Has carefully compared same and finds it correctly enrolled.

ATCHISON, Chairman.

Committee Room,
Austin, Texas, November 14, 1935.

Hon. Coke Stevenson, Speaker of the House of Representatives.

Sir: Your Committee on Enrolled Bills to whom was referred

H. B. No. 77, "An Act defining the term 'open saloon,' and prohibiting the operation of an open saloon, and providing a penalty for its violation; regulating the traffic in alcoholic liquors in this State, and prescribing penalties for offenses defined in connection therewith; creating the Texas Liquor Control Board, prescribing the qualifications and duties of the members thereof, and vesting it and other departments of State government with power to administer the provisions of this Act; providing for local option elections in counties, justice precincts, incorporated cities and towns to determine whether or not the qualified voters desire to authorize the sale of intoxicating liquors having various alcoholic contents; establishing a system or permits and licenses for persons engaged in the various phases of the liquor traffic; levying fees and taxes, and providing for their collection and allocating the fees and taxes collected; repealing Chapter 7, Title 11, Penal Code of 1925; Title 80, Revised Civil Statutes, 1925; Chapter 116, Acts of the Regular Session, Forty-third Legislature, and all amendments thereto; defining terms used in the Act; making appropriations; and declaring an emergency."

Has carefully compared same and finds it correctly enrolled.

ATCHISON, Chairman.

Committee Room,
Austin, Texas, November 14, 1935.

Hon. Coke Stevenson, Speaker of the House of Representatives.

Sir: Your Committee on Enrolled Bills to whom was referred

H. C. R. No. 33, Instructing the Enrolling Clerk of the Senate to amend the conference report on Senate Bill No. 5.

Has carefully compared same and finds it correctly enrolled.

ATCHISON, Chairman.

Committee Room,
Austin, Texas, November 14, 1935.

Hon. Coke Stevenson, Speaker of the House of Representatives.

Sir: Your Committee on Enrolled Bills to whom was referred

H. C. R. No. 35, Instructing the Enrolling Clerk to make the caption of House Bill No. 127 conform to the body of the bill.

Has carefully compared same and finds it correctly enrolled.

ATCHISON, Chairman.

Committee Room,
Austin, Texas, November 14, 1935.

Hon. Coke Stevenson, Speaker of the House of Representatives.

Sir: Your Committee on Enrolled Bills to whom was referred

H. C. R. No. 30, Instructing the Enrolling Clerk of the Senate to make certain corrections in conference report on S. B. No. 5.

Has carefully compared same and finds it correctly enrolled.

ATCHISON, Chairman.

Committee Room,
Austin, Texas, November 14, 1935.

Hon. Coke Stevenson, Speaker of the House of Representatives.

Sir: Your Committee on Enrolled Bills to whom was referred

H. C. R. No. 31, Instructing the Enrolling Clerk of the Senate to make certain corrections in Senate Bill No. 5.

Has carefully compared same and finds it correctly enrolled.

ATCHISON, Chairman.

FIFTEENTH DAY

(Monday, November 18, 1935)

The House met at 9:30 o'clock a. m., and was called to order by Hon. Emmett Morse, of Harris County.

The roll was called, and the Chair announced that there was not a quorum present.

Mr. Reed of Dallas moved a call of the House for the purpose of securing a quorum, and the call was duly ordered.

On motion of Mr. Reed of Dallas, the Sergeant-at-Arms was instructed to bring in all absent members within the city who are not ill.

The roll of the House was again called, and the following Members were present:

Adamson
Adkins
Aikin
Alexander
Alsup
Ash
Atchison
Beck
Bourne
Bradbury
Bradford
Broyles
Burton
Butler of Brazos
Calvert
Canon
Celaya
Clayton
Collins
Cooper
Cowley
Craddock
Crossley
Daniel
Davis
Davison of Fisher
Davisson of Eastland
Dickison
Dunagan
Dunlap of Hays
Dunlap of Kleberg
Dwyer
England
Fain
Farmer
Fisher
Ford
Fox
Gibson
Glass
Good
Graves
Gray
Hanna
Hardin
Harris of Archer
Harris of Dallas
Hartzog
Head
Herzik
Hill
Hodges
Hofheinz
Holland
Hoskins
Howard
Huddleston
Hunt
Hunter
Jackson
James
Jefferson
Jones of Atascosa
Jones of Falls
Jones of Shelby
Jones of Wise
Keefe
King
Knetsch
Lanning
Latham
Leath
Lemens
Leonard
Lindsey
Lucas
Luker
Mauritz
McCalla
McConnell
McFarland
McKee
McKinney
Moffett
Moore
Morris
Morrison
Morse
Newton
Olsen
Padgett
Palmer
Patterson
Petsch
Pope
Reed of Bowie
Reed of Dallas
Riddle
Roach of Angelina
Roach of Hunt
Roane
Roark
Rogers
Russell
Rutta
Scarborough
Sessions
Shofner
Smith
Spears
Stanfield
Steward
Stinson
Stovall
Tennyson
Thornton
Tillery
Venable
Walker
Wells
Wood of Harrison
Wood of Montague
Youngblood
Worley

Absent

Mr. Speaker
Butler of Karnes
Colquitt
Colson
Duvall
Lange
Reader
Roberts
Settle
Westfall
Young

Absent—Excused

Bergman
Cagle
Caldwell
Fitzwater
Frazer
Fuchs
Greathouse
Hankamer
Hyder
Lotief
Nicholson
Payne
Quinn
Tarwater
Waggoner

A quorum was announced present.

Rev. George W. Coltrin, Chaplain, offered the following invocation:

"Lord, as we enter into this peculiar phase of our activity we pray for a spirit of fairness and justice, and for Thy blessing upon those who lead and those who follow in this undertaking. Lead us in the even paths of wisdom and understanding. For Christ's sake. Amen."

LEAVES OF ABSENCE GRANTED

The following members were granted leaves of absence on account of important business:

Mr. Tarwater for today, on motion of Mr. Alexander.

Mr. Hyder for today, on motion of Mr. Worley.

Mr. Caldwell for today, on motion of Mr. Good.

Mr. Greathouse for today, on motion of Mr. Clayton.

Mr. Waggoner for today, on motion of Mr. Adamson.

Mr. Lotief for today, on motion of Mr. Butler of Brazos.

Mr. Quinn for today, on motion of Mr. Harris of Archer.

Mr. Bergman for today, on motion of Mr. Canon.

The following members were granted leaves of absence on account of illness:

Mr. Nicholson for today and indefinitely, on account of illness in his family, on motion of Mr. Tarwater.

Mr. Hankamer for today and the balance of the week, on motion of Mr. Clayton.

Mr. Payne for today, on motion of Mr. Howard.

Mr. Fuchs for today, on account of the death of his mother, on motion of Mr. Davis.

Mr. Frazer for today and tomorrow, on motion of Mr. Dunlap of Hays.

Mr. Hofheinz moved that the call of the House be extended until 11:00 o'clock a. m., today.

The motion was lost.

IN COMMITTEE OF THE WHOLE

(Mr. Spears in the Chair)

On motion of Mr. Reed of Dallas, the House at 10:20 o'clock a. m., resolved itself into a Committee of the Whole House, for the purpose of hearing certain charges preferred against Hon. J. E. McDonald, Commissioner of Agriculture.

PROCEEDINGS

of the House of Representatives of the State of Texas, as a Committee of the Whole, to hear charges against J. E. McDonald, Commissioner of Agriculture.

Monday, November 18, 1935.

The Chair: I assume, gentlemen, that both sides to this transaction are ready.

Mr. Aikin: We are ready.

Mr. Felts: So far as we know, we are ready.

The Chair: The Clerk will call the list of witnesses and I will ask them to come forward.

The Clerk: The following witnesses will please come forward as their names are called.

(Thereupon, The Chair swore the witnesses.)

Mr. McLean: May I ask what your announcement is?

Mr. Reed of Dallas: We are ready.

Mr. McLean: The defendant is ready. As I understand it, the Hearing will be conducted,—and if I be mistaken in this, correct me now,—under the rules of evidence applicable to our codes of procedure. Is that correct?

Mr. Aikin: Not strictly speaking.

Mr. McLean: We would like for the Chair to strictly speak, as to whether we will have this trial governed according to the rules of evidence as laid down by our codes of procedure, both civil and criminal, or whether we are not going to have it that way.

The Chair: As far as the Chair is concerned he intends to conduct the hearing as nearly as possible according to the rules of evidence. There are, however some precedents laid down in proceedings heretofore relative to impeachment charges that have been preferred against certain State officials on which the Chair is perfectly willing to say he has an open mind, some of which ruling he is in accord with and some of which he is not. Therefore, the only thing I can say about that is to pass upon them when we get to them.

Mr. Aikin: The next thing will be the reading of the charges.

The Chair: The charges will be read by the Clerk.

(Thereupon, the Clerk read the following charges to the Committee:)

"Articles of Impeachment

"Articles exhibited and presented by the House of Representatives in their name and in the name of the people of the State of Texas against J. E. McDonald, Commissioner of Agriculture in maintenance of and predicated upon the minority report of the above named committee heretofore adopted by the House of Representatives, these said Articles of Impeachment representing:

"Article 1. That the said J. E. McDonald, while serving in the capacity of the Commissioner of Agriculture for the State of Texas, knowingly and wilfully paid and caused to be paid to his brother, A. E. McDonald, out of funds in and belonging to the State Treasury of the State of Texas, the sum of $315.00 pursuant to an agreement entered into with his said brother for the transportation of certain animals, to-wit: Jacks and stallions belonging to the State of Texas, the same being in violation of the laws of the State of Texas.

"Article 2. That on or about the second day of March, 1934, and for sometime prior thereto and subsequent thereto, the said J. E. McDonald, while serving and acting in his official capacity as Commissioner of Agriculture for the State of Texas,

knowingly and wilfully connived and conspired with his brother, A. E. McDonald, and one Jim Tate to evade the provisions of Articles 432, 433, 434 and 437, of the Penal Code of the State of Texas, and by so conniving and conspiring did evade the provisions of said Article of the Penal Code of the State of Texas, all of which was done in violation of the laws of this State.

"Article 3. That the said J. E. McDonald, on divers occasions while acting in his official capacity as Commissioner of Agriculture for the State of Texas, has been guilty of gross negligence of duty in permitting his employee and agent, to-wit: W. D. Thurman, to accept commissions not authorized by law, and bribes, in violation of the laws of this State, in the sum of $1625.00, all of which was known to or could easily have been ascertained by the said J. E. McDonald.

"Article 4. That the said J. E. McDonald, during the year 1934, while acting in his official capacity as the duly elected Commissioner of Agriculture of the State of Texas, did then and there, unlawfully, wilfully and corruptly accept a bribe from one J. C. Robison, W. D. Thurman and one Dr. E. G. Wheeler, that he did accept two mares of the value of $250.00 each, the said W. D. Thurman, J. C. Robison and Dr. E. G. Wheeler then and there being persons with whom the said J. E. McDonald was dealing in an official capacity as Commissioner of Agriculture of and for the State of Texas, the said bribe being given for the purpose of influencing the said J. E. McDonald in his official acts as Commissioner of Agriculture of the State of Texas, and the said J. E. McDonald was so influenced in his official acts and the said W. D. Thurman, J. C. Robison and Dr. E. G. Wheeler gained advantage and benefits thereby, all of which was done in violation of the laws of the State of Texas.

"Article 6. That the said J. E. McDonald, acting in his official capacity as the Commissioner of Agriculture for the State of Texas, on divers occasions, from February 1st, 1934, to December 20th, 1934, did unlawfully knowingly and wilfully withhold and divert from the credit of the Special Racing Fund of the State Treasury of Texas, procreation fees amounting to $16,196.00 by depositing the same in a bank in the City of Austin, Travis County, Texas, and did make withdrawals from said deposits in the sum of $13,319.04, over the signature of the said J. E. McDonald; the said J. E. McDonald thereby withholding and diverting from the Special Racing Fund of the Treasury of the State of Texas, the sum of $16,196.00 in money, the said money then and there being a special fund belonging to the State of Texas, and being set apart by law for specific purposes towit: The available school fund, the Jack and Stallion Fund, the Department of Agriculture and the several counties of the State of Texas; all of which was done in violation of the laws of the State of Texas.

"Article 7. That the said J. E. McDonald, while acting in his official capacity as Commissioner of Agriculture of the State of Texas, knowingly and wilfully distorted the records of the Department of Agriculture of the State of Texas, and comingled personal funds with public funds, and thereby was guilty of gross negligence of his official duties and incompetencies in the handling of public records and his official duties in office.

"Article 8. That the said J. E. McDonald, during the year 1935, while acting in his official capacity as Commissioner of Agriculture of the State of Texas, knowingly and wilfully made and entered into, and connived and conspired with various caretakers of animals, certain and unlawful contracts for the purpose of unlawfully diverting from the treasury of the State of Texas, certain procreation fees, required by law to be paid into the Treasury of the State of Texas, and permitted and caused and authorized certain caretakers to collect and retain said procreation fees, thereby depriving the Special Racing Fund of the State of Texas of said fees into which they are required by law to be paid, all of which constituted a violation of the laws of the State of Texas.

"Article 9. That during the years 1934 and 1935, the said J. E. McDonald, while acting in his official capacity as Commissioner of Agriculture of the State of Texas, knowingly, wilfully and unlawfully used his official office to promote the interests of milk, cream, baby chick and rice organizations, and to collect fees from divers sources without authority of law, and did during all of such time make dis-

bursements of said fees so collected, the same constituting a gross abuse of official authority and a violation of the laws of the State of Texas.

"Article 10. That the said J. E. McDonald, while acting in his official capacity as Commissioner of Agriculture of the State of Texas, during the year 1934, did wilfully and knowingly permit to be used and cause to be used, his official office in the furtherance of the affairs and business of private enterprises, to-wit: Harris & Voss, Cotton Brokers of New York City, and Anderson & Clayton Cotton Company, of Houston, Texas, that the said J. E. McDonald by so using his said office, benefitted personally and financially, the same constituting a gross and wilful abuse of authority and influence, and a violation of the laws of the State of Texas.

"Article 11. That the said J. E. McDonald, during the months of June and July, 1935, wilfully, knowingly and unlawfully destroyed and caused to be destroyed certain public records in his care and custody, the nature and extent of which is well known to the said J. E. McDonald and those acting for him; that said records were destroyed for the purpose of preventing a committee of the Texas Legislature from ascertaining the contents thereof and for the purpose of impeding and thwarting justice with reference to matters above set forth.

"Wherefore, premises considered, the House of Representatives of the Forty-fourth Legislature of the State of Texas, does charge the said J. E. McDonald in the manner, by the means and of the offenses aforesaid; and further charges that he did thereby render himself unworthy and no longer fit to exercise the duties incumbent upon the Commissioner of Agriculture of the State of Texas.

"And the House of Representatives, saving to itself the liberty of presenting at any future time during the course of proceedings had hereon or hereafter, further articles of impeachment for other accusations against the said J. E. McDonald, and also of replying to his answer which he shall make under said Articles, if he does so file an answer, and of offering proof to sustain each and all of the above articles and to each and all other articles or accusations which might hereafter be made or which the case shall require, requests that the said J. E. McDonald be called on to answer the above articles of impeachment and that in such proceedings the examinations, trials and judgments thereof be had and given thereto as are agreeable to law and justice."

Mr. Felts: Counsel would like to file a general denial as to all the charges and a special denial to each and every one of the charges that have been read. We would like at this time to inquire if the investigation will be confined to the charges read?

The Chair: The House passed a resolution a couple of days ago which resolution authorized the investigation of any additional acts of official misconduct, which resolution says that the hearing shall be conducted and evidence submitted upon not only such matters as are charged specifically but upon other matters involving official integrity of the Commissioner of Agriculture, J. E. McDonald.

Mr. Felts: If it meets with the approval of the Chairman and the Committee we would like to prepare and file the denial at sometime during the noon hour and have it ready to file immediately upon convening after lunch.

The Chair: That is agreeable.

Mr. Aikin: That will be all right.

Mr. Reed of Dallas: We offer in evidence, next, a letter to the Attorney General's Department, requesting that an assistant be assigned us, which letter I wish to read into the record as follows:

House of Representatives
Austin, Texas, November 12, 1935.

Mr. William McCraw,
Attorney General of Texas,
Austin, Texas.

Dear General:

We, the undersigned members of the Board of Managers, appointed by the Speaker of the House of Representatives pursuant to a resolution passed by the House of Representatives on October 8, 1935, request of you the assistance of Assistant Attorney General, Earl Street, to assist the Board of Managers in the presentation of the impeachment charges against Mr. J. E. McDonald, Commissioner of Agriculture of Texas.

We would appreciate your assigning Mr. Street to this matter at once, as the House has decided to hear charges against Mr. McDonald on November 15.

Thanking you for your very kind and prompt attention to this matter, we are,

Yours very truly,

A. M. AIKIN, Jr.
WILSON H. FOX,
HOWARD C. DAVISON,
J. BRYAN BRADBURY,
W. O. REED,
Board of Managers.

F/ly

Read in evidence and marked "Exhibit 1" for identification.

Mr. Reed of Dallas: The purpose in offering the letter is that we requested that Mr. Street be assigned us in this matter.

Mr. McClain: We have no objection to the letter.

Mr. Reed of Dallas: We have the Court Reporter here who reported a part of the investigation before the Legislative Investigating Committee, and we have the record here which he has prepared, and he has sworn to the testimony and we do not think it necessary to keep him here and for that reason as he is here and wants to go, if it is agreeable to the Chairman and the other gentlemen we would like to let him go, as he wants to get back to his business.

Mr. McClain: As one of the Attorneys for McDonald, if you are going to offer this testimony, we wish to state there have been several serious mistakes made in some of the hearings of the testimony, either in typing or in their understanding of the witness, and after we read over the testimony now offered, if we find no errors of course we would not insist that the stenographer be kept here, so we would like to have an opportunity to read over the testimony as reported by him and determine whether it is accurate. In other words we would not like to agree to let him go and raise no objection to the testimony until we have read it over.

Senator McGregor: We are not agreeing to the admissibility of the testimony as evidence.

Mr. McClain: We are admitting that the gentleman reported it correctly, if we find no errors in his report.

Mr. Spears, Chairman: That's the Chair's understanding.

Mr. Reed of Dallas: In view of the fact that the Attorneys for the Respondent would like to look over this evidence, and it is now 11:30 a. m., there would not be any use in going into the testimony on the first charge until after we have settled this question—and I would like to make a motion to recess until two o'clock.

Mr. Spears, the Chairman: Mr. Reed, the gentleman from Dallas, moves that the Committee recess until two o'clock.

The Chairman put the motion, and the Committee, at this point, took recess until two o'clock this afternoon.

Mr. Aikin: Mr. Chairman, we now ask for the witness, Gus Farrar.

The Chair: Come around Mr. Farrar.

Mr. Gus Farrar, a witness on behalf of the Relator, after having been first duly sworn, testified as follows:

Direct Examination

(Questions by Mr. Reed of Dallas):

Q. Will you state your name, please sir, to the Committee?

A. My name is Gus Farrar.

Q. Where are you employed?

A. In the Comptroller's Department.

Q. What are your duties there?

A. Chief of the Claims Division.

Q. Well now, just what do your duties consist of as Chief of the Claims Division?

A. I have immediate supervision over the payment of all claims as presented for the issuance of warrants, and I have supervision over the auditors who audit the claims and pass them on to the warrant writers.

Q. On or about March 5th, 1934, did you have a claim or a warrant, the original of which was made out to Mr. A. E. McDonald—first, did you have, round about the same, did you have a claim that was presented, seeking payment to A. E. McDonald?

A. What date was it?

Q. I suppose it was on or about March 5th, 1934; it was perhaps a little bit before that time.

A. I have a claim that is dated February 28th, but probably that would be the one that the warrant would issue on about March 5th.

Q. How much is it for?

A. $150.00.

Q. What's the number? Was it paid?

A. The warrant issued and it was paid.

Q. What was the number of the warrant?

A. 26,711.

Q. 26,711?

A. That's right.

Q. What was that for, in payment for what, Mr. Farrar?

A. Delivery of State owned jacks and stallions to the caretakers in the following counties: Lavaca, DeWitt, Bastrop, Hays, Concho, Haskell, Hall, Potter, Dawson, Cherokee, Shelby, Titus, Hunt, Dallas, Navarro, Bell and Williamson.

Q. And that warrant was made out to whom?

A. A. E. McDonald.

Q. And the amount was how much?

A. A hundred and fifty dollars.

Mr. Reed of Dallas: Mr. Chairman, we wish to offer in evidence the original documents and warrants.

Mr. Felts: We have no objection to the introduction of all these warrants, totaling the first $315.00 paid to J. E. McDonald.

Q. (By Mr. Reed of Dallas): Now, Mr. Farrar, you also have, or do you have a requisition there or request there for payment to A. E. McDonald on or about March 21st?

A. Yes sir, I have one claim, dated March 19th, 1934.

Q. And what was it for?

A. Transporting two loads of jacks and stallions from Missouri to Texas and delivery to the caretakers of the assigned counties.

Q. Was that paid?

A. It was.

Q. And to whom was it paid?

A. A. E. McDonald.

Q. And what was the number of the warrant?

A. Warrant 29,855.

Q. For how much?

A. $165.00.

Q. Now, Mr. Farrar, do you have a record of any claim being turned down?

A. I don't have any record of it with me.

Q. Was there a request made that was turned down?

A. I do not remember.

Q. Then you do not have anything other than what you have just stated here?

A. That's right.

Q. Do you have any record of a similar request being made that was turned down?

A. Not at this time; there might have been one of those turned down later on.

Q. But you don't have anything of that nature with you at any time—I mean that was turned down at any time, do you?

A. No sir, I do not.

Mr. Reed of Dallas: Mr. Chairman, in view of the fact that it is necessary that these documents remain in the hands of an employee of whatever department it might be, if it is agreeable with everyone we will have the contents read into the record that they might be later identified rather than introducing the instruments themselves. Is there any objection to that request?

Mr. McLean: We have no objection whatever.

Mr. Reed of Dallas: Read them into the record.

A. I read what they were both for. I didn't read the total amount of language on the claim itself.

Q. Read that also because it will have to be properly identified.

Mr. McLean: And by whom signed, and every name that appears upon it.

A. Austin, Texas, February 28th, 1934. Department of Agriculture. To A. E. McDonald, Dr. For delivery of State owned jacks and stallions to the caretakers of the following counties:

Lavaca, DeWitt, Bastrop, Hays, Concho, Haskell, Hall, Potter, Dawson, Cherokee, Shelby, Titus, Hunt, Dallas, Navarro, Bell and Williamson. $150.00. State of Texas, County of Travis. Personally, before me, the undersigned authority, this day appeared J. E. McDonald, Commissioner, who being by me duly sworn on his oath says that the account hereto attached for One Hundred and Fifty Dollars in favor of A. E. McDonald and against the Department of Agriculture is within the

knowledge of affiant just, true and correct. That it is due and unpaid. Signed J. E. McDonald. Sworn to and subscribed before me this 28th day of February, 1934, M. A. Morris, Notary Public, Travis County, Texas. Approved for $150.00, Appropriation Gus—201, J. E. McDonald, Commissioner. Department 551. Project —— Original Warrant, 26,711, for $150.00.

Q. Does that finish one of them?

A. The first claim, yes. I might add that this carries a seal. I didn't read it but it carries a seal. The next one reads: Austin, Texas, March 19th, 1934, State of Texas, Department of Agriculture, to A. E. McDonald, Dr. For transporting two loads of jacks and stallions from Missouri to Texas and delivering to caretakers $165.00. Approved for $165.00 to be drawn out of appropriation G-201. J. E. McDonald, Commissioner. State of Texas, County of Travis. Personally, before me the undersigned authority, this day appeared J. E. McDonald who being by me duly sworn on his oath says that the account hereto attached for $165.00 in favor of A. E. McDonald and against the Department of Agriculture is within the knowledge of the affiant, just, true and correct. That it is due and unpaid. Signed J. E. McDonald. Sworn to and subscribed before me this 19th day of March, 1934. M. A. Morris, Notary Public, Travis County, Texas, with the seal attached. Warrant No. 28855, Department 551, Appropriation G-201, for $165.00. It has the auditor's approval, the letter "B".

Mr. McLean: The Auditor approved it?

A. Yes, sir.

Mr. McLean: You didn't state on the first one, did that have the Auditor's approval?

A. Yes, sir. It had the approval of the same Auditor, "B". That is Mr. Briscoe, in our department.

Mr. McLean: It would not have been paid if it had not been approved?

A. No, sir.

Q. Have you read the claim?

A. The entire claim. This is the claim that comes to our department.

Q. The claim is a separate document, isn't it?

A. No, sir, this instrument is the instrument upon which the warrant issues.

Q. That is all that you have on those two claims?

A. Yes, sir.

Q. Now, I will ask you if these are correct photostatic copies of the original warrants which you have?

A. I don't have the original warrants. They are held by the Treasurer's Department.

Q. I see. I think another man has those.

Mr. McLean: We will agree that those are correct photostatic copies.

Mr. Reed of Dallas: We will offer them in evidence, these two warrants.

The Chair: We will have the warrants read.

Read the warrants, please.

(Thereupon, the Reading Clerk read the following two warrants):

STATE COMPTROLLER
of Public Accounts.

3-10-34
No. 26711.
AUSTIN, TEXAS.

SPECIAL FUND
Treasury Warrant

The Treasurer of the State of Texas
Will Pay to the Order of
And Charge to

DATE	APPR. NO. AND FUND	
MAR 5-34	G201	RACING

For EXP. G.

A. E. McDONALD $150.00
EXACTLY *150 DOLLARS 00 CENTS

CHARLEY LOCKHART
State Treasurer

GEO. H. SHEPPARD,
State Comptroller of Public Accounts.

STATE COMPTROLLER
of Public Accounts.

3-28-34
No. 29855.
AUSTIN, TEXAS

SPECIAL FUND
Treasury Warrant
The Treasurer of the State of Texas
Will Pay to the Order of
And Charge to
DATE APPR. NO. AND FUND
MAR 21-34 G201 RACING
For TRANS. CHG.

A. E. McDONALD $165.00
EXACTLY *165 DOLLARS 00 CENTS

CHARLEY LOCKHART
State Treasurer

GEO. H. SHEPPARD,
State Comptroller of Public Accounts.

Mr. Reed of Dallas: Now, read the endorsements on the first warrant.

(Thereupon, the Clerk read the following endorsement:)

Pay to the order of Republic Bank & Trust Company, Waxahachie, Texas A. E. McDonald. Pay to the Order of Waxahachie Bank & Trust Company, Waxahachie, Texas. Peoples Potato & Plant Co.

Pay to the Order of Any Bank, Banker or Trust Co. Previous Endorsements Guaranteed 32-62 March 3, 1934. Republic National Bank and Trust Company, Dallas, Texas.

Mr. Reed of Dallas: Read the endorsements on the second one.

(Thereupon, the Clerk read the following endorsement:)

Pay to the Order of Republic Bank & Trust Company, Waxahachie, Texas. A. E. McDonald.

Pay to the Order of Waxahachie Bank & Trust Company, Waxahachie, Texas. Peoples Potato & Plant Co.

Pay to the Order of Any Bank, Banker or Trust Co. Previous Endorsements Guaranteed 32-62 March 27, 1934. Republic National Bank and Trust Company, Dallas, Texas.

Pay to the Order of Any Bank or Banker, Prior Endorsement Guaranteed, March 26, 1934, Waxahachie Bank & Trust Company, Waxahachie, Texas.

Mr. Reed of Dallas: That is all.

Cross Examination

(Questions by Mr. McLean):

Q. Do those warrants show that they came thru the various banks as is usually customary for public warrants?

A. That would be an opinion from me.

Q. That is what I am asking you for.

A. Yes, sir, I would say that they did.

Mr. McLean: That is all.

(Witness excused.)

The Committee called to order by the Chairman, Mr. Spears.

Mr. Spears, Chairman: Gentlemen, have you any witnesses here?

Mr. Reed of Dallas: We have arrived at a definite agreement in reference to some of the evidence—in regard to photostatic copies of certain testimony that we have. This agreement that has been reached is that—

Mr. Felts: We have not agreed to the admissibility of any of the evidence, but that we will only make such objections as we could make to the original instruments if offered.

Mr. Spears, Chairman: You agree to use photostatic copies and waive the proposition that they are not the original documents?

Mr. Felts: Yes, sir.

Mr. Felts: We now offer the denial of the allegations—formal denial of the allegations, and we would like to have that read.

Mr. Spears the Chairman: Alright, please hand it to the Clerk.

Mr. Dunn, the Reading Clerk reads the denial as follows:

"Before the House of Representatives sitting as a Committee of the Whole.

"In Re: Investigation of J. E. McDonald, Commissioner of Agriculture.

"Comes now, J. E. McDonald and says he is not guilty of any one of the charges alleged against him; that he has violated no law knowingly or wilfully, and he denies generally each and all of the allegations contained in the eleven counts presented against him.

FELTS & WHEELER,
BILL McCLAIN,
T. H. McGREGOR,
WILL HANCOCK,
M. W. BURCH,
Attorneys for Respondent, J. E. McDonald."

November 18, 1935, Received and filed in the office of the Chief Clerk of the House of Representatives.

Mr. Reed of Dallas: We offer in evidence the agreement and asked that it be marked for Identification:

"To the Honorable Earl Street, Assistant Attorney General and the Committee in charge:

"In order to facilitate matters, we agree were the witness, Homer F. Wicker, present he would testify as a court reporter and stenographer that he correctly took down and transcribed all of the evidence introduced before him relative to the J. E. McDonald investigation, but we do not agree that any part of the testimony is admissible for any purpose whatever. We will make our objections to the inadmissibility of the evidence at the proper time. Of course, we do not agree that the evidence itself is true, were it admissible.

Respectfully,
FELTS & WHEELER,
BILL McCLAIN,
T. H. McGREGOR,
WILL HANCOCK,
M. W. BURCH,
Attorneys for Respondent, J. E. McDonald."

Marked "Exhibit A" for Identification.

Mr. Aikin, of the Committee: We now offer in evidence that part of the Graves' Committee report, which is the testimony of J. E. McDonald, beginning on page 188 of the Graves' with the first answer to page 195, from the Graves' Committee report as follows: That the Reading Clerk read it—we offer it in evidence and ask that it be now read.

Mr. Felts: We agree to the admission of the evidence given by Mr. McDonald, but under the rule of evidence, where they offer a part of a man's testimony, we have a right to offer the remainder of it, and we ask that all of his testimony be allowed to be read as testimony in this matter.

Mr. Street: I just want to offer a portion of the testimony at this time, and as to the rest of it, whatever testimony he sees fit to offer, we agree that the rest of it will become admissible, and we shall at this time offer only just a part of it.

Mr. Spears, Chairman: As I understand, the law that authorizes you to offer a certain part of it will authorize them to offer the balance, should they so desire.

Mr. Felts: Mr. Chairman, if the evidence which is submitted is related to any other matter not contained in the eleven charges before the House, we would like to make the objection that it is irrelevant and immaterial and unnecessary at this time.

Mr. Spears, the Chairman: Now, of course, you will have to point out such part of the testimony as you want to object to—the Chair would not be in a position to watch the reading of the testimony and make the objection himself. If any particular part or portion of the testimony that you want to object to, the Chair will be glad to rule on it.

Mr. Felts: I think the Committee sees our position and the point is that we wish to object to any testimony that does not bear directly on the original eleven charges; clearly it would not be admissible as evidence, if it relates to none of the questions, and should it appear that other matters not embraced in any of the questions we would make an objection that it is irrelevant and immaterial and not admissible at this time.

Mr. Reed of Dallas: This concerns only the particular counts contained in the charges which have been submitted to the House Committee.

The reading clerk reads:

"Report of House Investigating Committee House of Representatives Forty-fourth Legislature. May 11th, 1935, Received and filed in the office of the Chief Clerk of the House of Representatives. Mr. Graves, explained that the committee had a few

questions which they wanted to ask Mr. McDonald.

Mr. J. E. McDonald having been sworn in testified as follows:

Mr. Calvert questioning:

Q. Mr. McDonald, you have appeared before this committee before this time with reference to the administration of the jack and stallion fund. At the time you first started buying jacks and stallions in other states what method did you follow in transporting them into Texas?

A. The first we bought was in the early part of February 1933, and I sent Mr. J. J. Olsen, I think, the latter part of January, to Kansas and Missouri and gave him a list of the breeders that I had and told him to try to locate some jacks and stallions and I would come up with a member of the Board of Control when he notified me when he had about twenty-five or thirty located. I went over to the Board of Control and they sent Mr. Harry Peterson, one of their purchasing agents, with me. We drove up in the State car, and purchased twenty-six or twenty-eight head, loaded on two freight cars and shipped them to Austin.

Q. Was Austin at that time the central point of shipping animals to this State for the purpose later of distributing over the State?

A. We shipped the first two car loads here and we had not determined at that time just what would be our policy.

Q. You shipped those by freight?

A. Yes, sir.

Q. Do you know what it cost to ship them to Austin?

A. It cost approximately $12.50 a head. That was freight. They were shipped in box cars and we had in addition $35 or $40 expense for putting petitions in the two trucks.

Q. It did not run much more than $13 or $15 all totaled?

A. I think about $15 or $16.

Q. When did you conceive the idea of trucking them instead of by freight?

A. We found they developed shipping fever and the people that had been shipping animals told me that the better method would be never to concentrate them in stock yards and ship them by train and we found the trucking more satisfactory.

Q. Who did you have first dealing with trucking them in?

A. I rented a truck for $15 or $18 a day from my brother and hired a man by the name of Tate and paid him $5 a day for expenses to operate the truck.

Q. Had it occurred to you at that time that you were violating the Nepotism Law?

A. No, sir; it did not. After we hauled some the Board of Control notified me that it was irregular and I told them that it never occurred to me that I could not rent a truck from my brother and I told them to fix a truck up with five stalls and that I wanted Mr. Tate because I knew he was a livestock man and could do the job.

Q. How many days did you rent that truck from your brother?

A. I think the records will show that, I don't remember.

Q. You say when you discovered, or when some question was raised about renting a truck from your brother you entered into some character of contract with Mr. Tate?

A. Down at the Board of Control I talked to Mr. Wallace and Mr. Teer and told them that I was unable to get a truck and that we had to equip this truck and that Mr. Tate was the man I wanted because he was thoroughly dependable not only in operating a truck but he knows live stock.

Q. Is it a fact that most of these buying and trading concerns have trucks that are equipped in somewhat similar way transporting live stock?

A. No, sir; I don't remember at the time that they had one for transporting jacks and stallions. Stallions will fight and kill one another just as quick as they get to them.

Q. What type of contract did you make with Mr. Tate about that truck?

A. I made a contract with Tate $45 per head to go to any State—Kansas, Missouri, Iowa, Nebraska, Kentucky, or Tennessee, and concentrate those animals and to transport them to wherever they were assigned in Texas—wherever that location may be and they were to take care of the feed.

Q. Did you know what truck Mr. Tate was going to use in transporting the animals?

A. Yes, I did.

Q. Did you make that contract with him in writing?

A. I could not say whether it was in writing or whether I wrote a letter. I think I have a letter with Mr. Tate. After this question came up I told my brother that it was irregular for me to rent his truck. We talked it over with the Board of Control and it was suggested that you can make a bona fide agreement with the Board of Control for this truck and I entered into a contract with Mr. Tate.

Q. Do you recollect whether it was in writing?

A. My recollection is that I gave him a letter.

Q. When did you first approach Mr. Tate about the matter and where?

A. I think I wrote Mr. Tate a letter. I think that was the first contract I had when I wrote the letter.

Q. Had you talked to Mr. Tate prior to that time about buying the truck?

A. No, sir; I did not.

Q. Did you talk to your brother about selling the truck?

A. I did. He showed me the transfer and I wrote Mr. Tate a letter making him a price.

Q. You knew at that time that Mr. Tate had been employed by your brother?

A. Yes, I did.

Q. You saw only the transfer—you did not see a note or mortgage in payment of the truck did you?

A. No, I did not.

Q. Did you ever examine your brother's books to determine whether or not the sale had been made?

A. No, I did not.

Q. You continued to pay Mr. Tate $45 a head for hauling animals?

A. Yes.

Q. You never did see the warrant after the payment had been made?

A. I could not say that I did. They came back to the office and I may have seen some I don't know.

Q. Did you have any knowledge directly or indirectly from your brother or Mr. Tate that those warrants were being cashed and turned over to your brother?

A. No, I did not.

Q. Did you concentrate some of these animals at Waxahachie?

A. Yes, they were there in a barn in the care of Mr. Smith.

Q. Is he any relation of yours?

A. He is my brother's father-in-law.

Q. Did you pay him for taking care of the animals there?

A. Sometimes, yes. Sometimes we would bring in a load when the road conditions were so that we could not get out and the animals were concentrated there. One time we brought in a load from Tennessee and we concentrated them there until the roads cleared up and then we distributed them out.

Q. Did you have any conversation with Mr. Tate with respect to whether or not he purchased that truck?

A. No, I did not.

Q. Did it ever occur to you that $45 per head might be pretty high for the transportation of jacks and stallions into Texas?

A. No, sir, it was not high.

Q. What would it cost by palace car?

A. About $18 per head.

Q. Were the accommodations satisfactory?

A. We used an old barn here and found that they developed shipping fever and we decided we did not want any more animals in that barn. Many times when a load was bought I would give an assignment over the telephone and it is worth about twice as much trouble to deliver them after they get to Texas as it is to bring them from Kansas or Missouri into Texas.

Q. Did you know that that truck had been purportedly resold to your brother?

A. I did not.

Q. Do you know that Mr. Tate denied that he ever bought that truck?

A. I have been told that.

Mr. Graves questioning:

Q. Did you know Mr. Tate's financial condition? Did you know he could not buy a truck?

A. My brother told me he had to buy it by terms, as I remember it was $1100 or $1200 that he paid for the truck.

Q. Did you know that your brother passed to profit and loss $1715.13 that was made off of that truck while it was leased to the State of Texas?

A. I did not know that."

Mr. Reed of Dallas: That's all of that.

Mr. Felts: Mr. Chairman, will you give us just a minute.

Mr. Reed of Dallas: Mr. Chairman, we would like to have the witness, Jim Tate:

Jim Tate, a witness called, having been duly sworn, testified as follows:

Direct Examination

(By Mr. Reed of Dallas, in Chief):

Q. Please state your name to the Committee.

A. Jim Tate.

Q. Make it just a little bit louder, Mr. Tate.

A. Jim Tate.

Q. Where do you live, Mr. Tate?

A. Waxahachie.

Q. Are you employed at the present time?

A. Yes, sir.

Q. By whom are you employed?

A. A. E. McDonald.

Q. Mr. A. E. McDonald lives in Waxahachie?

A. Yes, sir.

Q. What are your duties?

A. Driving a truck.

Q. How long have you been in the employment of Mr. A. E. McDonald?

A. Oh, about six or seven years.

Q. Prior to that time where did you work, Mr. Tate?

A. I worked in Waxahachie.

Q. What were you doing?

A. Working for a Wholesale Grocery Company—Grocery House.

Q. Is Mr. A. E. McDonald a brother of J. E. McDonald?

A. I believe so.

Q. How much a month did you get from Mr. A. E. McDonald.

A. I wasn't working on a monthly salary.

Q. What was your salary? What is your salary?

A. So much a trip for driving a truck.

Q. How much a trip—during this seven years, I think you said about seven years—have you always drawn that salary from Mr. A. E. McDonald?

A. Practically all the time; yes, sir.

Q. During that time did you ever draw a salary from the State of Texas?

A. Yes, sir.

Q. What was that for, Mr. Tate?

A. Driving a truck.

Q. What were you hauling?

A. Stock.

Q. What kind of stock?

A. Jacks and stallions.

Q. Where from and to?

A. From—I think I hauled two loads from Missouri, and then I hauled some from Austin and delivered them over the State.

Q. The two from Missouri—are they the only two you recall having driven from out of the State?

A. I believe at that time; yes, sir.

Q. You made several trips within the State.

A. Yes, sir.

Q. Mr. Tate, have you previously testified before a House Investigating Committee?

A. Yes, sir.

Q. About what time was it—how long ago?

A. Oh, possibly a month and a half, or two months.

Q. Just generally, what was the nature of your testimony at that time?

Mr. McClain: We object to the witness reciting his testimony before the Committee at this time.

Mr. Chairman, Spears: I believe the objection would be good—Mr. Reed, under the nature of the testimony at this time—the objection is sustained.

Q. Mr. Tate, at the time you were hauling these stallions and jacks, who were you trucking them for?

A. For the State.

Q. Whose truck were you using, Mr. Tate?

A. I believe the truck was leased by the State, at that time.

Q. Well, by whom was it leased?

A. Mr. J. E. McDonald.

Q. And who did he lease it from.

A. From Mr. A. E. McDonald.

Q. Did the State ever lease the truck from you?

A. No, sir.

Q. The State never did lease the truck from you?

A. No, sir.

Q. Do you own the truck now, or did you own the truck at that time?

A. No, sir.

Q. And you stated that the State never leased a truck from you—is that correct?

A. Yes, sir; that's correct.

Q. Did you ever enter into a contract with anyone in regard to the use of a truck?

A. Yes, sir.

Q. Tell us about that?

A. Just—well, just what do you want to know about it?

Q. Who did you enter into the contract with—what was the arrangement to pay you and how you were going to be paid?

A. I entered into a contract with Mr. J. E. McDonald to haul stock within the State and from out of the State into the State for forty-five dollars a head.

Mr. McClain: Was that contract in writing?

Witness: Yes, sir.

Mr. McClain: We don't raise the question at this time, but of course the contract would be the best evidence—have you gentlemen (to the Board of Managers) the contract?

Mr. Reed of Dallas, for the Managers: No, sir; we haven't the contract.

Mr. McClain: We have the contract and will use it, however, we have no objection to questioning the witness about the contract.

Mr. McClain: The witness is permitted, without objection to state what the contents of the contract—we make no objection, Mr. Chairman.

Mr. Reed of Dallas: You say you entered into the contract with Mr. McDonald?

A. Yes, sir.

Q. And you stated a while ago that you didn't have a truck?

A. Not at that time—I didn't state that then.

Q. I asked you about the truck at the time you were hauling jacks and stallions?

A. When the State was paying me, I understood you to say—I thought the truck related to when I entered a contract with Mr. J. E. McDonald—I had a truck then.

Q. Where did you get the truck?

Mr. Tate: Where do you usually get trucks?

Mr. Reed of Dallas: Where—I am asking you?

Mr. Tate: I bought it.

Q. From whom did you buy it?

A. Mr. A. E. McDonald.

Q. How much did you pay for that truck, Mr. Tate?

A. I don't remember now, that has been a long time.

(By Mr. Street):

Q. Mr. Tate, when was it you started to work for Mr. A. E. McDonald?

A. Well, I said it was about six or seven years ago.

Q. And have you worked for him continuously from that time up to now?

A. No, sir.

Q. When did you cease to be in his employ?

A. I told you that I worked for a while for the State of Texas.

Q. When did you start working for the State of Texas?

A. 1934.

Q. About what time in 1934?

A. I don't remember now.

Q. Do you have any idea as to the time?

A. Along in March, I believe.

Q. And how long did you work for the State?

A. About two months.

Q. What was your compensation when you were working for the State?

A. One Hundred Dollars per month and expenses.

Q. Did you receive that pay directly from the State?

A. Yes, sir.

Q. From the State Treasury?

A. Well, I got—I suppose it was from the State Treasury.

Q. You got a warrant each month for your salary?

A. Yes, sir.

Q. What did you do with those warrants?

A. Cashed them.

Q. What did you do with the proceeds—I mean did you use that for yourself, or turn them over to someone else?

A. Used them for myself.

Q. During that time were you drawing any pay from Mr. McDonald?

Mr. Tate: From what McDonald?

Mr. Street: Either one of them?

A. No, sir.

Q. I thought you stated a while ago that you bought the truck from A. E. McDonald?

A. I did.

Q. When did you buy that truck?

A. In April; I think.

Q. What year?

A. 1934.

Q. About how much did you pay for it?

A. I don't remember now—exactly.

Q. Well, about how much did you pay for it?

A. About eleven or twelve hundred dollars.

Q. Had you ever bought a truck before that?

A. No, sir.

Q. Have you ever bought one since that time?

A. Not directly, no, sir.

Q. You don't remember what you paid for this?

A. No, sir?

Q. Do you still have it?

A. No, sir.

Q. What did you do with it?

A. I transferred it back to Mr. McDonald.

Q. How long did you keep that truck?

A. About a year.

Q. About a year—I believe you said you bought it in April, 1934?

A. Yes, sir.

Q. (By Mr. Street): Do you recall the month that you transferred it back to Mr. McDonald?

A. No, sir, I do not.

Q. When you bought it, how, did you get any written transfer from him?

A. Yes, sir.

Q. When you delivered it back to him, did you give a written transfer?

A. Yes, sir.

Q. How did you buy that truck? Did you pay for it in cash or part cash and part on time?

A. I bought it on time.

Q. You bought it on time; did you pay anything down?

A. No, sir.

Q. How much did you pay per month on it?

A. I think I paid fifty dollars a week.

Q. Fifty dollars a week and you, at that time, were drawing a hundred dollars a month, is that correct?

A. Yes, sir.

Q. I believe you said that you kept that truck about a year?

A. That's right.

Q. How many payments did you make to Mr. A. E. McDonald on it?

A. Well, I don't remember.

Q. Well, give us some idea about it?

A. Well, I just don't know.

Q. Well, did you make as many as one payment?

A. Sure, of course.

Q. Did you make as many as half a dozen?

A. I don't remember.

Q. You just don't have any idea about how much you paid Mr. McDonald on that truck?

A. No, sir.

Q. However, you are positive that you bought the truck from Mr. A. E. McDonald?

A. Well, it was transferred to me.

Q. Well, did you buy it from him?

A. Well, it wouldn't be transferred to me, would it, otherwise?

Q. Well, I am just asking you, Mr. Tate, whether you bought the truck from Mr. McDonald or not, did you or didn't you?

A. I did.

Q. You testified before what was known as the Graves Committee down here, didn't you, Mr. Tate?

A. Yes, sir.

Q. I believe you said that was about two months ago?

A. Something like that.

Q. I will ask you, if, during the course of your testimony before the Graves Committee, you didn't testify to this effect, you were asked these questions and gave these answers: "What are you driving?" Answer: "A G. M. C. truck." Was that question asked you and did you make that answer?

A. I don't remember.

Q. Was the question asked you: "Q. Is it a new truck?" and "Whose truck is it"?

A. I don't remember whether it was or not.

Q. And did you give this answer: "A. It is a brand new one and belongs to Mr. McDonald?"

A. I might have.

Q. You won't say about that?

A. No, sir.

Q. Then weren't you asked this question: "Q. Did you ever buy it from him?" and didn't you answer "No, sir. I made a statement to Mr. West, and as I stated then, I was talking then, but now I am swearing." Did you say that, Mr. Tate?

A. I believe I did.

Q. You think you said that?

A. Yes, sir.

Q. (Reading): "Question, about the hauling of jacks and stallions, whose truck did you use for that purpose," wasn't that question asked you?

A. I don't remember.

Q. And didn't you answer: "A. E. McDonald's truck?"

A. I don't remember that question.

Q. All right, do you remember that answer?

A. No, Sir.

Q. Then, weren't you asked the question: "when you went to Tennessee and Missouri and other places, whose truck did you use"? Do you remember being asked that question?

A. No, sir, I don't.

Q. And do you remember making this answer: "The same one."

A. I might have made that answer.

Q. You might have made that answer; do you remember if you were asked this question: "Did you buy a truck from him for $1100.00 and pay $150 cash"? and you answered: "no sir"?

A. That's right.

Q. Well, what did you mean then, Mr. Tate, when you said you didn't buy any truck for $1100.00?

A. I didn't pay $150 cash.

Q. Now, then, were you not further asked this question: "you did not get those warrants, did you; McDonald got them, didn't he?

A. I don't believe I answered that that way.

Q. Well, were you asked that question?

A. I don't remember it; I don't think I was.

Q. And didn't you give the answer "yes sir"? What about that, is that, is that correct or not?

A. I don't remember it.

Q. You don't remember it; then weren't you asked this question:

"Q. How much did he pay you"? and didn't you answer "a hundred dollars per month, he paid every first and fifteenth of the month."

A. I believe so.

Q. Well now, which was correct then, Mr. Tate, when you testified that at that time you were drawing a hundred dollars a month from A. E. McDonald and you now say that you were drawing a salary from the State, which one of those statements is correct?

A. I drawed a salary from the State for only about two months.

Q. That was the time you were hauling animals?

A. Yes, sir.

Q. And that's the time you were talking about here when you were asked these questions that I repeated to you here, was it not?

A. No, Sir.

Q. What were you talking about then?

A. When?

Q. When you were asked these questions?

A. They were speaking about the owner of the truck at that time.

Q. And you now state that you actually bought a truck from Mr. A. E. McDonald?

A. Well, it was transferred to me.

Q. It was transferred to you?

A. Yes, sir.

Q. And that's your statement about it now; that it was transferred to you, not that you bought it?

A. I didn't say that.

Q. Just tell us what is correct about it?

A. I said it was transferred to me.

Q. Well, why was it transferred to you?

A. Well, I don't know.

Q. Huh?

A. Unless it was to haul stock with.

Q. Now, Mr. J. E. McDonald and A. E. McDonald are brothers, are they not?

A. I believe they are.

Q. And isn't it a fact, Mr. Tate, that this arrangement was made between you and J. E. McDonald and A. E. McDonald, when your attention was called to the fact that it was probably a violation of the law for J. E. McDonald to hire his brother directly to truck, wasn't this arrangement made between you three in order to get around that provision of the law?

A. No, sir.

Q. That sale he made to you was not a bona fide sale, was it?

A. I don't know.

Q. That arrangement was made just so there wouldn't be a kick-back about the money being paid for the hauling of those animals?

A. I wouldn't say that.

Q. Well, I would like for you to explain, Mr. Tate, what you meant when I asked you if you bought that truck and you said: it was transferred to you?

A. That trade was made between me and Mr. Arthur alone.

Q. Between you and who?

A. Mr. A. E. McDonald.

Q. What trade is that?

A. When the truck was transferred to me.

Q. And you don't remember for certain how much you paid for it?

A. No, sir.

Q. And you don't remember for certain how many payments you made on it?

A. No, sir.

Q. Don't know whether you paid a third of it or a tenth of it or half of it?

A. I imagine I paid around half of it.

Q. You imagine that?

A. Yes, sir.

Q. But you couldn't tell us anywhere close to the amount that you paid?

A. No, sir.

Q. Where were you when you made this transfer, of this truck, that is, when the truck was transferred to you?

A. In Waxahachie.

Q. Who all was present?

A. Mr. A. E. McDonald and myself.

Q. Anybody else?

A. No, sir.

Q. Well, can you tell this committee or this House of Representatives why that transfer was made at that particular time?

A. Well, I said it was transferred to me to haul stock with.

Q. Well, theretofore you had been using Mr. McDonald's truck to haul stock, hadn't you?

A. When he had it leased to the State, yes, sir.

Q. Then when he found out he couldn't lease it to the State, he transferred it to you, is that correct?

A. Well, he never told me he couldn't lease it to the State.

Q. He transferred it to you along about the time that he found out that he coudn't lease it to the State?

A. I don't know that he found out that he couldn't lease it to the State.

Q. Now, will you be kind enough to answer my question: when he transferred that truck to you, along about that time he found out that he couldn't lease it to the State himself, isn't that correct?

A. Well, I didn't know that he couldn't lease it to the State.

Q. I believe you stated that you were to pay him fifty dollars a week on that truck?

A. I think so, yes sir.

Q. Now, how were you going to pay fifty dollars a week on a truck when your salary was only a hundred dollars a month?

A. Well, when the truck was transferred to me, I had a contract to haul the stock for so much a head and was to pay it out of that.

Q. Then, you weren't working for the State at that time?

A. Certainly not; I had a contract to haul the stock.

Q. In other words, the truck was transferred to you at the same time or about the same time that you quit

working directly for the State, is that correct?

A. That's right.

Q. Along just about the same date. That's all for the present, Mr. Chairman.

Cross Examination

(By Mr. McClain):

Q. Have you ever had any conversation with Mr. McDonald, the Commissioner of Agriculture about making any false deals with the State or anybody else?

A. No, sir.

Q. At the time you made the contract with him, relative to hauling jacks, was it put in writing?

A. Yes, sir.

Q. At the time you had the dealings with his brother, was Mr. McDonald present at that time?

A. No, sir.

Q. Did he, so far as you know, know anything about the transfer or the deal between you and your brother?

A. Beg your pardon?

Q. Did Mr. McDonald here, the Commissioner of Agriculture, know anything about the transaction up there between you and his brother?

A. No, sir.

Q. Now, that transaction was also put on record, in that county, was it not?

A. Yes, sir.

Q. That's all. Wait just a second. That's all.

Redirect Examination

(By Mr. Street):

Q. I believe you stated a while ago that you kept this truck about a year and transferred it back to A. E. McDonald?

A. Yes, sir.

Q. What did he pay you when you transferred it back to him?

A. He hasn't paid me yet.

Q. How much is he supposed to pay you for that re-transfer?

A. Do I have to answer that question.

Q. I am asking you, Mr. Tate?

A. Well, I decline to answer it.

Mr. Street: Mr. Chairman, we call upon the Chair to require an answer of the witness.

The Chair: The witness will have to answer the question.

A. What was the question now?

Q. When you re-transferred that truck to Mr. A. E. McDonald, how much did he pay you or I believe you said that he hadn't paid you anything yet, but how much did he promise to pay you?

A. About seven hundred dollars.

Q. About seven hundred dollars?

A. Yes, sir.

Q. Did he give you a note for that amount?

A. No, sir.

Q. Did he give you a mortgage on the truck for that amount?

A. No, sir.

Q. He just promised you orally that he would pay you seven hundred dollars?

A. Yes, sir.

Q. At what rate was he to pay you that seven hundred dollars?

A. We didn't make any rate.

Q. He just is going to pay it whenever he gets ready, is that the idea?

A. Yes, sir.

Mr. Street: Mr. Chairman, just a minute, there have been some requests sent up, and I want a little time to look them over.

Q. (By Mr. Street): Mr. Tate, I will ask you in your testimony before the Graves Committee about this transaction, if you were not asked about this transaction in this question: "does he owe you any money," referring to A. E. McDonald, and didn't you give the answer "no sir."

A. I don't remember it.

Q. You don't remember whether you did that or not?

A. No, sir.

Q. Well, if you did make that answer then, it wasn't correct, is that right?

A. Well, I don't remember that question.

Q. Well, you say now that A. E. McDonald owes you seven hundred dollars, is that right?

A. Yes, sir.

Q. And if you told the Graves Committee that he didn't owe you anything, then you were wrong at that time?

A. I don't remember the question being asked.

Q. I say if you did, if you told them that he didn't owe you anything, then you were wrong about it?

A. I don't remember that question.

Q. I am asking you this question, Mr. Tate: that if you did tell the Graves Committee that, that is, that A. E. McDonald didn't owe you any money, if you told them that, then you were wrong about it, is that correct?

A. I told you I didn't remember them ever asking me that question.

Q. Will you answer the question that I have asked you now?

A. Well, I don't remember it; I could have been right or I could have been wrong, if it was asked; I don't remember its being asked.

Q. If it was asked and you made that answer that he did not owe you anything then, you were wrong about it, is that correct?

A. I might have been.

Q. You might have been; you are not sure about that?

A. No, sir, I don't remember the question being asked.

Q. That's all.

Q. Mr. Tate, during the time that you were hauling these animals for the State, I believe your testimony is that you owned the truck all that time, is that right?

A. At what time?

Q. The time that you were hauling these jacks and stallions for the State of Texas?

A. Well, not all the time. It was leased by the State for a while.

Q. From the time you bought the truck, as long as you continued to haul jacks and stallions for the State of Texas, you owned that truck during that time according to your testimony, is that right?

A. Yes, sir.

Q. Did you have a permit from the Railroad Commission to haul property for hire?

A. No, sir.

Q. You didn't have any permit at all?

A. No, sir.

Q. Did you ever make an application for a permit?

A. No, sir.

Q. You knew, didn't you, that a person had to have a permit from the Railroad Commission to haul property for hire?

A. No, sir.

Q. You didn't know that?

A. No, sir.

Q. Is that right?

A. Yes, sir.

Q. And you have been in the truck business now how long?

A. I have been driving a truck for six or seven years.

Q. You have been driving a truck for six or seven years and didn't know about that?

A. No, sir.

Q. Do you have any idea how much you made out of that truck while you owned it, Mr. Tate?

A. No, sir.

Q. You don't have any idea at all?

A. No, sir.

Q. Did you keep any record of it at all?

A. No, sir, Mr. McDonald's bookkeeper kept the books for me.

Q. How is that?

A. Mr. McDonald's bookkeeper kept books for me.

Q. Mr. A. E. McDonald?

A. Yes, sir.

Q. His bookkeeper kept your books for you?

A. Yes, sir.

Q. Did he keep the books for Mr. A. E. McDonald at the same time?

A. I suppose so, yes, sir.

Q. I believe you said awhile ago you made a contract to haul stock with your truck?

A. Yes, sir.

Q. Who did you make that contract with?

A. Mr. J. E. McDonald.

Q. That is the Commissioner of Agriculture?

A. Yes, sir.

Q. Did you enter into a written contract?

A. Yes, sir.

Q. Do you have a copy of that contract?

A. I do not.

Q. Did both of you sign that or just you sign it?

A. Both of us signed it.

Q. What were the terms of that contract?

A. I was to haul stock at forty-five dollars a head, pick them up anywhere out of the State and deliver them anywhere in the State.

Q. And you didn't keep a copy of the contract?

A. No, sir.

Q. You don't have any idea how much money you made out of it?

A. No, sir.

Q. I hand you a photostatic copy of an instrument here. I will ask you if it is or not a copy of the contract that you made with Mr. McDonald? I wish you would examine it and see whether it is, or not.

A. Yes.

Q. Is that the one?

A. Yes, sir.

Q. That is not signed by Mr. McDonald, is it?

A. I didn't notice.

Q. Look at it again.

A. I don't see his name on that, No, sir.

Q. And he didn't sign the contract at all, did he?

A. He doesn't seem to have signed that.

Q. This is just an instrument which you signed and swore to before a Notary Public?

A. Yes, sir.

Q. Purporting to be a contract between you and Mr. McDonald, but he didn't sign it?

A. I don't see his name on there.

Q. All right. Now, Mr. Tate, do you have any idea how many trips you made under your contract with the State for the hauling of those animals?

A. No, sir.

Q. Could you give us any idea at all about how many you made?

A. I would say about ten.

Q. I believe you stated in the early part of your testimony you made two trips outside of the State of Texas. Is that correct?

A. When I was working for the State, yes, sir.

Q. How is that?

A. When I was drawing salary from the State of Texas.

Q. Did you make any trips outside of the State after you went onto a contract basis?

A. Yes, sir.

Q. How many did you make after that?

A. About ten.

Q. You made about ten trips outside of the State?

A. Yes, sir.

Q. Do you have any idea how much money you made off of those trips?

A. No, sir.

Q. When you would come back off of one of those trips did you send in your claim for the amount of money you had earned under your contract?

A. Yes, sir.

Q. Twenty-five dollars per head for each head of stock you hauled?

A. Yes, sir.

Q. And did you get warrants in payment of those claims?

A. Yes, sir.

Q. Now, when you received those warrants, Mr. Tate, what did you do with them?

A. I kept part of them and gave part of them to Mr. McDonald for payment on the truck.

Q. How many of them did you cash?

A. I don't remember now.

Q. About what percentage of them, if you have any idea?

A. I don't have any idea.

Q. And you don't know how many you gave to him?

A. No, sir.

Q. But part of the warrants that you received from the State in payment of your compensation for going outside the State and hauling in animals, you endorsed them and turned them over to Mr. McDonald?

A. Yes, sir.

Q. How long have you known Mr. J. E. McDonald?

A. Quite awhile.

Q. What do you mean by "quite awhile?"

A. Eight or ten years.

Q. You have known him during all the time you have been working for his brother?

A. Yes, sir.

Q. And he, of course, knew that you were working for his brother?

A. Yes, sir.

Q. He had been knowing that all along, had he not?

A. He knew I worked for his brother, yes, sir.

Q. And he knew it at the time you worked for him? Mr. J. E. McDonald has known about it, hadn't he?

A. Yes, sir.

Q. You testified awhile ago that you never did have any permit from the Railroad Commission?

A. Yes, sir.

Q. Were you ever stopped by any officer to inquire about why you did not have a permit?

A. No, sir.

Q. They just passed you right on by and never inquired of you at all?

A. That is about it.

Q. They never did stop you?

A. No, sir.

Q. Do you have any receipts that you got from Mr. A. E. McDonald in payment of the payments on the truck?

A. No, sir.

Q. You never did take any receipts?

A. No, sir.

Q. You would just get the money and pay it to him?

A. Yes, sir.

Q. And he never has paid you any of this seven hundred dollars he owes you?

A. No, sir.

Q. I believe that is all.

Cross Examination

(Questions by Mr. McLean):

Q. Just one question. Did you haul animals, jacks and stallions from the State of Iowa to the State of Texas and distribute them as far as Amarillo?

A. Yes, sir.

Q. During all the trips that you made I will get you to state whether or not you got by wreck or otherwise, a single one of those animals crippled?

A. No, sir.

Q. Did you deliver them all without breaking the hide on any of them?

A. Yes, sir.

Q. Mr. Tate, I will ask you whether or not you made trips day and night?

A. Yes, sir.

Q. Driving at night?

A. Yes, sir.

Q. And at daytime?

A. Yes, sir.

Q. Are you an experienced man in the handling of stock of this class and character?

A. I believe I am.

Mr. McLean: That it all.

Redirect Examination

(Questions by Mr. Street):

Q. What experience have you had, Mr. Tate?

A. I was raised on a farm. A man raised on a farm ought to know how to handle stock.

Q. That is your answer to the question of your experience in handling live stock?

A. Yes, sir.

Q. Now, I want to get this straight, about your purchase and leasing of this truck—I believe you stated that you paid about eleven hundred fifty dollars for it?

A. Eleven or twelve hundred dollars, I said.

Q. And you kept it about a year?

A. During that time, I swapped or traded that truck for another truck—for a new truck.

Q. Then you traded that truck for a new truck?

A. Yes, sir.

Q. Let's go back a little bit—when you got this truck that you got—this truck you got from McDonald—did you give him any mortgage on it?

A. I think I did.

Q. You think you did?

A. Yes, sir.

Q. Don't you know whether you did?

A. I suppose I did.

Q. Did you sign any note for it?

A. I signed a mortgage.

Q. Do you recall how that mortgage called for payments—how the payments were to be made?

A. It was either fifty dollars a month—fifty dollars a week, or fifty dollars a month.

Q. What did you do with that truck?

A. The first truck was traded for the other truck.

Q. So a while ago when you said that you sold that truck back to Mr. A. E. McDonald, you were mistaken, is that right?

A. No, sir; I sold the new one back to him—it had been used.

Q. Didn't you tell us a while ago, that you sold that truck that you got from Mr. McDonald—that you sold it back about a year?

A. I might have.

Q. Now, you say it was a new truck?

A. You didn't ask me if—whether it was the same truck.

Q. Which truck was it that you sold back?

A. The new one.

Q. When did you make that sale, where you traded that truck for the new?

A. Latter part of 1934—along in August 1934.

Q. Who did you make that trade with?

A. It was General Motors people —of Dallas.

Q. The General Motors people of Dallas?

A. Yes, sir.

Q. What was the name of the concern up there?

A. General Motors Trucks of Dallas.

Q. General Motors Trucks of Dallas?

A. Yes, sir.

Q. What kind of truck did you trade to them?

A. G. M. C.—General Motors truck.

Q. What kind did you get back—what was the new one?

A. Traded a Chevrolet—for the new one.

Q. The one that you bought from Mr. McDonald?

A. To start with—yes, sir.

Q. What was it when you traded for it?

A. A Chevrolet.

Q. How long did—how long had McDonald had that truck when you bought it?

A. I don't remember.

Q. Do you have any idea?

A. No, sir.

Q. Was it old or new?

A. It was used.

Q. Was it nearly new, what was its condition?

A. It was a good looking truck.

Q. A good looking truck—and you got the truck—the one you got from McDonald in, about August?

A. Yes, sir.

Q. And then you traded it to the G. M. C. people in Dallas?

A. Yes, sir.

Q. Did you make that alright with Mr. McDonald?

A. Oh, he went with me to make the trade.

Q. And you got what kind of a truck from Dallas—the second one you got?

A. G. M. C.

Q. A G. M. C.—how long did you keep it?

A. Until April or March in this year.

Q. In whose name did you buy that new truck?

A. In Mr. A. E. McDonald's name.

Mr. Street: That's all.

Mr. McClain: That's all.

Mr. Spears, Chairman: The witness is excused.

Mr. Street: Mr. Chairman, at this time we want to offer certain testimony of the witness taken and as taken before the Investigating Committee, beginning at the third question on page 173 and down to and including the first answer on page 174.

Mr. Spears, the Chairman: Is that testimony offered for the purpose of impeachment and is it in conformity with the predicate which you have laid?

Mr. Street: It is.

Mr. McClain: I want to object to that testimony taken before the committee, for the reason that it is hearsay testimony taken without the presence and hearing of Mr. McDonald, at a time when he was not represented before the committee by counsel and was not himself present, and for the

further reason that it appears that the testimony was taken at a time, from the transcript of the testimony, when a quorum of the committee was not present, and Mr. McDonald is not bound by the testimony cannot be bound by the transaction, occuring out of his presence and hearing, where he was not represented in the hearing by counsel or anybody else who had authority to speak for him.

Mr. Spears, Chairman: For what purpose do you offer the testimony?

Mr. Street: Impeachment purposes.

Mr. McClain: He is their witness—and they cannot impeach their own witness—you must remember that he is their witness—he is not ours.

Mr. Spears, Chairman: The statute, however, makes exceptions to the rule, for impeachment purposes, when there is a ground for surprise. In the case of surprise.

Mr. Spears, Chairman: The Chair will overrule the objection and will admit it for only impeachment purposes. Just the testimony covering the predicate.

Mr. Street: I will offer only the testimony covered by the predicate. Only offering this.

Mr. Spears, Chairman: The Chair will permit you to offer that only for the purpose of the impeachment of that witness—only for that purpose. The objection is accordingly overruled.

Mr. Dunn, the Reading Clerk, reads the following testimony into the record:

"Jim Tate, a witness, having first been sworn as a witness, testified as follows:

Q. What are you driving?

A. G. M. C. truck.

Q. Is it a new truck and whose truck is it?

A. It is a brand new one and belongs to Mr. McDonald.

Q. Did you ever buy it from him?

A. No, sir; I made a statement to Mr. West and as I stated then I was talking then, but now I am swearing.

Q. About the hauling of jacks and stallions. Whose truck did you use for that purpose?

A. A. E. McDonald's truck.

Q. When you went to Tennessee and Missouri and other places whose truck did you use?

A. The same one.

Q. Did you buy a truck from him for $1100, and pay $150 cash?

A. No, sir.

Q. Does he owe you any money?

A. No, sir.

Q. You did not get those warrants did you? McDonald got them didn't he?

A. Yes, sir.

Q. How much did he pay you?

A. $100 per month and paid every first and fifteenth of the month."

Mr. Aikin, of the Committee: Mr. Chairman, in taking up charge Number Three (3), it will be necessary for us to have the testimony of a witness that didn't report this morning when the witnesses were called and sworn—W. D. Thurman—if he is present—we are ready to proceed—if he is here.

Mr. Spears, Chairman: Well, let's see if he is present.

Mr. McClain: Mr. Chairman, I want to ask if they have finished with the testimony on the first two charges—in so far as the first two counts are concerned?

Mr. Bradbury: We are through for the present, but we do not wish to bind ourselves if we have further testimony to offer.

Mr. McClain: Very well.

Mr. Aikin: Mr. Chairman—we will proceed to Charge Number Four—in view of the fact that the witness on Charge Number Three does not appear to be here—a material witness to the charge. We think it is now proper to have that charge—charge Number Four read—so we can take it up.

Mr. Spears, Chairman: The Clerk will now read Charge Number Four.

The Reading Clerk read to the committee Charge Number Four.

The Clerk thereupon read Article 4 as follows: "Article 4. That the said J. E. McDonald, during the year 1934, while acting in his official capacity as the duly elected Commissioner of Agriculture of the State of Texas, did then and there, unlawfully, wilfully and corruptly accept a bribe from one J. C. Robison, W. D. Thurman and one Dr. E. G. Wheeler, that he did accept two mares of the value of $250.00 each, the said W. D. Thurman, J. C. Robison and Dr. E. G. Wheeler then and there being persons

with whom the said J. E. McDonald was dealing in an official capacity as Commissioner of Agriculture of and for the State of Texas, the said bribe being given for the purpose of influencing the said J. E. McDonald in his official acts as Commissioner of Agriculture of the State of Texas, and the said J. E. McDonald was so influenced in his official acts and the said W. D. Thurman, J. C. Robison and Dr. E. G. Wheeler gained advantage and benefits thereby, all of which was done in violation of the laws of the State of Texas."

Mr. Bradbury: Mr. Chairman, we would now like to have the Reading Clerk read the testimony of J. E. McDonald, as given before the Graves Investigating Committee; said testimony begins on page 196 and ends on page 198.

Mr. Felts: Does the testimony you are offering relate to the charge just read?

Mr. Bradbury: It does.

Mr. Felts: No objection.

The Reading Clerk thereupon read the following testimony of J. E. McDonald, beginning on page 196 and ending on page 198 of the report of the Graves Investigating Committee:

(Reading) "Mr. J. E. McDonald having been sworn, testified as follows:

"Q. Did Mr. Robison give you two mares?

"A. He did not give me any mares. He gave my boys, J. E. and Roy a couple of mares three and four years old. One of my boys went on a trip up there and visited in his home and met his boy and he came to Texas to visit the races and was a visitor in my home and gave each of my boys a mare. One of those mares a jack bit on the neck when it was small. However, that does not hurt the mare for breeding purposes, but she did not have much sale value. The other mare will not breed and my man investigated her female organs and failed last year to foal and has failed this year. Both of them have a value, I guess, of $175 a piece.

"Q. The testimony shows that you visited Mr. Robison and Dr. Wheeler for the purpose of buying animals and that you made some statement about somebody giving you a span of mares.

"A. No, sir, I did not do that. He gave them to the boys in July I think, and I was never at his place until October.

"Q. Had you ever seen Mr. Robison prior to the time you were on his farm?

"A. I think once before and once afterwards perhaps. I have the transfer of the mares Mr. Robison gave the boys. If Mr. Robison wanted to give my boys the mares I have nothing to say.

"Q. There never was any discussion between you and Dr. Wheeler and Mr. Robison with respect to giving them to you or to your boys? They just shipped them to the boys without your knowing anything about it?

"A. I sent him a personal check for $75 to help pay delivery on them. I think Mr. Robison asked the boys how they would like to have a mare. If I had known that he was going to give my boys a mare it certainly would have met my approval. That was his business.

"Q. I don't suppose anybody would disagree with you about that but these gentlemen told Mr. Robison and Dr. Wheeler that they gave them to you and that they put the transfer in the boys' name.

"A. They did not do anything of the kind. There is the papers right there and Mr. Robison never mentioned to me about mares in any way, shape, form or fashion."

Mr. Bradbury: That will be all from that Article for the present, Mr. Chairman. Mr. Chairman, we would like on the part of the Board of Managers to stand at ease for a period of about ten or fifteen minutes.

The Chair: Gentlemen of the Committee, I will consider that as a motion.

Mr. Bradbury: Yes, sir, I make that as a motion.

(The Committee of the Whole thereupon recessed for a period of fifteen minutes upon the above motion being carried.)

Mr. Davison: I want to introduce Mr. McDonald's testimony with reference to the Jack and Stallion Fund as reported under the Graves Committee report.

Mr. Felts: We have no objection.

The Chair: I will admit the testimony. The Clerk will read the testimony.

Mr. Davison: Beginning on page 112.

(Thereupon, the Clerk read the following testimony of Mr. J. E. McDonald):

"Q. You remember that on the floor of the House somebody made a statement that they were willing to issue a check for $200.00 in favor of several copies and deliver it to some member of the Legislature, what was that for?

A. I just know about it like you would. That was up to the Comptroller. We had nothing to do about that. The law provides that the taxes shall be divided at first 25% to the available school fund and 25% to the Department of Agriculture for the purpose of buying stallions and jacks, and then so much as is necessary to take care of the Legislative Appropriation for the Department of Agriculture, then any funds remaining at the end of the year, 31st of December, shall be divided equally between 254 counties. It says at the end of the calendar year."

Mr. Davison: Now, on page 120.

"Q. Do you receive any kind of money or fees from any service for the Department of Agriculture which is not deposited in the State Treasury?

A. At present no, but last year the service fees from these stallions and jacks was deposited to the State Stallion and Jack Fund in the Austin National Bank. Now, the purpose of that was this: The law says that five dollars shall be collected for a foal. I thought it would be a pretty arduous thing to breed these mares and let 200 caretakers put it on the books, so five dollars should be charged when the mare was first served and if the mare failed to foal then the five dollars would be returned, and if that was going to the State Treasury I could not do that so I put that in the bank. The Auditor said he thought I had a right to do that and suggested that we put it in a suspension fund in the State Treasury and so we changed the fund to that."

Mr. Davison: Now, on page 188. At that page it shows Mr. McDonald was sworn again and the testimony I desire to have read is on page 201.

"Q. Have you any money in the bank that belongs to this fund?

A. No, sir, I have never had a dollar.

Q. Have you taken any of this money ($13,000) for breeding fees before it went to the treasury?

A. Yes, some of that fund last summer was used to pay the caretakers and to pay expenses of jacks. The law says that five dollars shall be collected for foal.

Q. If that belonged to the racing fund, of course, that should have gone into the treasury and apportioned out 25 per cent here and 25 per cent there and 50 per cent there. Does the statute say that is a part of the jack and stallion fund?

A. I think so. The breeding fees should be used for the maintenance of the animals, I think, when the other funds are not available. There are funds there now that can be replaced out of funds available.

Q. Do you have any of those funds in the bank?

A. No, sir. The funds are in trust. The State Auditor told me that these fees may have to be returned if the mare failed to foal and that mare owned is entitled to a refund. When the Auditor came around he said instead of putting these in the bank you put them in a suspense fund. That was the first time I had known about that suspense fund.

Q. This breeding fund in the bank is checked out only on your check, is it?

A. It was when it was there.

Q. Have you ever used any of that money to pay charges which had theretofore been disallowed by the State Comptroller's Department?

A. No, sir, not knowingly I never did. Mr. Morris, my bookkeeper, puts them on the desk and I sign them.

Q. Did you ever pay any salaries out of that fund?

A. Yes. The salary for the man looking after the animals. The caretakers thirty dollars per month taking care of the animals.

Q. Any other?

A. Thurman was paid looking after animals during the summer.

Q. About how much did you ever pay him?

A. $125.00 per month and traveling expenses for three months.

Q. Do you know how much that amounted to?

A. I don't know. It would be three hundred or four hundred dollars. The salary was $125.00 per month.

Q. Did you ever pay any other salary out of that?

A. I don't remember. We had some other people probably on spare time.

Q. Was there any reason why you paid Mr. Thurman out of that instead of getting warrant for it?

A. Yes, there wasn't sufficient funds in the jack and stallion account and we had these fees and I felt like the jack and stallion money that they had earned was available and should be used to pay the caretakers and he was continually during the summer months visiting these animals and looking after them."

Mr. Davison: That is all. Mr. Chairman, I would like to call Mr. C. L. West.

C. L. West, having been previously sworn by the Chairman, in answer to questions propounded, testified as follows:

(Questions by Mr. Davison):

Q. Mr. West, you have been sworn?

A. Yes, sir.

Q. How old are you, Mr. West?

A. Thirty-five.

Q. You are an Assistant State Auditor?

A. Yes, sir.

Q. About what time did you qualify as Assistant State Auditor?

A. In April, 1934.

Q. Are you a C. P. A.?

A. No, sir.

Q. Then state whether or not you had been a fully recognized auditor and whether you were so recognized prior to the time you qualified for the position you now hold?

A. I had been Public Accountant maintaining an office in Abilene and Lubbock, Texas, since 1919.

Q. Approximately sixteen years?

A. Yes.

Q. Mr. West, have you ever qualified in any District Courts in Texas as an expert witness?

A. Yes.

Q. In your profession?

A. Yes, sir.

Q. In what District Courts were you so qualified?

A. The District Courts, both of them, at Abilene, Texas; Lubbock, Anson, and other places.

Q. That is sufficient. Mr. West, have you ever had occasion to make an audit of the Agricultural Department?

A. Yes, sir.

Q. When?

A. Some time in 1934.

Q. In 1934?

A. Yes, sir.

Q. What particular records did you examine there?

A. All of the Department of Agriculture except the Jack and Stallion Fund and such records as tie in with the Racing Commission. All of that was handled when I made an audit of the Racing Commission.

Q. You have those records and facts in your possession?

A. Yes, sir.

Q. Did you examine a fund called the Procreation Fee Fund?

A. Yes, sir.

Q. Will you state to the Committee just the facts that you found about that fund, or state from your record what that fund showed at the time you made the audit?

A. Well, will you be a little specific and give me the information you want? I have the entire report here and it would be too lengthy to read it all.

Q. Do you know when the racing law went into effect, from your report?

A. The original Act creating the Racing Commission and providing for the purchase of jacks and stallions was amended by the First Called Session of the Legislature, as shown by the Acts of the Forty-third Legislature, Page 327. This audit covered the period beginning September 1st, 1933, and ending December 31st, 1934.

Q. That's the information I desire.

A. He was on the Racing Commission, at that time—if my memory serves me right—it was Pete Edwards, Tax Commissioner, J. E. McDonald, Agricultural Commissioner,

and Mr. Waggoner, then of Fort Worth, I believe he was Chairman.

Q. What were the receipts you found that came into the Racing Commission or the Jack and Stallion Fund as procreation fees?

A. Fees collected under Subsection seven of the Statute, during the fiscal period—procreation fees collected were $14,608.00.

Q. What period was that?

A. That was the period ending August 31, 1934.

Q. When did that period begin, Mr. West?

A. That began at the inception of the Racing Act and extended down to August 31, 1934.

Q. In other words, after the law was made, at the First Called Session —to include the entire receipts?

A. That came down to August 31, 1934, and of course, other fees went on down to date.

Q. Do the records show what became of those procreation fees, or how they were expended or appropriated or what funds they were distributed or how disbursed?

A. Yes, sir; the disbursements were, refunds for no foals, Eighty Dollars; care takers' salary; $7083, returned checks $385, and to make a total of $7489.00 down to August 31, 1934.

Q. Now, that's from the procreation fees—what should have been done with this fund—these fees—if it had been placed to the correct fund?

Objected to as being a conclusion—calling for a conclusion of the witness —also a question of law.

Mr. Davison of Fisher: Do the records show what was done with the money—the funds when they came into the department?

A. Those funds were deposited in the Capital National Bank, Austin, Texas, to the credit of the Jack and Stallion Fund and disbursements made therefrom by checks signed by J. E. McDonald to various parties.

Q. Were those funds placed in the State Treasury?

A. No, sir; they were placed in the Capital National Bank, Austin, Texas in a special account, Jack and Stallion Account.

Q. And checks given indiscriminately on this account by Mr. McDonald, Commissioner?

A. Yes, sir.

Q. Approximately, what was the sum total of the checks given against these funds covering that period?

A. Well, for this particular period $7489.14, but of course this is bringing it on down to January 1st, 1935, would of course add to that, materially. I think I have the total amount right here on these papers—Now, I have a schedule here, the receipts and disbursements of the jack and stallion procreation fees, from February 1st, 1934, to December 31, 1934, which included the total receipts of $16,496.00 and the total disbursements of $13,319.04. Leaving in that account as of December 31, 1934, 2876.96.

Q. What were those disbursements for?

A. Care-taker $1141; transportation of animals $185.00; traveling expenses $691.06; returned checks $418.18, veternarian services and medicine $17.80 and other items, a total of $13,319.04.

Q. Was there ever any money placed in the suspension fund in the Treasury Department?

A. You mean Suspense Fund?

Mr. Davison: Yes, sir.

Mr. West: No, sir; originally there was $645.00 deposited by the Commissioner of Agriculture—I believe that was the amount there—$645.00 in procreation fees, collected and deposited in the Treasury to the credit of the Jack and Stallion Fund, set up as a special fund—Special Racing Fund.

Q. Does that show the date?

A. No, sir; it was sometime in February of 1934.

Q. February of 1934?

A. Yes, sir.

Q. Then these Jack and Stallion Fund at the bank, referred to in that report, those funds were placed there after the time or prior to the time they were placed in the treasury?

A. No, sir; those were some of the first collections—they were deposited with the treasury in an account known as the Jack and Stallion Fund that the law provided that it should be deposited in the Special Racing Fund—and

that was stopped and the Commissioner of Agriculture deposited it—the procreation funds in the Capital National Bank in a special account—and didn't deposit it with the treasurer.

Q. After these funds were placed in the Treasury Department, where should they have been allocated to?

Objected to as calling for the opinion and conclusion of the witness on a question of law—and he is not an expert witness and certainly is not a lawyer. And not entitled to give an opinion on this matter.

Mr. Fox, for the Committee: We cite you as authority, in the Terrell case, as shown in the House Journal, Fifth Called Session of the Legislature, when the attorneys for the House as a Committee of the Whole placed the Auditor on the stand and qualified him, as has been done here, and he was permitted to take up each section of the charge and show where the Comptroller had failed to follow the law—he was permitted to show it in each instance.

Mr. McClain: He was not permitted to tell what the law was in his opinion.

Mr. Spears, Chairman: I think this witness can testify as to what should have been done with the funds and how they should have been allocated, if he knows, but must confine himself to the rule.

Mr. Davison of Fisher: Mr. West, give us, and you would naturally have to know, where this money was supposed to go.

A. I am supposed to acquaint myself with the law—

Q. In acquainting yourself with the law, have you acquainted yourself with the law on the question?

A. Yes, sir; very carefully at all times on various questions.

Q. Where is this money supposed to be allocated?

A. The law provided that the racing taxes as collected is to be deposited in the State Treasury to the credit of the Special Racing Fund to be held until December of each year, and at that time it is divided or disbursed by the Treasurer in the following manner: One-fourth to the Public Free School Fund or Available School Fund, one-fourth of the remainder to the Jack and Stallion Fund, and the balance pays the expense of the Department of Agriculture, and if there is any left, it is divided out among the 254 counties of this State, share and share alike.

Q. Did you find in your audit in this particular case that the law had been followed?

A. The law could not have been lived up to, because the money was never deposited in the Treasury, therefore, the money could not have been disbursed as I have just outlined.

Q. Then Mr. West, in your audit, if this money had been properly allocated, then this sixteen thousand dollars, one fourth of that money should have been placed to the account of the Public or Available School Fund, it didn't go to the School Fund?

A. No, sir.

Q. Did you find in your audit any arrangement for a petty cash funds?

A. No, not with reference to the Jack and Stallion Fund.

Q. Did you find any petty cash fund in this item—Jack and Stallion Fund, in the Jack and Stallion Fund?

A. Yes, sir.

(Questions by Mr. Davison):

Q. Was there any provision for this petty cash fund under the Jockey Fund?

A. Well, I can say this: that the Racing Commission provided for the collection of certain license fees for jockeys and trainers, etc., fines, fees and penalties. This money was collected; placed in a special account in one of the local banks here in town, and was spent for hospitalization of jockeys, among other things; and there was a fifty dollar petty cash fund, kept in the local bank, under this caption.

Q. (By Mr. Street): Mr. Chairman, I was out a little bit and may repeat a little bit, but I won't do it intentionally. Mr. West, I believe you stated that you made an audit of the Racing Commission?

A. Yes, sir.

Q. Of which, Mr. McDonald, the Commissioner of Agriculture is a member?

A. Yes, sir.

Q. And, among other things, you made an audit of what is known as the "Jockey Fund?"

A. Yes, sir.

Q. Now, where do the funds that go into that fund come from, Mr. West?

A. The monies that go into the jockey fund, as I explained, are derived from licenses; the racing commission is authorized to promulgate certain rules and regulations, among which they provide that a license fee shall be charged for each trainer and each jockey and a fee shall be charged for registering horses and partnerships, etc; and all of that money was to be collected, and their rules provided, deposited into a special account known as the "Jockey Fund," to be used, among other things, for the hospitalization of jockeys, in other words, if a jockey got injured, why they would take care of him.

Q. Do you know where this money was deposited?

A. In a local bank, here in town.

Q. Do you have a record of which bank it was?

A. I think so. In the Austin National Bank.

Q. How much was deposited in that bank to the credit of the jockey fund?

A. From January 31st, 1934 to December 31st, 1934, there was $8,754.00 deposited into the Jockey Fund.

Q. Do you have a record of the disbursements from this fund?

A. Yes, sir.

Q. What was the amount of the disbursements?

A. $2070.66.

Q. Do the records show what these disbursements were for?

A. Yes, sir.

Q. What was that?

A. Check tax $1.12; jockey hospital and medical treatment, $1903.80; petty cash fund $50.00; re-funds on licenses, $38.00; refunds on excess advertising fee $18.64; publishing race notices, $31.32; return checks $10.00; exchange charges twenty eight cents; payment of a bill which the Comptroller refused to pay out of the Special Racing Funds, $17.50; total $2070.66; balance December 31st, 1934, $6,683.34.

Q. In other words—on whose order were those disbursements made?

A. The disbursements were made over the signature of the Chairman of the Racing Commission.

Q. I believe you stated Mr. McDonald is a member of the commission?

A. He is a member, but not the Chairman.

Q. You mentioned a petty cash fund; have you detailed to the House the receipts and expenditures from that fund?

A. There was $50.00 transferred out of the Jockey Fund proper to the petty cash fund, the Petty Cash Jockey Fund, and that fifty dollars was spent as follows: Printing and supplies, $7.35; bell boys, maids and porters $9.01; express and telegrams $4.41; postage $1.20; pass refund $1.00; check tax six cents; cash on hand 2-9-35, $7.03, or a total of $30.06, and a balance in the bank 2-9-35 of $19.34.

Q. Is that a complete record of all the receipts and expenditures from that particular petty cash fund?

A. Down to February 9th, 1935.

Q. Mr. West, I will ask you if you find any record in your audit there as to whether or not any money has been collected in fines and penalties against any person for violating the rules of the Racing Commission or of the laws of the State?

A. There were, during the calendar year 1934, from January 1st, 1934 to December 31st, 1934, there was $8,754.00 collected. Of that amount—I will give you the analysis; Apprentice Jockeys Fees fifty dollars; Jockey license fees, $1935.00; authorized agents fees $249.00; trainers license fees $4324.00; stable registration fees $923.00; partnership registration fees, $322.00; unregistered horses $157.00; fines, $340.00.

Q. That last item of fines was that distinguished from the license fees that were collected for certain privileges?

A. Yes, sir; there seemed to be a misunderstanding with reference to that.

Q. Well, what do the records show as to what has become of that three hundred dollars that has been collected as fines?

A. That three hundred and forty dollars on December 31st, 1934, was in the Jockey Fund, on deposit in the bank here in Austin.

Q. And is that as far as your audit went, down to the last date that you mentioned, down to December 31st, 1934?

A. Yes, sir.

Q. Mr. West, in that list there was an item of $9.01, I believe it was if my memory is correct, for bell boys and maids and porters, was that the employment of those people, or was it expenditures as tips or does the record show on that?

A. Well, it seems when the Racing Commission was first organized, that they had their offices in the Stephen F. Austin Hotel, and that was the amounts paid bell boys, maids, and so forth for I don't know what.

Q. They were not paid as employes of the Racing Commission?

A. No, sir, just for services rendered.

Q. Mr. West, you read from your report a while ago an item of seventeen dollars and some cents, I believe, which you stated was paid on a claim which had been turned down by the Comptroller; am I correct about that?

A. That was a bill for some printing, which hadn't gone through the regular channels, and it seems the Comptroller refused to pay it, so they paid it out of the Jockey Fund.

Q. That was a fund that was on deposit down in the bank here?

A. Yes, sir.

Q. And the payment then of this particular item of seventeen dollars and some cents was never made with the approval of the Comptroller?

A. No, sir, it wasn't necessary.

Q. Mr. West, would you be able to tell the House with reference to—before I ask the question, I will remind you that you testified that there was about three hundred and forty dollars, I believe, that was paid in fines for violations of rules and so forth; are you able to tell the Committee whether or not there was any authority of law for the collection of fines of this kind?

A. According to an opinion from the Attorney General's Department—

Mr. McGregor: Mr. Speaker, he asked him if in his opinion there was any authority at law for his right to do a certain thing. Now, we object to that question—

The Chair: I believe that the objection is good. Of course, the Legislature and everybody else would take judicial knowledge of what the law was; and I believe his opinion of the law wouldn't matter one way or the other.

Mr. Street: Mr. Chairman, I wasn't quite understood; I was showing the absence of a law, rather than what the law was, but I withdraw the question. That's all for the present.

Mr. Felts: All right; no questions.

Mr. Fox: Mr. Chairman, we have completed through Charge No. 6, and some witnesses have arrived this afternoon, whom we haven't had an opportunity to talk to, and at this time, I am making the motion that we stand recessed until 9:30 o'clock in the morning.

Mr. McCalla: Mr. Chairman, I move that we adjourn until 7 p. m., tonight.

Mr. Fox: Mr. Chairman, I believe we will save time by doing that, and I believe that the course that this is taking, it is not going to take a good deal of time to complete it, and I believe that the House and the Committee would save time by recessing until in the morning.

The Chair: Mr. Fox moves that the Committee stand adjourned until 9:30 o'clock in the morning, and Mr. Mccalla, as a substitute, moves that the House stand recessed until 7 o'clock tonight. I will put the substitute motion of Mr. McCalla first.

(After the Vote):

The Chair: The nays have it and the Committee of the Whole refuses to recess until 7 o'clock tonight.

The House, sitting as a Committee of the Whole, upon the motion of Mr. Fox thereupon adjourned until 9:30 a. m., Tuesday, November 19th, 1935.

FIFTEENTH DAY

(Continued)

(Tuesday, November 19, 1935)

IN COMMITTEE OF THE WHOLE HOUSE

(Mr. Spears in the Chair.)

PROCEEDINGS OF TUESDAY

November 19, 1935

The Chair: Are you ready to proceed, gentlemen?

Mr. Fox: Yes, sir. We will call now Mr. M. S. Fraze, and while he is coming around I would like for the Clerk to read Article 7. I want him to re-

read it to get it properly before the House.

The Chair: The Clerk will read Article 7.

"Article 7. That the said J. E. McDonald, while acting in his official capacity as Commissioner of Agriculture of the State of Texas, knowingly and wilfully distorted the records of the Department of Agriculture of the State of Texas, and comingled personal funds with public funds, and thereby was guilty of gross negligence of his official duties and incompetencies in the handling of public records and his official duties in office."

M. S. Fraze, having been previously sworn by the Chairman, in answer to questions propounded, testified as follows:

Direct Examination

(Questions by Mr. Fox):

Q. Give your name to the Committee.

A. M. S. Fraze.

Q. Where are you now employed?

A. In the Department of Agriculture.

Q. How long have you been employed there?

A. It will be five years in January, I believe.

Q. What is the nature of your duty?

A. I am in the Weights and Measure work.

Q. Weights and Measures?

A. Yes, sir.

Q. Have you been in that division ever since you have been in the department?

A. Yes, sir.

Q. What did you do prior to the time you became connected with the Department of Agriculture?

A. Farmer.

Q. Whereabouts?

A. In Ellis County.

Q. Farmed all your life?

A. Yes, sir.

Q. Mr. Fraze, have you ever sold any jacks and stallions to the State of Texas?

A. The record indicates that I did when in fact I just loaned Mr. McDonald $150.00 and we bought some together and I signed the invoice. The record indicates that I did but the fact is Mr. McDonald and I sent some money to Mr. Thurman in Missouri, I believe it was.

Q. You do not raise any jacks or stallions on your farm?

A. No, sir.

Q. You are not connected with that business in any way?

A. No, sir.

Q. Now, will you relate to the committee the facts pertaining to this transaction wherein you billed the State of Texas for certain jacks and stallions?

A. Mr. McDonald came by my office, by my department one day, and asked me to go to the Western Union office with him. He said he wanted to send some money to Mr. Thurman to buy some jacks and stallions and didn't think he had enough money and might want to borrow a little from me, and we went there together, and after he transacted what business he wanted to he turned to me and asked me to loan him a hundred and fifty dollars and to make the check payable to the Western Union, and I dismissed it from my mind considering that I had loaned him the $150.00, but later it developed that Mr. Morris, our bookkeeper, he came back and asked me to sign the invoice. He said "You or Mr. McDonald one or the other is supposed to sign this invoice so you can get your money back," and I signed the invoice.

Q. Where did you get your money that you gave to Mr. McDonald?

A. I wrote a check.

Q. Out of your personal funds?

A. Yes, sir, out of my personal funds.

Q. And your check was for how much?

A. One hundred and fifty dollars.

Q. Where did Mr. McDonald get the money that he used?

A. I will say that I will state that in answering what I did with the warrants when it came. When the warrant came I went up to Mr. McDonald and told him we had a warrant there covering our money that we had been out for this stock and asked him what to do with it and he said, "Go down to the bank and pay off that note for $800.00 that I borrowed for this purpose and put your $150.00 in the bank."

Q. Who did you send this money to?

A. Mr. Thurman, I believe.

Q. When you went to the Western Union office, did you and Mr. McDonald go together?

A. Yes, sir.

Q. He supplied $800.00 and you supplied $150.00?

A. Yes, sir.

Q. Making a total of $950.00?

A. Yes, sir.

Q. What did you do with it?

A. Sent it to Mr. Thurman, I believe it was.

Q. What Thurman was that?

A. W. D.

Q. Where was he?

A. He was in Missouri, I am sure, but I wrote my check for $150.00 to the Western Union.

Q. You and Mr. McDonald discussed the transaction, did you not?

A. He just said he wanted to send Thurman some money to buy some stock and asked me to go with him.

Q. And the $950.00 was sent to Mr. Thurman?

A. Yes, sir.

Q. Do you remember the date you made that check out?

A. No, sir, but it was in March, about the 20th. I believe it was the 23rd. I have the check.

Q. I hand you a copy of a check and will ask you whether that is a photostatic copy of that check that you made?

A. Yes, sir.

Q. Will you please read that check, everything on it?

A. "Western Union Telegraph Company, $150, purchased for State stallions and jacks" and signed M. S. Fraze.

Q. What is the date?

A. March 23rd, 1934.

Q. And while you were there did Mr. McDonald write out a check?

A. He did.

Q. For how much?

A. I don't know the amount. I didn't see it.

Q. But it was at the same time there?

A. Yes, sir.

Q. Now, when we are talking about these transactions here, we are talking about Mr. J. E. McDonald, are we not?

A. Yes, sir.

Q. So that was on March 23rd, 1934?

A. Yes, sir.

Q. But you made out the check for $150.00 and Mr. J. E. McDonald made out a check for $800.00?

A. Yes, sir.

Q. Payable to the Western Union?

A. Yes, sir.

Q. This money was wired to W. D. Thurman in Springfield, Missouri, is that correct?

A. Yes, sir.

Q. Now, what did you do after that with reference to getting your money back?

A. Well, when the warrant came back Mr. Morris gave it to me and I went to Mr. McDonald and asked him what to do with it and he said to go down and pay that note off at the bank.

Q. Just prior to that time, how did you go about presenting your claim to the State of Texas?

A. I signed the invoice to the State.

Q. Do you recall when that invoice was made out?

A. No, sir.

Q. Was it after or prior to the time that you and Mr. McDonald sent this money to Springfield, Missouri?

A. After.

Q. Are you sure of that?

A. Well, it was afterwards when I signed it.

Q. How much was the bill made out for?

A. $970.00.

Q. $970.00?

A. Yes, sir.

Q. I am going to show you a photostatic copy of a bill signed by you and will ask you if that is the one presented to the Comptroller?

A. Well, the amount is right and my signature is there and I suppose it is.

Q. Will you read the date and the amounts on it, everything on there? Read the whole thing?

A. The date is March 8, or March 6, 1934. The amount is $970.00.

Q. Read the entire wording of the instrument?

A. "1 Black Percheron Stallion name 'Prince' $360.00
1 Black Percheron Stallion name 'Buster' 310.00
1 Black Jack with Gray Nose 310.00

Total ..... $970.00"

Q. Well, you haven't read everything at the top there, Mr. Fraze. Read the entire thing?

A. The entire thing?

Q. Yes, sir.

A. "No. 170. Appropriation No. G 201
Balance Available $.....

PRINTING AND STATIONERY ORDER

THE STATE BOARD OF CONTROL: March 6, 1934.
(Division of Printing)

Please place with the proper contractor the following order for.....
Agriculture.....Department (Institution)

Signed.....

Requisition must be signed by the Head or Chief Clerk of a Department or Institution.

Form 112 1b-R93-733-10m

Make All Requisitions in Duplicate.

1 Black Percheron Stallion name 'Prince' $360.00
1 Black Percheron Stallion name 'Buster' 310.00
1 Black Jack with Gray Nose 310.00

Total $970.00

From
M. S. Fraze
Austin, Texas."

Q. Now, Mr. Fraze, what is the date again on that bill?

A. This is blurred a little bit. I interpret it to be March 8, 1934.

Q. And you stated a few minutes ago your check was made out on March 23rd, 1934?

A. Yes, sir.

Q. Now, will you please state to the Committee how it is that you could bill the State of Texas seventeen days before the animals were bought?

A. I just imagine that is an error in this date. I never noticed the date when I signed the invoice.

Q. Don't you think that is a rather important matter?

A. Well, I think so. It might have been dated wrong.

Q. Did you have very much to do with what happened in this transaction?

A. No, sir, I didn't make out the invoice. I just signed it when he brought it back.

Q. Who brought it to you?

A. Mr. Morris, the bookkeeper.

Q. The bookkeeper in the Department?

A. Yes, sir.

Q. A bill for $970.00. You knew it was for twenty dollars more than you and Mr. McDonald sent to Springfield, Missouri, for the purchase of the animals?

A. No, sir. I didn't know how much Mr. McDonald's check was for.

Q. Didn't you state he made a check to the Western Union for $800.00?

A. Yes, sir, but I found it out after I paid off the note at the bank.

Q. You knew he had paid $800.00?

A. I didn't know at the time I signed this invoice, this bill.

Q. Weren't you standing there when he made out the check?

A. I was standing there, but I was standing back. I didn't see the transaction at all.

Q. Didn't you state awhile ago that Mr. McDonald said he had $800.00 and needed $150.00 more?

A. I don't think so.

Q. Didn't you state that a few minutes ago?

A. I don't think so. He told me he wanted me to go down to the bank, that he wanted to send Thurman some money and didn't know whether he had enough, or not, and might want to borrow some from me.

Q. Well, I believe you stated that Mr. J. E. McDonald sent you down to the Austin National Bank, is that correct, to pay off this note?

A. I asked him what to do with the warrant when it came and he said to go down and pay off the note.

Q. How much did you pay?

A. $800.00, and a little interest, a dollar and something. I don't know the exact amount.

Q. A dollar and something as interest?

A. Yes, sir.

Q. And you knew that he had sent $800.00?

A. I didn't know it. I knew then it was $800.00. If he ever said $800.00 I don't remember it.

Q. What went with this $20.00?

A. After we paid off the note at the bank and put my $150.00 back I had $18.05, I believe it was,—it might have been ninety-five cents,—but it was eighteen dollars and a fraction, and I came back to the office and handed it to Mr. McDonald. He said "what is this for"?

I said "That is that much more than the money we were out" and I handed it to him.

Q. You handed it to Mr. McDonald?

A. Yes, sir.

Q. Did he take it?

A. Yes, sir, and handed it to Mr. Morris, the bookkeeper.

Q. What was then done with it?

A. I don't know what Mr. Morris did with it.

Q. Mr. Fraze, in purchasing these animals in this roundabout way was any record kept of the cost of the animals? Would it be possible to trace back now and find out what these three animals actually cost the State of Texas, how much money was actually paid to W. D. Thurman?

A. I imagine it would be. We actually paid him $950.00.

Q. You actually paid him $950.00?

A. I think the record could be traced. As far as I know that is the amount.

Q. Do you think that is a very good way in which to handle the State's business, to create a debt against the State of Texas?

A. I guess it isn't because some criticism has come up.

Q. Some criticism has come up?

A. Yes, sir.

Q. Didn't you know then that you were placing yourselves in a very embarrassing position by such a transaction?

A. Mr. Fox, I was just in my mind accommodating Mr. McDonald when I loaned him the $150.00 and I dismissed it from my mind as having loaned him $150.00.

Q. Just one other question. When you presented, or when you signed or presented a bill to the Comptroller's Department, did you sign an affidavit that these animals cost the State of Texas $970.00?

A. Yes, sir.

Q. Was that affidavit correct?

A. Well, of course it is proven it wasn't, but I thought it was.

Q. It has been proven that it is not correct?

A. Yes, sir.

Q. Mr. Fraze, with reference to these checks that were paid to the Western Union, I will ask you can you recognize Mr. J. E. McDonald's signature?

A. Yes, sir.

Q. I will hand you a copy of a check and ask you whether or not that is Mr. McDonald's signature on the check?

A. Yes, sir.

Q. Will you please read it in detail to the Committee?

A. "Austin, Texas, 3-23-34. American National Bank. Pay to Western Union Telegraph Company, or bearer, $800.00, purchased for State stallions and jacks." Signed J. E. McDonald.

Mr. Fox: Mr. Chairman, we desire to offer these two instruments in evidence.

Mr. Felts: We have no objection.

The Chair: Admit them in evidence.

Q. (By Mr. Fox): Mr. Fraze, were any other animals bought with your knowledge in this manner?

A. Well, yes and no. There was another time when I went to Springfield, Missouri, and we purchased four stallions, where I financed the deal in a way.

Q. What do you mean by that?

A. I loaned Mr. W. B. Blackwell $1015.00 to buy some stallions that I thought couldn't be bought otherwise.

Q. Who is Mr. W. B. Blackwell?

A. Well, he is a citizen of Springfield, Missouri.

Q. A citizen of Springfield, Missouri?

A. Yes, sir.

Q. And you, as an agent of the State of Texas loaned the State of Texas $1015.00 in order to buy animals for the State of Texas?

A. I loaned Mr. Blackwell that.

Q. And he bought them; and what did he do with them?

A. He sold them to the State.

Q. He sold them to the State of Texas?

A. Yes, sir.

Q. For how much?

A. $1015.00 is what I loaned him, and that's what the bill was.

Q. I understand that, but how much did he sell them to the State of Texas for?

A. $1015.00.

Q. As the head of the Weights and Measures Division, as I believe you said you were, how come that you were in Missouri purchasing or assisting in the purchase of animals for the State of Texas?

A. This was on the first trip that Mr. Thurman made, after he became connected with the Department of Agriculture and Mr. McDonald asked me to go with him over there to buy this load.

Q. You went with Mr. Thurman?

A. Yes, sir.

Q. Now, Mr. Fraze, I asked you this question before I think, but I want to go about it maybe in a little different manner now; why was it necessary that you loan this money to Mr. Blackwell in order to buy animals? Why couldn't it have come through the natural channel of dealing?

A. I will say this, as I have explained, Mr. Fox, we located some animals over there that we thought were worth the money, and Mr. Blackwell being a resident there, why he talked to those people about the animals and purchased them, for Mr. Thurman and I, after we had looked at them and decided that they were a good buy and enough to get our load; we picked out the animals that we thought were the best buy, and Mr. Blackwell called them up and told them that we had picked our horses and would take them tomorrow or the next day, that conversation was one night, and one of the parties said: "Mr. Blackwell, I understand these boys want to take these animals to Texas; when you come out here to get my horses, you pay cash for them." That's what Mr. Blackwell told me; he was talking over the 'phone. Well, that conversation slowed things down, and I asked Mr. Blackwell if he could finance the deal, if he could buy them and sell them to the State, and he says: "No, I can't; I haven't any money and I am involved with the bank a little bit"; and I says: "go see your banker and see if you can't get him to handle it"; and I heard the banker myself say: "Mr. Blackwell owes the bank some, and he doesn't care to be involved in it any further; and I am not going to encourage him to be involved further;" and it looked like leaving the stallions there after we had decided it was a good buy; and I had a little money I didn't have to have and I just loaned him the money rather than come back without them.

Q. Are you positive as to the amount of money that Mr. Blackwell paid for those animals?

A. No, sir, I am not; I don't know what he paid for them.

Q. You merely took his statement for that?

A. Yes, sir.

Q. Did he render a bill to the State of Texas?

A. Yes, sir.

Q. For $1015.00?

A. Yes, sir.

Q. But you don't know what he paid for the animals?

A. I don't.

Q. Mr. Fraze, in your dealings over there in the purchase of these animals, do you know of any bonus,

gratuity or any money of any kind that was paid or changed hands?

A. No, sir.

Q. As far as you know it was above board?

A. Yes, sir.

Q. But you went about it in a very round-about way?

Mr. Felts: We object to that, as being argumentative, and not admissible, and should be stricken from the record. The witness has stated the manner in which it was done and the reasons for so doing.

The Chair: That's true; there is no question about that; the witness has testified about the facts.

Mr. Fox: All right, we withdraw it.

Q. (By Mr. Fox): Mr. Fraze, when you loaned Mr. Blackwell this money, did he pay you any interest?

A. No, sir, not a penny.

Q. How long did he keep it?

A. Oh, I don't know, Mr. Fox, just long enough to get a warrant over there and get it paid.

Q. Did he give you any security of any kind?

A. No, sir.

Q. Did you know, Mr. Blackwell—how long had you known him previous to that time?

A. No, sir, I did not know him previous to that time.

Q. Now, I will ask you how and when you got your money back from Mr. Blackwell?

A. Mr. Fox, we made arrangements with the bank over there for this warrant to be sent to the bank and Mr. Blackwell was to endorse it at the bank there and the banker, a Mr. Knox at the bank, was to send the warrant on to me here, but what happened is, after I got back, not having any security from Mr. Blackwell and not having known Mr. Blackwell before, I wrote Mr. Blackwell if he would wire me and give me the authority to place his endorsement on the warrant and keep it here, and that's what happened.

Q. And he wired you, giving you the authority to endorse the check for him, the warrant?

A. Yes, sir.

Q. Just as a matter of information, Mr. Fraze, did you carry this money to Missouri, or how did you carry on the transaction?

A. I drew on my account here after I had gotten to Missouri.

Q. Did you bring that check with you?

A. I believe I have it here. I have a statement of it.

Q. Please read that check into the record.

A. I drew on my account for a thousand dollars, and gave Mr. Blackwell fifteen dollars out of my pocket. That check reads "March 6th, 1934; Received of M. S. Fraze, check on Austin National Bank, Austin, Texas, $1,000, to be collected and paid to the credit of W. B. Blackwell. Union National Bank." Signed: "G. F. Knox, Cashier."

Q. And that check is for a thousand dollars?

A. Yes, sir.

Q. And how did you say you completed the transaction?

A. I gave him fifteen dollars out of my pocket.

Q. Fifteen dollars cash you mean?

A. Yes, sir.

Q. Why did you handle it in that manner, Mr. Fraze?

A. Well, I had enough extra cash in my pocket to where I thought I would just draw on my account for a round thousand dollars, and I gave him the fifteen dollars out of my pocket, because I had more than I needed, after we were fixing to get away then.

Q. Mr. Fraze, how long have you known Mr. J. E. McDonald?

A. Oh, fifteen or twenty years; I couldn't say exactly, Mr. Fox, maybe twenty-five.

Q. Are you pretty well acquainted with the family?

A. Well, I don't know all of his family; I know his family here, but I am talking about his brothers.

Q. I mean his immediate family?

A. Yes, sir.

Q. Are you familiar with the ages of the boys, J. E. and Roy?

A. Well, I could guess at their ages; I never heard their ages, but I could make a pretty good guess at it.

Q. Approximately how old are they?

A. I imagine J. E. is about twenty and Roy about seventeen or eighteen.

Q. All right, before you leave the stand, do you have an employee over there in your department with the initials "H. M.," a stenographer more than likely?

A. I don't think of any.

Q. Has there been any there of that initial?

A. Well, I didn't know her initials, but Helen Moorman.

Q. A stenographer in the department?

A. Yes, sir.

Q. Is she working there now?

A. Yes, sir; I just know her as "Miss Moorman"; I didn't know her initials.

Q. That's all.

Cross Examination

(By Mr. McLean):

Q. You were asked the question as to whether or not that was a roundabout way of doing business, was it your judgment that that was a good buy and the animals were worth the money for the State?

A. Well, I will say this: that I thought it was such a good buy that I was willing personally to take a chance on loaning the money.

Q. And the State then paid you back?

A. Yes, sir.

Q. Now, these people were demanding the cash before they would turn the bridle loose from the animal, is that correct?

A. Yes, sir. That's what Mr. Blackwell said.

Q. That's what Mr. Blackwell said. And they got the cash?

A. Yes, sir.

Q. Now, did you profit one thin dime personally by that transaction?

A. I never took a dishonest penny in my life from anybody.

Q. Did Mr. McDonald, so far as you know, profit by you loaning the State that money personally?

A. I am sure he did not.

Q. Did the State profit by it in your judgment?

Mr. Fox: We object to that, Mr. Chairman; he is not in a position to testify as to that; he hasn't qualified as an expert on animals.

The Chair: I believe the objection to be good.

Q. Very well, Mr. Chairman; we submit to the ruling of the Chair and will elicit the proof from another source; Were all of those transactions open and above board?

A. As far as I know they were.

Q. During your service under Mr. McDonald or with Mr. McDonald, did he ever at any time make a suggestion to you, or in your hearing or in your presence about beating the State or anybody else out of a thin dime?

A. Never.

Q. That's all.

Redirect Examination

(By Mr. Fox):

Q. Now, Mr. Fraze, does not the law specify the manner in which these animals shall be bought, and the manner in which the State of Texas shall go about it?

A. Yes, sir.

Q. Then, Mr. Fraze, you substituted your own judgment for the law, as passed by the Legislature of the State of Texas?

Mr. McGregor: If the Court please, we object to that; that's not the law—

The Chair: What's your objection, Senator.

Mr. McGregor: The objection is, he asked him if the law didn't specify a certain way of buying these animals and if this way wasn't against the law.

Mr. Fox: That's not the question. Read the question.

The Chair: Now, gentlemen, as to what the law is, of course, we will take notice; as to what the witness actually did, the testimony will show; I don't want to unnecessarily delay this thing, and I am not going to do it, but at the same time, I believe the matter as to whether or not he followed the law is a matter of evidence that will be shown by what he did, and I believe the question is argumentative, and it would be purely a conclusion—let me finish, Mr. Aikin—on his part, and something that he couldn't testify to.

Mr. Aikin: This gentleman was in Missouri—let me make my statement before you rule on it, please sir—buy-

ing animals for the State of Texas, and if he didn't know the correct procedure to follow, he should have known.

The Chair: I think it would be permissible to ask the witness if he knew what the law did provide at that time, if you want to show that the witness did not follow the law, that he knew what the law was and that he did not follow it; I believe that it would be proper to ask him if he knew what the statutes provided at that time, and then ask him what he did do, and then it would properly be a conclusion for the committee and the House to draw as to whether or not he followed the law.

Mr. Felts: And to that, Mr. McDonald has no objection whatever.

Mr. McGregor: If the court please, we desire to make our objection. As to what the law is, I think, that while this may have been in a sense an irregularity, that it is our position it was in no sense a violation of the law.

The Chair: Read the question, please.

The Court Reporter thereupon read the foregoing question as follows:

"Q. Then Mr. Fraze, you substituted your own judgment for the law, as passed by the Legislature of the State of Texas?"

The Chair: I understand that that is more a matter of conclusion and argument to be drawn in the end. Now, I think it is proper for each side to show, if they wish, that—

Mr. McGregor: The law presumes that he knows the law.

The Chair: That's correct.

Mr. McGregor: Therefore, it is not necessary to ask him that question.

The Chair: Absolutely. There is no question about that. They are just taking over a burden that they don't have to do. Let's proceed, gentlemen.

Mr. Spears, Chairman: Let's proceed, gentlemen. The Chair would like to make a statement in this proceedings, at this time. I want to be fair in the matter, and of course know what the rules are relative to the matter of the admissibility of evidence and want to call your attention to the latitude allowed in the Terrell case and in the Robison case in the matter of asking what the law provided in certain instances. The Chair, personally thinks that would pertain to the law of the particular matter asked about, and that ignorance of the law is no excuse, and he agrees with you that what the law provides is what the Committee, the Chair and everybody else are interested in. What we want is to develop the facts in the case on legal testimony and I believe each party will support the Chair in confining our procedure to the law.

Mr. Felts: We agree with the remarks made by the Chair and that's alright.

Mr. Spears, Chairman: Thank you, sir.

Mr. Fox: Mr. Fraze, I'll ask you that during the time this took place when you were purchasing animals, did it ever occur to you that this method of purchasing animals for the State of Texas was irregular.

A. Mr. Fox, let me answer that this way: It looks like to me, if you will let me—permit me to make this explanation, that this was the only way to proceed to get the animals—that way we could buy them and pay for them, and get good animals, and I know in one instance we made a good buy by doing that, one of the best we bought, a very fine jack, and that's the way I think about it and thought at the time, that it was one of the best buys the state made and naturally I would think that.

Q. At whose suggestion did you do this?

A. At my own suggestion.

Q. I believe you haven't answered the question. Did you, or did you not know that this method was irregular?

A. No, sir; I did not.

Q. You did not?

A. No, sir.

Q. Then you think you could go out and create a debt for the State of Texas, in this manner?

A. I didn't consider it a debt. I considered that a personal loan to Mr. Blackwell, personally.

Q. What if these animals had died, what position would you have been in?

A. I figured that I would just lose the animal.

Q. You just considered that you did that for the State of Texas?

A. I just considered it that way.

Re-Cross Examination

Mr. Felts: Mr. Fraze, those animals were bought from farmers and people who were not in the habit of selling animals to the State and were not familiar with selling animals to the State?

A. Some were farmers.

Q. And they would not turn these animals loose without the money and invoice them to the State and get the money later—they demanded the cash?

A. Yes, sir.

Mr. Felts: That's all.

Re-Direct Examination

(By Mr. Reed, of Dallas):

Q. You just answered that the people you traded with were people that wanted cash; wasn't it a fact that the people you were dealing with were in the habit of selling animals?

A. I don't know, except our dealings with them.

Q. You don't know whether or not they had their business of buying and selling jacks and stallions?

A. No, sir; I do not.

Re-Cross Examination

Mr. Felts: Mr. Fraze, were these prices of these animals in line with prices of other animals that you had bought?

Mr. Fraze: I didn't understand the question.

Q. I say, were the prices of animals that you bought in line with the prices of other animals that you had bought from established dealers in this and other states?

A. I am not familiar with the prices, Judge, that they had paid. I know some of them ran very much higher. That I would not say. I was familiar with the prices we paid. I would not say that I was familiar with prices, because I was not in that business of buying stock.

Re-Direct Examination

(By Mr. Fox):

Q. At the time you made these purchases, in what condition was this particular fund out of which these animals should have been bought?

A. I do not know, sir.

Q. You haven't the slightest idea? You don't know whether it had a deficit or a surplus?

A. No, sir; I do not.

Q. I believe you stated that Mr. J. E. McDonald sent you over to Missouri to buy these animals?

A. Yes, sir.

Q. After getting over there, did you ever call Mr. J. E. McDonald by wire, or otherwise before you made the purchases?

A. Yes, sir.

Q. What was the nature of the information that you related to Mr. McDonald?

A. After we had decided what animals we would purchase, we would call him and describe the animals to him and give him the prices of them.

Q. Did you discuss the manner in which the animals would be paid for?

A. No, sir; never, because I didn't know that we were going to run up against this proposition.

Q. Didn't you go to Missouri with instructions to buy animals in this manner?

A. No, sir; I did not.

Q. That wasn't discussed before you left?

A. No, sir.

Q. It was not?

A. No, sir.

Mr. Fox: That's all.

Mr. Gus Farrar, called and sworn as a witness testified as follows:

Direct Examination

(By Mr. Fox):

Q. I believe you were on the stand yesterday, Mr. Farrar?

A. I was.

Q. You are an employee of the State Comptroller's Department?

A. That's right.

Q. A little closer to the mike?

A. That' right.

Q. I want to ask you about one warrant—warrant Number 6549—do you have that in your possession? I mean that that, it is jacket, or file or whatever you call it—your invoice?

A. I have the claim, by which that warrant was issued.

Q. Numbered what?

A. 6549.

Q. Please read the entire contents.

Witness reads:

"INVOICE, Issued in Triplicate—J. E. McDonald, Commissioner of Agriculture, State of Texas, Department of Agriculture, Austin, Texas. Debtor to R. E. Snell, Murfreesboro, Tennessee.

The following livestock:

1 Jack 'General Lenden'	$1,100.00
1 Jack 'Doctor Barnhill'	750.00
1 Jack 'Franklin D.'	481.00
1 Stallion 'Ben Allen'	500.00
1 Stallion 'Red Walker'	400.00
Total	$3,231.00

Approved for $3231.00 State Board of Control by R. Ham, Secretary. Fund 72, Dept. 557, Div. 8, Appro. No. H 167 Acct. 6810 $3231.00 Number 6549.

Approved Oct. 22, 1934, J. E. McDonald, Head of Department."

And the Affidavit:

"The State of Texas,
County of Travis.

Personally, before me, the undersigned authority, this day appeared R. E. Snell, who being by me duly sworn on his oath, says that the account hereto attached for $3231.00 in favor of R. E. Snell and against Dept. of Agriculture is, within the knowledge of the affiant, just, true and correct, that it is due and that all just and lawful offsets, payments and credits have been allowed; that the articles enumerated therein have actually been delivered, and the goods so delivered, are the kind and quality contracted for, and that the amounts charged in said account are in accordance with the contract price and correspond in every particular to the supplies or articles furnished; that no commission or other compensation has been or will be paid as a consideration for such purchase, and that affiant knows all such facts.

R. E. SNELL.

Sworn and subscribed before me this 22 day of October. 1934.

M. A. MORRIS,

(Seal) Notary Public Travis, County, Texas."

Q. Now, that was an affidavit made by R. E. Snell?

A. That is right.

Q. For the sum of $3,231.00?

A. That is correct.

Q. For animals purchased?

A. That is correct.

Mr. Fox: That is all, Mr. Farrar.

Mr. McLean: That is all.

(Witness excused.)

Tom McKnight, the witness who had been previously sworn by the Chair was called, and in answer to questions propounded, testified as follows:

Direct Examination

(By Mr. Fox):

Q. Your name is Tom McKnight?

A. Yes, sir.

Q. You haven't been on the stand heretofore, have you?

A. Not at this hearing.

The Chair: Now, Members of the Committee, a strict enforcement of the rules has been called for and the Chair is going to ask your indulgence and a little order and attention to the entire proceedings. I think you owe it to yourselves, I think you owe it to the State and to the parties involved in this proceeding to give attention to it in order that you may dispose of it fairly; this is the opinion of the Chair and the Chair is going to ask you to please do that.

Q. Mr. McKnight, you are an employee of the Treasury Department, are you not?

A. Yes, sir.

Q. Been employed there for sometime?

A. Six years.

Q. Six years?

A. Yes, sir.

Q. What are your duties in the Treasury Department?

A. I am Depository Manager.

Q. Then warrants issued by the Comptroller's Department pass through your hands?

A. Yes, sir.

Q. Have you with you Warrant 6549?

A. Yes, sir.

Q. Mr. McKnight, please read to the Committee every word and figure on that instrument?

A. The warrant is payable to R. E. Snell, and is in the amount of three thousand two hundred—

Q. (interrupting) Just begin at the very top and read it, because we want it for the record.

A. "State Comptroller of Public Accounts. Warrant No. 6549. Austin, Texas, Special Fund Treasury Warrant. The Treasurer of the State of Texas will pay to the order of and charge — Dated October 24, 1934, Appropriation 8167 Racing." Number and fund is above that; Live Stock G. payable to R. E. Snell in the amount of three thousand two hundred thirty-one dollars. Exactly three thousand two hundred thirty-one dollars no cents. Charley Lockhart, State Treasurer on the left hand side, George Shepherd State Comptroller of Public Accounts on the right hand side.

Q. That is George H. Shepherd?

A. Yes, sir.

Q. Now, Mr. McKnight, do you find anything else in the way of endorsement?

The Chair: The Chair has had several complaints that members can't hear anything in the House and therefore can't give the matter their attention. Now, I think it will be proper to at least make some effort so that the membership of the House can hear. I don't know just what you can do about it, unless probably the speaker system is not working in a proper manner; we might give it a little more juice.

Q. Mr. McKnight, read what you find on the back side of that warrant, the endorsements?

A. Deposited in the Republic National Bank & Trust Company of Dallas to the account of J. E. McDonald and R. E. Snell by J. E. McDonald, and the endorsement, rubber stamp endorsement of the Republic National Bank & Trust Company dated October 25, 1934.

Mr. Fox: That is all, Mr. McKnight.

Mr. Burch: That is all, we don't want him.

Witness excused.

Mr. Fox: Mr. Chairman, we are requesting a little more information and it has been sent for, and the witness will be back in a few minutes, and we ask your indulgence for a little time.

Motion was made, seconded and carried that the Committee of the Whole recess for fifteen minutes.

The Chair: The Committee will please come to order. There has been something said,—not necessarily a complaint,—about certain members wanting questions asked of the witnesses. I call the attention of the Committee to the fact that the House passed a resolution several days ago providing that any questions which any member of the House wanted to ask should be in writing and sent up to the leading counsel on either side and that certain questions should be propounded by such leading counsel to the witness. I will ask the members of the committees to please observe that rule established by the resolution. Are you ready to proceed, gentlemen?

Mr. Davison: Mr. Chairman, I want to ask that the Reading Clerk read Charge No. 8.

The Chair: The Reading Clerk will read Charge No. 8.

"Article 8. That the said J. E. McDonald, during the year 1935, while acting in his official capacity as Commissioner of Agriculture of the State of Texas, knowingly and wilfully made and entered into, and connived and conspired with various caretakers of animals, certain and unlawful contracts for the purpose of unlawfully diverting from the Treasury of the State of Texas, certain procreation fees, required by law to be paid into the Treasury of the State of Texas, and permitted and caused and authorized certain caretakers to collect and retain said procreation fees, thereby depriving the Special Racing Fund of the State of Texas of said fees into which they are required by law to be paid, all of which constituted a violation of the laws of the State of Texas."

Mr. Davison: I want to introduce as testimony Mr. McDonald's testimony as given before the Graves Committee.

Mr. Felts: We have no objection.

Mr. Davison: On page 111.

The Chair: I will admit the testimony.

Mr. Felts: May we inquire if this relates to this Charge 8?

Mr. Davison: Yes, sir, only.

"The caretakers are paid $15 per month in cash and allowed to keep a maximum of three breeding fees for that current month. I wanted to get as much breeding done during the off season, that is throughout the year, rather than to have the continued old custom of breeding two or three months in the Spring. They are given $15 per month and allowed to keep

three breeding fees out of each current month and if he breeds but one he gets $20, if he breeds two $25, if he breeds three he gets $30. That is what we paid last year and it has been very satisfactory."

Mr. Davison: I want to introduce as testimony Mr. McDonald's testimony as given before the Hunter Committee, beginning on page 72 and going down to and including page 86 which I will ask the Clerk to read at this time.

Mr. Felts: Does this testimony relate to Charge No. 9?

Mr. Davison: Yes.

Mr. Felts: We have no objection.

The Chair: I will admit the testimony. The Clerk will read it.

"Q. Do you know Mr. J. W. Ridgeway of Fort Worth?

A. I do.

Q. Was he appointed administrator of the milk code at Fort Worth at the time that milk code was instituted over there?

A. I think he served in that capacity.

Q. You think he did?

A. I believe that is right.

Q. Didn't you appoint him as administrator over there, Mr. McDonald?

A. I think so.

Q. Do you know positively whether you did or not?

A. Yes, sir, he was administrator over there. I don't know the details there, because Mr. Canon who was Chief of the Marketing Division, Department of Agriculture, handled the most of that.

Q. Did you ever have occasion to write Mr. Ridgeway a scorching letter about trying to coerce the distributors over there into some kind of a movement, and you wrote a letter; he wrote a letter calling it the McDonald code and you censured him for that?

A. I remember something about writing a letter to Mr. Ridgeway but I don't know what it was.

Q. Do you remember whether or not that letter was mailed?

A. I presume it was.

Q. Mr. Ridgeway didn't know anything about it, and I just wondered whether this was put in your files for any other purpose?

A. No, sir, if I wrote a letter to Mr. Ridgeway it was mailed, or I presume it was. Of course, I don't mail the letters myself.

Q. Did you instruct Mr. Ridgeway at any time to keep any records of monies collected from that milk code?

A. In that letter?

Q. No, sir, at any time did you ever instruct him that he was to keep records of the monies collected from the milk code?

A. I can't say that I instructed him to keep the money, but it must be self supporting.

Q. I mean keep records of what he did in the name of the Department of Agriculture?

A. I don't remember giving him any specific instructions at all.

Q. Did Mr. Canon ever advise him—

A. I don't know.

Q. Did you ever advise Mr. Canon to advise him to do that?

A. I couldn't say.

Q. When these codes were being set up was it your thought to just turn them loose and let them do anything they wanted to or were you going to safe guard the collection of that money with good records, like you keep over in your Department?

A. I certainly was going—I expected it to be done in a business like manner. Mr. Ridgeway is a business man of ability and enjoys the implicit confidence of the business world.

Q. Did you consider this movement a part of your department over there, these codes?

A. I felt like it was my duty to do anything I could to help stabilize the milk industry of Texas and get for the producer the most money for his milk.

Q. When you appointed Mr. Ridgeway administrator if you had wanted him to conduct the collection of that money, etc., in the same legal way that you conducted the rest of your Department, doesn't it appear you would have instructed him to have kept proper records?

A. As I stated a minute ago, Mr. W. A. Canon was Chief of the Marketing Division of the State Department of Agriculture and a very capable man, and I can't keep detailed

track of everything that occurs. I had implicit confidence in Mr. Canon, he was honest, and those milk codes at Ft. Worth were set up by Mr. Canon and the producers and distributors of milk up there.

Q. How many sets of codes did you institute in Texas?

A. I couldn't say, something like four or five, perhaps.

Q. Where were they located, please sir?

A. One in San Antonio, and one in Dallas, and one in Ft. Worth, and I believe one possibly at Amarillo. I am not sure about that.

Q. You never had one at Waco?

A. I couldn't tell you whether there was one there or not.

Q. Lubbock?

A. I couldn't say.

Q. Beaumont?

A. Yes, sir, Beaumont had one.

Q. Port Arthur?

A. And possibly Port Arthur. I think so.

Q. Did you have anything to do with that situation at Houston?

A. Yes, sir, I spent a lot of time trying to stabilize that milk industry down there and I think our Department rendered them a wonderful service.

Q. You said you turned it over to Mr. Canon, is that right?

A. The most of it. I can't keep up with every Department.

Q. Mr. Murphy and I asked you for the records on all these codes over there, asked you to get them together, did you ever do that?

A. No, sir.

Q. Why?

A. I wrote to Mr. Ridgeway for them and he didn't send them.

Q. Did he give you any reason as to why he didn't?

A. I gave you a letter to go up there and get the records.

Q. You gave me three, one to Ft. Worth and one to Dallas and one to San Antonio?

A. Yes, sir.

Q. When we contacted Mr. Ridgeway he stated he took the books out and burned them up; do you think that is the way to treat public records?

A. I think that was an individual matter up there that concerned that industry, and I certainly wouldn't have suggested that they be burned but Mr. Ridgeway in his judgment, I guess, thought since the Federal Code came in there following us, that there was no further need for them.

Q. Did you ever get an Attorney General's opinion as to whether these milk codes were legal or whether you could legally lend the dignity of your office to that matter?

A. I certainly did, yes, sir. You have a copy of it.

Q. Me?

A. I think so.

Q. I am sorry but I don't. We have one on the cream testing but none on the milk codes?

A. Possibly that is what I have reference to.

Q. Now, you collected fees in each instance, didn't you, Mr. McDonald—your administrator, I mean, in each place?

A. They collected such amounts as was necessary to defray the expenses of the administration. The milk industry was in a deplorable condition. At San Antonio milk was selling as low as three cents a quart with a twenty per cent discount. The farmers were getting nothing for their milk. In every instance I got the farmers more money for their milk and stabilized the market.

Q. Can you ascribe any reason why the base of milk purchased under the codes at Houston and Beaumont would be far greater than that in Ft. Worth and Dallas; for instance, at Beaumont the base was $2.60 a hundred and at Houston, somewhere around $2.60, and in Dallas and Ft. Worth it was $1.87 and $2.00?

A. Milk has always sold higher in Beaumont and Port Arthur and in Houston than it ordinarily does in Ft. Worth and Dallas.

Q. Did the producer, the actual producer of milk, was he represented on the Board or by an administrator appointed by you in Ft. Worth, Texas?

A. Yes, sir, supposed to have been.

Q. Who was on the Board up there that was a producer?

A. I couldn't say. Mr. Canon handled that.

Q. Mr. Ridgeway appointed by you as administrator was an employee of Borden & Company, wasn't he?

A. Yes, sir.

Q. And he was drawing a good salary from them and you appointed him administrator and he drew $250.00 a month from that?

A. I am not acquainted with the salaries he got. Mr. Canon handled that.

Q. You left all that up to Mr. Canon?

A. Yes, sir, practically. I think the details in the different divisions are left up to the head of that division. I told Mr. Canon at all times we must keep the producers' interests at heart. I was satisfied at all times that he was looking out for the producer.

Q. Did you ever investigate Fort Worth to see whether or not the producers were properly represented?

A. I asked Mr. Canon about that continually, not especially Fort Worth, but all of them.

Q. You didn't go on the ground and look it over to see, did you, Mr. McDonald?

A. Yes, sir, I was up there on two or three different occasions and talked to different parties. You take Ward Harrison, a producer, he served for a time. I consulted him.

Q. You are sure he served on that job, are you?

A. I don't know whether he served as a director or not.

Q. We have it from Mr. Ridgeway that he was the King Fish, that he was the Big Boy with the big stick, and he went out and contacted we will say this producer and that distributor and this producer and that distributor, and then he did what he deemed was wise and sufficient in the matter, is that right?

A. I don't think so.

Q. He should know shouldn't he, Mr. McDonald, what he did?

A. Mr. Canon handled that, if you want to know the details of the Fort Worth milk code. Our participation up there was in trying to stabilize that market. If you want the details you will have to get Mr. Canon and Mr. Ridgeway. They are both very intelligent men.

Q. We have Mr. Ridgeway's testimony.

A. You can get Mr. Canon.

Q. Do you know anything at all about how these codes were handled other than there was just a code set up?

A. Yes.

Q. You made detailed inspections or did you just talk to Canon?

A. No, I talked with others and had correspondence with others and kept in touch with the situation. The situation at San Antonio I handled largely myself.

Q. Every one of these creameries that joined this movement, did they put up cashier's checks for forfeit to live up to that agreement, Mr. McDonald?

A. I don't remember. Some checks were put up. I don't remember just who.

Q. Did you see some three or four thousand dollars in cashier's checks ranging from three to five hundred dollars each?

A. Some checks were put up to Mr. Canon and made payable to me. Those were kept awhile in the safe by the Department of Agriculture and when they had served their purpose and stabilized the market they were returned.

Q. We have letters here showing that all of those, or quite a lot of those were returned; was one of those ever forfeited?

A. I would have to look at the records you have to see.

Q. Did that code agreement provide that any firm that violated that code was subject to a fine of so much a day for each and every day?

A. I couldn't say.

Q. You don't know what was in that code then?

A. I certainly did at the time .

Q. You would remember that, wouldn't you, Mr. McDonald?

A. I wouldn't trust that to my memory. At the time I knew exactly what was embodied in each contract.

Q. Were all these codes alike?

A. I wouldn't say. I think they differed to meet the situation in the different milk sheds.

Q. Will you say this, that there was a provision made, to the best of your memory, in each of these codes that

you could assess a fine for any violations thereof?

A. I don't know.

Q. What was the use or the idea of having the cashier's checks put up?

A. You will have to take that up with Mr. Canon and find out exactly what the purpose was and what was to be accomplished.

Q. We have a copy of the milk code here which makes this provision: "that if any signer of the above named association or of this agreement should be found guilty by the superviser or a representative of the Department of Agriculture or by the milk advisory board of disregarding or going contrary to or not abiding by this agreement, then and in that event it is herein agreed by each signer of this agreement that there shall be assessed a penalty of not less than twenty-five dollars nor more than two hundred dollars for each day or portion thereof that he violates any provision hereof, and that the same additional amount shall be assessed against him or them on each code or clause under which he failed to abide by, and it is agreed any such assessment when not paid by the signer within thirty days after he has been notified in writing of said assessment due by him for his failure to abide by, and it is agreed any such assessment when not paid by the signer within thirty days after he has been notified in writing of said assessment due by him for his failure to abide by this agreement, then and in that event it is herein agreed by said signers that said amount of assessment then and there automatically does become a lien on any or all of his assets collectible by law as any other debt that he might owe. Any monies collected or due as assessments shall be collected and used by the milk industries board and/or J. E. McDonald, State Commissioner of Agriculture, or his employee assigned to work hereunder, for the benefit or use of this program and or agreement and to maintain same, or the Commissioner may withhold assessment amounts from the products sold by or for the signer owing the assessment."

A. Gentlemen of the Committee, at that time the milk industry in these different sheds were in a demoralized condition and the poor producer was suffering because of fights with the distributors. They would get in a fight among themselves and they would make gentiemens agreements that they would pay a certain price and the first thing you knew somebody had broken over and some distributor was cutting the price and he had to pass it on to the producer, and these codes were gotten out and prepared largely by themselves and by the producers to keep them in line, to keep them from cutting the price so the farmers wouldn't have to suffer. It was at the time that the codes were being used by the Federal Government. It was an emergency and possibly Mr. Canon and possibly the distributors themselves in their desperation entered into agreements that would not be considered at any other time except in a period of desperation. In all those things that we did, I had the one motive and that was to protect the producer, and to stabilize the milk industry, and we did the things we thought was best, and I never received one penny from any source for my efforts, and I went many times at night and attended meetings and did everything in my power to stabilize the industry. I may have entered into some agreements there that under ordinary conditions I wouldn't have done. but if I did it was a mistake of the head and not of the heart. My purpose was to get to that poor producer out there a stabilized market and a good price for his milk.

Q. Do you recollect reserving in each of these codes the right to change in the contract any word or any paragraph at any time you saw fit?

A. I think that was in some of those contracts. Those contracts were written by Mr. Canon and the producers and the distributors. I can't remember everything that was in the contracts.

Q. "It is agreed herein by all parties hereto that the Commissioner may if he thinks best for the milk industry add to, subtract from, or insert additional words or paragraphs, which shall be binding on the signers hereto, and that the Commissioner shall notify the signers by registered mail, at their address on file in the Commissioners' office, of any change in this agreement?"

A. I will say there that in all these milk meetings the producers and the distributors and the industry as a whole seemed to have implicit confidence in my honesty and sincerity and

ability and they gave me broad discretion, and I safeguarded that to the best of my ability. I at all times tried to be fair and I don't think you will find anybody that will say J. E. McDonald at any time betrayed anybody's confidence and didn't do everything in his power to stabilize the industry.

Q. Did Mr. J. W. Ridgeway of Fort Worth, an employee of Bordens, as well as your duly appointed administrator of the milk code, contribute anything to your campaign fund that you know of?

A. He did not. He may have had some literature printed or something like that. He never did.

Q. Did he use this money collected up there for campaign purposes, collected from the code?

A. No, sir.

Q. Do you know that to be a fact?

A. I have no knowledge of it if he did.

Q. Did you look the books over and investigate all the expenditures to see?

A. No, sir, he never gave me any money and I never investigated any of it.

Q. Then if he did collect four hundred dollars a month there from off this milk code he could have gotten out and used that money for anything he saw fit and you would never have been the wiser, would you?

A. Yes, sir, but Mr. Ridgeway wasn't that type of man, Mr. Ridgeway was for a number of years head of the Animal Husbandry and Dairy Division of the A. & M. College, and I think he did more for the dairy industry of Texas than any other man in the State. The fact he was an employee of Borden & Company never caused him to relinquish his interest in the dairy industry in this State. In my opinion when he was appointed he was practically the most capable man, having the greatest knowledge, and should have been able to render the greatest service in the Fort Worth milk industry.

Q. Doesn't it seem to you that he wasn't such a good business man if he would take books, records, and bank statements out and burn them up?

A. I wouldn't say that wasn't a business transaction if they had served their purposes and there was no complaints, and the Federal authorities had come in there to set up their code. They were no longer of use and I think he had a right in his discretion to destroy them.

Q. You think it was within his discretion, or any of your employees, to take public records out and destroy them?

A. No, sir, not public records. If it had come to my attention I certainly wouldn't have advised destruction of them and wouldn't have agreed to it.

Q. If he was an employee of Borden & Company and a great business man, don't you know he would have realized the statute of limitations doesn't run on an open account for two years and that they should have been kept for two years anyway?

A. The A. & M. College thought Mr. Ridgeway was a man of ability and was honest and Borden's evidently thought the same, and I thought the same. If you want to know why those records were burned I would suggest that you get that information from Mr. Ridgeway.

Q. I just wondered which one he was serving, whether it was Borden's or the State of Texas; he was on Borden's payroll before he was the State's?

A. I want to say to you that Mr. Ridgeway in my opinion served very efficiently when he was serving as milk administrator, the milk industry of Texas and especially the producers.

Q. We have a letter dated July 26, 1934, from you to Mr. Ridgeway, "From the letter above referred to it appears you referred to it as the J. E. McDonald code when in fact the code was formed by those having a direct interest in the milk industry?"

A. That is right.

Q. "This is embarrasing to me and I am afraid it will work a hardship on me in the coming election. I have held you in the highest esteem and had implicit confidence in your ability and felt that the important office of milk administrator could be entrusted to you and that you would conduct the office in a dignified manner and deal fairly and in such manner as would bring about harmony and confidence with and among those interested in the milk industry in the Fort Worth territory. I am asking you to come to Austin at the earliest possible convenience and give me a full report of conditions

existing there and explain to me why one of the milk producers of the association should be offended. Pardon the very frank manner in which I have written you, etc." He refers or you refer in this letter to a member of the Natural Milk Producers Association being offended.

A. I don't remember just exactly what it was but I remember writing a letter that some complaint had come to me. I wrote rather a straight letter to Mr. Ridgeway, as I would to anybody, I don't care if they are my friends.

Q. If Mr. Ridgeway stated he never received that letter he would be just mistaken?

A. I couldn't say. I presume it was mailed out of my office. I dictate the letters and then the stenographer or secretary mails them out.

Mr. Hunter: You mailed a copy of that to some of those people up there who had been down here raising the dickens, didn't you?

A. I do sometimes mail a carbon copy to people interested.

Mr. West: Q. Did Mr. Ridgeway act as your campaign manager in Ft. Worth, Mr. McDonald?

A. No, sir, he did not.

Q. Did he pass the word along to the creameries and their employees that they wanted to vote for McDonald?

A. I don't konw.

Q. If he sent out sixty thousand pieces of literature say July 17, 1934, that was in line with your advertising at that time, you would think he was very muchly interested in your campaign, wouldn't you?

A. I think he had a right to be interested in my campaign like any man in Texas.

Q. Getting $250.00 a month out of the Administrator's job he would have a right to be interested in the outgrowth of agriculture, etc?

A. I think in so far as I knew him that $250.00 a month wouldn't influence that man.

Q. We have a letter dated July 17, 1934, which says up here in the corner, "this is copy of another letter Ridgeway sent out. He reports excellent response." "Dear Mr. Canon: I am writing this letter to you asking you to do everything you possibly can to further the candidacy of Mr. J. E. McDonald for Commissioner of Agriculture." One employee writing to another. Up in the corner it says, "this is copy of another letter Ridgeway sent out. He reports excellent response." "I am doing this because I know Mr. McDonald by virtue of his qualifications can best serve the interest of agriculture. Mr. McDonald is a man of broad practical farm experience. He is throughly familiar with what is needed to improve agricultural conditions in this State. He has well formulated plans that should help materially improve conditions. He has been outstanding in working with Governmental agencies etc." "It is unfortunate that a man of Mr. McDonald's qualifications and capabilities should even have to make a campaign for re-election. Knowing him personally as I do and having been associated with him in many of his activities I feel no hesitancy in—etc."

That letter was written by J. W. Ridgeway to Mr. W. A. Canon and across the corner Mr. Canon says, "these were sent out by Mr. Ridgeway and he reports excellent results," I mean "excellent response"?

A. I feel complimented that a man of Mr. Ridgeway's ability and standing felt as he did and expressed that in his letter.

Q. When you received this you were informed that was being sent out to the public, were you not, Mr. McDonald?

A. I don't remember of ever having seen a copy of that, but Mr. Ridgeway, and I think Mr. Canon at that time was not an employee of the State Department of Agriculture. He was with the Federal Government at that time. Mr. Canon at that time was not, if my memory serves me right, an employee of the Agricultural Department. He resigned before that and was with the Federal Government.

Q. He solicited for you nevertheless according to this correspondence?

A. Yes, sir, he had a right to do that if he had been a former employee and was then with another project.

Q. That came out of your files over here, Mr. McDonald?

A. I don't remember this letter but I am deeply grateful to Mr. Ridgeway for his expressions there as

to my interest in agriculture and as to my ability."

Mr. Street: Mr. Chairman, at this time, we want to offer in evidence a copy of the Fort Worth Milk Code. We are offering an unsigned copy. I understand from Counsel for the Defendant that there is no objection to offering this copy in lieu of one that was signed. It is offered as one of the general contracts that was established up there. If I am mistaken in my understanding, then of course, counsel is at liberty to say so.

Mr. Felts: We are not informed about the facts as to whether this is an exact copy or not, but with the assurance of counsel that it is a copy, we make no objection to its admission in evidence. Should it develop later that it is not the same as the signed copy, we of course will want the signed copy or a copy of it substituted for this copy.

Mr. Street: We agree to that, Mr. Chairman.

The Chair: With that understanding, the Chair admits it in evidence.

Mr. Street: I will make this statement that it is our information that this is a correct copy of the code; if it develops that this is an incorrect copy, we will want to correct that ourselves, of course.

The Chair: Yes, sir, the Chair understands that, and it is admitted.

The Reading Clerk thereupon read a copy of the Fort Worth Milk Code as follows:

"The Department of Agriculture of the State of Texas, through its duly authorized representatives, Mr. W. A. Canon, has made an investigation of the milk producers in the Fort Worth Milk Shed and also of the competitive situation among the various milk distributors in Fort Worth who are purchasing milk to sell at the prices at which milk is offered in the City of Fort Worth.

The Department of Agriculture has found that unless something is done immediately to relieve the situation among the producers in the Fort Worth Milk Shed, the producers will go bankrupt and be forced to sell their cows, and they will not be able to make a livelihood on their farms. The Department also finds that the quality of milk produced in the Fort Worth Milk Shed from a health and sanitary standpoint will be greatly effected unless this condition is relieved.

The Department of Agriculture hereby declares, based upon the facts brought forth from its investigation, that an emergency now exists in the Fort Worth milk shed, and that unless this emergency is met properly, peace and order among the producers in the Fort Worth area cannot long be maintained.

The Department of Agriculture further wishes to co-operate with President Roosevelt's program as expressed in the Agricultural Adjustment Act and the National Industrial Recovery Act and do everything possible to provide a proper standard living for the milk producers in the Fort Worth area, and since these milk producers are unorganized and have no duly chosen representative, the Department of Agriculture hereby speaks for these producers, at their request, as hereinafter set forth.

The Department of Agriculture, in order to handle the situation to the best interests of the State, hereby assures you that it is empowered to speak for the State of Texas, in matters concerning the welfare of the milk industry of the State, and to work out the following arrangement with you as a pasteurized milk distributor in Fort Worth, and hereby requests that you signify to this department your cooperation with the program herein outlined.

1. The State Department of Agriculture assures you that your consent to the program as herein set forth, made at the request of this department, shall not be construed as a restraint of trade or as a monopoly, or as a combination to fix prices, but shall be construed as an arrangement to which you have consented in a spirit of cooperation and at the request of this department in order to relieve the emergency situation now actually existing among the milk producers in the Fort Worth milk shed. The Department of Agriculture has taken this means of relieving the emergency among the milk producers with the firm belief and conviction that this situation can be relieved only by securing your cooperation as hereinafter expressed from you as a pasteurized milk distributor. The Department of Agriculture further promises that the State of Texas hereby relieves your firm, as well as the executives of your

firm from any liability, either criminal or civil because of any activities carried on because of your firm's cooperation in the furtherance of the program as herein set forth to preserve the milk industry of this State.

2. The Department of Agriculture hereby requests your firm to observe the following code:

(a) No milk or milk products shall be sold at prices below the minimum prices set forth on the price list attached hereto and hereby made part of this program. You are to observe these minimum prices until such time as the Department of Agriculture recommends other prices.

(b) No milk or milk products shall be purchased at prices below the minimum prices set forth on the list termed the "Purchase Plan" attached hereto and hereby made part of this program. You are to observe these minimum prices until such time as the Department of Agriculture recommends other prices.

(c) You shall give no free goods of any nature, or any discounts or rebates or any concessions on other merchandise sold, in order to influence the securing of a new customer or the holding of an old customer. This shall apply to both firms and to employees of firms to whom you sell or attempt to sell. Free ice or extra services of any nature shall be considered an infraction of this rule, provided that in approved cases set off milk may be iced with a minimum amount of chipped ice during the period of May 1st to November 1st. Advertising allowances which are really concessions shall be considered an infraction of this rule. Sale of tickets at a discount or so as to include free goods shall be a violation of this rule. Prizes shall not be given to the public or to customers to induce them to secure additional customers or induce them to increase the size of their purchase. Advertising schemes regarding which there might be a reasonable doubt as to their conformity with the rules outlined in these premises are prohibited unless the approval of this department is first secured. Boxes, cabinets, or other containers will not be furnished, and such as may be furnished, rented or loaned at the time this agreement goes into effect will be removed or sold within fifteen days; in case such is sold, the sale shall be bona fide and evidenced by bill of sale. Invoices shall not be back-dated. Free signs of material value shall not be furnished and the Department of Agriculture shall determine what shall be contrary to the intent of this provision. The distributor agrees to maintain adequate service to the public, but shall not make deliveries of merchandise after 7 p. m., until regular routes are in operation the following morning, and then to make special deliveries only after 6:00 a. m. No allowances shall be made to customers for bottles, and same shall be paid for at the rate of 5c for quarts and 3c for pints and half pints. Milk cases and other equipment shall not be picked up except by lawful owners thereof, and any such equipment now in possession of any other than the lawful owners shall be returned within fifteen days. A stenciled or branded name on equipment shall be considered prima factor evidence of ownership. The specific instances of types of violations of this rule herein set forth shall not be construed as narrowing the import of the general rule herein set forth.

(d) The Department of Agriculture hereby requests your firm not to disorganize competitive firms by securing or seeking to secure their employees with your firms. A route man who has worked for another pasteurized milk distributor in the Fort Worth territory, if employed by your firm, shall not for a period of one year, work in the same territory that he worked during his former employment.

(e) The Department of Agriculture hereby requests your firm to deal with the producer in a fair and equitable manner, to prevent gross inequalities in apportioning base milk, and, upon order of the individual producer, to pay over in a legal manner to a designated person or persons designated deductions from the amount due the producer. The department further requests that you not cut off a producer, in the ordinarily accepted meaning of this term, except for reasons of unacceptable quality or temperatures, but provided that the producer may be required strictly to make deliveries at a reasonable designated hour or hours. The producer, if selling base milk to a distributor, shall give this distributor refusal of surplus milk in any form at prevailing fat prices, if such surplus is sold in or to compete with the Fort Worth market.

3. The Department of Agriculture requests your firm to consent to a program whereby this Department, or an appointee of this Department, shall serve as a judge regarding any alleged infraction of any and every promise contained in this instrument, and to which your firm has agreed when it will have expressed its approval of the program herein outlined. The Department shall conduct an investigation of alleged infractions and give your firm ample opportunity to be heard following due notice. The Department shall find your firm guilty or not guilty of the alleged infraction. In event your firm is found guilty of a violation of the promises contained in these premises, your firm hereby agrees to pay to this Department Fifty ($50.00) Dollars for each such violation, plus Fifty ($50.00) Dollars for each day such violation continues following the day this Department finds you guilty of such violation. Your firm shall also stop serving for thirty (30) days a customer involved in such a violation, and your firm shall pay an additional Fifty ($50.00) Dollars to this Department for each day that such customer is served during this thirty day period. The payments herein set forth shall be mandatory and not discretionary. There shall be no appeal upon finding that your firm has violated the promises contained in these premises. The Department shall decide the disposition of any money thus secured.

4. Your firm is hereby requested by the Department of Agriculture to deposit Three Hundred ($300.00) Dollars as earnest money. In the event your firm is found guilty of a violation of these premises your firm shall have five days in which to pay the penalties for such violation as herein set forth. In the event said penalty is not paid within five days, the Three Hundred ($300.00) Dollars hereby deposited by your firm shall be forfeited. Disposition of any money thus secured shall be decided by the Department.

5. The Department of Agriculture believes that it is advisable for the Department to have a representative in the Fort Worth territory during the period of this emergency in order that its recommendations will be carried out and observed. The Department therefore requests that your firm agree to pay its pro rata share along with the other pasteurized milk distributors in order that the Department of Agriculture may maintain such a representative in the Fort Worth territory.

6. The Department of Agriculture necessarily is working out a program of stabilization with the entire milk industry in the Fort Worth Milk Shed and hereby promises your firm that whenever seven of the pasteurizing firms now doing business in the Fort Worth territory express their desire to terminate their co-operation with this Department, within ten days thereafter this Department will cease its efforts in behalf of the milk industry in the Fort Worth territory, and will return to your firm any moneys deposited that have not been forfeited.

7. It is the intent and purpose of this agreement that its provisions apply only to Grade A milk as designated by the Department of Public Health and Welfare of the City of Fort Worth.

8. This Department, of its own initiative, requests your firm individually and without regard to the action of any other milk distributory in the Fort Worth trade territory, to express its co-operation with this program as outlined in these premises by so stating on this instrument and returning it to this Department.

Yours very truly,

DEPARTMENT OF AGRICULTURE

By_____

_____ hereby expresses its co-operation with the Department of Agriculture as outlined in these premises and agrees to the promises and the penalties herein contained.

_____

By:_____

Date:_____

PURCHASE PLAN

Your purchase plan containing the following minimum shall be printed and distributed to your producers:

The distributory agrees to pay the producer $1.70 per hundred 4% basis with 2c a point up and 3c a point down for all base milk. The amount of base milk shall be considered to be: the total sales gallonage of milk,

buttermilk, chocolate milk, sweet cream, cottage cheese, and ice cream. Gallonage shall be computed so as to include the maximum amount of milk necessary for 20% light cream and 32% heavy cream, and ice cream gallonage shall be computed on a mix basis of 4% fat.

Surplus price shall be paid for all milk purchased that does not fall within the classifications of base milk. The price per pound butterfat for surplus milk shall be the price of Chicago Standards on the preceding Wednesday less 4c per pound.

MINIMUM PRICE LIST

Your price list containing prices not less than the following shall be printed and distributed to your retail and wholesale trade:

	Wholesale	Retail.
SWEET MILK-4% Min. fat-Gals	.30	.....
Quarts	.08	10
Pints	.05	.07
½ Pints	.03	.00
BUTTERMILK-Gals	.20	.30
Quarts	.06	.08
Pints	.03	.05
½ Pints	.02	....
CHOCOLATE MILK		
Quarts	.10	.12
Pints	.05	.07
½ Pints	.03	.05
LIGHT CREAM-20-22% Fat Gals	1.20	.....
Quarts	.35	.40
Pints	.18	.20
½ Pints	.10	.12
HEAVY CREAM-32-34 Fat		
Gals	2.10	.....
Quarts	.55	.65
Pints	.30	.35
½ Pints	.16	.18
COTTAGE CHEESE		
Bulk Pounds	.15	.20
10 oz.	.10	.12
½ lb.	.08	.10

Butter:

The wholesale price of sour cream butter shall not be less than Chicago standards as quoted on Wednesday of each week, said price to apply through Wednesday of the following week. In the event said price is fractional, the next higher figure shall apply.

The wholesale price of sweet cream butter shall not be less than 4c above the sour cream price.

The retail price of sour cream butter shall be 4c above the wholesale price of sour cream butter.

The retail price of sweet cream butter shall not be less than 5c above the wholesale price of sweet cream butter.

These prices shall be minimum prices, and in the event the market price on butter falls below such minimums, you shall immediately notify the Department of Agriculture on such changes.

RETAIL AND WHOLESALE

Retail stops shall not be sold at wholesale prices. Distinction between wholesale and retail stop: All grocery stores, drug stores and cafes shall be regarded as wholesale stops. Boarding houses, regardless of the amount purchased, shall be regarded as retail stops and shall pay retail prices unless boarding house has obtained a permit from the City of Fort Worth to handle food. Places that have secured such a permit shall be entitled to wholesale prices. Generally speaking, the test for such distinction is that the customer

who is a recognized food dealer and who buys milk for resale as milk or otherwise, or who has a permit to handle food, is considered a wholesale stop. Deliveries to the residences of owners or employees of wholesale customers shall be considered retail deliveries."

The Committee thereupon recessed until 2:00 o'clock p. m., November 19th, 1935, upon motion duly made and seconded.

The Chair called the Committee to order at two o'clock p. m. and the hearing resumed.

Mr. McLean: Mr. Chairman, counsel upon both sides have been endeavoring, to the best of their ability to relieve the members of this Legislature as soon as possible. Counsel representing the State, or nominally, the State, I might say, announce to me that in all probability, unless some unforeseen testimony is presented, that they will conclude their testimony by three-thirty o'clock this afternoon, or about that time. The defendant, McDonald, announces that he will put no witness on the stand, save and except himself. The length of time he will be on the witness stand, of course, will depend upon the examination and cross examination. Is that correct, gentlemen?

John Bateson, Jr., a witness called and sworn, testified as follows:

Direct Examination

(Questions by Mr. Street):

Q. State your name to the Committee, please, sir?

A. J. A. Bateson, Jr.

Q. Where do you live, Mr. Bateson?

A. Cleburne, Texas.

Q. What is your business in Cleburne?

A. Dairying.

Q. How long have you been engaged in the dairy business?

A. Practically all my life.

Q. With whom are you engaged in that business?

A. With my father.

Q. Mr. Bateson, please tell us whether or not you are acquainted with, or familiar with what is known as the milk code that was established up in your section of the State some time ago.

A. I operated under that code during it's entire life in Fort Worth.

Q. Is a part of your business in Fort Worth?

A. My milk is sold exclusively in Fort Worth.

Q. As I understand it, your dairy plant is located at Cleburne?

A. Yes, sir.

Q. But you sold your milk products in the City of Fort Worth, is that correct?

A. Yes, sir.

Q. And you are familiar with this milk code that was established in the City of Fort Worth?

A. I am.

Q. Whom did this code affect? Does it affect the producer of milk or the distributor? I mean who entered into the code?

A. The distributor and the Department of Agriculture.

Mr. McLean: I object. The code has been read. It is in writing, and this man has no more right to construe that code than any man in the Legislature, and we expect each member of the Legislature to construe that code.

Mr. Street: I am not asking him to construe that code. I expect him to give the effect of the code.

Mr. Spears, Chairman: I understood him to ask the effect of the code.

Mr. Street: What I asked him was, who entered into it, the producer or distributor—entered into the code—in other words its application.

Mr. McLean: We object to his stating what the effect would be. The code speaks for itself.

Mr. Street: I wasn't asking that. Maybe I could not make myself clear. Who signed these codes, whether distributors or producers? That's not a conclusion or anything else the witness might not know.

Mr. Spears, Chairman: Does not the code itself show whether or not it is the producers or distributors?

Mr. Street: I think it does.

Mr. Spears, Chairman: Don't you have a copy, as a basis for the evidence?

Mr. Street: The one we introduced was a general code and wasn't signed by anybody. We introduced it as a general contract and was no name to it, but showed what had been entered into.

Mr. Felts: We agree that the code was the same as the signed one.

Mr. Street: Mr. Reporter let us have the one that was introduced.

Mr. Street: In the interest of time we will proceed along with the questioning, while we wait on the code.

Q. Mr. Bateson, do you know the proximate dates that this milk code became effective in Fort Worth?

A. My impression is that it was on the ninth of September.

Q. At least that is the proximate date of it?

A. In my mind that's the date.

Q. You said the ninth day of September. Of what year?

A. 1933.

Q. 1933? How long did that so-called code remain in effect?

A. It remained in effect until, I believe it was the 17th day of August, 1934, at which time the wholesale dairymen of Fort Worth went out on a milk strike and my understanding is that it automatically killed the code until the strike was settled. At which time the administrator in response to the citizenship put the milk code back into effect.

Q. As I understand you are a producer of milk and not a distributor of milk?

A. Yes, sir; that's correct.

Q. And you produce your milk in Cleburne and sell it in Fort Worth?

A. I do.

Q. To whom do you sell through, a wholesale dealer or retail distributor?

A. I sell to a wholesale and retail distributor and I would like to explain the report on record?

Mr. McLean: We object to any explanation. He is not on trial, and we do not care—the attorneys for Mr. McDonald do not care anything about why he broke the strike or what part he took in the strike. The explanation of how he runs his milk business is wholly immaterial in this case. Mr. Chairman, it looks to me like if we are going to put all these people on trial in that milk fight in Fort Worth and in Dallas, why it would take what I call unstatesmanship, and I still believe our Legislators are all statesmen and I know if we hear all it would take a week, it would take a month, it would take a year to hear every milk producer enter his complaint. I stand by the articles whereby McDonald is charged and not to go into the milk trade in the State of Texas. If there is anything wrong let's blame McDonald—but let's not hear the witness who is in the milk business in his explanation.

Mr. Street: What's his objection?

Mr. Spears, Chairman: The Chair understood the gentleman to say the testimony was irrelevant, immaterial and incompetent for the reasons stated. I would like to hear from you on the question of the admissibility of the testimony offered.

Mr. Street: The objection is based on something that he assumes that I am going to ask about.

Mr. Spears, Chairman: Let's see that charge.

Mr. Street: Mr. Bateson, I believe you say this code went into effect on the 9th day of September, 1933?

A. According to the best of my recollection.

Q. Did you sign one of these code contracts as a producer of milk?

A. I did not.

Q. You did not sign one?

A. No, sir.

Q. Will you tell the Committee, Mr. Bateson, the comparative prices you received for milk immediately before and immediately following the going into effect of this so-called code?

A. I'll give the statements received by me from the distributors who I sell my product to for the month of August before the code went into effect.

Q. Pardon my interruption, do you have a record of the amount you received for your products during the month of August immediately preceding the going into effect of this code?

A. I do.

Q. Just give that to the Committee please.

Mr. McLean: To which the Respondent McDonald excepts most respectfully—are these amounts either before or after the code went into effect?

A. After the code went into effect.

Mr. McLean: What is the concern to him when he refused to join in that code?

Mr. Spears, Chairman: The Chair doesn't know just at this time just

what they are trying to prove by this witness. For the time being I am going to overrule your objection. I don't just know what counsel is trying to get to yet. I'll overrule the objection at this time.

Mr. McLean: Very well, it is accepted.

Mr. Street: Mr. Chairman, the counsel said the witness refused to sign the code—(to the witness)

Q. Were you requested to sign it?

A. I was not; no, sir.

Q. Did any distributor refuse to sign it in Fort Worth?

A. Not to my knowledge.

Q. You didn't refuse to sign it?

A. I didn't.

Q. Give the information to the Committee the price you received in August, 1933 for your products?

A. Do you intend for me to give it through the mike?

Mr. Street: Yes, give it through the microphone.

A. The statements I have are on the stationery of the Alford Milk Company of Fort Worth, the date is first 7-30-31. I'll read the dates. On 7-30 the day's milk was 750 pounds, on 7-31, 744 pounds, 8-1, 746 pounds, 8-2, 750, 8-3, 900, 8-4, 900-basis—

Q. Let me understand you—what do you mean by basis—your basis?

A. The basis is the milk that we sell—that is the amount that goes in —and the amount we are allowed.

Q. When you say the basis was 900—what do you mean—900 pounds was the basis?

A. 900 pounds was the basis.

Q. Then give each one of these in July—throughout the month—give us the prices you received? Did you sell by the hundred pounds, the bottle or how was it you were selling and give the price?

A. I sold by the hundred pounds.

Q. Just give us the amount you received per hundred pounds?

A. I was just taking the one date here, that was my basis 900 pounds—that brought me $15.30.

Q. Then just how much would that amount to—how much make—what would that make the rate?

A. I would have to figure that out, I don't just know yet.

Q. Do you have the rates already figured out on any of it?

A. No, I do not.

Q. Just give us the rates for this, Mr. Bateson?

A. I'll have to figure it.

Q. Just give us the rates for the different days alone?

Mr. Bateson: How's that?

Q. The rates per hundred pounds.

A. Mr. Street, I would have to figure that.

Q. You would have to figure that would you?

A. If you will give me a pencil I'll figure it in just a minute—just one minute.

Mr. Street: I do not have it—

Mr. McLean: Mr. Chairman, I would like for the gentleman to figure how much price, when he gets through, per gallon.

Mr. Street: Mr. Chairman. I think perhaps we can save some time by asking another question.

Q. Mr. Bateson, tell the Committee this, what was the comparative price that you received for your milk before the going into effect of this code and afterwards; in other words, after the code went into effect, did you receive a greater price or lesser price for your milk?

A. I will answer the question in this way; I sold the milk for a figure I have here, and my total amount received—

Mr. McLean: (Interrupting) I wish that the witness be instructed to answer the question and not endeavor to give an explanation not called for by the question.

The Chair: The Chair will ask you to answer the question and if an explanation is necessary and you wish to make an explanation you can then do so.

A. On that date I received $15.54 for my milk; after the code went into effect my total amount received was $12.08.

Q. Was that for the same amount of milk?

A. Well, I would have to figure that.

Mr. McLean: Mr. Chairman, in the interest of time I renew my objection. We have a milk man up here now who has testified that one day he received three dollars more than on the other,

and we object to this testimony upon the ground that it is irrelevant and immaterial, does not tend to prove any issue with which Mr. McDonald stands now charged.

The Chair: Now, Bill will have to then answer you in the same way. The Chair doesn't know exactly what the Board of Managers is getting to and on the question of materiality that is something that the Chair is not in possession of and I respectfully overrule your objection.

Mr. McLean: I accept respectfully.

Mr. Street: The point I am driving at was to show the comparative price before the code went into effect and afterwards; of course, the purpose of that is to show the effect that this code had, and the witness naturally wouldn't be permitted to testify to that effect, but can testify to the facts.

The Chair: Yes, sir.

Mr. Street: And that is the purpose I have in mind in asking the question.

Q. Now, can you answer the question I asked you a while ago, that is, did you receive after the going into effect of the milk code up there, receive more or less per hundred pounds for your milk than you did before the code went into effect?

Mr. McLean: Now, Mr. Chairman, I think you understand the objection to this question. Now, then, if a man engaged in the milk business could come here and testify that his price either went up or went down, no matter what the truth may be, but as to whether or not this man dealing in milk, his price went up or down and it is immaterial as to his particular operation of his business; that is the objection.

The Chair: Now, in ruling upon this question the Chair will call the attention of counsel on both sides to this; I don't wish to make any statement which might be misconstrued, and will make very few statements. Now, Article 9 charges; (reading): "That during the years 1934 and 1935, the said J. E. McDonald, while acting in his official capacity as Commissioner of Agriculture of the State of Texas, knowingly, wilfully and unlawfully used his official office to promote the interests of milk, cream, baby chicks and rice organizations, and to collect fees from divers sources without authority of law, and did during all of such time make disbursements of said fees so collected, the same constituting a gross abuse of official authority and a violation of laws of the State of Texas." Now, I don't know, and I will have to assume in answer to your objection that what the Board of Managers is trying to prove is that they are trying to prove the allegations in No. 9. Whether or not they will do that, I don't know; however, I think, in other words, that the objection goes more to the question of weight rather than its admissibility and will overrule the objection at this time.

Mr. McLean: All right.

A. Ask the question again?

Q. The question was as to whether you received a larger or a smaller price per hundred pounds for your milk products after the so-called code went into effect than you received before it went into effect?

A. My total proceeds were less.

Mr. McLean: We again object to it; he will not answer the question, the question is very clear.

The Chair: Mr. Witness, the Chair doesn't wish to admonish you, and I ask you to try, as best you can, to answer the question. If you can't answer a question without explaining it, why, so state, and then just try to make your answers as nearly responsive to the question as you can.

A. It will be impossible to answer that question without explanation.

Q. Don't give your explanation?

A. We sold our milk in Fort Worth before the code went into effect, and to answer that question, before the code went into effect the price of our days milk from day to day varied, varied from day to day as the statement showed. Afte the code went into effect there was surplus milk and the amount was reduced from time to time in this, that the best milk is the base milk and is the milk that really brings the amount necessary to carry on the production of milk, and the surplus milk is a burden on any producer. To answer the question I will have to say that the total amount received per hundred pounds, that would be the only way I could answer it, because before the code went into effect I had a much higher base than I had after it went into effect. However, when the code went into effect the base market was some higher than it was before it

went into effect, but my surplus immediately became greater on the same amount of milk.

Q. Mr. Bateson, do you know anything about who determined the price that you received for your milk after the code went into effect?

A. Yes, sir.

Q. Tell us what you know in reference to that?

Mr. McGregor: Mr. Chairman, this testimony is offered under Paragraph or Charge 9; that Charge embraces two propositions, one of which may be a commendable proposition, and this testimony is not responsive to either of those propositions, and therefore is not admissible. The proposition is, charges that the Relator knowingly, wilfully and unlawfully used his official office to promote the interests of milk, cream, baby chick and rice organization. That is what his department was created for, to promote the interests of those people. That is the first charge in the paragraph.

The Chair: This isn't time for arguments on the merits of the case.

Mr. McGregor: I am not arguing, but am submitting it to the Chairman in order to base his ruling on the facts admitted. The other charge is "And to collect fees from divers sources without authority of law, and did during all of such time make disbursements of said fees so collected, the same constituting a gross abuse of official authority and a violation of the laws of the State of Texas." Now, the inquiry as put to the witness wouldn't require an answer as to the promoting of the interests of those industries, nor would it require an answer as to collecting fees from divers sources, nor would it require an answer as to disbursements of said fees so collected; those are the only three propositions in that charge.

Mr. Felts: Mr. Chairman, another proposition, it is in evidence here that a system of grading and testing milk was installed in this organization; that was designed, of course, to stabilize the price of milk, to improve its price. Now, unless this witness has statistics showing the general effect of that code on the milk organization,—of the milk industry generally, it occurs to us that his testimony would have no probative force. As to the general effect of the code on the milk industry, I don't think that his testimony would have any probative force; it would simply be an isolated instance and would not be admissible for any purpose.

The Chair: Don't you gentlemen think in answer to the objection that it narrows itself down into the proposition I stated before and that is that the objection as made goes rather to the weight than the admissibility of the testimony?

Mr. Felts: You may be right about it.

The Chair: I will overrule the objection for the time being.

A. The distributor who I sold my milk to prepared a statement, a copy of which I have here, that was given to each producer showing the amount of base milk and of surplus milk, and he then prepared a statement showing all milk purchased during a ten day period and that statement was left in the office subject to an audit of the auditor working under the State Administrator in the City of Fort Worth.

Q. Do you know who was in charge of the administration of the milk code in Fort Worth?

A. Mr. J. W. Ridgeway, manager of the Borden Company.

Q. Do you know by whom he was appointed to that position?

A. We were told in an open meeting by Mr. W. A. Canon who represented himself to represent the Department of Agriculture and represented that Mr. McDonald had appointed Mr. Ridgeway local administrator.

Q. (By Mr. Street): Mr. Bateson, there has been some mention made of the establishment of a cream grading system, are you familiar with that?

A. I am.

Q. Do you know by whom that grading system was established?

A. It was sponsored by the Department of Agriculture, I am informed.

Q. Will you just give the Committee, if you know the method that was used, for testing or grading cream?

A. Well, to determine the grade, or No. 1, No. 2 or No. 3, or do you mean the butter fat test?

Q. I mean to determine the grade of the cream; how many grades were established first?

A. There were three, one was sweet cream, No. 1 sweet cream; No. 1 sour cream, and No. 2 sour cream and No. 3 sour cream, that should not be sold.

Q. Do you know the method that was used by the Department of Agriculture and its representatives to determine the grade of each particular container of cream that was graded?

A. The taste and smell of it mostly.

Q. Do you mean by that, that when a particular vessel or container of cream was brought to the creamery that some person tasted and smelled it and determined by that what grade it would go into?

A. Yes, sir, and the acidity test, I also forgot the acidity test; the acidity test also applied; a certain per cent acidity governed the grade, I believe, of No. 2 cream.

Q. I believe that's all I want to ask you.

Cross Examination

(By Mr. McLean):

Q. Now, as a matter of fact, you did not agree and would not agree for anybody nor any association to control the price nor the grade of milk?

A. As a matter of fact, I spent more money on health building—

Mr. McLean (interrupting): Mr. Chairman, will you request the witness to answer the question.

The Chair: Mr. Witness, please answer the question and then later, at some other time, you can make any explanation you want to make.

A. What was the question?

Q. As a matter of fact, you were opposed to any one or any regulation that was enforced, endeavoring to get your milk to the people and you opposed it and would not join the association, ain't that a fact?

A. Pertaining to the Fort Worth situation, that question would have to be answered by explanation.

Mr. McLean: Insofar as he desires to explain everything, Mr. Chairman, I don't care to examine the witness any further. That's all, Mr. Bateson.

The Chair: Do you want this witness still retained under the rule, gentlemen?

Mr. Street: It isn't necessary.

Mr. McGregor: Do you want to excuse him, or is he going to stay in here?

Mr. Street: It is all right with us for him to be excused.

Mr. McGregor: We will excuse him, but we won't excuse him from the rule.

The Chair: You don't want him to excuse him from the rule?

Mr. McGregor: No sir, but we will excuse him, and he can go home as far as we are concerned.

(Witness excused).

Mr. Aikin: Mr. Chairman.

The Chair: Mr. Aikin.

Mr. Aikin: We want to take up at this time Charge No. 11; 10 will be last.

The Chair: Charge No. 11.

Mr. Aikin: And we ask that the Clerk read it.

The Chair: The Clerk will read Charge No. 11.

The Reading Clerk thereupon read Article 11, as follows: "Article 11. That the said J. E. McDonald, during the months of June and July, 1935, wilfully, knowingly and unlawfully destroyed and caused to be destroyed certain public records in his care and custody, the nature and extent of which is well known to the said J. E. McDonald and those acting for him; that said records were destroyed for the purpose of preventing a committee of the Texas Legislature from ascertaining the contents thereof and for the purpose of impeding and thwarting justice with reference to matters above set forth."

Mr. Aikin: Mr. Chairman, we ask that Mr. Ed Hunter, a member of the House, take the witness stand.

Mr. E. E. Hunter, a witness on behalf of the Relator, after having been first duly sworn, testified as follows:

Direct Examination

(By Mr. Aikin):

Q. Mr. Hunter, for the record, please state your name?

A. My name is E. E. Hunter.

Q. You are a member of the House of Representatives, Mr. Hunter?

A. Yes, sir.

Q. State whether or not, Mr. Hunter, you were the Chairman appointed by the Speaker of the House, Chairman of an investigating committee to investi-

gate the Department of Agriculture, pursuant to a resolution passed at the regular session of the Forty-fourth Legislature?

A. I was.

Q. We have before us at this time a charge that you just heard read with reference to the Commissioner of Agriculture destroying certain public records, state whether or not you were in Austin on or about the 17th of June, 1935?

A. I was.

Q. State whether or not you were at that time investigating the Department of Agriculture?

A. Yes, sir; I came down to Austin, I think on the 14th, the night of the 14th of June.

Q. State whether or not that on or about the 17th of June, I believe it was, that you witnessed the destroying of any records, and if so, go into detail and tell the committee just what happened on the date mentioned?

A. May I be permitted to start from the 14th and come down?

Q. Yes, sir.

A. As I stated, I think it was on the night of the 14th of June, I came down; that was on Friday night, as I remember it, and Saturday morning we had a flood on and the lights were out. I had come down here for the purpose of starting Mr. Murphy and Mr. West to make an audit of the Commissioner of Agriculture's office. Due to the fact that we didn't have any lights or anything, and everybody was upset on Saturday, we deferred it until Monday morning. Monday morning, I think somewhere about ten o'clock I sent Mr. Murphy and Mr. West over to check the records of Mr. McDonald's office, not anticipating any trouble. I was busy and during the noon hour, Mr. McDonald called me at the Driskill Hotel and paged me and told me that the auditors were up there and wanted to check his private records, and he objected to that, and he wanted me to come up there. So I think about 11:30, I went up there with Mr. West and Mr. Murphy too, and we went in there and talked to Mr. McDonald.

Mr. McDonald: He is a damn liar.

The Chair: Go right ahead, Mr. Hunter.

Q. Go ahead with your testimony.

A. I don't like for a man to call me a "damn liar."

Mr. McDonald: Mr. Chairman, I apologize.

A. (Continuing): I went into his private office, and left Mr. Murphy and Mr. West in the front office, I believe in Mrs. Young's office; and I told Mr. McDonald that he had voluntarily come before the committee and offered his assistance in any way he could to carry on this investigation, and that I wanted the records checked, and that I couldn't understand why he would object to them checking the files, and he agreed that it was all right, go ahead. I called them in there then, as I remember and suggested that they start on the front end—I remember one of them in the milk department, and he said that he wouldn't let them start until he called the Attorney General. Mr. McDonald picked up the 'phone and 'phoned General McCraw, I presume he talked to Mr. McCraw, and of course, I don't know what Mr. McCraw told him, but he turned around and said it was all right, to go ahead, and late that afternoon I think it was, I called Mr. Murphy and didn't get him, and later, around about 7 o'clock or 7:30, I called Mr. West, and asked him how they were getting along, and he said: "all right"; I naturally asked him if he found anything that was of interest, and he told me about some things that he did find, and I asked him if he got the records, and he said "no"—

Q. (Interrupting): Right there, about what time of the day was that?

A. That was about between, I would say around 7:30 in the afternoon or night. So I said to him: "you try to get in touch with Murphy and come down to my room; I think you should have gotten those records." So they came down there, I presume it was after 8 o'clock, I will say anyhow, and I insisted that they should have gotten them, and that I felt like that Mr. McDonald, as important as that information was, would probably either destroy or carry them out of the office, that I was not satisfied, and I would like to go up and see whether or not—in fact, I suggested I thought the probabilities were that he would be up there, and I think Mr. Murphy, but one of the other of them, said: "Well, if you just won't have it any other way, I have got my car down here, and we will drive up there." So we drove up

there on the North side of the street; the building was well lighted, and some young man, the night watchman, I understood, was in there studying, and I think it was Mr. West says: "Well I told you he would have better sense than to do that; he wouldn't do that; he would be afraid to do that, or something to that effect; and that was about the length of the conversation. Mr. McDonald, and some lady, whom I understood later was Mrs. Young, drove up on the other side of the street, got out, and went in. Mr. McDonald went to his desk, and as I recall it, went to the second room, and the lady stopped in the front room, and went immediately to the particular cabinet file that Mr. West and Mr. Murphy were checking, and she carried those records in and put them on Mr. McDonald's desk, and as I remember, she made two or three trips, and in the meantime, when I saw what was happening, I sent to see if we could get a Ranger, and we had more or less difficulty in locating a Ranger. Some little time elapsed then and we finally got a Mr. Holland, and some other man. I signed a subpoena for the records and we started in the office, and I insisted that those two men wait around there and watch them go through those records, in order that they wouldn't say it was a frame-up on the part of the Chairman of the Committee and the two Auditors, so they did so, and we went in and Mr. Holland or one of the men walked up to the window, and asked to be let in, and I think it was a young fellow that let us in, and we walked on in the office. Mr. McDonald's desk was covered with papers, and after Mr. Holland read the subpoena, he said to me: "Now, I wish you would look through these records and see if there is anything here you want." I just merely told him that I wanted them all. Now, that's about the sum and substance, other than the fact that he was going through those records, laying some of them out and tearing up some. What he tore up, I don't know.

Q. Mr. Hunter, I will ask you whether or not you saw Mr. McDonald destroy or throw away any of those records?

A. I saw him tear them up and put them in a waste basket.

Q. What did those records appear to be?

A. Well, it seemed, as I remember, most of those records were telegrams to the United States Senate; I remember some of them were, and some of them were so badly torn that you couldn't tell what they were.

Q. Mr. Hunter, do you know what of the records were torn up, that's what we want to get at?

A. Mr. Aikin, I don't remember. There were some of them that I remember that were concerned with urging United States Senators with reference to the Bankhead Bill or something of that nature. I don't remember just what they were.

Q. Mr. Hunter, state whether or not some of them were torn, or whether or not they were torn to the extent that you could not tell about what they were?

A. Yes, sir; some of them were torn all into small pieces.

Mr. Aikin: I think that's all.

Cross Examination

(Questions by Mr. McLean):

Q. You had a ranger or two with you—and the records you claim to have been destroyed, they were there in the waste basket is that correct? Is it correct, or not?

A. Some of them were, yes, sir.

Q. Now, in that waste basket you got the telegrams out and read them, did you not?

A. No, sir; I did not.

Q. How did you swear then about the contents of the ones that you say urge the United States Senators?

A. I said I saw some of them and some of them were to United States Senators.

Q. Why did you not see all of them?

A. One reason, I didn't have time —another reason was, I tried to be courteous and mind my own business and I tried to keep my nose out of that mess over there in order that I might not be censured for butting in where I did not have any business.

Q. Now statesman, they are not censuring you, I am not, Mr. McDonald is not, I am just asking you these questions: Is it not a fact that you did read some of these different telegrams, these torn ones? Answer that, please, sir?

A. Yes, sir; I read part of some of them.

Q. Those that you did read, were to United States Senators, is that correct?

A. I remember one was, one or two of them, yes, sir.

Q. And they referred to the Bankhead Law, is that correct?

A. I am not right sure, I rather think it was with reference to the cotton program proposition.

Q. Well, is not that called the Bankhead Law?

A. There are so darned many of these laws, that I can't remember all of them.

Q. Now, statesman, what telegram did you find there that you consider to have been torn up that would reflect upon any man?

Mr. Street: Mr. Chairman, the witness has not testified that he found anything that reflected on any man. But just testified to what he saw take place there.

Mr. McLean: Mr. Chairman, in reply to that objection, the witness testified he saw him destroy public records.

Mr. Spears, Chairman: The objection is overruled.

Judge Graves, a member of the House: The man's name is Mr. Hunter—just call his name, there are lots of statesmen here and we do not know who you are talking to.

Mr. Hunter: Judge, that didn't have anything to do with the letter you wrote.

Mr. McLean: You never saw one over my signature.

Mr. Hunter: I had a copy of it.

Mr. McLean: If you'll produce a letter I ever wrote in regard to McDonald, I'll quit this case.

Mr. McLean: Mr. Chairman, in addition to Mr. McDonald, the apology he made to the gentleman of the Legislature who heard the remark, and I join in that apology which was made.

Mr. Aikin: Mr. Chairman, we object to this.

Mr. McLean: It goes to the weight of the evidence.

Mr. Aikin: If he wants to testify, let him take the stand.

Mr. Spears, the Chairman: Gentlemen, the Chair is going to ask that you be more orderly in conducting the case.

Mr. Hunter: I know Bill McLean.

Mr. McLean: Now, what public record did he destroy?

A. Mr. McLean, I have told you what public record. I told you what he was doing. He was laying out the records that he wanted to keep and tearing up the ones, in my opinion, that he didn't want kept, that's the ones he tore up.

Q. In your investigation and in the investigation of the auditors, did you find a single missing record?

A. Through every bit of those records they didn't appear to be a letter here to answer another—I am not saying about that, they didn't correspond.

Q. The auditors that you employed, have they found any missing records?

A. The auditors can testify about these things. They were over there. I stayed away from over there.

Q. In your investigation for the House here—in your investigation, have you found a single place where you think McDonald himself stole a dime?

Mr. Aikin: Now, Mr. Chairman, we object to that. That would be the conclusion of the witness. Calling for a conclusion and opinion of the witness.

Mr. Reed of Dallas: Mr. Chairman, we are considering charge number Nine, I believe. Not eleven.

Mr. McLean: I will withdraw that.

Mr. Spears, the Chairman: As I understand it, the custom adopted is rather not to call for opinions and while it is true that some latitude has been allowed in the examinations but if you want to adhere more to the rule the Chair will sustain the objection.

Mr. McLean: I will withdraw the question.

Mr. Reed of Dallas: We also agreed that if we had any new charges that counsel for Mr. McDonald would be notified in sufficient time.

Mr. Spears, the Chairman: That's correct, Mr. Reed.

Mr. Felts: Mr. Hunter, what time of night was it you went up to the Capitol and found Mr. McDonald and his Secretary going in?

A. I would say it was about in the neighborhood of 8:30.

Q. I am just asking you these questions for information—if you found that Mr. McDonald was going to Fort Worth, or some other place that night for the purpose of attending a convention and was getting out papers or documents or something of that kind—have you found that out?

A. No, sir; I did not. I heard the next morning that he was gone. In fact it was in the paper.

Q. Don't you think the files he was laying out there that night was files that he was going to take with him, that were pertaining to the meeting he was going to attend?

A. I'll answer it—

Objected to by counsel for the State.

Mr. Felts: The question is withdrawn. That's all.

Mr. Bradbury: Mr. Chairman, we would like to have the reading Clerk read the Charge Number Ten.

Here the Reading Clerk, Mr. Dunn read to the Committee Charge Number Ten.

Mr. Bradbury: Mr. Chairman, to begin with, we would like to have the reading Clerk read the testimony of Mr. McDonald appearing in the transcript of the hearing before the Legislative Committee at Austin, Texas, August 9th, and 10th, 1935,—on pages —beginning on page 55 and ending and concluding on page 63 that relates to that charge.

Mr. Felts: There is no objection to the Clerk reading the testimony—if it is on the charge and contains no other matters.

Mr. Bradbury: It contains no other.

The Reading Clerk reads the testimony as follows:

"Mr. West: To the witness:

Q. Mr. McDonald, have you ever had any business relations with Harris & Voss, cotton brokers in New York City, either personally or officially?

A. Well, I have had personal business with them, yes, sir.

Q. What business relations have you had with them, Mr. McDonald?

A. Well, Mr. Robert Harris, a member of the firm of Harris & Voss, is a native Texan, owning considerable property at present in Texas, and is a large taxpayer in the State, and a man that has always been interested in the welfare of agriculture, and through his firm I have had some personal business in the way of brokerage business.

Q. Did you ever purchase any cotton from them, spot cotton—I mean cotton that you usually put up margin on?

A. I have used them as brokers in the purchasing and selling of some cotton, a limited amount, yes, sir.

Q. Did they require any margin from you?

A. No, sir; they never did.

Q. How many bales was the most you ever bought at any one time?

A. Well, I would say two hundred, possibly three hundred at one time.

Q. I have your account here with them beginning July 31, 1933?

A. Wait a minute. You asked if I would put up any margins. Knowing Mr. Harris for a number of years and he knowing me they haven't required any margin. If I wanted to buy a hundred bales of cotton or sell a hundred bales I would wire them to that effect. When the deal was closed, if I owed them some money I sent them a check for it, and if they owed me I drew my account.

Q. I have your account here from July 31, 1933, to February 28th, 1935, which shows a total I believe of $2742.31, monies that you had drawn from them; was that profit on the cotton or just what was that?

A. Whatever money I drew from Harris & Voss was profit, and I think last year when I finished up I owed them, I had a loss and I owed them—I was in the red four hundred and eighty or ninety dollars; something less than five hundred dollars. I sent them a check, as I have in the past, in the last twenty years. When I finished trading if I owed them I would send them a check.

Q. Here is what I want to make clear; are you telling this committee that you were not required to put up any margin on this cotton and in addition to that you drew against the profits of that account, or over drew it, I will say five hundred dollars?

A. No, I didn't over draw. I drew whatever amount there was. I drew my profits along, a hundred or five hundred dollars, or whatever it was, in

my account as they accumulated. When I closed the account and quit trading then I balanced up. I never traded in many hundreds of bales, possibly five or six hundred bales all told. When I closed my account I owed them $480.00 or $490.00, or approximately $500.00, and as I had done in the past, I just sent them a check.

Q. When are the profits on one of these accounts determined, at the time the sales are made?

A. No, sir. A man may buy a hundred bales at ten cents and when it goes to eleven cents he has five hundred dollars profit. If it goes to twelve cents he has a thousand dollars profit. When my wife was sick last year and we had hospital bills, and then she died and I had considerable expense, burial expenses, etc. and I just kept drawing on those accounts about as my profits accumulated. And when I closed my account, or at the time I closed it, I didn't have the money to send them five hundred dollars. He didn't care. It was all right for me to send it when it was convenient, and I sent it to him when I had the money.

Q. Cotton could be ten cents at noon today and drop back to five cents that afternoon, couldn't it?

A. No, sir.

Q. Say the market breaks, it starts up and goes to ten or eleven cents, and then drops back to five cents; that is just an illustration,—how many points can it break?

Mr. Good: Two hundred points in a day.

A. I sold my cotton, spot cotton. I wanted to divide with my tenants. I felt like in 1933 the market would go up. My tenants needed their money and wanted it. I have found it better to divide the dollars, sell the cotton and divide the dollars with the tenants rather than divide the bales. Then there is no controversy as to who gets the best bale of cotton. Therefore, I sold my cotton and bought futures rather than carry the spot cotton.

Q. (By Mr. West) You carried some of that at Galveston and I believe had a pool in Dallas, did you not?

A. Not in 1933, I don't think so.

Q. Last year, for instance?

A. No, I don't think I had any spot cotton at Galveston. I sold it as we got it out. My brother was instructed to do so, who attends to my farm.

Q. Nevertheless, getting back to my question, say your draft on Harris & Voss for $200.00 hit there at nine o'clock in the morning and your account showed a profit of $150.00 or $200.00 say $200.00, and the market broke during the day and absorbed all of that profit, then the $200.00 advanced to you would be merely a loan, wouldn't it?

A. Mr. Harris, if I had a loss, if I was to send a draft up there for $500.-00, and the market in the mean time had broken and I didn't have $500.00 profit there, very likely he would take care of my draft. In fact, if I wanted to borrow a hundred dollars or five dollars for my friend, or brother, I would call Bob Harris, I have known him for years.

Q. Did Mr. Harris contribute anything to your campaign fund?

A. Not one nickel.

Q. Did you ever send any telegrams, send telegrams yourself, and get your friends to send telegrams, to President Roosevelt asking that he use his influence to get a fifteen cent a pound loan on cotton, and after the telegrams were sent by yourself and your friends you paid for them out of your account, and then sent a statement to Harris & Voss and they remitted to cover what you had been out?

A. I certainly did. I am going to do that tonight, a bunch of them.

Q. The one bill I have in mind totaled $116.50, I believe that is what that was for?

A. Yes, sir, I sent those telegrams. Mr. Harris is a man that has large cotton farms and cotton interests in Texas, Oklahoma and Louisiana, and a man that is eternally working for higher prices for cotton and for the farmers' benefit. Last year we were trying with other commissioners to get to the farmers a fifteen cent loan. I didn't feel disposed to take funds out of the department, although I thought that was proper, if I had so desired, to send messages in behalf of agriculture and in behalf of our farmers. I think that was perfectly in order, but Mr. Harris had suggested he be allowed to defray the expenses of those telegrams and I sent the telegrams and sent him a statement of the bill and he sent me his check for it.

Q. Did you ever go to Washington at Harris & Voss' expense?

A. Yes, sir; I have.

Q. What for, in what capacity?

A. On agricultural matters.

Q. I have a telegram here dated April 16, 1935, which reads as follows: "There will be very important meeting in Washington next Monday April 23rd, in connection with agriculture and silver. Believe most advisable for you to be there. Please telegraph if you can arrange this. Think your expenses will be paid. Best regards"?

A. Yes, sir.

Q. In what way does silver affect the farmer, Mr. McDonald?

A. At that time the Dies Bill, and he had a partner, I have forgotten the name—they were going to arrange to exchange cotton with silver monied countries, allowing the purchase of cotton in these silver countries at a twenty five per cent bonus on their silver as an inducement for them to buy our cotton.

Q. This cotton business became international then in so far as silver was concerned?

A. Cotton and silver has always been an international question. Our farmers benefit when our silver nations have a stabilized silver basis.

Q. That is more of an international question, however, and should have been handled by the Department of Agriculture in Washington possibly more than by the Commissioner of Agriculture in Texas?

A. No, siree, Bob—if the Commissioner of Agriculture of the state producing one-third of the cotton in the United States isn't as much interested in the welfare of the farmers as the bunch in Washington, then I am mistaken.

Q. The information I gathered here from this telegram is that your expenses would be paid, and why did this company pay your expenses in this matter?

A. Because of his interest in the agriculture of Texas, and Oklahoma, and Louisiana.

Q. However, he knows that you have an expense account here as a State official?

A. He knew I did not have. I have not had an expense account outside of the State.

Q. You have collected from the State for trips to Washington haven't you?

A. That was before that time. The first time I was there we had our expenses paid, but thereafter there was no expenses for State officials outside of the State, except on special permits. I believe the Railroad Commission and the Attorney General is excepted.

Q. Can't you as a State official leave the State of Texas under a written request to the Comptroller and the Board of Control?

A. I did that and carried Senator DeBerry and Mr. Olsen to New Orleans to that cotton meeting and incurred $24.00 expense after getting a permit from the Comptroller and the Board of Control and it was turned down. That was the only time I ever had an expense account in that way. If I had had an expense account and Mr. Harris, who is a wealthy man and interested in the agricultural welfare of Texas, had told me that he wanted to pay my expenses I would have saved the State that money and let Mr. Harris pay my expenses.

Q. He was also interested in the price of cotton too, Mr. McDonald?

A. Yes, sir; as a farmer and a business man.

Q. And as a cotton broker?

A. He is interested in anything—

Q. That there is money in?

A. No, sir; He is interested in anything that will get to the farmers of the South the most money for their cotton.

Q. He wouldn't be interested then in the price of cotton going up or the farmer getting fifteen cents a pound loan on cotton and him bulling the market or bearing it, or whatever they call it?

A. I never have had any knowledge of Mr. Harris speculating. If he speculates in the market I don't know it. He is in the brokerage business. If he has ever speculated on a bale of cotton, I haven't any knowledge of it. I want to say right here that no man could pay my expenses to Washington on an agricultural matter that wasn't a heavy property owner in Texas and I had reason to believe and knew that he was interested in the agricultural welfare of our State; no outside brokerage concern could pay my expenses.

Q. (By Mr. Hunter) I just want to ask you this question: You realize Harris & Voss are really sure enough big brokers, don't you?

A. Yes, sir.

Q. You also realize their best customers are big monied folks in Wall Street, don't you?

A. No, sir; I don't know that.

Q. You would naturally judge that would be true?

A. I would not judge it.

Q. You realize it is just as much to the interest of their customers when the market goes down and they are on the bear side as it is when the market goes up and they are on the bull side, don't you?

A. I don't know that. I do know that a speculator speculating has the same opportunity from the bear side as he does from the bull side. He can sell short as well as he can buy long.

Q. You don't think any of those brokers are up there for the benefit of the farmer, but they are up there to make money, that is true, isn't it?

A. No, sir, that is not true.

Mr. West: Q. Did you keep Harris & Voss advised at all times as to the condition of the cotton crop in Texas?

A. No, sir; I did not. Occasionally I would give them a report on the condition of the crops, as I saw it. I will do that with any man that is interested in Texas that lives outside the State. People in other states who own citrus orchards in the Rio Grande Valley write for information concerning the citrus crop and I try to give them the information as near as I can.

Q. What do you mean by this paragraph in this letter written July 15, 1933, to Mr. Robert Harris, New York City. "I certainly appreciate the consideration shown me, it has meant a lot to me financially and I would appreciate you watching my account and keeping me fully advised. I have worked hard to put this program over and feel that I am entitled to make some real money out of the advance, and with your assistance feel that I can"?

A. I meant exactly what you read there.

Q. He operated this account for you, he told you when to sell and when not to sell?

A. No, sir; he never did. He never did advise me when to sell cotton.

Q. I notice telegrams in here from Harris & Voss, saying "Bought one December, bought one December, sold three". These are all telegrams from Harris & Voss to you. Here is one says, "Selling to May", etc.

A. "Selling to May", I think it is.

Q. Yes, sir. I fail to find in those files any continuous line of correspondence there; in other words, where you wired him to "sell to May" but I find wires where he wired you that he had sold for you; did he operate that account as in his judgment he saw fit, or did you keep him advised on that from time to time?

A. No, sir; he never sold or never bought a bale of cotton for me on his own discretion. I gave him specific orders to buy or sell."

Mr. Bradbury: Mr. Chairman, we would like to have Mrs. Cora Young, together with the documents which have been subpoened.

The Chair: Miss or Mrs.?

Mr. Bradbury: I don't know whether it is Miss or Mrs. Cora, Young at any rate.

Mrs. Cora Young, who had been previously sworn by the Chair was called as a witness, and in answer to questions propounded, testified as follows:

Direct Examination

(By Mr. Bradbury):

Q. Will you state your name, please?

A. Mrs. Cora Young.

Q. Mrs. Young, where are you employed at the present?

A. In the Department of Agriculture.

Q. How long have you been employed there?

A. Since April 1, 1931.

Q. What position do you hold there at the present?

A. I am Secretary to Mr. J. E. McDonald.

Q. Have you been his secretary during the entire tenure of your position there?

A. No, sir.

Q. How long have you been his secretary?

A. Since March 14, 1932.

Q. Now, Mrs. Young, you were subpoened to bring certain letters; do you have those letters with you?

A. I do.

Q. I would like to see a letter written by Mr. McDonald to Robert Harriss of New York City of July 15, 1933?

A. What?

Q. July 15, 1933?

A. I have them numbered; July 15, 1933?

Q. Yes?

A. (The letter requested was handed Mr. Bradbury by the witness)

Q. Mrs. Young, did you write this letter?

A. I suppose I did. I don't notice my signature there. (letter handed witness by Mr. Bradbury) Yes, sir.

Mr. Bradbury: Mr. Chairman, we would like to offer that copy in evidence and have the reading clerk to read it.

The Chair: The reading clerk will read it.

July 15, 1933.

Mr. Robert Hariss,
New York City, New York.

My Dear Mr. Harriss:

Todays tabulation shows Texas Farmers leased 4,190,000 acres same being little more than 26% of the land planted to cotton in Texas this year. It must be remembered that no acreage having a prospective yield of less than 1-5 bale per acre was eligible or taken, therefore the acreage leased represents a large per cent of the production than it does the acreage.

Another observation I have made is that the heavy cotton producing counties leased a large per cent than did the counties making small yields.

Julius and I gave three weeks of our time, day and night, covering the State in behalf of the Acreage Retirement Plan, and I have had opportunity to check up on the leasing in the sections we visited, and find that in every instance, more liberal leasing was obtained; we had some very large crowds, numbering as high as 5,000 which is evidence of the interest our farmers gave. This week Texas has experienced, some of the hottest weather in its history, many sections showing temperatures from 104 to 115 three days in succession and these temperatures have been very damaging to the crops. While the Texas crops looked good a week ago and even looks good now considering such excessive temperatures, it is my personal opinion that another week without a general two or three inch rain, our yield may be much shorter than recently expected; showers will be more harmful than beneficial, especially if followed by another period of high temperatures. I will watch the crop closely and try to keep you advised in a conservative manner.

It is largely through your efforts that the Cotton Acreage Retirement Plan was adopted and in this you have rendered your country an outstanding service.

The advance in the price of farm products has put new life into our people and if we can just attain prices of $1.00 corn, $1.50 wheat and the 20c cotton, it will enable farmers to meet their obligations, save their farms and give them money with which to patronize other industries, which will in turn employ the millions now unemployed, and no greater benefactor could be given our Nation than such prices as mentioned above, and I am truly hoping that our leaders, of which you are one, will use their full efforts towards advancing prices to the levels above mentioned.

I certainly appreciate the consideration shown me, has meant a lot to me financially and I would appreciate you watching my account and keeping me fully advised. I have worked hard to put this program over and feel that I am entitled to make some real money out of the advance, and with your assistance feel that I can.

With great appreciation and best regards, I am

Sincerely your friend,

J. E. McDONALD,
Commissioner of Agriculture.

JEMcD/y

Q. Mrs. Young, did Mr. J. E. McDonald dictate that letter to you?

A. Yes, sir.

Q. Now, Mrs. Young, do you have a copy of a letter from Mr. McDonald to Mr. Robert Harriss of New York City dated July 18, 1933?

A. Yes, sir. (letter to counsel.)

Mr. Bradbury: Mr. Chairman, we offer the other letter in the record.

Mr. McLean: Mr. McDonald has no objection to the letter going into the record, I believe it was read.

The Chair: Yes, sir.

Mr. Bradbury: Mr. Chairman, we have photostats of those letters if they would rather keep the copies.

Mr. McLean: We have no objection; Mr. McDonald has no objection.

Q. Mrs. Young, did you write this letter of July 18, 1933?

A. Yes, sir.

Q. Did Mr. J. E. McDonald dictate this letter to you?

A. Yes, he did.

Mr. Bradbury: Mr. Reading Clerk, we would like to have you read the letter, and Mr. Chairman, we would like to offer it in evidence.

The Chair: I will admit it.

(The letter offered was thereupon read by the Reading Clerk and is as follows):

July 18, 1933.

Mr. Robert Harriss,
60 Beaver Street,
New York City, New York.

Dear Mr. Harriss:

Today I drew a sight draft in the amount of five hundred ($500.00) dollars on Harriss & Voss, 60 Beaver Street, New York, and of course you will debit my account with that amount. The profits in the cotton purchased for me certainly have been a help and I appreciate it more than I can tell.

While Texas has had considerable showers, the State is badly in need of general two or three inch rain.

While I am getting some very alarming reports on the crops, I know that they are not fully justified because the Texas crop is still in pretty bad condition.

Now please keep me advised on the market, and with appreciation and regards I am

Sincerely your friend,
J. E. McDONALD,
Commissioner of Agriculture.

JEMcD/y

Q. Mrs. Young do you have a copy of the telegram from Harriss & Voss to J. E. McDonald, dated August 1, 1933?

A. A telegram?

Q. Yes, ma'am?

A. I don't think my list called for a telegram.

Q. Yes, ma'am, called for several telegrams?

A. Let me see; was that addressed to Mr. McDonald?

Q. Yes, to Mr. J. E. McDonald from Harriss and Voss dated August 1, 1933?

A. I don't seem to have a telegram to Mr. McDonald.

Mr. Bradbury: Mr. Chairman, in view of the fact that she doesn't have that, we have a photostatic copy here and would like to offer that in evidence.

Mr. McLean: Mr. Chairman, there will be no objection.

Mr. Bradbury: We would like to have it read.

(The Reading Clerk thereupon read the following telegram:)

New York, N. Y.
August 1, 1933.

J. E. McDonald, State Department Agriculture, Austin Tex.

Sold 3 Dec Ten Fifty Nine
HARRISS AND VOSS.

Mr. Bradbury: Mr. Chairman, we have another telegram from Harriss & Voss, a photostatic copy and would like to offer it under the same circumstances.

Mr. McLean: There will be no objection on the part of Mr. McDonald.

The Chair: Let the Reading Clerk read it.

(Telegram was thereupon read by the Reading Clerk and is as follows:)

New York, N. Y.
August 18, 1933.

J. E. McDonald,
Department of Agriculture,
Austin, Texas.

Bot One Dec 960 instructions Robert M. Harriss.
HARRISS AND VOSS.

Mr. Bradbury: Another telegram under the same circumstances, Mr. Chairman.

Mr. McLean: No objection.

The Chair: Read the telegram; it is admitted in evidence.

(The telegram was thereupon read by the Reading Clerk and is as follows:)

New York, N. Y.
April 16, 1934.

J. E. McDonald,
Commissioner of Agriculture,
Austin, Texas.

There will be very important meeting in Washington next Monday April Twenty Third in connection with agri-

culture and silver. Believe most advisable for you to be there. Please telegraph if you can arrange this. Think your expenses will be paid. Best regards.

ROBERT HARRISS.

Mr. Bradbury: Another telegram, Mr. Chairman.

Mr. McLean: No objections.

(The Reading Clerk thereupon read the following telegram.)

Austin, Texas,
April 17, 1934.

Robt. Harriss,
Care Harriss and Voss,
New York City, New York.

Retel accepting your statement that I can aid agriculture by appearing in Washington Monday 23rd I am arranging to be there on that date Stop My time will be limited and I am asking that you arrange that I testify without delay Stop Plan in advance and advise me upon arrival just what I can do to render the greatest possible service Appreciation and regards

J. E. McDONALD
Commissioner of Agriculture.

Mr. Bradbury: Another telegram.

Mr. McLean: No objection.

(The following telegram was thereupon read by the Reading Clerk:)

Austin, Texas,
October 25, 1934.

Harriss and Voss
New York Cotton Exchange
New York City, New York

Sell two May

J. E. McDONALD.

Collect.

Mr. Bradbury: Another telegram, Mr. Chairman.

The Chair: Admit it in evidence. Read the telegram.

"Postal Telegraph

D110 32-39 DL-DA Washington DC 29, 523P 1935 Jan. 29 PM 4 46

J. E. McDonald, Commissioner Agriculture, Austin, Texas.

Believe important interest Texas farmers you be here Friday morning appear before Senate Agriculture Committee will be glad contribute one hundred dollars towards expenses of farmers in this good cause please answer via Postal Telegraph care Hamilton Hotel best regards.

ROBERT HARRISS."

Mr. Bradbury: Another telegram, Mr. Chairman.

The Chair: Admit it in evidence. Read the telegram.

"Western Union

Received at 613 Congress Ave., Austin, Texas, 1935 June 13 AM 9:05 XD 42 7-F X New York, N. Y. 13, 1003A

J. E. McDonald,
State Agriculture Department,
Austin, Texas.

Bot one Dec 1114.

HARRISS AND VOSS.

Personal 24139 Adse. 906 A DLR."

Mr. Bradbury: Mrs. Young, that is all for the present but I would like to have you back in a few minutes. Has the other side any questions?

Mr. McLean: No questions.

Mr. Bradbury: Then we would like to have Miss Helen Moorman.

Mr. McLean: Just a minute.

Cross Examination

(Questions by Mr. McLean):

Q. Mrs. Young,—is that the name?

A. Yes, sir.

Q. At the time Mr. Hunter and those other gentlemen came into the office there, what records, if any, were destroyed?

A. None that I know of.

Q. What records, if any, was Mr. McDonald getting and where was he to carry them?

A. He was going to a milk meeting in Fort Worth on Wednesday and this was on Monday night and we were going thru the files getting out some of his milk correspondence.

Q. Speak a little louder. I want the gentlemen of the House to hear this. Were they any of the State Records, or anything of the kind, or any other records destroyed by Mr. McDonald in your presence?

A. No, sir.

Q. Has he ever requested you to destroy any records?

A. No, sir.

Q. Do you know what telegrams there were in the waste basket?

A. I do not.

Mr. McLean: That is all.

Redirect Examination

(Questions by Mr. Reed of Dallas):

Q. Just a minute, Mrs. Young. As to the destroying of any records by Mr. McDonald, if any records were destroyed would you know of your own knowledge whether or not they were State Records?

A. If I saw the letters I would.

Q. Did you see everything that Mr. McDonald dropped into the waste basket?

A. I don't know. I tell you that night we were going thru the records as I say, the milk files and we found one or two places where we had two or three copies of one letter and I said that there was no use of keeping but one copy in our files and he may have dropped some of those in the basket but if so we have a copy of it in our files yet.

Mr. Reed of Dallas: That is all.

Cross Examination

(Questions by Mr. McLean):

Q. You have here, while he was then dealing in his own private affairs with a Cotton Brokerage firm all of the correspondence, have you?

A. I have.

Q. And you have produced all of that correspondence before the House of Representatives?

A. All that was called for, yes, sir.

Q. And you will produce any other that maybe called for?

A. I will.

Mr. McLean: That is all.

Redirect Examination

(Questions by Mr. Bradbury):

Q. Those telegrams were not presented, were they?

A. They were not in the list sent to me.

Mr. Bradbury: That is all right. Through the courtesy of other Counsel that is handled all right. We now want Miss Helen Moorman.

Miss Helen Moorman, was sworn by the Chairman, and in answer to questions propounded, testified as follows:

Direct Examination

(Questions by Mr. Bradbury):

Q. Will you state your name, please?

A. My name is Sarah Helen Moorman.

Q. Are you employed in the office of the Commissioner of Agriculture?

A. I am.

Q. How long have you been employed there?

A. Since June 1st, 1934.

Q. What is your position there?

A. Well, I really am a statistical clerk.

Q. Did you bring with you certain records and letters that were called for in the subpoena?

A. Yes. I have what you asked me to bring.

Q. Do you have one with you written by Mr. McDonald on September 8, 1934, to Mr. Joe T. Wood, of Sulphur Springs, Texas?

A. Yes, sir.

Mr. Bradbury: We will follow the customary procedure of introducing a photostat.

Mr. McLean: There will be no objection to introducing photostatic copies without identification.

Q. You wrote that letter?

A. Yes, sir.

Q. Dictated to you by Mr. McDonald?

A. Yes, sir I am very sure it was.

Q. Written by you?

A. Yes, sir.

Mr. Bradbury: Mr. Reading Clerk, I would like to have it read, and Mr. Chairman, I would like to offer it in evidence.

Mr. McLean: No objections.

(Thereupon, said letter was read in evidence by the Reading Clerk, as follows):

September 8, 1934.

Mr. Joe T. Wood,
Sulphur Springs, Texas.
My Dear Mr. Wood:

Enclosed please find my check for $7.62 to pay for your telegrams that you were so kind as to send asking President Roosevelt to provide for a loan of 15c per pound on cotton.

I was disappointed that the President could not provide the 15c loan instead of 12c, but I feel that the many telegrams that went out of Texas were of material help.

I certainly thank you for your cooperation in this matter and any time

the State Department of Agriculture can render you a service, please call.

With kindest regards, I am,

Sincerely yours,

J. E. McDONALD,
Commissioner of Agriculture.

JEMcD:HM
Enc: check.

Mr. Bradbury: Another letter, Mr. Chairman, addressed to Mr. E. E. Johnson, of Mart, Texas.

(Thereupon, said letter was read in evidence by the Reading Clerk, as follows:)

September 8, 1934.

Mr. E. E. Johnson,
Mart, Texas.
Dear Mr. Johnson:

Enclosed please find my check for $4.47 to pay for your telegrams that you were so kind as to send asking President Roosevelt to provide for a loan of 15c per pound on cotton.

I was disappointed that the President could not provide the 15c loan instead of 12c, but I feel that the many telegrams that went out of Texas were of material help.

I certainly thank you for your cooperation in this matter and any time the State Department of Agriculture can render you a service, please call.

With kindest regards, I am,

Sincerely yours,

J. E. McDONALD,
Commissioner of Agriculture.

JEMcD:HM
Enc: check.

Mr. Bradbury: Another letter addressed to Mr. J. E. Edwards of Munday, Texas.

(Thereupon, said letter was read in evidence by the Reading Clerk, as follows:)

September 8, 1934.

Mr. J. E. Edwards,
Munday, Texas.
My dear Mr. Edwards:

Enclosed please find my check for $1.98 to pay for your telegram that you were so kind as to send asking President Roosevelt to provide for a loan of 15c per pound on cotton.

I was disappointed that the President could not provide the 15c loan instead of 12c, but I feel that the many telegrams that went out of Texas were of material help.

I certainly thank you for your cooperation in this matter and any time the State Department of Agriculture can render you a service, please call.

With kindest regards, I am,

Sincerely yours,

J. E. McDONALD,
Commissioner of Agriculture.

JEMcD:HM
Enc: check.

Mr. Bradbury: A letter to Mr. J. A. Alderdice, Harlingen, Texas.

(Thereupon, said letter was read in evidence by the Reading Clerk, as follows:)

September 8, 1934.

Mr. J. A. Alderdice,
Harlingen, Texas.
My dear Mr. Alderdice:

Enclosed please find my check for $10.21 to pay for your telegrams that you were so kind as to send asking President Roosevelt to provide for a loan of 15c per pound on cotton.

I was disappointed that the President could not provide the 15c loan instead of 12c, but I feel that the many telegrams that went out of Texas were of material help.

I certainly thank you for your cooperation in this matter and any time the State Department of Agriculture can render you a service, please call.

With kindest regards, I am,

Sincerely yours,

J. E. McDONALD,
Commissioner of Agriculture.

JEMcD:HM
Enc: check.

Mr. Bradbury: A letter to Mr. Charles B. Metcalfe, San Angelo, Texas.

(Thereupon, said letter was read in evidence by the Reading Clerk, as follows:)

September 8, 1934.

Mr. Charles B. Metcalfe,
San Angelo, Texas.
My dear Mr. Metcalfe:

Enclosed please find my check for $28.35 to pay for your telegrams that you were so kind as to send asking President Roosevelt to provide for a loan of 15c per pound on cotton.

I was disappointed that the President could not provide the 15c loan instead of 12c, but I feel that the many telegrams that went out of Texas were of material help.

I certainly thank you for your cooperation in this matter and any time

the State Department of Agriculture can render you a service, please call.

With kindest regards, I am,

Sincerely yours,

J. E. McDONALD,
Commissioner of Agriculture.

JEMcD:HM
Enc:check.

Mr. Bradbury: Mr. Chairman, we have two more letters, identical except as to the addresses. I wonder if there would be anything wrong in just introducing them in evidence and not having them read?

Mr. McLean: There is no objection, and we don't care to look at them. I know that Counsel has stated them correctly and any letters they have can be introduced and considered in evidence without any objections from Mr. McDonald. Are those letters the same, in substance, as those you have just read?

Mr. Bradbury: Exactly the same except the amounts and the parties addressed.

Mr. McLean: That is all right, then.

Mr. Bradbury: You mean the last two?

Mr. McLean: Yes, sir.

(Said two letters were received in evidence without reading, and are as follows):

September 8, 1934.

Judge Lamar Gill,
Raymondville, Texas.
My dear Judge Gill:

Enclosed please find my check for $1.95 to pay for your telegram that you were so kind as to send asking President Roosevelt to provide for a loan of 15c per pound on cotton.

I was disappointed that the President could not provide the 15c loan instead of 12c, but I feel that the many telegrams that went out of Texas were of material help.

I certainly thank you for your cooperation in this matter and any time the State Department of Agriculture can render you a service, please call.

With kindest regards, I am,

Sincerely yours,

J. E. McDONALD,
Commissioner of Agriculture.

JEMcD:HM
Enc:Check.

September 8, 1934.

Mr. J. K. Knight,
Bartlett, Texas.
Dear Mr. Knight:

Enclosed please find my check for $7.49 to pay for your telegrams that you were so kind as to send asking President Roosevelt to provide for a loan of 15c per pound on cotton.

I was disappointed that the President could not provide the 15c loan instead of 12c, but I feel that the many telegrams that went out of Texas were of material help.

I certainly thank you for your cooperation in this matter and any time the State Department of Agriculture can render you a service, please call.

With kindest regards, I am,

Sincerely yours,

J. E. McDONALD,
Commissioner of Agriculture.

JEMcD:HM
Enc:Check.

Mr. Bradbury: I would like to have Mrs. Cora Young again, if agreeable, Mr. Chairman?

The Chair: All right. Call Mrs. Young.

Mrs. Cora Young, a witness on behalf of the Relator, was recalled by the Relator for further:

Redirect Examination

(By Mr. Bradbury):

Q. Mrs. Young, do you have a copy of a letter there written by Mr. McDonald to Colonel C. C. Hanson of Memphis, Tennessee?

A. I have it here; it may take some time to find it; what date, please?

Q. September 8th, 1934?

A. Yes, sir.

Q. Did you write that letter?

A. I did.

Q. Was it dictated to you by Mr. McDonald?

A. Yes, sir.

Mr. Bradbury: We would like to offer it in evidence and have it read, Mr. Chairman.

The Reading Clerk thereupon read the following letter:

"September 8, 1934.

Col. C. C. Hanson,
1883 Galloway Avenue,
Memphis, Tennessee.
Dear Colonel:

Absence from the office and a desk piled high with correspondence accounts for the delay in answering your letter and mailing the check, but inclosed you will find my check in the amount of twelve dollars and forty cents ($12.40) as payment of the telegrams you sent to President Roosevelt in behalf of the fifteen cent loan on cotton.

I am very sorry that the President did not see fit to make a fifteen cent loan instead of twelve cents. Last year Secretary Wallace and the President provided a loan of forty-five cents per bushel on corn when the market was only thirty-eight cents, and if a loan in excess of the market value for corn was permissible, there is no excuse for not loaning fifteen cents when cotton is selling for from fourteen to fourteen and one-half cents.

I am going to attend the Tennessee State Fair at Nashville and will make the trip by auto, leaving here Saturday, September 15 and will expect to eat lunch in the Black Cat Chiska Hotel, Memphis Sunday the 16th, however, traveling by auto one cannot tell definitely just how the schedule will work out, but I surely want to see you and other Memphis friends.

I still remain firm in my conviction that the Clair Plan offers the solution for our agricultural ills.

There is getting to be very pronounced criticism of Triple A and its administration and it behooves our leaders to give serious thought to a permanent plan to take place of the emergency programs now being used and which are justified only as temporary measures.

Thanking you for your cooperation in sending the wires, and with all good wishes, I am,

Sincerely your friend,

J. E. McDONALD, Commissioner."

JEMcD/cy

Q. (By Mr. Bradbury): Another letter to Mr. Robert Harriss from Mr. McDonald, dated September 7th, 1934, attached to which is an itemized bill.

A. What date please?

Q. September 7th, 1934. We would like to offer it and have it read with the bill attached.

The Reading Clerk thereupon read the following letter and bill attached:

"September 7, 1934.

Mr. Robert Harriss,
60 Beaver Street,
New York City, New York.
Dear Bob:

Inclosed you will find itemized list of phone calls and wires sent asking the President to provide a fifteen cent loan on cotton.

I am today mailing these parties my check and ask that you get your check back to me as soon as you see fit, but some of the people asked that I mail them the check at once and I have neglected doing so before now.

I hope you feel that the wires did some good, and I was glad to do my part, and was disappointed that they put the loan at twelve cents instead of fifteen.

Any time I can do anything for you, please know that I will be glad to do it if I possibly can.

With kindest personal regards, I am,

Sincerely your friend,

J. E. McDONALD,
Commissioner of Agriculture.

JEMcD/cy

Telephone calls by McDonald	$ 32.03	
Telegram by J. E. Edwards, Munday Texas	1,98	
Telegrams by J. K. Knight, Bartlett	7.49	
Telegrams by J. A. Alderdice, Harlingen	10.21	
Telegram by Jno. A. Hester, Goldwhaite	2.00	
Telegrams by E. E. Johnson, Mart	4.47	
Telegrams by Joe T. Wood, Sulphur Springs	7.62	
Telegrams by Chas. B. Metcalfe, San Angelo	28.35	
Telegrams by Judge Gill, Raymondville	1.95	
Telegrams by C. C. Hanson, Memphis, Tennessee	12.40	
Total	$ 108.50	
Telegrams by C. E. McCormick, Stephenville	8.00	$116.50"

Q. (By Mr. Bradbury): Another letter to Mr. Harriss from McDonald, dated October 5th, 1933, with bill attached.

A. Dated October 5th, you say.

Q. Yes; October 5th, 1933.

The Reading Clerk thereupon read the following letter with bill attached:

"October 5, 1933.

Mr. Robert Harriss,
60 Beaver Street,
New York City, New York.
Dear Bob:

Inclosed find statement of account for trip to Washington, which I trust you will find in order.

Since returning to Texas I have called Washington over phone and sent several telegrams, pointing out the imperative necessity of rushing the promulgation of rules and regulations relative to the ten cent loan and I am thoroughly disgusted at having nothing definite from them.

While I have given quite a bit of publicity and have advised the farmers not to sell their cotton under the loan value, I have been unable to give detailed information, although floods of inquiries from over the State have come to me; such suspense is embarrassing and provoking, in other words, it "gets a fellows goat."

Farmers continue to sell cotton as though no loan was coming. Bob you have certainly done your part in behalf of agriculture and the stabilization of economical conditions generally, and sooner or later you will win because inflation is inevitable. I am reminded of a most impressive part of President Roosevelt's Inaugural Address, "The unscrupulous money changers faced with the failure of credit, for proposed only, the lending of more money," and to think our President is majoring on credit expansion, the very thing he ridiculed in his Inaugural Address.

I have asked Johnson to telegraph me rules and regulations just as soon as promulgated, and when these rules are in my hands I will certainly give publicity through the Press of Texas. I still think that this crop will be under twelve million three hundred fourteen thousand, the Government's estimate.

Give my regards to Mr. George L. LeBlanc. He impressed me as being a man of ability and sincerely interested in seeing Roosevelt's administration a success and I cannot see why Roosevelt does not accept the advice of a man of this type rather than a bunch of theoretical Drs.

With appreciation and regards, I am,

Your friend,

J. E. McDONALD.

JEMcD/cy

"311

R trip R R ticket		$82.70
Pullman	$10.50	
Pullman	5.63	
Pullman	2.80	
Pullman	4.50	
Pullman	4.50	
Pullman	2.70	
	30.63	
Pullman		30.63
Meals 14		28.00
		141.33
Phones and wires		69.70
Cash—W		211.03
Hotel		58.98
		270.01
Cash—W		150.00
		120.01"

Q. (By Mr. Bradbury): Now, Mrs. Young, just a minute ago, you were asked about the destruction of the records in that office; is it possible for you to know about all of the private records of Mr. McDonald?

A. Well, I don't know that it is possible for me to know about all of them, only that I am in the office, I am his Secretary and keep the files. Of course, anybody could go in there and get some of my files, when I am not there, and I wouldn't know it.

Q. But he could do a great deal of correspondence without your knowing about it? Is it possible?

A. It is possible, of course, but he doesn't do it.

Q. How can you make that statement?

A. It is very seldom that he dictates letters to any one else but me; that's why I make that statement.

Q. He does dictate letters to other people then?

A. To Miss Moorman, whom you have had up here, but she is about the only other person in the office.

Q. And it is possible for him to write letters by himself, is it not?

A. Sure, it is possible.

Mr. Bradbury: Mr. Chairman, we would like to stand at ease for a period of about fifteen minutes.

The Committee thereupon took a fifteen minute recess on the motion of Mr. Bradbury.

Mr. Street: Mr. Chairman, the Board of Managers is ready to rest their case with this provisal; there are at least two witnesses for whom subpoenas have been issued, but who have not put in their appearance. If they should be here at a later time, say, in the morning, why, of course, we don't want to be deprived of the privilege of using those witnesses. I can't speak for the other Members of the Committee, but it has just come to my knowledge, and it is a matter on which we have to make further investigation and, frankly it is a new matter, and we don't know yet, and we cannot determine until tomorrow possibly whether we can go into it or not. Subject to those things we are willing to rest and the Committee can either recess until morning or do whatever they see fit.

Mr. Pope: I move that we recess until tomorrow morning to give them an opportunity to prepare their defenses, as well as give the Members of the Board an opportunity to determine whether or not they will go forward on any further proof.

The Chair: Would the Gentlemen of the defense like to proceed now or recess until tomorrow morning?

Mr. McLean: Mr. Chairman, we would like to recess until morning when these gentlemen will know definitely whether or not they have concluded their case. It is now four-thirty, and as I stated to the House, the Legislature, our evidence is going to be very short and will not delay them very long, and the probabilities are that by adjourning now so that we may go over the matter with Mr. McDonald, practically all of his evidence has already been read, and we don't want to repeat it, or have him repeat it, if we can prevent it, and I believe that if you adjourn until nine-thirty we will all save time.

Mr. Young: As a substitute I move that we have a record vote in order that it might be determined whether or not a quorum is present.

(The above motion by Mr. Young was withdrawn by him.)

A substitute motion to adjourn to nine-thirty a. m., Wednesday, November 20, 1935 was carried.

FIFTEENTH DAY

(Continued)

(Wednesday, November 20, 1935)

IN COMMITTEE OF THE WHOLE HOUSE

(Mr. Spears in the Chair.)

PROCEEDINGS

Of the House of Representatives of the State of Texas, as a Committee of the Whole, to hear Charges against J. E. McDonald, Commissioner of Agriculture.

Wednesday, November 20th, 1935.

The Chair: The Committee will please be in order.

Mr. Street: Mr. Chairman, we want Mr. M. A. Morris.

The Chair: Mr. Morris, please.

Mr. M. A. Morris, a witness on behalf of the Relator, after having been first duly sworn, testified as follows:

Direct Examination

(By Mr. Street):

Q. Are you ready to proceed, Mr. Chairman?

The Chair: Yes, sir, proceed.

Q. Mr. Morris, your initials, please?

The Chair: The witness has been sworn, hasn't he?

Mr. Street: Yes, sir.

A. M. A.

Q. Your initials are M. A.?

A. Yes, sir.

Q. What is your present business or occupation, Mr. Morris?

A. I am bookkeeper at the—

Mr. J. C. McConnell: Mr. Chairman.

The Chair: For what purpose does the gentleman from Palo Pinto rise?

Mr. McConnell: Could we have the charge read, the particular charge as to which this evidence goes?

The Chair: The Chair didn't understand you.

Mr. McConnell: I say, could we have the specific charge or at least be directed to which charge or charges his evidence goes, so that we can follow the testimony clearly?

The Chair: Yes, sir, we will be glad to do that.

Mr. Street: Just a moment, Mr. Chairman, until we find it. It is Article 8, Mr. Chairman, if the gentleman would like to have it read.

The Chair: The Clerk will read Article 8, please.

The Reading Clerk thereupon read Article 8, as follows: "Article 8. That the said J. E. McDonald, during the year 1935, while acting in his official capacity as Commissioner of Agriculture of the State of Texas, knowingly and wilfully made and entered into, and connived and conspired with various caretakers of animals, certain and unlawful contracts for the purpose of unlawfully diverting from the Treasury of the State of Texas certain procreation fees, required by law to be paid into the Treasury of the State of Texas, and permitted and caused and authorized certain caretakers to collect and retain said procreation fees, thereby depriving the Special Racing Fund of the State of Texas of said fees into which they are required by law to be paid, all of which constituted a violation of the laws of the State of Texas."

Q. (By Mr. Street): Now, Mr. Morris, I don't remember whether you answered the last question or not, but where are you employed at this time?

A. Bookkeeper at the State Department of Agriculture.

Q. How long have you served in that capacity?

A. Since January 1931.

Q. Mr. Morris, you were requested to bring with you certain records, particularly contracts from the Department of Agriculture, did you bring those with you?

A. I don't have them with me this morning. I brought them over. I can get them in just a few minutes.

Q. Well, will you do that now, please sir.

A. Yes, sir; I can get them in just a minute.

The Chair: Gentlemen of the Committee, let's have your attention just a minute. Mr. Dunlap wants me to inform you that he has a considerable amount of bills, that is, a combination of four bills and one phamphlet, and if the members desire copies of it, let it be known at the Sergeant-at-Arms Office or send for them and get them. Let's have a little order.

Q. (By Mr. Street): Mr. Morris, do you have in your possession here a contract between Mr. McDonald, of the Department of Agriculture, and I don't recall the man's name, with reference to the taking care of a State-owned stallion?

A. Yes, sir.

Q. What is the date that that contract was entered into?

A. Effective January 1st, 1935.

Mr. Street: Mr. Chairman, I want to offer that contract in evidence, and would like to ask the Reading Clerk to read it, please:

The Reading Clerk thereupon read the following contract into evidence:

"STATE OWNED
JACK/STALLION LEASE AGREEMENT No. 23

STATE OF TEXAS
COUNTY OF CONCHO

KNOW ALL MEN BY THE PRESENTS

By authority of H. B. No. 167, re-enacted and amended by H. B. No. 12, I, J. E. McDonald, Commissioner of Agriculture of the State of Texas, party of the first part, and Fred Hall of Eden, County of Concho, State of Texas, party of the second part, in consideration of the stipulations herein expressed do hereby agree:

1. The Commissioner of Agriculture having examined the application of the party of the second part for Jack/Stallion does hereby deliver to said party of second part the following described Jack/Stallion: One fourteen year old Gray Percheron Stallion, Name "Judge."

2. For and in consideration of $15.00 per month to be paid by the Commissioner of Agriculture and in addition the retaining of not to exceed three service fees for each current month, party of the Second part agrees to give said animal proper care in every respect with reference to feed, exercise and shelter; and will feed a balanced ration at all times, or in

accordance with the instructions of the Commissioner of Agriculture. Provided, that if said party of the second part shall not collect any service fees during any month, then his compensation shall be $15.00 for said current month, but that said compensation shall be $20.00, $25.00, or $30.00 per month conditioned on the collection of one, two or three service fees of $5.00 for said current month. In the event party of the second part is awarded two State animals, then his compensation shall be $25.00 per month and FIVE SERVICE FEES of $5.00 for said current month.

3. Party of the second part agrees to handle Jack/Stallion in an approved and efficient manner in serving mares offered for breeding, but will have the right to refuse to let Jack/Stallion serve any mare which in his judgment should not be served. A charge of $5.00 in cash shall be made for each mare foaled and shall be paid in cash at the time, each mare is served the first time, provided however, if mare is returned for inspection and/or further stud service according to instruction of caretaker and fails to foal, then the $5.00 thus collected shall be refunded by the Commissioner of Agriculture to the owner of any mare bred to such Jack/Stallion. It is expressly agreed that the party of the second part is to be liable to the Commissioner of Agriculture for $5.00 for each colt foaled by Jack/Stallion in his possession, except such fees as designated in Article 2 to be retained by party of the second part for part compensation as caretaker.

4. Party of the Second part agrees that said Jack/Stallion will not be removed from the premises and enclosures as described in said application without written consent of the State Commissioner of Agriculture, except for the purpose of advertising and showing in the community where located and at Fairs. In every case where a premium or prize is awarded to any State animal it is understood that this premium or prize is to be retained by the caretaker of such animal.

5. The Commissioner of Agriculture or his duly authorized representative shall have access to premises where said Jack/Stallion is kept for the purpose of making inspection of the animal, food and care given, or for any other reason pertaining to said animal. In the event the Commissioner of Agriculture deems it necessary for the best interest of the State or district, to move said Jack/Stallion from said premises, the party of the second part agrees to deliver in good condition at place where located, to the party of the First part, upon ten (10) days written notice said Jack/Stallion.

6. Party of second part agrees to remit weekly to the Commissioner of Agriculture, all fees collected for service of said Jack/Stallion except such fees as are retained by him for part compensation as caretaker and as set out in Article 2 above, and to make weekly reports on such forms as may be furnished him, and that failure to make such reports will be just cause for removal of Jack/Stallion from the possession of party of the second part.

7. Party of the second part agrees to be responsible for any damages occurring to said Jack/Stallion due to any negligence on his part and further agrees that said Jack/Stallion will be returned to Commissioner of Agriculture in good condition. When called for at place where located.

8. It is understood that the title of said Jack/Stallion remains in the State of Texas.

9. It is hereby agreed that the application of party of the second part to the Commissioner of Agriculture for said Jack/Stallion is made a part of this lease agreement and is so recognized.

Witness my hand at Eden, Texas, this 22nd day of Dec. A. D., 1934.

(Signed) FRED HALL,
(Party of the Second Part.)

Sworn to and subscribed to before me, a Notary Public in and for Concho County, this 22 day of December A. D., 193....

(Signed) G. Y. LEE,
Notary Public, Concho County, Texas.

ACCEPTED FOR THE STATE OF TEXAS:

(Signed) J. E. McDONALD,
Commissioner of Agriculture."

The Chair: Mr. Sergeant-at-Arms, I want you to keep these pages from running up and down these aisles. They have been doing it all this week, and, as far as I am concerned, I would like to see every one of them fired, if they don't stop it. The pages might just as well take notice of that.

Mr. McKee: I want to ask a question.

The Chair: All right.

Mr. McKee: Can we have a page if we want one?

The Chair: I have no objections to your having a page, but they have been running up and down the aisles here all the week; you know that; I don't have to tell you that.

Mr. Street: Mr. Chairman, we want to offer this contract in evidence, and we don't have a copy of it, so we will have to offer this one.

The Chair: There will be no objection; admit it in evidence.

Q. (By Mr. Street): Mr. Morris, are you familiar with the fact as to how many contracts of the same kind were entered into between the Department of Agriculture and various caretakers over the State?

A. At the time of this contract?

Q. Yes, sir, at or about the same time?

A. Approximately 175.

Q. Approximately 175?

A. Yes, sir.

Q. Of this same kind of a contract?

A. Yes, sir.

Q. That's all.

Cross Examination

(By Mr. McLean):

Q. Before those contracts were written, or during the preparation of those contracts, who prepared them on the part of the State of Texas?

Mr. Street: Mr. Chairman, I don't think that's material; I don't know myself who did, but I don't think it is material.

Mr. McLean: Well, I don't see why they introduced that contract unless they thought it was material. Now, I want to know who prepared it.

Mr. Street: The point I make, Mr. Chairman, is that we consider the contract material, but we don't consider it material who wrote it.

Q. Well, perhaps my next question will clear that up; was the gentleman that wrote it connected with the Attorney General's Office, or was that contract submitted to the Attorney General, the advisor of the State officials, before it was printed and sent out, if you know?

A. Well, I am not sure whether that was submitted to the Attorney General or not; I couldn't say.

Q. Very well; that's all, Mr. Morris.

Mr. Bradbury: Mr. Chairman, we would like to call Mr. W. D. Thurman.

The Chair: Mr. Thurman is not here apparently, according to the Sergeant-at-Arms.

Mr. Bradbury: Mr. Chairman, we have had a Texas Ranger on his trail for some little time now, and the last we heard of him, why he was in Old Mexico, and we thought sure he would be back in time to testify in this investigation, but since he is not here and since we believe this House is entitled to all the information surrounding these charges, I wish to offer in evidence at this time the testimony of Mr. W. D. Thurman, as given before the Hunter Investigation Committee.

Mr. Felts: To which we want to object, for the reason that the testimony of Mr. Thurman would naturally be ex-parte. We would have no means of cross examining Mr. Thurman; he is not our witness; he is a witness for the State, and it would be, according to the way we think, a rank injustice to Mr. McDonald to permit the testimony of Mr. Thurman to go in the record, without an opportunity upon the part of his counsel to cross examine him.

The Chair: Now, Members of the Committee, I want you to give me your strict attention for just a minute, because I am going to submit a matter to you for your vote. I am going to follow the precedents heretofore established by the Speaker of this House: that whenever a question was submitted to him upon which he had doubts, he submitted it to the House for decision; and I am going to submit this matter to the Committee as a Whole and let you vote on it. First, however, I want to give you the Chair's position, and preliminary to doing that, I want first to ask a question: Mr. Bradbury, at the

time that this testimony was taken, was Mr. McDonald present, either in person or by counsel?

Mr. Bradbury: I could not answer that except in this way: I do know according to the report of the testimony that he was present immediately preceding the testimony of Mr. Thurman, because he testified, according to the record, just before him.

The Chair: Was he represented by counsel at the time?

Mr. Bradbury: I do not know.

The Chair: Do any of you gentlemen on the other side of the table know whether Mr. McDonald was present when this testimony was given by Mr. Thurman, and, if not, whether he was represented by counsel at that time?

Mr. McLean: May Mr. McDonald make that statement in preference to his counsel making it?

Mr. Bradbury: We would object to his doing so.

The Chair: I think that his counsel can make that statement, Mr. McLean.

Mr. McLean: His counsel from all investigation knows to the very best of all the written evidence and their judgment that he was not present, nor heard this man Thurman's testimony, and that he had no counsel present.

Mr. Bradbury: Believing that this House is entitled to all the facts and information possible to arrive at a just conclusion in this matter, we are perfectly willing for the matter to be submitted to a vote of the House and see whether they want to hear all of the testimony.

The Chair: And now, members of the Committee of the Whole, I desire to call your attention to the fact that in the Terrell and Robinson cases, when they were tried before the House of Representatives, as a Committee of the Whole, at that particular time, the Chair wants to state, to be perfectly frank and honest with the membership of the Committee, that he is not in accord with the ruling laid down by the Committee heretofore in this character of case, and if the Chair were left to rule upon it now, he would probably rule entirely different from the precedents heretofore laid down by the Committee. That's why I feel in all fairness the matter should be submitted to the Committee. Now, Judge Sinks, ruled, I believe it was in the Robinson case that where the evidence was taken before a committee and where the Respondent was represented either in person or by counsel, that then that testimony should be read to the Committee of the Whole, and they should be allowed to pass upon the matter. I would like to read you just what he had to say about that. I will try to read you enough of it so that you can get the true import of the situation, as it existed at that time.

Mr. Butler of Brazos: Mr. Chairman, before you go into that, may I suggest something to the Chair?

The Chair: Yes, sir.

Mr. Butler of Brazos: I would like to ask if Mr. Thurman was present before the Hunter Committee?

The Chair: Yes, sir.

Mr. Butler of Brazos: Now, at the time Mr. Thurman was present before the Hunter Committee, was that Committee in Executive Session, or was it open to the public?

The Chair: The Chair can't answer that.

Mr. Butler of Brazos: The reason I am asking that question is for this reason, if the Committee was in Executive Session, then as I understand the rules then no body was there except the witness and the Members of the Committee, and Mr. McDonald would not have had the right to have been represented by counsel. Am I right about that?

The Chair: I don't know what the situation was at that time and to clear that thing up in that regard, and I am sure that the Committee wants to be fair to all concerned and in that connection, I suggest that Mr. Canon, Mr. Westfall, or Mr. Hunter take the stand and tell exactly what the situation was an then you will have a chance to cast a more intelligent vote.

Mr. Bradbury: We now understand that Mr. McDonald was not present, and was not represented by counsel with the exception of Mr. Pat Lawrence.

Mr. Caldwell: Mr. Chairman?

The Chair: Mr. Caldwell.

Mr. Caldwell: I want to make an inquiry; is this proceeding we are now in akin to a criminal proceeding in such a manner as to bring it under

the purview of Section 10, Article 1 of the Constitution, which provides that a man who is charged with a criminal offense shall be entitled to be confronted by his accusers.

The Chair: In answer to your question, Mr. Caldwell, the Chair will state that it is the opinion of the Chair that a man should be confronted by the witnesses against him. It is the opinion of the Chair that testimony taken in the manner and form that this testimony was heard and secured, could not be admitted in a proceeding of this kind. However, I will call your attention to several proceedings in which they have laid down an entirely different rule than the Chair's opinion of the matter, and have established precedents in the past, Mr. Caldwell, which are not in accord with the opinion of this Chair, and the Chair wants to read to the Members of the Committee what they did do, and then let these gentlemen put the proposition to the Committee of the Whole and let them rule on it.

Mr. Butler of Brazos: Can't one of the Members of the Committee tell us whether Mr. McDonald had the right to be heard so that we can cast a more intelligent vote?

The Chair: I am going to see that they are given an opportunity to be heard and then let the Committee vote on it.

Mr. Caldwell: I don't believe or think that a legislative precedent could or would override a constitutional right.

The Chair: Mr. Caldwell, I will answer that by saying that I have answered that heretofore; however, I would just like to state this, and in doing so I am not trying to influence any Member of the Committee, I don't want to, as it is your hearing and I want to conduct it just like you want to. However, this proceeding has been likened several times to a proceeding before a grand jury, and the Chair would like to say, just to give you his idea about the matter, that there have been a couple of investigating committees in this matter; they have investigated it and reported back to the House of Representatives, and I feel personally that the evidence as adduced here, the evidence that is heard should be such evidence upon which the House may vote intelligently. I would like to read this precedent, and then I am going to give both sides an opportunity to present this situation as they may see it to the House, and then when I get through, the Chair without any comments or remarks of any kind will put it to a vote of the House.

Mr. McCalla: Mr. Chairman, and Members of the Committee, we are faced with this situation, and I want to give you a little information which I think may be of some help to you to understand it. In taking our action in this matter we will be required to consider only the competent evidence introduced in this hearing. Now, if this evidence is incompetent, then certainly we will have no right to consider it, and if this man Thurman is not now available, and there is no likelihood of his being available in the event that Articles of Impeachment are voted; then, is there any likelihood that his testimony will then be available. I would like to call upon the gentlemen who are in close touch with the situation to advise us whether or not there is any likelihood that Mr. Thurman will ever be available.

Mr. Reed of Dallas: May I answer that portion of his question.

The Chair: Yes, sir.

Mr. Reed of Dallas: There is likelihood that Mr. Thurman will be present at any future hearing. We do not know; it may be, that he is now apprehended, and could be present, but he isn't present right now,—right at this time, and we are conducting our search for him.

The Chair: Members of the Committee I ask that you give your attention while I read this to you.

Mr. Reed of Dallas: We have just determined that it was an Executive Session.

The Chair: I now want to read this.

Mr. Jones: Mr. Chairman, I understand that you are now going to read from the opinion of Judge Ed. R. Sinks in the Robinson trial, is that correct?

The Chair: That is right, Mr. Jones.

Mr. Jones: Now, does the Chair, would the Chair take judicial knowledge of the fact that Judge Ed. R. Sinks prior to his service in writing this opinion, or dictating this opinion was a judge of the district

court for several years with an outstanding record for ability; will the Chair take judicial knowledge of that fact?

The Chair: Yes, sir, Brother Jones, I will let the Committee take knowledge of anything; I will just give it to them and let them pass on it.

Mr. Felts: May I at this point state that in the precedent laid down by Judge Sinks, that that was in an Executive Session in which the respondent and his counsel were excluded.

The Chair: Now, I am going to read it to you. I have already stated that I do not agree with this holding and am perfectly frank about it, and am going to leave it up to this Committee as to what they want to do about this matter.

(The Chair thereupon read the following):

"Mr. Freeman: Judge Sinks, Ladies and Gentlemen, of the House—I shall consume but a moment of your time. The respective positions of counsel for the House and the respondent have been stated. I think, clearly and fairly. The question Judge Sinks will pass upon, as I understand, is whether or not the testimony taken before the Committee will be admitted in evidence subject to such rulings as may be made if the witness were personally present and offered as a witness. This is an inquisitorial proceeding, as Judge Allen has explained, and the purpose of it is to get at the truth of the transaction for the purpose of enabling you to say whether or not Mr. Robinson shall be tried before the Senate Court of Impeachment.

"We ask you to do this, first, because testimony is under oath; second, it has been correctly transcribed; third, it is in such form that the House can readily grasp the knowledge of the respective witnesses. It will save several days of your time. I understand you desire to transact other public business, so far as you are able, after giving proper attention to this.

"In this inquisitorial proceeding, where you will not be charged by a court, and where you will be hearing the evidence, and expressing yourselves from information you gain in this way, we think it is just and fair, and a lawful and proper way of presenting the issues which you are to determine, the request we make is that you permit us to substitute the transcript of the testimony for the consideration of the House, the same as if the witnesses were personaly present, and under such rulings as will be made as to its admissibility. That applies to both sides, and we invoke your ruling, Judge Sinks."

The Speaker: We will hear Judge Sinks, the Presiding Judge.

"Judge Sinks: Gentlemen of the House—This matter has been presented here, you have heard counsel, and understand it. As a matter of course, all lawyers know that the State, if it were a trial in the district court, could not introduce testimony of that character. But this, in my judgment, is an altogether different proposition. It is merely an action before the grand jury.

"Now, if Mr. Robinson and his counsel had not been present when that testimony was taken and permitted an opportunity to cross-examine every witness offered, I would unhesitatingly hold, not just as a mere matter of law, but as a matter justice, that no part of that testimony could be read before you; but in as much as he had all the opportunity of being there himself, and by counsel, and having the witnesses subject to cross-examination, I think, as this is a grand jury proceeding we should and ought to receive any testimony that is in that transcript, and have it read; subject, of course, to objections that might be made. That would apply to witnesses for Mr. Robinson and witnesses for the proponent.

"This is a case where we are not sitting as a court, as counsel has told you. We are sitting merely as a grand jury, and testimony of that sort has often been used before a grand jury when they could not conveniently get the witnesses, but had the testimony taken down; and the grand jury took it for the purpose of passing on whether or not an indictment should be found. That is all there is for this body to pass on, whether charges should be preferred and presented to the Senate.

"My ruling, then, will be that either party may use this record, subject to any legal objections to the testimony."

The Chair: Now, Gentlemen of the Committee, I think that is sufficient,

but if you would like to have me read any more I will be glad to do it.

Mr. Felts: Mr. Chairman, in behalf of Mr. McDonald, we would like to say now that we do not care to make any argument over the admissibility of this testimony. We understand that it has been agreed by the Board of Managers that it was at an Executive Session at which this was taken, and we think that the Members of the Committee are fully competent to pass upon this question without argument from Mr. McDonald's counsel.

The Chair: You may exercise your discretion about that when you get to it.

Mr. Reed of Dallas: Mr. Chairman, with reference to the question raised by Mr. Caldwell, I would like to read a portion of the case of Ferguson versus Maddox, and I think it has to do with that particular question raised by Mr. Caldwell. Reading as follows: "There is no conflict between Article 3 of the Penal Code and the sections of Article 15 of the Constitution relating to impeachment. They relate to different matters and operate on entirely different theories. The purpose of an impeachment lies wholly beyond the penalties of the Statute or the customary laws. The Constitution in relation to impeachment had in mind the protection of the people from the official delinquencies or malfeasances. The Penal Code, on the other hand, had in mind an offender merely as a member of society who should be punished for his individual wrong doing. The primary purpose of an impeachment is to protect the State, not to punish the offender. True he suffers as he may lose his office and be disqualified from holding another but these are only incidents of a remedy necessary for the public protection. There is no warrant for the contention that there is no such thing as impeachment in Texas because of the abuse of the statutory definition of impeachable offenses." Now, it is our contention that the section dealing with the primary purpose of an impeachment answers the question raised by Mr. Caldwell as to whether or not it is proper to conduct this hearing in the same manner that it would be proper should it be strictly a court proceeding. We are not, of course, doubting that the defendant naturally should be confronted with the person accusing him under those circumstances, but in view of the case, that is, the precedent as read by the Chairman, and in view of this section of Ferguson versus Maddox we contend that we do have this right to introduce this evidence, but I certainly think, and I think the entire Board of Managers agree, that it should be left up to the membership of this Committee, as has been done in the past.

Mr. Caldwell: The decision you have just read there,—that Court is discussing a different proposition, that is, as to whether there is a necessity that impeachable of Texas be set out in the Statute, and in that discussion they have said something which I feel clears up the point now before the Committee,—don't you feel that is clearly dicta and not a decision of the Court?

Mr. Reed of Dallas: It is the decision of the Court.

Mr. Caldwell: They are discussing something else. It is not applied to the question before the House.

Mr. Reed of Dallas: It certainly is not dicta as far as the decision is concerned. It is true it does not cover exactly the point you want but it does bring out the difference between a criminal proceeding and an impeachment proceeding. I think it brings that out very clearly.

Mr. Lindsey: From what are you reading?

Mr. Reed of Dallas: 263 S. W. Ferguson versus Maddox, page 888. The portion I was reading is on page 892.

Mr. McLean: As Counsel for Mr. McDonald, this is a matter for you gentlemen to settle by your own consciousness, as to whether or not a man may be indicted without the witness confronting him, but I want this House to understand now that we make no objection to the reading of this testimony. That is a matter for the House itself. If you care to hear it, we do not fear it.

A Voice: If there is no objection to it, lets have it.

The Chair: If there is no objection to it, the Chair will admit the testimony.

Mr. Reed of Dallas: Did Counsel for Mr. McDonald make the statement there was no objection to this being read?

Mr. Felts: We want to further clarify our position. When we made the objection it was our opinion at the

time, and now, that the evidence was not properly admissible, but we know that the discussion of this matter will consume considerable time and out of the abundance of respect we have for the membership of this committee, and in the interest of time, we will say now that so far as the Defendant's Counsel is concerned we will withdraw the objection and leave it to the membership of the House whether they think it is pertinent testimony.

The Chair: I will admit the testimony.

Mr. McCalla: I am not partisan in this matter, on one side of the other—

Mr. Hunt: Oh, no.

Mr. McCalla: The answer is no, right in your teeth. Now, what do you think?

Mr. Hunt: Go right ahead, but I know how you stand on it. I have heard you comment on it.

Mr. McCalla: I want to tell you this. You brought a fellow named Tate in here. In my opinion as plain a liar as ever testified before anybody in Texas, and he backed up on everything he had said before a previous committee. If you are going to permit this testimony to be read you are going to permit the ex-parte statement of a man to be made to this Committee and then in order to convict this man, if you do vote Articles of Impeachment, that testimony substantially as it was given to the first committee must be reproduced in the Senate from the lips of that witness. I take it that by the fact you Gentlemen have had to have a Texas Ranger on his trail, that he is running, and any of you that have ever tried a case in Texas and had to run down your witnesses, run him down with a Peace Officer, if you please, and bring him in, you know when you get him in there you are not going to get the testimony from him that you expect. Don't you? Every lawyer in this House knows that. Every man that has had any experience from the Police Court on up knows when you have got to run a witness down, chase him, you are not going to get the testimony from him that you expect. Without any desire to influence you one way or the other, I want to say this, that if you are forced to bring that man Thurman in you are not going to get the testimony from him that he gave to that Committee in Executive Session, and you know it. What I would like to see now is keep from getting yourselves in the ridiculous position of voting an indictment on testimony that is not now available, that will not be available in the event of a trial before the Senate of Texas, even if you vote these Articles of Impeachment, if you find Mr. Thurman in Mexico, Texas, or anywhere else. I don't care what you do as far as I am personally concerned. It wouldn't make a particle of difference to me, but I am not going to stand here and keep my mouth shut and not raise my voice in protest over this proceeding.

Mr. Bradbury: Mr. Chairman, it is not the desire of this Committee to take undue advantage of anybody or any situation, but several members of the Committee of the Whole have wanted to know about this evidence, and that evidence, and as the Board of Managers of this Committee we offer it for their consideration if they want it. It is only a matter of opinion of the Gentleman from Harris whether Mr. Thurman can be present in the Senate, or not. He may know more about that than we do. I can't say. We submit this testimony for the consideration of the Committee of the Whole and if they want to accept it, it is their privilege, and we offer it in that spirit.

Mr. Leonard: That Committee made an investigation and I presume made a record of that investigation. Is that material gathered by that Committee now, and has it been available to the members of the Whole Committee?

Mr. Bradbury: It has been on record in the Chief Clerk's office for several months.

Mr. Calvert: I would like to make this observation. There is no question but that this testimony is admissible. Likewise, there is no question but that this testimony in a trial before the Senate would not be admissible, and therefore I agree with the things Mr. McCalla has said, that it would be a futile thing to lay a predicate for impeachment on testimony that is not admissible and then not be able to produce the testimony on the trial, but I do say this, that Counsel for the Defendant has withdrawn their objection and as long as that objection has been withdrawn there is nothing for the House to decide, and there is now no course for the Chair to take but to admit the testimony when it is offered.

The Chair: The Chair agrees with the Gentleman from Hill, and will admit the testimony. If you want to take an appeal from my decision, all right, but with the objection withdrawn I will admit the testimony. I will ask the Clerk to read the testimony.

Mr. Bradbury: Beginning on page 10 and continuing to the end of the testimony.

Mr. McLean: May I ask Counsel to mark out the parts of that testimony that you think is material because I find, as Counsel for Mr. McDonald, in reading it over, a part of it relates to matters not under investigation and no charges preferred against him about those matters.

Mr. Bradbury: I will mark out the parts that are omitted.

(Thereupon, the Reading Clerk read the following testimony, omitting the parts marked out by the Board of Managers):

"The Chairman: I think we have an understanding now and Mr. Thurman will be sworn. I am going to let Mr. Murphy question Mr. Thurman and when he gets through you may ask any questions that you wish. All right Mr. Murphy.

Mr. Murphy: Mr. Thurman, you were purchasing agent for the Department of Agriculture under this Stallion and Jack Purchasing Act. You traveled over several different states and bought these animals didn't you?

Mr. Thurman: Yes, sir.

Mr. Murphy: What State did you make your first purchases from?

Mr. Thurman: I believe I made them in Missouri.

Mr. Murphy: Who from?

Mr. Thurman: From a fellow by the name of Blackwell. I don't know his initials.

Mr. Murphy: Who else did you purchase animals from in that State?

Mr. Thurman: Mr. Fraze was on the first trip with me and I think he has the farmer's name. I went up to pass on them.

Mr. Murphy: You purchased in Springfield, Missouri, from Blackwell. The price you paid was $950. Do you know why the warrant made payable to Mr. Fraze was made for $970 and wired to you to Springfield, Missouri, and you paid for these animals when they were loaded in the truck, and if the warrant was made for $970 there was a $20 discrepancy?

Mr. Thurman: I never did see the warrant.

Mr. Murphy: Do you know anything about Mr. Blackwell having wired Mr. Fraze to sign his name to the warrant?

Mr. Thurman: I believe I heard Mr. Fraze speak of that that he had authority.

Mr. Murphy: The next purchase you made was from Mr. Finley at Higginsville?

Mr. Thurman: Yes, sir.

Mr. Murphy: What do you think about Mr. Finley? Did you have any argument with him or did he get mad at you?

Mr. Thurman: I think he wrote Mr. McDonald that I was hard to please. Something like that.

Mr. Murphy: Was there any misunderstanding between you and Mr. Finley about the type of animals you bought? You bought these animals on Mr. McDonald's okeh?

Mr. Thurman: Yes.

Mr. Murphy: You did not fail to take any stock that you said you would take?

Mr. Thurman: I heard that the banker had wired or wrote a letter that I had planned to take a lot of stock that Mr. Finley had bought with banks' money and I never did contract any stock because I was not allowed to contract.

Mr. Murphy: In the purchasing of these animals, when you would get several animals together you would call up Mr. McDonald each time. What means of getting him to accept them would you take?

Mr. Thurman: I described the animals, giving age, color, approximate weight and just a general outline and the price, and then he would take them or leave them.

Mr. Murphy. Would he tell you over the phone?

Mr. Thurman: He would tell me to buy them or leave them. He wired me twice that I was not buying them fast enough and to buy most any kind to get the stock down here.

Mr. Murphy: Did you talk to Mr. Finley's banker?

Mr. Thurman: One time in the hotel. I told him that if he let Mr. Finley have money to buy stock to give ages, weights and type when we wanted them and he said if Mr. Finley can buy those kind of animals we will buy them, otherwise we will turn them down.

Mr. Murphy: Do you think Mr. Finley is an honest man?

Mr. Thurman: I don't want to say.

Mr. Murphy: In your dealings with him was everything all right?

Mr. Thurman: I don't think he is right up to the minute with it.

Mr. Murphy: He is like the average horse trader?

Mr. Thurman: He is like the average horse trader, that is if you don't buy his stock he gets mad. I believe every man I ever bought from, or 50% of them wrote Mr. McDonald that I was too particular and a little hard to get along with.

Mr. Murphy: Do you think it is possible for a man to have the presence of mind to be on one end of the telephone and let another man describe an animal to him and tell the price and for him to be able to pass on whether or not it should be bought?

Mr. Thurman: Mr. McDonald did. I suppose he used my judgment on it.

Mr. Murphy: Could you have used your own judgment and saved the State telephone calls?

Mr. Thurman: Absolutely.

Mr. Murphy: Did you ever feel that it may be a little infringent to use that personally?

Mr. Thurman: It would cause delay in lots of ways.

Mr. Murphy: That was the understanding you had when you went up there to purchase them. That you get the description, age, and so forth, and phone Mr. McDonald and give that information?

Mr. Thurman: Yes.

Mr. Murphy: Do you think it is possible, in your opinon, for a man to describe an animal over the phone sufficient for another man to okeh and buy it?

Mr. Thurman: I would not buy one over the telephone.

Mr. Murphy: Did Mr. Finley ever pay you any money?

Mr. Thurman: I don't want to answer that.

Mr. Murphy: You bought some animals from J. C. Robison, didn't you?

Mr. Thurman: Yes.

Mr. Murphy: You also bought some from Dr. Wheeler, didn't you?

Mr. Thurman: No sir.

Mr. Murphy: There were two loads in Iowa with Mr. Robison, and Mr. McDonald was called from Iowa about them and later were taken down to Kiowa, Kansas.

Mr. Thurman: I believe the first load that came from Iowa came to Dallas first and showed at the Dallas races one day and were loaded and moved to San Antonio and showed there. The two loads that were bought out of Iowa was bought last Spring. Mr. Wheeler and Mr. Robison came down here and made a proposition to gather a load and show at the Dallas Fair and I think there was supposed to be 18 in that load and they agreed on the price and the grade of animals they were supposed to get and that load was gathered in Iowa and shipped to White Rock, Arkansas and Mr. McDonald and I went up there and inspected them and I looked the 18 head over and Mr. McDonald and Mr. Robison agreed on the price and I did not know what the load cost. That load was brought to the Dallas Fair, I believe it was.

Mr. Murphy: Does Dr. Wheeler buy and sell? Is he supposed to be one of the largest purchasing agents of stallions in the United States?

Mr. Thurman: I don't know about that.

Mr. Murphy: He has made several trips to Europe, hasn't he? Did you ever hear whether Robison financed that trip? Dr. Wheeler bought a bunch of animals for himself on these trips.

Mr. Thurman: Yes.

Mr. Murphy: Do you see any reason why you could not have traded directly with Dr. Wheeler instead of through Mr. Robison?

Mr. Thurman: I suppose so.

Mr. Murphy: Do you know any reason why the animals purchased from Dr. Wheeler should have been paid by J. C. Robison?

Mr. Thurman: If you buy direct with Dr. Wheeler, but I think Mr. Rob-

ison made a proposition with Mr. Wheeler, the way I understand it, to buy horses and that he had the business.

Mr. Murphy: Who made the contract with Robison?

Mr. Thurman: Mr. Robison was in the office one day and Mr. McDonald told me to go to Robison, that he had five horses and to look them over and see if we could buy them. In that letter I think that they had prices of the horses and I went up there and bought the load I believe after the first load was shipped, I believe they were bought a little cheaper than the letter priced them. That started the contract with Mr. Robison. Mr. McDonald said he had rather deal with Mr. Robison and men of his standing. Lots of them, when you buy animals, some are sterile and you have to send them back.

Mr. Murphy: Do you know whether Mr. McDonald had ever made him a proposition?

Mr. Thurman: I don't think so.

Mr. Murphy: Did Mr. McDonald ever go up there with you?

Mr. Thurman: Yes we went up there to look at the load that went to the Dallas Fair. Mr. Robison came down here twice. That was the younger Mr. Robison.

Mr. Murphy: Did Mr. Robison ever pay you any money?

Mr. Thurman: I don't want to answer that.

Mr. Murphy: How many animals did you buy in Tennessee?

Mr. Thurman: I judge around 15 or 18.

Mr. Murphy: You bought all of them from Mr. Snell?

Mr. Thurman: Yes.

Mr. Murphy: Why was it that the price of animals in Tennessee was higher than in other states?

Mr. Thurman: Better grade.

Mr. Murphy: Did you find a scarcity in other states?

Mr. Thurman: Very much.

Mr. Murphy: Is it a fact that Mr. Snell bought some of the jacks in other states?

Mr. Thurman: Where he bought them I don't know.

Mr. Murphy: The trip to Kentucky did he buy any stock up there?

Mr. Thurman: No, sir.

Mr. Murphy: Mr. Finley was supposed to have had some animals to sell to the State?

Mr. Thurman: The last trip to Tennessee, I went to some little place out of Higginsville to look at a saddle horse and some jacks, on my way to Tennessee. I asked Mr. McDonald about seeing Mr. Finley and he said no not to deal with Mr. Finley any more. I did not go there.

Mr. Murphy: Do you know Mr. Michaeles at Kyle?

Mr. Thurman: Yes.

Mr. Murphy: Did you ever hear him say whether he knew Mr. Finley or not?

Mr. Thurman: Yes.

Mr. Murphy: Did he ever say anything about his character?

Mr. Thurman: I don't think so.

Mr. Murphy: You thought Mr. Finley was a fair average horse trader?

Mr. Thurman: He will skin you if he gets a chance. If he has them to sell and you don't buy them he gets mad at you.

Mr. Murphy: When you left over there didn't all the dealers in Missouri get more or less peeved that you did not come up there and buy any more?

Mr. Thurman: Yes.

Mr. Murphy: Did you know anything about Mr. McDonald being given two mares?

Mr. Thurman: Yes.

Mr. Murphy: How did you and Mr. Robison and Dr. Wheeler get the idea of getting the mares for Mr. McDonald?

Mr. Thurman: He spoke about wanting two mares when Mr. Robison was here and wanted to buy two and Mr. Robison made the suggestion that he should give him two mares—two that he had on his farm, and the mares were bought and given to him.

Mr. Murphy: How much did they cost?

Mr. Thurman: $400.

Mr. Murphy: Did you pay one-third of that cost?

Mr. Thurman: Yes.

Mr. Murphy: To your knowledge there never was anything said in the conversation with Mr. Robison and

Dr. Wheeler that you were talking about giving the mares to the boys?

Mr. Thurman: I did not know anything about that. He knew they were going to buy them.

Mr. Murphy: Did you hear that he fell in love with the boys

Mr. Thurman: I did not know about that. I read it in the paper.

Mr. Murphy: Did you know that these two mares were bred to the United States Grand Champion?

Mr. Thurman: No, I did not. Mr. Robison said they were. One of the mares wasn't even bred and the other one's colt didn't look like a grand champion's colt.

Mr. Murphy: What is the price charged for the stud fee on that United States Grand Champion?

Mr. Thurman: I believe it is $25 but I wouldn't say for sure.

Mr. Murphy: Were any transfer charges to be paid?

Mr. Thurman: I believe it was understood that Mr. McDonald pay the freight. They were brought down by Mr. Robison's son.

Mr. Murphy: Do you think Mr. McDonald knew that they were going to be given to him?

Mr. Thurman: I could not say.

Mr. Murphy: You never said anything to him that you were buying them for him?

Mr. Thurman: I mentioned over the phone one night after Mr. Robison showed me the two mares, that Mr. Robison had his mares and they were ready to go.

Mr. Murphy: What did he say?

Mr. Thurman: He said he was glad of it.

Mr. Murphy: He knew that he was not going to have to pay for them?

Mr. Thurman: I told him over the phone that they were going to be given to him.

Mr. Murphy: Were they pretty good mares?

Mr. Thurman: Pretty good mares.

Mr. Murphy: The $400 was only the actual figure of them?

Mr. Thurman: I would judge they would bring $250 apiece, market price.

Mr. Murphy: Do you know of any transfer charges and having pedigree brought up to date? Do you know how much the transfer is?

Mr. Thurman: Sometimes it is fifty cents and sometimes one dollar. According to ages.

Mr. Murphy: What did the registration fee cost on that?

Mr. Thurman: I would judge it would cost $5 to register them.

Mr. Murphy: Do you know of any transfer charge or registration charge that would cost $35?

Mr. Thurman: I don't think it would cost that much.

Mr. Murphy: So far as you know they would cost $250 apiece?

Mr. Thurman: Yes.

Mr. Murphy: How many trips did McDonald go with you on out of the State?

Mr. Thurman: Every trip was made in his car that was made with him.

Mr. Murphy: Did you drive it?

Mr. Thurman: Yes.

Mr. Murphy: You made a trip to Tennessee and Kansas?

Mr. Thurman: Yes.

Mr. Murphy: Did you make any other trip?

Mr. Thurman: I don't think we did.

Mr. Murphy: I just wanted to get it straight. You were with Jim Tate quite a bit, weren't you?

Mr. Thurman: I made several trips with him.

Mr. Murphy: Did you ever have any discussion with him as to who owned that truck?

Mr. Thurman: No I never. I knew.

Mr. Murphy: Who owned that truck?

Mr. Thurman: When it was first leased it was leased from McDonald's brother to the State, I guess.

Mr. Murphy: After that transaction was over who owned the truck?

Mr. Thurman: I heard it was transferred to Mr. Tate's name .

Mr. Murphy: Do you know whether or not Mr. Tate bought the truck?

Mr. Thurman: I could not say whether he bought it or not. I understood that it belonged to Tate but Tate said it did not belong to him. Mr. McDonald was the one that always bossed the truck."

Mr. Bradbury: Mr. Chairman, the State rests it's case.

Mr. Felts: Mr. Chairman, will the Committee give us about five minutes to consult.

The Chair: Will some member of the Committee make the motion to recess for five minutes.

Mr. Wells, of the Committee: Mr. Chairman, I make a motion that we recess for five minutes.

The Chair: Gentlemen, of the Committee, Mr. Wells, of the Committee moves that the Committee recess for five minutes.

Whereupon the Chair put the motion, declared it carried and declared a five minute recess. (At the conclusion of the recess.)

Mr. Felts: Is the Chair ready to proceed?

The Chair: Gentlemen, you may proceed.

Mr. Felts: We would like to have Representative Hunter recalled to the stand.

Mr. E. E. Hunter, being recalled by the Respondent, testified on recross examination as follows:

(Questions by Mr. Felts):

Q. Mr. Hunter, you testified yesterday afternoon, on the stand?

A. Yes, sir.

Q. You were Chairman of the Committee that investigated the Agricultural Department?

A. Yes, sir; I was.

Q. What other Representatives were on that Committee?

A. Mr. Good, Pat Dwyer, Mr. Westfall and C. C. Canon.

Q. Mr. Hunter, you testified yesterday about going up to the Capitol on a certain Monday night at which time you say you saw Mr. McDonald and his Secretary, Mrs. Young in the office, in the building at night?

A. Judge, I didn't say at the Capitol, I said at the Agricultural Commissioner's Office.

Q. I meant, at the Agricultural Commissioner's office, in the Land Office Building at the intersection of Brazos and Eleventh Street?

A. That's right.

Q. What time in the night was it when you went up there?

A. I think it was somewhere in the neighborhood of 8:30.

Q. Any way it was dark?

A. Yes, sir.

Q. I believe you testified that you saw Mr. McDonald and his Secretary get out of a car and go into the office?

A. That's right.

Q. Now, when you gained access to the office, what other persons were with you?

A. Well, Mr. West and Mr. Murphy and a Mr. Holland, and somecther man, I don't remember his name, I don't recall who the other man was—the other gentleman.

Q. That was the Monday night that you said that Mr. McDonald was destroying the records?

A. Yes, sir.

Q. Mr. Hunter, can you tell the Committee why you went to Mr. McDonald's office in the night time?

A. Well, I think Judge, I explained that when I was on the witness stand yesterday. I went up there because I had a suspicion that he was going to carry those records out.

Q. How long had you known Mr. McDonald?

A. Well, I had—say a year and half.

Q. Had you ever known, at that time, of Mr. McDonald ever destroying a State record?

A. No, sir; I didn't know but very little about Mr. McDonald.

Q. Then you had no facts upon which to base your suspicion that he would destroy the State records?

A. I think I made that clear when I stated that I had reasons to believe that he would probably carry some of the records out—as I considered important records out of that office.

Q. Now, Mr. Hunter, you told us you went up there and you found some records in the waste paper basket, and of course, acting in your official capacity, as Chairman of that Committee, you made an investigation to see what those records were. Now, can you tell this Committee, at this time, whether or not, there was any State record that was of any value to the State destroyed and put in that waste paper basket, at that time?

A. Judge, as I stated, I tried to be fair in this whole thing, and I have tried to keep myself in the clear, where I would not be criticised for taking undue advantage and it would be a question as to what was of im-

portance. Now, there were telegrams, as I considered to be records, anything that was signed by Mr. McDonald as Commissioner of Agriculture.

Q. Did you gather up the pieces of these telegrams to see what the contents were?

A. No, sir; I did in a general way, as I stated yesterday, I remember that there were some telegrams to—and some letters too. I don't remember, in fact I didn't want to have anything to do with those records.

Q. Don't you know, or couldn't you tell, at the time, Mr. Hunter, that those were copies of telegrams of which other copies were still left in the files?

A. No, sir, I don't know.

Q. Do you know whether or not that's a fact?

A. I know that it is not a fact.

Q. Mr. Hunter, didn't those telegrams that you said were destroyed, or were torn up and put in the waste paper basket, were those telegrams not telegrams addressed to Senator Bankhead or some other United States Senators?

A. I am sure that I don't remember Senator Bankhead, but I am sure that there were one or two telegrams that were addressed to some of the United States Senators.

Q. All right, Mr. Hunter, now, outside of these telegrams, what other records did you say were destroyed that night?

A. Judge, I think I have stated clearly, I didn't go through those things. I told you, yesterday, I think, that he was laying out the records he wanted to keep with the purpose of taking them home or somewhere else, and probably destroying those of a minor value.

Q. Mr. Hunter, do you know, that at the very time you went down there to visit Mr. McDonald's office, that a member of the House, Mr. Traylor Russell was holding an investigation up in Fort Worth, in regard to the milk situation?

A. Yes, sir; in connection with the monopolistic operation of the creameries, and I want to say right there, Judge, I want to say right there, that I am sure Mr. McDonald had no intention to go to Fort Worth.

Q. Mr. Hunter, at the time you went down there, you said it was about eight thirty o'clock?

A. Yes, sir.

Q. That was in June, wasn't it?

A. Yes, sir, I believe that was right.

Q. And the weather was warm?

A. Yes, sir.

Q. The windows were all up?

A. I could not tell you about that.

Q. The windows were not pulled down and the shades or blinds down?

A. The blinds were not down.

Q. Anybody passing could see in there and see anything going on?

A. Yes, sir.

Q. Mr. McDonald's desk is about three feet from the window; is that about right?

A. Probably, it is

Q. And apparently there was no effort made on the part of Mr. McDonald, in that office, to keep anything from being seen in that office?

A. No, sir; it was wide open.

Q. It was wide open. Don't you know that Mr. McDonald, at that time, was going up to Fort Worth, and wasn't you told that the files which his Secretary was laying out on the desk at that time, were files that he was taking up there in compliance to the request of Mr. Russell, to bring up there to that meeting?

A. No sir, I don't remember that ever being said to me.

Q. Now, Mr. Hunter, then you later found out that Mr. Russell was holding a meeting in Fort Worth, at that very time and that he was requesting that Mr. McDonald come up there and bring such records as he had which were pertaining to that Fort Worth situation?

A. No, sir, I have not.

Q. Then you went down there when you were going to move that office, you were down there, after that night, and when you came down to the office and what was said?

A. Well, Mr. Holland had the subpoena and we walked in there and he was ready to subpoena the records, and to serve it on Mr. McDonald.

Q. What did that subpoena state?

A. I don't remember. It subpoened the records.

Q. Well, what was the effect of it? Where was Mr. McDonald? What was done with it? What was done in regard to it?

A. Seems to me like it was just subpoening the records, the records of the Agricultural Commissioners Office.

Q. Well, what did you do there, at that time?

A. I didn't do anything. Mr. Holland, I believe it was, said he would stay there, and—

Q. Who was Mr. Holland?

A. Mr. Holland was a ranger.

Q. One of our Texas Rangers, wasn't he?

A. Yes, sir.

Q. And he was left there with the records?

A. Yes, sir.

Q. All right, you knew that Mr. McDonald was out of town the next day, don't you?

A. All I know was I read in the papers the next day that he was gone to Fort Worth, that's what I said.

Q. You knew he went over there, didn't you?

A. I am quite sure he went somewhere, but I don't know of my own knowledge.

Q. The Ranger was still in charge?

A. So far as I know, he was.

Q. You put him there and told him to stay?

A. Yes, sir.

Q. All right, then what happened Wednesday?

A. Well, let's see. Wednesday, I think an officer, or one of the auditors, I believe it was Mr. Murphy, got in touch with me and told me that Mr. McDonald had come up there and was over there with Senator Will Martin and Mr. Biffle and that he had—Mr. McDonald, had taken the records that they were looking at there and that they were going through them, examining them there.

Q. Were not these the same records that were laid out there the night you went up there?

A. No, sir; probably a part of them were.

Q. You went on over there, didn't you?

A. I went over there and I got up there about 2:30 that afternoon.

Q. Is that the time you took a Deputy Constable over there with you?

A. Yes, sir.

Q. Along about that time, Mr. Hunter, you went and got a truck and took it up at the curb for the purpose of removing all of the records, desks, files, filing cabinets and to carry out the effects of that office and place them somewhere else, didn't you?

A. I didn't back it up; I didn't even see the wagon.

Q. You had a truck to come over there to haul that stuff out?

A. Yes, sir. I 'phoned some transfer man and told him to bring his wagon over there.

Q. So at that time you took a Deputy Constable over there for the purpose of removing the entire Agricultural Department to some other office?

A. I gave him a subpoena for those records to be moved to the Committee Room.

Q. You gave him what you called a subpoena duces tecum?

A. Maybe so, I am not a lawyer, Judge, just wanted the records.

Q. Did you know, at that time, that a subpoena duces tecum could not reach the records, and nothing but a writ of attachment?

A. I was so advised, at that time, by Senator Martin.

Q. At that time, you got the Deputy Constable, and got your truck and went up there and at that time made a demand that Mr. McDonald surrender his desk and his filing cabinet and all his files and effects to let you move them over to the capitol?

A. Not his desk, just the filing cabinets.

Q. Didn't you say you would take the drawers out of his desk and leave him the desk?

A. No, sir, I didn't.

Q. You didn't demand his desk?

A. No, sir.

Q. But you were going to move out and take the filing cabinets?

A. That's what I intended to do.

Q. You intended to move considerable property, otherwise you would not have had a three ton truck?

A. Do you know it was a three ton truck?

Q. Might have been a two ton truck?

A. Do you know it was a two-ton truck?

Q. Might have been a one ton truck?

A. Might have been a one ton truck, I didn't see the truck myself, at all, no, sir.

Q. Now, Mr. Hunter, to be perfectly fair, and I know you want to be perfectly fair, do you have a thing in the world to base your conclusion on, a single fact, on which to base your suspicions that J. E. McDonald would destroy a public record of this State?

A. Judge, and I say, I was there, I didn't have any choice, so far as the facts were concerned, I was there and I was doing my duty to the people of Texas.

Mr. Felts: That's all.

Redirect Examination

(By Mr. Street):

Mr. Felts: Mr. Chairman, Mr. Traylor Russell, will be our next witness.

Mr. Davison: Mr. Chairman, we want to ask this gentleman some questions.

The Chair: All right, go right ahead.

Q. (By Mr. Street): Mr. Hunter, at the time you went over there on the evening that you testified about, who all were present?

A. You mean who went with me, or who was present in the office.

Q. Who all were present in the office?

A. Was that the evening I went to get the records?

Q. Yes, sir.

A. Judge, I don't know half the people over there, but in the back, in a huddle, was Senator Martin, Mr. Bethel, Mr. Good and Mr. McDonald and a whole bunch of employees that I did not know.

Q. Did you have any discussion of any kind with Senator Martin?

A. Yes, sir.

Q. What was the nature of that?

A. Well, Senator Martin just advised me that, as Mr. McDonald's attorney, that he wanted to tell me that I couldn't take the records off.

Q. I will ask you this, Mr. Hunter, in doing the things done by you, I mean all the things that you have testified about here, state whether or not you were acting as Chairman of that Committee to which you had been appointed?

A. I was.

Q. And whether in doing the things that you did do, you were acting in what you thought to be the best interests of the State; in other words, whether you thought you were just doing what you considered to be your duty?

A. Judge, I tried to do that. If there was ever a man in the world that tried to do his duty and be fair about it, I tried to do that very thing.

Q. That's all, I believe, Mr. Chairman.

Mr. Felts: That's all. We will have Mr. Traylor Russell now.

Mr. Traylor Russell, a witness on behalf of the Respondents, after having been duly sworn, testified as follows:

Direct Examination

(By Mr. Felts):

Q. Mr. Witness, is your name Traylor Russell?

A. Yes, sir.

Q. Are you a member of the House of Representatives?

A. Yes, sir.

Q. In June of this year, did you have occasion to be in Fort Worth in your official capacity to conduct some investigations or inquiries?

A. Yes, sir, I did.

Q. Do you know about what time in June that was?

A. The Committee of which I was Chairman, met in Fort Worth on the 18th, 19th and 20th of June.

Q. Did you have any understanding with Commissioner of Agriculture, Mr. J. E. McDonald, as to whether or not he would come to Fort Worth and bring certain records with him?

A. The Committee had that understanding with Mr. McDonald.

Q. And was it the desire of the Committee that Mr. McDonald come to Fort Worth and bring those records?

A. Yes, sir.

Q. And what day of the week was it that Mr. McDonald was supposed to be there?

A. Mr. McDonald was to be there on Wednesday, which I believe was the 19th.

Q. And he was to bring with him certain records that pertained to the work of the Committee of which you were then Chairman?

A. That's right, yes sir.

Q. We have no further questions. Wait a minute, one more question. Did Mr. McDonald come to Fort Worth?

A. No sir, he did not.

Q. Did the records get there?

A. Mr. Bassell came up and brought some.

Q. Did he bring the records or some of the records that you wanted?

A. Yes sir, he brought some of the information that the Committee wished.

Q. What did he state to you about how he got those records and why Mr. McDonald did not come?

A. Mr. Bassell stated that the McDonald Committee was meeting in Austin and that Mr. McDonald was unable to get away at that time, and that he came on up and brought the records..

Q. At whose request were those records brought to Fort Worth?

A. They were brought there at the request of the Committee.

Q. That's all.

Cross Examination

(By Mr. Street):

Q. Do you recall what day of the month that was?

A. No sir; I could look on the calendar and very easily tell you; it was on Wednesday; we met there on the 18th, 19th and 20th of June.

Q. Well, was it one of those days?

A. Mr. McDonald was to appear there, he and Mr. Bassell on the 19th, and that was on Wednesday, the 19th.

Q. I have a request here that's been submitted to the Committee for a question to be asked. Did you call Mr. McDonald to Fort Worth on the 7th of June?

A. On the 7th of June?

Q. Yes, sir.

A. No, sir, I was not in Fort Worth on the 7th of June.

Q. That's all.

Mr. Felts: Wait just a minute. I believe that's all, Mr. Russell.

Mr. Reed of Dallas: I would like to make a motion, Mr. Chairman, that the Committee as a Whole stand recessed until two o'clock this afternoon.

The Committee thereupon took recess until 2 p. m., Wednesday, November 20th, 1935, upon the motion of Mr. Reed of Dallas.

AFTERNOON SESSION

Wednesday, November 20, 1935

The Chair: The Committee will please be in order.

Mr. Felts: Mr. Chairman, we are ready to proceed.

The Chair: All right, proceed, gentlemen.

Mr. Felts: We will have Mr. McDonald on the stand.

J. E. McDonald, the respondent, was called in his own behalf and after having been duly sworn by the Chair, in answer to questions propounded, testified as follows:

Direct Examination

(By Mr. Felts):

Q. Mr. Witness, will you please state your name?

A. J. E. McDonald.

Q. Where do you live, Mr. McDonald?

A. 1401 Travis Boulevard, Austin, Texas.

Q. Is that your official residence?

A. That is my home residence.

Q. Where did you come from to Austin?

A. From Waxahachie, Ellis County, Texas.

Q. How old are you, Mr. McDonald?

A. I am fifty-four years old.

Q. How long have you lived in Texas?

A. Fifty-four years.

Q. You were born and raised in Texas?

A. I am a native Texan.

Q. Did your father and your mother live in Ellis County?

A. My father and mother lived in Limestone County.

Q. Came to Texas from Alabama, didn't they?

A. My father came from Alabama and married my mother who was a native of Limestone County, Texas.

Q. Mr. McDonald, are you married at this time?

A. I am.

Q. Other than your wife, do you have any other family?

A. I have two daughters, one of whom is Home Demonstration Agent of Bastrop County; I have one married who lives in Wichita Falls, and have one son, J. E. Jr., who is a student of the University and two other sons, Harold and Roy.

Q. What is the age of the boy in University?

A. Twenty-one years old.

Q. What are the ages of the two boys in the public schools of Austin?

A. Roy is eighteen and Harold sixteen today; this is his birthday.

Q. Mr. McDonald, are you the duly elected and qualified Commissioner of Agriculture of the State of Texas?

A. I am.

Q. How long have you been the Agricultural Commissioner for Texas?

A. I took the oath of office January 10, 1931.

Q. Are you now serving on your term as Commissioner?

A. I am.

Q. Mr. McDonald, you have been charged in eleven counts with violations of your duties as Agricultural Commissioner,—the Board of Managers and the Members of the Legislature sitting as a Committee of the Whole desires to know the facts. A great part of your testimony has been reproduced—

The Chair: (interrupting) Just a minute please; can you gentlemen hear?

A Number Voices: Louder please.

The Chair: All right, Judge Felts go ahead.

Q. You are now serving your third term as Commissioner of Agriculture?

A. Yes, sir.

Q. Mr. McDonald, you are charged in these eleven counts with having violated your duties as Commissioner of Agriculture, and while some of your testimony has been reproduced from Committee Hearings, not all of the subject matter of those articles have been covered. I will take these articles up one at a time, and touch upon such matters as have not been covered heretofore by testimony that has been read, and you will kindly answer as promptly as possible, but fully and tell all the facts as they actually exist with respect to each of these charges. The first count with which you are charged is having—is that of having paid your brother $315.00 of the State's money for the transportation of live stock and animals from other states to Texas and in Texas. I will ask you whether or not you have ever paid to your brother any money as compensation for his services?

A. I did not.

Q. You did pay to your brother this $315.00, or a $315.00; will you explain to the Committee what that $315.00 was for?

A. That may take a little explanation.

Q. Go right ahead with your explanation.

A. I will make it as brief as possible. I was charged under the law with buying stallions and jacks with the proceeds of racing funds and to distribute them to the farmers and ranchmen over Texas in order that the live stock of Texas might be improved. Now, this was a new program and I had to work it out to the best advantage. My first two car loads were purchased in Sedalia, Missouri and surrounding territory, and shipped by railroad to Austin and thereafter sent out over the State by hired trucks.

Q. Did you find transportation by railroad practical and advisable, and if not, state why not?

A. The shipping by railroad was not altogether satisfactory, because it necessitated the concentration of the animals at the shipping point and we had to have the expense of feeding where all were concentrated, and, then, partitions had to be built in the cars, strong partitions to keep the animals from getting together. Now, stallions and jacks will fight and they will kill one another if they get together. The animals were shipped by railroad to Austin and were put in a barn which had been used for many years as housing for animals.

Q. Was that the only available place you could get at that time in Austin?

A. Well, it was the only available place that we knew of, and, then even we had to do some repairs in order to make it habitable for our live stock.

Q. All right; how did the live stock fare while in the barn in Austin?

A. The animals while waiting in that barn to be trucked out to the different assignments contracted more or less disease, and we had a considerable number of sick animals.

Q. Did you later decide to try out another method of transportation and distribution of those animals?

A. After talking with people and observing the methods others had used in transporting animals I thought it was worth while to try trucking them from purchase point to the destination.

Q. In that case would it require any concentration either at the place in the State where you got the animals, or in Texas after you got home with them?

A. No, sir, the animals when purchased were picked up one right after another and when loaded complete they headed for Texas with two drivers driving night and day and made quick delivery to the assignments without any delay and without subjecting them to any disease which might be in the railroad yards or concentration points.

Q. All right; what did you do about trying out the other method of transporting those animals?

A. In order that we might have the trucking demonstrated, whether that would be practical or not, I thought it would be necessary to get a truck on which we could build five stalls; we wanted to haul five animals. My brother, A. E. McDonald, is in the trucking business, and I remembered that he had a truck with a shop made body, a large body, that it occurred to me would be a practical truck upon which to build the five stalls for this purpose.

Q. Did you request your brother to let you have his truck for that purpose?

A. I went to my brother, A. E. McDonald, and asked him if he would rent to the State of Texas that particular truck, and permit us to build the stalls on the truck, which necessitated the boring of many holes in the building of the partitions, and my brother said he would do anything he could to help me in my delivery.

Q. You did make the arrangements for the truck?

A. He offered me the truck.

Q. Did you at that time come to an agreement as to what the value of the truck would be, or the daily lease on the truck should be?

A. I asked my brother what amount he would want per day for the truck. I told him we would not use the truck every day, but wanted to hire it just such days as we needed it and used it, and he says, I don't know what it will be worth. What do you think it will be worth? I suggested fifteen dollars a day and night for the day and night it was used.

Q. You mean fifteen dollars per day and fifteen dollars for a night, or fifteen dollars for a day of twenty-four hours?

A. Fifteen dollars for the twenty-four hours.

Q. What were you to pay him, if anything, for the days the truck was not used?

A. He agreed that on the days we were not using this truck that he would expect no pay.

Q. Did you at that time know of any other place that you could hire a truck any cheaper than that?

A. I did not know where we could find a truck cheaper, nor did I know of any other party who would let me have a truck to demonstrate with, not knowing whether we would haul more than one load or not, and permit us to bore a sufficient number of holes in the body of the truck upon which to build five stalls.

Q. Now, you used that truck twenty-days, I believe, that is your testimony before the Committee?

A. I think we used it twenty-one days; I think that is correct.

Q. And paid fifteen dollars a day for those twenty-one days?

A. Yes, sir.

Q. Now, Mr. McDonald, you kept the truck longer than fifteen days; were there intervals between the deliveries that you were not using that truck?

A. There was a considerable number of days that we had the truck in our possession when it was not used and not paid for; I don't know the exact number.

Q. Did you pay lease money on the truck for any day that it was not used?

A. I paid no charges on the truck, or rental on the truck except on those days on which the truck was used.

Q. Now, did you later on decide to discontinue leasing this truck from your brother?

A. I did.

Q. Why and what occasioned the change in your attitude?

A. The question arose that perhaps the leasing of a truck from my brother was a matter that might subject me to criticism.

Q. Was that suggestion made by the Board of Control?

A. Mr. Teer, a Member of the Board of Control, whom I have implicit confidence in, and who I went to for advice, advised me so.

Q. At any rate you decided to discontinue the leasing of the truck; then, what was done?

A. I went over and talked it over with Mr. Teer, and I said, "I am very anxious, since we are right in the breeding season, and it is imperative that these animals get to the breeders as soon as possible, to use this truck, if some way can be arranged so that it can be used through this rush of the breeding season."

Q. All right, what was done about it?

A. Between Mr. Teer and myself. I suggested that if Mr. Tate should make a trade with my brother and buy the truck, that he might continue using the truck, but Mr. Teer told me, he says, "Frankly, it will have to be a bona fide trade," and he warned me that it must be a bona fide deal.

Q. Did you communicate with Mr. Tate and your brother about the matter?

A. I communicated with my brother.

Q. What did you tell him?

A. I said "Arthur, I can't use your truck any longer because Mr. Teer advises me that perhaps it would subject me to criticism and I will not use it any longer, but Mr. Teer and I agreed that if it were possible and you so desired you could sell the truck to Mr. Tate and Mr. Tate could continue using the truck and delivering the stock."

Q. Were you informed later that a deal had been made between your brother and Mr. Tate?

A. Yes, sir. A day or two later my brother said he had sold the truck to Mr. Tate on terms.

Q. He had sold it on terms?

A. Yes, sir.

Q. Did you inquire particularly as to the terms, the exact amount of payment?

A. No, sir, I did not.

Q. Did you later talk to Mr. Tate and make a contract with Mr. Tate?

A. Yes, sir. Later I talked with Mr. Tate and told him I wanted him to deliver this stock for me. I told him I thought he was not only a good truck man but that he knew live stock and I was very anxious to have him continue work.

Q. Was it necessary to have an experienced truck man as well as an experienced live stock man in order to properly handle those animals and get them to their destination without injury?

A. It is very important to have a man operating that truck who is also an experienced handler of livestock, especially jacks and stallions.

Q. Now, if this deal between your brother and Mr. Tate was not a bona fide deal did you know anything to the contrary or did you have anything come to your mind that would put you on inquiry as to the contrary?

A. No, sir. I made it very plain to Arthur that it might be a bona fide deal, and I have implicit confidence in my brother. I never suspicioned anything but what it was a bona fide deal.

Q. You entered into this deal with Mr. Tate for the transportation of these animals by truck, I believe you testified in your testimony before the Graves Committee at $45.00 per head. Now, that included all the cost of gathering this stock up in the other states and transporting them to Texas and distributing them to the assignments that you had made in Texas?

A. That contract that I made with Mr. Tate required that he pick up the animals in the States of Kansas, Missouri, Iowa, Nebraska, Tennessee and Kentucky at such points where they were purchased, concentrate them if necessary, feed and care for

them in transit, and deliver them to any point in Texas for which the assignment had been made.

Q. If he picked up a load of stallions in Nebraska and took them to Hidalgo County, Brownsville, or somewhere down there, he got the $25.00 per head, and if he took them to some place in the Panhandle he got the same thing?

A. Yes, sir.

Q. How did the expense of handling them that way compare with the expense of shipping them to concentration points in Texas,—first gathering them up and concentrating them and then shipping by rail to concentration points in Texas and then distributing them by truck in Texas?

A. The $25.00 that I offered him was about the same amount that I paid by freight and proved to be much more practical from every standpoint. Especially the transit was quicker and the animals fared better than being concentrated in stations.

Q. Is the Board of Control that is now buying animals using trucks for delivery?

A. After the Board of Control was given the purchasing of these animals, Mr. Teer suggested, or Mr. Wallace, that we buy a truck and equip it, which was done.

Q. Do you know approximately what it cost to buy and properly equip that truck.

A. My records would show, as I remember, about twenty-three or twenty-four hundred dollars. I may be wrong but the records will show.

Q. And that truck is being used at the present time for that purpose?

A. That truck is now en route to Iowa to bring to Texas five Stallions to be delivered in the Panhandle section.

Q. Mr. McDonald, did you personally, directly or indirectly, in any way profit a dime, or a nickel, or any other amount, from that contract between your brother and Mr. Tate?

A. I did not.

Q. Were you at that time acting in good faith and do you believe that that was a good contract for the State, a fair contract for the State?

A. At that time I believed it was a fair contract for the State and since I have made further observations I know it was an unusually good contract.

Q. Those two vouchers that were introduced in evidence represent the money paid your brother?

A. I think so.

Q. One hundred and fifty dollars and one hundred and sixty-five dollars respectively?

A. I think so.

Q. Did you at the time that you leased the truck from your brother for use by the State believe or have any suspicion that that was contrary to the nepotism law of Texas?

A. I did not.

Mr. Street: We object, Mr. Chairman. It may be a violent presumption but we are all presumed to know what the law is, and whether he did know or did not know would not be material to this question.

Mr. Felts: There is a word in these charges that Mr. McDonald "Wilfully" did these several things, among which is that he wilfully paid to his brother this money contrary to law. Now, the question that I asked bears upon the question of good faith and whether or not he wilfully violated the nepotism law of this State?

Mr. Street: The matter of good faith, as we see it, is absolutely immaterial. As I stated, we are all presumed to know what the law is, and ignorance of the law is no excuse, of course, as everybody knows.

The Chair: Anything further, Gentlemen?

Mr. Street: Nothing further.

The Chair: The Chair will overrule the objection.

Q. You may now answer the question as to whether or not you had any idea or knew at the time that you made this deal for this truck that you were violating the nepotism law.

A. I certainly did not. If I had I would not have made a contract with him.

Q. Now, we are going to pass from that charge. That testimony covers substantially charges one and two. We are going to pass to number 3 in which it is charged that you connived with,—I believe I will read that

charge, "Article 3. That the said J. E. McDonald, on divers occasions while acting in his official capacity as Commissioner of Agriculture for the State of Texas, has been guilty of gross negligence of duty in permitting his employee and agent, to-wit: W. D. Thurman, to accept commissions not authorized by law, and bribes, in violation of the laws of this State, in the sum of $1625.00, all of which was known to or could easily have been ascertained by the said J. E. McDonald." Do I understand that the Board of Managers has abandoned that count?

Mr. Street: We did not offer any testimony on it.

Q. I am going to ask just one question on that count. Mr. McDonald. Did you have any knowledge, or anything to put you upon inquiry as to whether or not Mr. Thurman was accepting commissions or bribes over in these states where he was buying stock for you?

A. I did not.

Q. So far as you know there has been no bribes or commissions paid him?

A. I know of no bribes or commissions being paid to Mr. Thurman.

Q. If such matter had come to your knowledge what would you have done about it?

A. I would have fired him so damn quick he wouldn't have known which way to get out of the house.

Q. Mr. McDonald, the next relates to another matter in which Mr. Thurman's name is used and alleges in substance that you corruptly, unlawfully, wilfully accepted a bribe from one W. D. Thurman, Dr. E. G. Wheeler and a fellow named Robison, in that you permitted him to give you two mares. Now, I am going to ask you to explain that to the Committee?

A. I did not accept two mares from anyone.

Q. Mr. McDonald, you are familiar with this charge that is made about the two mares. I am going to ask you to relate to the Committee just what happened about the two mares?

A. Mr. J. C. Robison of Tawanda, Kansas, who is reputed to be the largest breeder and dealer in Percherons in America gave my sons, J. E. and Roy McDonald each a brood mare.

Q. What was the value of these two mares, and each of them?

A. I think these two mares were worth about two hundred dollars or two hundred and twenty-five dollars for the two.

Q. Why do you say that the mares did not have any more value than that?

A. One of the mares was a four year old and when a colt a jack had bitten a plug out of her neck which did not hurt the animal as a brood mare but as a saleable animal it materially injured her.

Q. Was anything wrong with the other one?

A. The three year old mare was a nice mare apparently but she had failed to breed.

Q. The mares do not have a value at this time of two hundred and fifty dollars each?

A. My judgment is the mares today have a market value of one hundred to possibly one hundred and twenty-five dollars each.

Q. Mr. McDonald, prior to the time that these mares arrived—I guess I had better first ask you: How did they get to Texas? How did these mares get to Texas?

A. Mr. J. C. Robison sent these mares to my farm in Waxahachie in his own truck, driven by his own son.

Q. Prior to the time these mares arrived, did you know he was going to give them to the boys?

A. I did not.

Q. When was the first that you knew of their being there?

A. When my brother informed me —notified me that Mr. Robison had shipped to my farm two black mares for J. E. and Roy.

Q. Mr. McDonald, you heard in the hearing here this morning in reading the testimony of Mr. Thurman, that he said something about a conversation over the phone before the mares were sent. Did any such conversation occur between you and Mr. Thurman?

A. It did not.

Q. You knew Mr. Robison well?

A. Yes, sir.

Q. Had he visited Texas?

A. Yes, sir; he had visited Texas, and my son J. E. went with Mr. Tate

on a truck when he was going to Mr. Robison's place for a load—for a load of stallions, and went along to see the country, and they arrived late in the afternoon and they spent the night in Mr. Robison's home. My boy went along to be of what assistance he could to the truck driver, and to see the country.

Q. Did your boy, at the time he went there, with Mr. Tate to get this load of animals, did he draw any compensation, at any time, either directly or indirectly, any kind of compensation—any kind of employment of the State?

A. My son didn't draw any pay. He went as a boy to see the country and when along he would render such assistance as he could give the truck driver.

Q. You said Mr. Robison visited in Texas, did he visit any race tracks in Texas?

A. Mr. Robison visited the Dallas Race Track, and the San Antonio Race Track. I don't know whether he visited the other tracks or not.

Q. Mr. Robison is not the only dealer from which you buy animals, is he?

A. No, sir.

Q. Did you buy from quite a number of persons?

A. We did buy from quite a number.

Q. At the time, Mr. Robison gave your two boys these two animals, did Mr. Robison have any right to except or have any assurance from you, directly or indirectly, that he would receive any favors of any kind in return for these presents to the boys?

A. He had no assurance, and I know of no reasons why he had any right to expect any favors.

Q. If he had expected them, would he have got them?

A. No, sir.

Q. Mr. McDonald, have you bought from Mr. Robison, after that happened, any greater number of stock or animals than you bought before?

A. No, sir; I have only bought one load from him since that time.

Q. How many animals did that consist of?

A. I think, eighteen.

Q. Eighteen? Did you get those animals you bought from Mr. Robison for a reasonable price?

A. I bought them at a very reasonable price, for I bought them after the breeding season.

Q. How have those purchases been. Were they worth the price you paid for them?

A. They were worth the price—in fact I find they were worth considerable more money than I paid Mr. Robison.

Q. Is the price you paid Mr. Robison for the animals you got in that deal, in line with the prices you paid him before or for animals you got from other dealers before and since?

A. In this case they were possibly a little better because I bought them after the breeding season was over.

Q. This charge reads that these animals were given to you for the purpose of influencing your official action and that your official action was influenced thereby. Is there any way or manner in which your official conduct was—or your action either towards Mr. Robison or anybody else has been influenced by the giving of these two mares to your boys?

A. No, sir, and it could not.

Q. Mr. McDonald, do you know anything about how these mares were paid for, or how they handled that proposition over there?

A. I know nothing about it whatever.

Q. Did you afterwards send Mr. Robison a check to cover freight on those animals?

A. I did.

Q. What was it?

A. Seventy-five dollars.

Q. Was that about what was charged for care and transportation of animals to Texas, when you consider that they were loaded in one place and unloaded in one place—at the same place, in view of the fact?

A. About in line with what we were paying for the others.

Q. Now, Mr. McDonald, there is no Charge Number Five, but there is a Charge Number Six, and this Number Six deals with this jack and stallion fund that it is alleged that you carried in the bank here.

Mr. Felts: This article six reads as follows: "That the said J. E .McDonald acting in his official capacity as the Commissioner of Agriculture for the State of Texas, on divers occasions, from February 1st, 1934, to December 20th, 1934, did unlawfully knowingly and wilfully withhold and divert from the credit of the Special Racing Fund of the State Treasury of Texas, procreation fees amounting to $16,196.00 by depositing the same in a bank in the City of Austin, Travis County, Texas, and did make withdrawals from said deposits in the sum of $13,319.04, over the signature of the said J. E. McDonald; the said J. E. McDonald thereby withholding and diverting from the Special Racing Fund of the Treasury of the State of Texas, the sum of $16,196.00 in money, the said money then and there being a special fund belonging to the State of Texas, and being set apart by the law for specific purposes, to-wit: The available school fund, the jack and stallion fund the Department of Agriculture and the several counties of the State of Texas; all of which was done in violation of the laws of the State of Texas."

Q. Now, Mr. McDonald, I'll ask you to explain to the Committee just how this money for the use of these animals was collected and how it was handled and how it was deposited and your reasons for so doing?

Mr. Street: Just a minute, before you start on the answer, Mr. McDonald, I want to object to the last part of that question for the reason that it calls for a conclusion for him to give his reasons.

Mr. Felts: The reason becomes material because in all of these counts it is alleged that Mr. McDonald knowingly and wilfully violated the law and it becomes a question of intent, and the reasons for doing would indicate his intent in doing a thing.

The Chair: Mr. Reporter read the question again and let's see just what it says.

The Reporter here read the question again.

Mr. Street: I would just like to call the Chair's attention to this one thing. I think the Chair has really ruled on this question one time before, but if you are going to permit a man to give his reasons for doing something then you are just going to throw the gates wide open. In other words you are going to permit a man charged with murder to give his reasons and just throw the gates wide open for his reasons. We object on the grounds that it is not proper that he be permitted to give his reasons under the law, and surely improper to state why he did it.

The Chair: The Chair will state in answer that a man charged with murder the question of intent is always in it. The question of his intent is in it. If you charge a man ipso facto of violating the law, the question of intent is always in the case. The Chair respectfully over rules the objection.

Mr. Street: I think you misunderstood me. I think he should not be permitted to state that he didn't intend to violate the law.

Mr. Spears, The Chairman: What portion of it do you object to?

Mr. Street: The last portion of it, because it calls for the answer, as I understood it, that he didn't know what the law was, but I may have misunderstood it.

The Chair: Don't you think you misunderstood the question?

Mr. Street: I may have, and withdraw the objection, if I did. If I did, then I withdraw the objection.

Mr. Felts: Mr. McDonald, the Chair has ruled that you may now answer the question, do you remember it?

A. I do remember it.

Q. Then proceed to answer it?

A. The racing law provided that the Commissioner of Agriculture should charge a service fee for the State-owned jacks and stallions of not in excess of Five Dollars for the fold, which meant five dollars when the colt was born. Which is eleven months after breeding.

Mr. Felts: Alright, did you collect that money when the colt was born?

A. No, sir, I did not. We had, I believe one hundred sixty jacks and stallions and about the same number of care-takers and there were something like thirty-five hundred mares and my knowledge and experience with breeding convinced me that if the service fees were not charged until the colt was born, that the State—

Q. (By Mr. Felts): You mean collected?

A. Collected, thank you, but if not collected until the colt was born, I thought the State of Texas would suffer in the collection a material loss. Therefore, I ruled that the five dollar service charge should be collected at the time the mare was first served, with return privileges, and if the mare failed to stick, during the breeding season, that with an affidavit from the mare owner and the caretaker that the five dollars should be returned.

Q. In that way, were you enabled to make a hundred per cent collection?

A. Yes, sir; I believe we made a hundred per cent collection.

Q. All right; as that money came in, where did you put it?

A. As that money came in, I considered that in a manner a trust fund, subject to a refund in case the mare did not stick, and I put that money in the Jack and Stallion Account in the Austin National Bank in Austin, Texas.

Q. Did you put one dime or one penny of that money in your pocket?

A. I did not put one dime or one penny of that money in my pocket or to my account in the bank.

Q. All right, did you have certain requests for refunds?

A. We had a number of requests for refunds, which were paid out of this fund.

Q. All right, after the refunds were made, just explain to the Committee—they want to know the facts, what was done to the other part of the money.

A. Along in the Summer or early Fall, the funds from the race tracks in the Jack and Stallion Fund had been exhausted, and I used a part of those fees that were in the Jack and Stallion account in the Austin National Bank for paying the caretakers for feeding, and housing and caring for these animals.

Q. Did you have to pay those caretakers in order to keep them at work and to keep them caring for these animals?

A. We had a contract with those people to pay them monthly, and in many instances, the caretakers needed that money with which to buy feed for the animals.

Q. How much were you paying these caretakers per month?

A. We were paying those caretakers thirty dollars per month for housing, feeding, currying, watering and caring for the animals, and servicing the mares brought to the place.

Q. Did that include feed?

A. That included feed and attention.

Q. That was thirty dollars per month; now, were you to pay them thirty dollars per month the whole year round?

A. Yes, sir, we were.

Q. There is something in your testimony before the Graves Investigating Committee to the effect that a portion of the time, or during the off season you paid fifteen dollars in cash and permitted the retention of service fees not exceeding fifteen dollars, is that correct?

A. That is correct.

Q. Then suppose a caretaker of one of the animals, say in same portion of the off season should fail to collect any service fees for the animal, would that caretaker get his thirty dollars for that month?

A. He would not; and Judge Felts, perhaps it would be well for me to explain why I changed the method of paying the caretakers.

Q. All right, explain that fully.

A. As you know, this was a new program that had never been conducted by Texas or any other State, and I had to kinder feel my way. In 1934, we paid thirty dollars per month, and I was very anxious to encourage the breeding of mares throughout the season rather than just in the Spring as had been the custom. I observed in the breeding seasons in the North that they bred throughout the year, and in order to encourage that, and in order to encourage the caretakers to encourage breeding throughout the off breeding months, as they are generally known, I felt that to give them fifteen dollars per month cash and allow them to retain a maximum of three breeding fees of five dollars each would encourage and induce further breeding, which I thought was very necessary to build up as rapidly as possible the live stock of Texas.

Q. There were instances then in which the caretakers did not get as much as thirty dollars a month?

A. Under that contract, which became effective January 1st, 1935, if the caretaker bred no mares at all, he received only fifteen dollars compensation; if he bred one mare, he retained the five dollars, making twenty dollars; if he bred two mares during the current month, why he got twenty-five dollars for his services; and if he bred three mares, he got the thirty dollars, which was the maximum that he could be paid, and any other breeding in excess of that was remitted weekly to the Department of Agriculture and placed in the Jack and Stallion Fund.

Q. Was it your opinion then, and it is your opinion now, that that was a good contract for the State and made in the best interests of the State?

A. I do.

Q. And if you had it to do again, you would think it a wise policy for the State to do that same thing again, would you?

A. I think so. However, the question came up during the last legislative session that perhaps I didn't have the right to allow the caretaker to retain three breeding fees, and I changed the contract back to thirty dollars, which we first paid, in order that I would not be not following the law; it was suggested that that might be irregular, and I immediately made the change back to the thirty dollars, and since about the 1st of July, I believe it was, or maybe June, we have been paying the thirty dollars a month as we did the first year.

Q. Mr. McDonald, were you in good faith all of the time and thought you were acting for the best interests of the State, and the people of the State in so handling those animals and the method of collecting fees?

A. Yes, sir.

Q. Mr. McDonald, you have been audited, and audited, again and again; has any Auditor or anybody else ever claimed that you got away with or diverted to your own use, directly or indirectly, one dime or one penny of that fund?

A. No, sir, they never have.

Q. And you have not?

A. And I have not.

Q. Did the State of Texas and the taxpayers of the State of Texas, and the people of the State of Texas, get the benefit of every penny of that money?

A. They certainly did, and will, as long as I am Commissioner of Agriculture.

Q. After it was questioned that possibly this manner of handling the money in the bank had come to your attention, did you work out another method of handling it, and have you adopted another method of handling that money now?

A. Last Fall, a little over a year ago now, when C. L. West audited the Department, I talked with him about this jack and stallion fund being in the bank; I told him that I thought the Austin National Bank was perfectly safe, but I wished that there was some way that I could put the money in the State Treasury, and then check it out for these refunds, as I did from the bank, and Mr. West says: "It seems to me that there ought to be some way to set up a suspense account in the Treasury" and suggested or offered to see about it for me. Some two or three weeks later perhaps, Mr. West came back to my office one morning very much elated, and he says: "Mr. McDonald, I have talked with the Attorney General and I have talked with the Comptroller and the Treasurer, and have arranged a method by which you can open a suspense account for your jack and stallion fund." I immediately called Mr. Morris, my bookkeeper in to hear the explanation that Mr. West had given me, which I appreciated very much, and told Mr. Morris to go over to the Comptroller's office and the Treasurer's, and see if that was correct and if we could put the money in a suspense account and draw for refunds as we had in the bank. Mr. Morris went over and talked to the Comptroller or other officials. He returned to the office and says: "Mr. McDonald, Mr. West is correct; a suspense account can be opened up and you can make these refunds when needed." I says: "All right, Mr. Morris, you have some checks that have been sent in by the caretakers, which were given the caretakers by breeders for breeding fees that have been turned down on account of insufficient funds, etc; now, Mr. Morris, as soon as you can clear at the bank, get your accounts straight, draw a draft on the

Austin National Bank for the amount of our balance and bring it to me, and I will sign it and we will put the money in the State Treasury, as suggested by Mr. West."

Q. Was that done?

A. That was done as quick as those bank accounts could be straightened out and the checks that we had received and the account generally straightened up.

Q. Has that method been followed since that time?

A. Since that time, until they amended the law, providing that the Jack and Stallion Fund can be drawn on for refunds.

Mr. Street: Mr. Chairman, pardon the interruption, but there is an objection that we haven't raised heretofore; it seems to me that counsel is leading the witness quite a bit and we would like to raise that objection at this time.

The Chair: We will ask counsel to refrain from leading his witness.

Mr. Felts: It is not the intention of counsel to lead the witness, except on matters where I knew the explanation, in the interest of time. I have probably been slightly leading in some of my questions, but I will endeavor not to do it any more.

The Chair: Try not to do it again.

Q. (By Mr. Felts): All right, Mr. McDonald, was it your construction of the law, as you applied it to those funds, that you placed in the Austin National Bank, that you could use those funds for the purpose of paying caretakers as well as to take care of those people?

A. Yes, sir, I thought that since there were no other funds available, that certainly the service fees collected from the jack or stallion service could be used to feed and maintain that animal.

Q. Those were bills that had to be paid monthly, is that right?

A. Well, in my estimation, the State of Texas had made a contract with those caretakers to pay them, and I felt like that that contract ought to be complied with.

Mr. Street: The same objection as a minute ago, Mr. Chairman.

Q. (By Mr. Felts): Mr. McDonald, what would have happened to the animals if you had had no funds from which to pay those fees?

A. Well, in some instances, I would assume that the caretakers would have had insufficient money with which to buy feed, and the animals possibly would have had to have been moved or suffered for want of feed.

Q. Mr. McDonald, were you in good faith in doing everything you did in connection with this Jack and Stallion Fund?

A. Yes, sir.

Q. Have you faithfully or have you not accounted to the State of Texas for every penny of that money?

A. Every penny of that money has been accounted for.

Q. Has any Auditor ever told you, or suggested to you that you were short one penny in that fund?

A. No, sir, they never did, and, as far as I know, we were never short a penny.

Q. Now, Mr. McDonald, we are getting down to Article No. 7; that article reads as follows: "That the said J. E. McDonald while acting in his official capacity as Commissioner of Agriculture of the State of Texas, knowingly and wilfully distorted the records of the Department of Agriculture of the State of Texas, and comingled personal funds with public funds, and thereby was guilty of gross negligence of his official duties and incompetencies in the handling of public records and his official duties in office." Now, I believe the testimony introduced upon that count related to some animals that you bought over in these other states with funds that you had supplied personally or funds that you had arranged to be supplied by other persons. We will first take up this case where you and Mr. Fraze supplied $950.00, or $970.00 to buy some animals; will you please state how that came about and just why it was done?

A. When I went to Missouri with Harry Peterson, Purchasing Agent for the Board of Control to buy the first car load we went through Springfield, Missouri, and there looked at a very fine American Saddle Stallion. We proceeded on to Sedalia, Missouri and bought the two car loads; the distance from this stallion in Springfield was so great that we did not purchase him. After I came back to Texas I found a need for just such an animal, and I phoned Mr. Blackwell, I believe his initials

are W. B. Blackwell, the owner of the stallion at Springfield Missouri and purchased the stallion from him over the telephone, and I asked Mr. Blackwell if he thought he could get four more animals needed to make a load of five, and he said he thought we could and that he would be glad to help us. Mr. Thurman then was employed as purchasing agent. It was his first trip and I asked Mr. M. S. Fraze, who has had considerable experience with live stock, and who at that time was serving as Chief of the Weights and Measures Division to go with Mr. Thurman to Sedalia and purchase four more animals, making a load of five. Now, Mr. Blackwell drove around with Mr. Thurman and Mr. Fraze and assisted them for two or three days in looking for and examining several animals offered for sale by local owners, farmers; finally they agreed to purchase four more. Mr. Fraze had told me before that time that the farmers was going to want cash; that they did not want to invoice their animals to the State of Texas and await the return of the vouchers.

Q. How long did it generally require to get the money on those vouchers?

A. I don't know exactly, but I think it took something like two weeks from the time the owner of the animal, the seller of the animal in other States invoices the animals and get his warrant. It may take longer or more, but I think that two weeks is a conservative estimate.

Q. All right, go ahead and state what happened?

A. Now, I went down to the bank after Mr. Fraze stated that he would have to have the cash and borrowed the money from the Austin National Bank, $800.00, with which to buy those animals, but when Mr. Fraze bought the animal I believe they needed $950.00 and Mr. Fraze stated that he had that amount of money that he would be glad to loan to the State.

Q. Had Mr. Fraze come back to Austin in the meantime?

A. No, sir, he had not.

Q. I believe you are a little confused; explain the transaction at the Western Union?

A. I may be confused right now, Mr. Felts with another deal where we paid a thousand and fifteen dollars instead of the $970.00.

Q. I believe you are.

A. I believe I am now.

Q. Follow out this deal then of the $1015.00?

A. I confused that with the other deal. Now, Mr. Fraze told me that we would have to have the money, and he suggested that he would furnish the money and he either drew on his own account for a thousand dollars and furnished the fifteen dollars out of his pocket. I think that is the deal that was made when Mr. Fraze was there.

Q. Is that the Blackwell deal?

A. That is the Blackwell deal.

Q. Springfield, Missouri?

A. Springfield, Missouri.

Q. Now, did you buy those animals?

A. Yes, sir.

Q. And brought them to Texas?

A. Yes, sir.

Q. And was a voucher drawn to Mr. Fraze later on for those animals?

A. I am not sure whether the draft was in favor of Mr. Blackwell or Mr. Fraze.

Q. Anyway they were paid for?

A. A draft for $1015.00 for the animals was drawn.

Q. I want to ask you this question, Mr. McDonald, why were those animals not invoiced to the State of Texas in the regular way as was customary to do when you dealt with average dealers?

A. They bought the animals from farmers one at a time in order that the State might purchase those animals cheaper and the farmers were not accustomed to invoicing to Texas and they demanded the money when the animals were delivered.

Q. Did you get those animals as cheap or cheaper than you could have gotton them if you had bought them from established dealers who were accustomed to deal with the State?

A. I think Mr. Fraze and Mr. Thurman buying the animals in the method they did saved the State at least seventy-five dollars per head under what they would have had to pay established dealers.

Q. Mr. McDonald, was that transaction honest, open and above board in every particular?

A. Yes, sir, it was and the papers on our office will show every transaction.

Q. Now, Mr. McDonald, take the $850.00 or the $870.00 deal; will you explain that, $950.00 or $970.00, I believe it is?

A. Yes, sir, Mr. Thurman went back to Springfield, Missouri, and with Mr. Blackwell located another load of animals, and they wanted to pay for them in cash as they did in the first deal, and so I went down to the bank thinking that $800.00 would be a sufficient amount of money to carry the deal, and I found later that it took $950.00. I mentioned this to Mr. Fraze who was in the office—

Q. (interrupting) Had he meanwhile come back to Texas?

A. He had come back to Texas after the first load was purchased for which they paid $1015.00.

Q. Now, Mr. McDonald, with reference to—

Mr. Bradbury: (interrupting) We insist that counsel refrain from leading the witness.

The Chair: I ask counsel not to lead him.

Q. State when, if you know, that Mr. Fraze located the $950.00 load of animals?

A. Yes, sir, I borrowed $800.00—

Q. (interrupting) State when he located the animals,—you are not following my question.

A. Pardon me.

Q. He located the $950.00 animals?

A. That was the second load shipped from Springfield and on which occasion Mr. Fraze did not accompany Mr. Thurman, and Mr. Thurman wired me or phoned me, which ever it was, that he would need some money to pay for the animals.

Q. Who were those animals bought from?

A. Mr. Blackwell.

Q. From the same man?

A. Yes, sir, he helped get the animals together, assisted them in a very friendly and able manner.

Q. All right, state how the money was drawn?

A. I borrowed the $800.00 from the Austin National Bank, which was $150.00 less than was necessary. I mentioned to Mr. Fraze that I would have to have $150.00 and he said, "I will be glad to let you have it, I have it to spare." So we went down to the Western Union, and I gave the Western Union my check on the Austin National Bank for $800.00, which I had borrowed for this purpose, and Mr. Fraze gave them, either his check for $150.00 or the money, I don't remember which.

Q. Did you send the money anywhere?

A. The money was sent to Mr. Blackwell or Mr. Thurman at Springfield, Missouri.

Q. All right, what was then done?

A. The animals were bought and shipped to Texas and delivered to the caretakers, and Mr. Fraze invoiced them,—I believe the invoice will show that Mr. Blackwell invoiced them or Mr. Fraze one, for $970.00, which was twenty dollars more than the $950.00; I instructed that be done, because I wanted to take care of what the interest was at the bank and the incidental expenses, if any, in the transfer of the messages and so forth. When the $950.00—the draft then was cashed by Mr. Fraze, I think he wired the bank or Mr. Blackwell to instruct him to draw on the bank to pay him, or he sent it up there for his endorsement, I don't know which, anyway it was a proper endorsement and the draft was presented at the bank and the note was paid. Mr. Fraze went down and paid my note and took out his $150.00 and he brought me back, I think, $18.00, and said that that was the amount in excess of what it required to pay his funds and my note. He asked me what to do with it. I said give this money to Mr. Morris, our bookkeeper, and have him put it in the cash account, the petty cash or change of the Jack and Stallion Fund.

Q. Did you profit one penny by that deal personally?

A. I did not.

Q. Were those animals bought for the State of Texas at a reasonable price, and were they worth the money?

A. Those animals was bought cheap; they were bought cheaper than animals we have bought since. These two loads were bought, as I have just explained in Springfield, Missouri, and in my opinion are the cheapest two

loads we ever bought. However, since we were going to buy so many animals I thought it would be better to buy them from established breeders or dealers who were willing to invoice the animals rather than go through the method we had, and thereafter no animals were ever paid for in a like manner. The State, I think, had to pay more money for the animals, but it was more satisfactory to buy them from established breeders and dealers who were willing to invoice them straight to the State.

Q. Now, with reference to the Snell deal, let's take that up and explain that?

A. Well, in 1934 I was invited by the Commissioner of Agriculture of the State of Tennessee to make the opening address at the Tennessee State Fair. I went in my own car and Mr. Thurman went with me and Mr. McCaleb and Mr. Victor Eckhart a citizen of South Texas also went along with us. I made the opening address at the State Fair and I remained in Tennessee for four days, or five days and observed the breeding farms, and the stallions and jacks that were available, knowing that we would be in the market, and I was trying to get all the information I could as to their methods of handling and breeding animals. At the time I was there they had a very fine jack, four years old, I think the best jack in the United States. He was then the grand champion for jacks in the States of Missouri, Kansas, Iowa, Kentucky and Tennessee. I saw some other animals; a red jack who had the first prize of the curio class to put on exhibition at the Dallas State Fair so that the farmers and ranchmen could see the class of animals being bought with the racing funds, and so, having no funds in the jack and stallion account, but being intensely interested in the live stock improvement program, I got from Mr. Snell a price on those animals, I believe those five, perhaps for the sum of $3200.00. One of those animals was the grand champion jack for which I paid $1100.00; the next highest price was the grand champion two year old jack that I paid $750.00 for and the other animals I paid $500.-00 for, and I think one other stallion at $400.00, but the total price from Mr. Snell for the animals to be bought and exhibited at the Dallas Fair was $3225.00. Not having the funds and being so anxious to exhibit those stallions and jacks where the farmers and ranchmen of Texas could see them while visiting the Fair, I went down to the Republic National Bank in Dallas and told Mr. Fred Florence the president of the bank what I wanted to do; that I wanted to borrow $3300.00 to make this purchase, and Mr. Florence loaned me $3300.00. I then phoned Mr. Snell that I would take the animals for $3200.00 and send a truck for them, and the animals were sent to Dallas and exhibited there during the Fair.

Q. Tell how the money transaction was handled?

A. When the animals had been on exhibition and ready for assignment, then Mr. Snell billed the animals for $3225.00, the price that I had paid him. I may be a little inaccurate, but I will give it as correct as possible, but anyway the draft was drawn, and as I remember I wired Mr. Snell to wire the bank's endorsement upon the draft for $3200.00 so I might pay the $3225.00 note that I owed at the bank.

Q. Was that note $3225.00 or $3300.-00?

A. The amount I borrowed for this deal was $3300.00, but I only used of that fund $3225.00 in purchasing the animals. When that draft was cashed I paid the interest out of my own personal account, out of the remainder of that $3300.00.

Q. How much was the draft?

A. $3225.00. I believe that is right.

Q. Now, Mr. McDonald, were those animals that you bought worth the money?

A. Yes, sir.

Q. How do you know they were worth the money?

A. I know they were worth the money because of other comparative prices, and in one instance particularly,—the grand champion jack,—the same man I bought him from, who was a dealer as well as a breeder, offered me if the State would sell him, offered me fifteen hundred dollars in cash for the jack's return that I had given eleven hundred dollars for. I told him the State of Texas bought these jacks and stallions to serve Texas and they were not for sale.

Mr. Street: Pardon the interruption but I think the question has been answered and I see no point in going ahead with any further statement about it.

Mr. Felts: We are simply trying to get all the facts that are facts.

The Chair: The Chair has no desire to keep the facts from coming out.

Mr. Street: Neither do we. That is, any material facts, but we object to a lot of things that have nothing to do with the case.

The Chair: Is that already in the record?

Mr. Street: Yes, sir.

Mr. Felts: The witness is not a lawyer and in making his explanation sometimes he puts in a little bit of irrelevant matter. We think it is relevant in this case, however, very much so.

The Chair: Has the witness already answered the question?

Mr. Felts: Yes, sir.

The Chair: That is all right then.

Q. Have you ever had any other offers on those animals?

A. Mr. Snell, after I refused to sell at $1500.00, wrote and asked me if I would take $2000.00 for the jacks, but he didn't make a firm offer of $2000.-00. The $1500.00 was a firm offer.

Q. Was that transaction handled open and above board?

A. It was, and the papers will show every transaction.

Q. Did you personally benefit one dime or one penny out of that transaction?

A. I did not profit one penny but I did pay out of my own personal funds about sixteen or seventeen dollars interest on that money.

Q. Mr. McDonald, I wish you would tell the Committee about the transaction in which the one eyed jack was involved?

A. The one eyed jack was purchased on the first trip that we made with Harry Peterson, Purchasing Agent of the Board of Control of Texas. We bought at that time, as I remember, twenty-six or twenty-eight head. We saw some jacks offered for sale by Roberts Bros. in Missouri. They had four jacks for sale, three of which were of a quality we would buy. He wanted to sell the four jacks and I did not want the one eyed jack because he was rather aged and was one eyed. He finally, after dickering around on the price, offered to take nine hundred dollars for the four jacks or he would take $850.00 for the three jacks, making a difference of only $50.00 for cutting out the one eyed jack. Mr. Michaelis from Kyle, Hays County, Texas, accompanied me on that trip at my request because he is an experienced jack man and it was our first deal and I thought we needed his assistance. Mr. Michaelis said he had some jennets at Kyle, Texas, that he would like to breed to this one eyed jack because he had a quality that appealed to him, so he called me off and said "McDonald, I will give you two hundred dollars for that one eyed jack at Austin, Texas." Inasmuch as I had a firm offer of $200.00 for the jack and as he was costing the State of Texas only $50.00, because the three jacks had been offered at $850.00 or the four jacks at $900.00, I bought the four jacks and then and there promised Mr. Michaelis that he could have this one eyed jack at two hundred dollars. The jacks were shipped to Austin. Mr. Michaelis got the jack from the car and carried it to his ranch at Kyle, Hays County, and when I paid Mr. Michaelis for the four jacks I had bought from him at the sum of $1500.00 we gave him a check or warrant for $200.00, making the State of Texas a profit by that deal, a profit of $150.00.

Q. Mr. McDonald, I am confused myself about the $1500.00. I don't understand your testimony on that point and I am afraid the members of the Committee do not?

A. I beg your pardon. Possibly I didn't explain it as I should. Prior to our going to Missouri to buy this first carload, two carloads, I had purchased from Mr. Michaelis at Kyle, Texas, who is a breeder of jacks, four jacks for the sum of $1500.00, delivery to be made when requested. Then we went to Missouri the jacks had been purchased but had not been delivered. Therefore, when we were in Knob Noster, Missouri, looking at the four jacks, the State of Texas owed Mr. Michaelis $1500.00 for four jacks which I had purchased from him. Now, the jacks I bought at Knob Noster, Missouri, from Roberts Bros., four of them were priced at $900.00, or if I cut out the one eyed jack which I did not want the other three were $850.00. Mr. Michaelis, the man I owed $1500.00 for jacks purchased prior to going to Missouri, called me aside and said "Mr. McDonald, I would like to have that jack

and if you will ship him to Texas I will give you two hundred dollars for him. In other words, you pay me $1300.00 for the four jacks you bought from me before we left home instead of that $1500.00." Did I make that clear?

Q. I think that is clear now. Mr. McDonald, we are now going down to the next count. I believe it is Number 9, about this baby chick and cream and milk business. "That during the years 1934 and 1935, the said J. E. McDonald, while acting in his official capacity as Commissioner of Agriculture of the State of Texas, knowingly, wilfully and unlawfully used his official office to promote the interests of milk, cream, baby chick and rice organizations, and to collect fees from divers sources without authority of law, and did during all of such time make disbursements of said fees so collected, the same constituting a gross abuse of official authority and a violation of the laws of the State of Texas." Now, state about that to the Committee as briefly as you can?

A. I did not violate the law but I did assist in setting up a cream grading system in Texas, working in conjunction and co-operation with A. & M. College, Texas Tech and Mr. A. B. Tarwater, Chairman of the House Agriculture Committee, and the milk industry of the State as a whole.

Q. I will ask you this. Did these organizations you set up require money from the State Treasury or were they self supporting?

A. They did not require one penny from the State of Texas. They were organized and were self supporting.

Q. Did any money come into the State Treasury from any of these organizations?

A. It did not.

Q. Did any money go out of the State Treasury?

A. No, sir.

Q. Did you ever get any money from any of these organizations personally, or profit one penny in any way from the organization of these associations or organizations, whatever they happen to be?

A. I did not get one penny directly or indirectly from the setting up of this cream grading or baby chick association.

Q. Why were you doing it?

A. I was doing it because the statute of the State of Texas creating the Department of Agriculture and providing for a Commissioner said it was the duty of the Commissioner to do those things which would promote the industry of horticulture and dairying.

Q. Did you think at that time that these associations were good things?

A. I certainly did.

Q. Did they have a beneficial effect upon the industry?

A. Yes, sir, they certainly did.

Q. Now, Mr. McDonald, I am going to pass briefly to count No. 10 which is the count charging that you had transactions with Harriss & Voss, cotton brokers of New York, and Anderson & Clayton in Houston. I don't believe the Board of Managers introduced any evidence as to any transaction with Anderson & Clayton. I will not ask you any questions with reference to Anderson & Clayton except to ask you if you had any transactions with Anderson & Clayton?

A. Repeat the question, if you will.

Q. I will ask you to begin at the beginning. I will ask you to explain your transaction with Harriss & Voss, cotton brokers of New York.

A. I had some correspondence and some personal business with the firm of Harriss & Voss, of which Mr. Robert Harriss, a personal friend of mine and a native Texan, is the senior member.

Q. I will ask you who Robert Harriss is, and if you know, what he owns in Texas?

A. Mr. Robert Harriss was born in Dallas, Dallas County, and is a native Texan, who has in recent years been in the cotton brokerage business and the cotton spot business in New York, formerly known as Harriss, Irby & Voss, but now Harriss & Voss.

Q. Does he own any property in Texas?

A. He owns considerable farm property and compress property and I believe oil mill property in the State of Texas, Oklahoma and Louisiana, quite a bit.

Q. What were your transactions with Harriss & Voss?

A. May I ask that you ask me direct questions on that so that I can answer them?

Q. All right. I will ask you did you ever have any transaction with Harriss & Voss in which the interests of the State of Texas was directly or indirectly involved? That is, the funds of the State of Texas.

A. No, sir.

Q. I will ask you if Harriss & Voss ever got a penny of the taxpayers money of the State of Texas either directly or indirectly?

A. Not through my office.

Q. Did Harriss & Voss ever profit any directly or indirectly from the expenditure of any funds of the State of Texas under your direction?

A. Not that I know of. There were no funds paid out of my office to Harriss & Voss and therefore he could not have profited thereby.

Q. Was there any transaction in which Harriss & Voss was at one end of the transaction and the State of Texas at the other end of the transaction?

A. There was not.

Q. Mr. McDonald, there was some testimony read in the record and some telegrams, photostatic copies of telegrams read in the record that had to do with your relationship and transactions with Harriss & Voss. I will ask you if any of those transactions affected the State of Texas one way or the other, or if all of those letters and telegrams were in connection with your own private affairs in which the State's interest was not involved?

Mr. Bradbury: We again insist that counsel not lead the witness.

The Chair: I will ask counsel not to lead the witness.

Mr. Felts: I will withdraw the question and ask this question. Mr. McDonald, you have heard the telegrams and letters read in evidence. Do you remember them?

A. I do.

Q. To what did those telegrams and letters relate? Did they relate to the State's business or your business?

Mr. Bradbury: He is again leading the witness.

The Chair: I am going to ask counsel not to lead the witness. I agree with counsel representing the State that you did lead the witness and suggest the answer.

Mr. Felts: I beg the Chair's pardon.

The Chair: I don't think you intended to do it. Try not to do it.

Q. To what did the letters and telegrams that were read in evidence relate?

A. They relate in some instances with my personal dealings with Harriss & Voss in buying or selling cotton futures, which I did. I sold my spot cotton and bought some futures in order that I might divide the proceeds with my tenants, which was more satisfactory.

Q. Did those transactions relate to any other matter other than that?

A. Yes, sir, they did.

Q. State what it was.

A. Mr. Harriss is a man that is very much interested in the welfare of agriculture in the South, and I went to Washington a time or two at his suggestion which was in conformity with my judgment that I could render service, and a time or two, maybe twice or three times, Mr. Harriss paid my expenses to Washington. And whenever legislation was before the Congress Mr. Harriss suggested that telegrams be sent from prominent people in Texas regarding a loan of fifteen cents a pound on cotton would be beneficial to the agricultural interests of Texas, and suggested that he would be glad to reimburse me or the senders of the telegrams for any telegrams sent in behalf of that legislation. I had a considerable number of telegrams sent from prominent people of Texas who concurred in the opinion that a fifteen cent loan would be advantageous to the people of Texas, and when I sent Mr. Harriss a bill for those telegrams to reimburse the senders he sent me his check in payment of the bill.

Q. Did any portion of those transactions relate to the State's business?

A. I can't say that any of it related to the State's business, but I can say that in my opinion then, and my opinion now, that my efforts as Commissioner of Agriculture in behalf of agricultural legislation in Washington was a benefit to the farmers of Texas.

Q. Did it cost the State anything?

A. It did not cost the State of Texas one thin dime.

Q. Now, I am coming to the last charge. There has been considerable testimony introduced on Charge No. 11 which in substance charges that you destroyed certain records of the department of which you are the head. I am going to ask you if you have at any time destroyed any of the records of that department, or any of the necessary records of that department, and if so, what records?

A. I destroyed no records at no time.

Q. (By Mr. Felts): Do you remember the occasion when Mr. Hunter and some other gentlemen visited your office on a certain Monday night in June, in which it was claimed that you had destroyed some papers?

A. I do remember that occasion.

Q. All right, I will ask you what happened on that occasion; just state it very briefly.

A. As briefly as I can, I will tell you. Monday, at noon, the Auditors came and wanted to make, with Mr. Hunter —they came in the morning first and said they wanted to make a record, and I told them "fine," that I would be glad to cooperate with them as I had on the two former occasions. About noon, Mr. Hunter came with them, and I told them I would like to know just what they wanted. At noon, or in the afternoon, when Mr. Hunter came with them and said they wanted to go through the records and my personal papers in my desk, as well as all papers in the office, including some of my personal papers. I picked up the telephone and called up General McCraw, and I says: "Mr. Hunter and the Auditors are here wanting to go through, not only the records of the department, but all my personal mail and everything in my office, and in my desk there is some personal matter" and Mr. McCraw says: "Mr. McDonald, I don't know whether they have the right or not; I would have to look that up, but," he says, "have you any objection to them seeing your personal papers?" I says: "I have not." He says: "I think I would go ahead then and let them see the whole thing; if you withhold something, they may feel that you were not fair." And I told Mr. West and Mr. Murphy to go ahead and they proceeded that morning. We gave them every courtesy possible and every cooperation possible. That night, Mrs. Cora Young, who is my secretary, and I came to my office about eight o'clock or 8:30, at first dark in the summer time, for the purpose of going through the milk files and getting out such papers, correspondence or records as was necessary for me to carry with me in my brief case to Fort Worth for a milk meeting held by the House Committee there, which Mr. Traylor Russell was the chairman of. As we were there going through the records, with the windows wide open and a light as bright as day at my desk, which sits about three feet from the window, where any one from the outside can see everything that is going on, we had been there, I presume thirty minutes, or possibly forty-five minutes, and some one knocked on the railing on the outside, and said "open the door." I sent the night watchman to open the door, which is usually closed, I believe at nine o'clock, and in came, as I remember, Mr. Holland, and perhaps another Ranger, Mr. Hunter and Mr. West and Mr. Murphy. Mr. Holland read a subpoena that was written or signed by Mr. E. E. Hunter, Chairman of the House Investigating Committee, directing that the Ranger take charge of the records of the State Department of Agriculture. I says: "Fine, Mr. Ranger; I am glad to have you; I hope you will stay with us until Christmas." Those were my words. A few minutes later, Mrs. Young and I went on about our business, and when we got through, we left it with them. The next day—no, pardon me, the reason that I was there that Monday night and getting those records was because I wanted to attend the meeting of the committee at Fort Worth, as per the request of the committee.

Q. Now, what date was that committee to meet in Fort Worth?

A. That committee was to meet, and I promised to be with them on Wednesday, so I came down Monday in order to get my files and in my brief case place the files I needed, and I wanted to leave the next morning without coming to the office, because I have found that when I am going away and come to the office in the morning that way that I am generally delayed; and I had for Tuesday, enroute to Fort Worth, several contacts to make on official business, and that's the reason I was there getting my records, so that I would get an early start to Fort

Worth, contact the parties on official business, and be in Fort Worth Wednesday.

Q. What records did you destroy?

A. I destroyed no records. In going through the files, as I remember, we threw out, as I usually do, in going through the files, duplicate matters; I think that perhaps we found some telegrams that had been addressed to Members of the Congress, several copies, maybe more than two or three copies, and I threw out the extra copies, retaining only one, in order to clean out our files, and I may have thrown some other letters away that I thought was immaterial in the waste basket, that's my custom in going through my files to discard anything of that nature.

Q. Did you discard any of the office records?

A. I did not.

Q. All right, did you leave the next morning?

A. I left the next morning.

Q. Where did you go?

A. I started to Fort Worth to attend the meeting and I stopped in Hillsboro to greet Senator Will Martin, who is my Senator; I told Mr. Martin what had happened in my office about the Rangers coming in and taking charge, and he said—

Mr. Street: Mr. Chairman, pardon the interruption, but I fail to see where any conversation he may have had with Senator Martin—

Mr. Felts: We don't care anything about it, in view of the fact that that side of this transaction has been so thoroughly covered by Mr. Hunter. We now pass the witness.

Mr. McGregor: Wait just a minute.

Q. (By Mr. Felts): Mr. McDonald, I want to ask you one other question: do you hold any position, any honorary position or positions on any association of officials engaged in the same line of work—

Mr. Street: Mr. Chairman, we object to that as being irrelevant—

The Chair: Let him go ahead and answer the question.

Mr. Bradbury: We would like to have the question restated and completed before the witness answers; restate your question, please, Mr. Felts.

Q. (By Mr. Felts): I will ask you, Mr. McDonald, if you hold any office of any association of Agricultural Commissioners of the United States?

A. Last week at the National convention of the Commissioners of Agriculture of the United States, I was elected Vice-President of that organization.

Q. Were you in attendance upon the meeting of that organization?

A. No, sir, because of this hearing, I could not attend that meeting, as I had desired.

Q. It doesn't pay any salary, does it?

A. The Vice-Presidency of the National Association of Commissioners of Agriculture pays no salary; it is an honor that is conferred.

Q. Do you draw any other compensation or salary from any other source other than your salary as Commissioner of Agriculture?

A. I draw no salary from any other source, except that of the Commissioner of Agriculture.

Q. Have you during the years of 1934 and 1935, or at any other time received from the State of Texas, directly or indirectly, any fees or compensation or other remuneration, other than your official salary?

A. Not one penny.

Q. That's all; we pass the witness.

Mr. Bradbury: Mr. Chairman—

The Chair: Just a second, Mr. Bradbury—

Mr. Bradbury: We would like to move that we stand at ease for about fifteen minutes.

The Chair: The motion has been made that the Committee as a Whole, stand at ease for about fifteen minutes; is there any objection? The Chair hears none, and the motion prevails.

Thereupon the Committee as a Whole stood at ease for about fifteen minutes.

The Chair: The Committee will please be in order. Are you ready, Mr. Street?

Mr. Street: Yes, sir.

The Chair: Let's have a little order now, please.

Mr. Street: Are you ready, Mr. Chairman?

The Chair: Yes, sir, let's proceed.

Cross Examination

(By Mr. Street):

Q. Mr. McDonald, will you tell us to the best of your recollection as to when this program of buying jacks and stallions for the State of Texas began?

A. I think we made our first purchase about the 1st of February.

Q. Of what year?

A. Of 1934, I believe.

Q. And you continued that program down to the present time?

A. Yes, sir.

Q. As I understand it, when you made the first purchase of jacks and stallions, you had them shipped to Texas by rail, is that correct?

A. That is correct.

Q. How many loads did you ship down here by rail?

A. I think we shipped possibly four loads by rail.

Q. What was the average cost of shipping those animals down here by rail?

A. I couldn't tell you the exact cost; our records will show the cost of shipping by rail.

Q. Could you tell us approximately the cost of shipping them by rail?

A. I cannot. I would have to refer to the records to be accurate.

Q. I will ask you if it isn't a fact, Mr. McDonald, that the average cost of shipping animals down to Texas by rail from the various States where you bought them, wasn't around fifteen and sixteen dollars, and that when you shipped them in what's known as Palace cars or Pullman cars, whichever term applies?

A. I think that that is not so very accurate, and I wouldn't want to trust my memory; the records are in the Department.

Q. Mr. McDonald, you testified before the Hunter Committee investigating this matter, did you not?

A. I did.

Q. And I will ask you if it is not a fact that in the course of your testimony before that Committee, this question was asked you: "Did it ever occur to you that forty-five dollars per head would be pretty high for the transportation of jacks and stallions into Texas" and did you give the answer: "no sir, it was not high."

A. It is my recollection that that was my answer, or something similar to that.

Q. Then, weren't you asked this question: "What would it cost by Palace car?" and didn't you give the answer "about eighteen dollars per head?"

A. I think perhaps around eighteen to twenty dollars by Palace car, shipping from the point of concentration to the concentration point in Texas, was approximately correct.

Q. But when you started shipping them by truck, you found it necessary, as I understood it, to pay forty-five dollars per head?

A. That is correct.

Q. Now, as I understood your testimony a while ago, Mr. McDonald, you stated that when you first started shipping these animals to Texas by truck that you hired your brother's truck at the rate of fifteen dollars per day?

A. That is correct.

Q. And who drove that truck?

A. I think the first load, or perhaps the first two loads was driven by a negro named Pete Williams.

Q. And after that, who drove the truck?

A. Jim Tate.

Q. Who is Jim Tate? Is that the same man that testified here on yesterday?

A. Yes, sir.

Q. How long have you known Jim Tate?

A. Well, I would say fifteen or eighteen years perhaps.

Q. He works for your brother, does he not?

A. He has worked for my brother something like six, eight or ten years.

Q. And is working for him now, isn't he?

A. I believe that's correct.

Q. How much did you pay Jim Tate for driving that truck, when he started driving it?

A. Well, I paid him a hundred dollars per month. I think that when I testified before the Graves Committee, I told them five dollars per day, which was my judgment, and I found out by looking at the records that it was a hundred dollars per month instead of the five dollars.

Q. You paid Jim Tate a hundred dollars a month to drive this truck, which belonged to your brother?

A. That is right.

Q. And you paid your brother at the rate of fifteen dollars a day?

A. That is right.

Q. As I understood your testimony a while ago, you testified that you used your brother's truck twenty-one days?

A. That is right.

Q. Is that all that you used your brother's truck?

A. I think that the records would show that that is correct.

Q. And you testified that you paid him $315.00 total, for the use of his truck?

A. I believe that twenty-one days at fifteen dollars a day would be $315.00.

Q. Now then, did you ever put in a bill, or did your brother ever put in a bill for any additional compensation, in addition to that $315.00?

A. I think not.

Q. I will ask you if it isn't a fact that your brother put in another bill for $180.00 for the use of his truck, and wasn't that bill turned down by the Comptroller's Department?

A. Yes, sir, I believe that that is correct.

Q. Now then, Mr. McDonald, in hauling these animals ard paying the various parties that did the work, out of which fund did you pay their compensation?

A. Out of the Jack and Stallion Fund, I presume.

Q. Well, what do you mean by the "Jack and Stallion Fund"?

A. That portion of the proceeds from the racing tax, which was set apart by the Comptroller and the Treasurer for the purchase and caring for jacks and stallions.

Q. All right, now let's understand about that, Mr. McDonald; you have testified about setting up an account down here in one of the banks in Austin under your name, that is, your official name, as head of the Department of Agriculture?

A. No, sir, I did not.

Q. Well, possibly I misunderstood you; tell us about that.

A. The funds were deposited in the Austin National Bank to the account of the State Jack and Stallion Fund, and not my account.

Q. Well, what I am getting at is, you set up a bank account down there in the Austin National Bank?

A. That is correct.

Q. That you called the Jack and Stallion Fund, or the State Jack and Stallion Fund?

A. That is correct.

Q. Now then, did the Comptroller have a Jack and Stallion Fund, or rather the State Treasurer, did he have a Jack and Stallion Fund?

A. The State Treasurer had a State Jack and Stallion Fund that was created from the proceeds of the racing tax.

Q. Yes, sir; now then, the point I am getting at is: did you pay the transportation charges for these animals out of the fund which you placed down in the Austin National Bank, or was that paid out of the funds which was in the State Treasury, known as the State Jack and Stallion Fund?

A. I would have to refer to my records to see which fund it came out of, one or the other.

Q. Well, Mr. McDonald, I would appreciate it, if you have got those records, if you would refer to them, and tell us about it.

A. I do not have those records here. You, I believe, insructed other members of my department to bring those, and they have them in their possession, according to your instructions or the committee's instructions.

Q. Maybe we can get at it in this manner: were those people who hauled these animals down here paid by check on that bank account down there, or were they paid by warrant on the State Treasurer?

A. I couldn't say that. I imagine some of it was paid out of each fund. My recollection now is that it was paid out of the treasury, out of the State Jack and Stallion Fund, but that may be incorrect.

Q. Well, who wrote the checks on that fund down there in the bank?

A. I wrote the checks on the fund in the bank.

Q. Are you able to tell us whether or not you wrote all the checks for

transportation charges on that fund down there in the bank?

A. I could not say positively; my recollection is that I possibly did write some checks on that fund for transportation charges. My records would show that. I am just presenting my recollection now.

Q. I find you stated a while ago, and I want to be sure I understood you to tell us that there was a bill put in by your brother's truck for an additional one hundred and eighty dollars?

A. I think that is correct. I think that is before it was called to my attention that it was my brother's truck and that possibly it would subject me to criticism—that I would be subject to criticism for using my brother's truck, but I don't recall accurately.

Q. Do you tell us—or did you tell us when that happened?

A. I did not. The records will show, Mr. Street, please, sir.

Q. I'll ask you then to explain, Mr. McDonald,—as I understand this one hundred eighty dollars was turned down by the Comptroller?

A. Possibly that's correct. I don't recall now just exactly what happened.

Q. Now, would you be able to tell how it happened that on the 27th day of December, 1934, there was a check issued to Jim Tate in exactly the sum of one hundred eighty dollars?

A. I could not. I expect my bookkeeper could explain that.

Q. I believe you stated a while ago, Mr. McDonald—I'll just ask you this question: What did this forty-five dollars per day that you were to pay to Jim Tate for transporting these animals down to Texas—what was that to cover—what did it cover?

Mr. McDonald: Mr. Street, I think you didn't ask me the question you wanted to. You asked me forty-five dollars a day, and I think you meant to ask forty-five dollars per head.

Q. You are correct, Mr. McDonald. Forty-five dollars per animal?

A. State your question again, please.

Q. What all did the forty-five dollars per animal that you paid Jim Tate for hauling the animals down there cover—what all was there to be done for or in exchange for that forty-five dollars per animal?

A. He was to go to the States of Oklahoma, Missouri, Kansas, Iowa, Nebraska, Kentucky and Tennessee and pick up such animals that had been purchased; concentrate them at a central point, until he could get them ready, and then to deliver them safely where they had been ordered in Texas.

Q. Did he do that on every occasion, Mr. McDonald?

A. Yes, sir, he did, with the exception of sometimes we were making exchanges and we used a little trailer. Sometimes there was a animal that we would purchase and we would pick up the animal and we would make an exchange of it. He did that with the exception of exchanges.

Q. Do you have any idea how many animals were handled at forty-five dollars per head?

A. I could not say. The records will show.

Q. Have you any idea?

A. I could not say. I would rather refer you to the records. The records will show.

Q. Give us some amount. Guess at it.

A. Mr. Street, the records are available, and I would not want to make a guess.

Q. We would like to have those records, Mr. McDonald.

Mr. Felts: Make a guess at it.

Mr. McDonald: To make a guess —let me see—I would say somewheres from ninety to one hundred twenty, perhaps.

Q. Somewhere from ninety to one hundred twenty?

A. That would be my guess.

Q. Now, then, out of that number, how many were hauled by Jim Tate, approximately, after the contract was made with Jim Tate to haul?

A. After that trade of forty-five dollars per head, so far as I know, he has hauled them all.

Q. Since that trade of forty-five dollars per head, he has hauled all the jacks?

A. And stallions.

Q. And so far as you know, did he deliver all of those to the caretaker where they were placed?

A. Yes, sir; with the exception that in some instances, we had a trailer we used behind a Ford car in making an exchange and that would facilitate deliveries, and that occurred in two instances, and in other instances I think it was used in making an exchange and when the State would be better served by the exchange.

Q. I'll ask you if on numerous occasions some other persons were paid to deliver these animals to some points in Texas where they were placed with caretakers?

A. I have no rememberance of it; possibly in some instances however.

Q. Possibly I can refresh your memory on it. I'll ask you, if you recall the occasion of the twenty-eight of March, 1934, that the Merchants Transportation Company was paid $16.03 freight for hauling an animal from Austin to Hallettsville?

A. I think that was done—that was delivering out of the first two cars—the first two carloads we shipped into Austin on the railroad before they went in my brother's truck. That was out of the first two carloads.

Q. You say that was before you rented your brother's truck?

A. I think that's correct.

Q. How do you account for that—it was on the 28th day of February, 1934, which was just exactly one month earlier than that you paid to your brother, A. E. McDonald, one hundred dollars for deliveries in seventeen counties.

A. Possibly in delivering that first load my brother had delivered some animals out of the cars. We had two carloads of animals we delivered from Halletsville to Amarillo in Potter County, and it is possible that we were using both trucks. My memory is not clear on that.

Q. At any rate, you did hire your brother's truck, in February, 1934, any way?

A. I don't know—the record will show.

Q. If the records show an item of one hundred fifty dollars on that date, that would be correct?

A. Why, I would think so.

Q. Then one month later you gave to the Merchants Transport or Transportation Company, it is abbreviated here, $16.03 for freight on one animal from Austin to Hallettsville; if that is true, then Jim Tate didn't haul that animal?

A. No, sir. At that time we had a truck employed, rented or leased for the State and Tate and Williams were working for the State as truckers. We used either of the conveyances for getting the animals and it is possible that they were both working at the same time. During the time my brother's truck was leased, other trucks would carry a load in another direction, perhaps.

Q. Now, Mr. McDonald, I'll ask you, if you understood that Jim Tate was to haul these animals down here and to deliver them for forty-five dollars a head, is that right?

A. That's correct.

Q. Can you explain why, on the 15th day of April, 1934, there was a charge of one hundred five dollars to Jim Tate for delivery of animals to Taylor County, Coryell County, Hamilton County and other counties?

A. I presume that's for delivery of animals, from cars.

Q. Have you not told us that he was to deliver for forty-five dollars per head?

A. Mr. Street, I will give you to the best of my memory.

Q. Then explain it?

A. I think that was some animals that was shipped in here by train. I think those animals came in here by palace car—two carloads were, and then Mr. Tate was hired to deliver those animals at fifteen dollars a piece to Coryell County, Hamilton County and the counties where they went. That's my memory.

Q. How long did you keep those animals?

A. We got them out just as soon as we could get trucks and trucked them out without delay, provided the animals were not sick. Sometimes we held the animals a few days to see if they didn't develop shipping fever, but ordinarily we got them out as soon as possible.

Q. I'll ask you why, on April 25, 1935, there is a charge to Jim Tate—there is a charge that says to "Counties" "c-o-u-n-t-i-e-s"—where no county is named?

A. I presume that some of these animals that came in over palace car

from Iowa and that Jim Tate was employed to deliver them from Austin into the counties into which they were distributed.

Q. You are presuming that?

A. That's my memory.

Q. How many animals were shipped in here in that fashion?

A. In that palace car there were eighteen head of stallions.

Q. On the twenty-sixth day of April —can you tell why there was a charge of two hundred twenty-five dollars—that was freight from Higginsville to Austin—that's part of the forty-five dollars is it not?

A. I presume it is.

Mr. Street: Alright —

Q. Then, can you tell why on the same day, that is, the 26th day of April, 1934, there is a charge of $70.00 to Jim Tate for hauling animals to counties?

A. Well, Tate hauled several loads of these animals to counties in Texas from Austin to their assigned counties; there was eighteen head, and I would have to look at the books.

Q. Can you give us any explanation, Mr. McDonald, as to how Jim Tate—how many times would forty-five go into two hundred twenty-five,—five; can you explain how Jim Tate could haul five animals from Higginsville, Missouri, to Austin, Texas, on the 26th day of April, 1934, and on the same day deliver the animals to other counties in Texas in addition to hauling those animals?

A. No, I cannot, but I presume my bookkeeper could tell you, Mr. Street, I can't keep that in my memory, but I know that at the time I was getting them distributed as rapidly as possible and as cheaply as possible. At the time Mr. Tate had the contract he also hauled animals to wherever they were delivered in Texas to the counties.

Q. Can you tell us why on the 14th day of May, 1934, there is a charge of $160.00 to Jim Tate for hauling animals from Austin to county locations?

A. The same explanation I gave you.

Q. Mr. McDonald, did I understand you to say that those jacks and stallions were, either or both, shipped down from Iowa and held over a period of two or three months?

A. They were not.

Q. What is your explanation as to that charge of that date?

A. Mr. Street, I am sorry my memory doesn't tell me just what it was, but I do know that it was correct at the time.

Q. Can you explain, Mr. McDonald, how on the 23rd day of May, 1934, there is a charge of $225.00 to Jim Tate for hauling animals from apparently, it is dim here, but from Tawanda, Kansas to Austin, Texas, and on the same date a charge of $60.00 to Jim Tate for hauling animals from Fort Worth to Austin and Sommerville?

A. Well, Tate brought, as well as I remember it, a load from Tawanda, Kansas, and at the same time we bought from Ross Brothers some jacks, and I presume, it is my memory, that he was paid for hauling the jacks from Ross Brothers, from whatever county it was at a price of $45.00 per head. Mr. Street, I will say, if you will pardon me, that as it was the breeding season, we were doing everything we could to get the jacks and stallions to the people of Texas because we had very many urgent applications.

Q. I am just trying to find out about the expenditures?

A. I thank you.

Q. Can you tell us why, on the same day, the 23rd of May, 1934, in addition to hauling animals from Tawanda, Kansas, to Austin and Fort Worth, and from Fort Worth to Austin and Sommerville that there is a charge in favor of Jim Tate for $80.00 for hauling animals from Austin to county location?

A. My memory doesn't recall that, Mr. Street, and I am sorry.

Q. If that is a fact, then, can you explain how that happened?

A. I presume that the books and bookkeeper could explain that to you. I will say this, Mr. Street, that I saw to all of that delivery personally and was getting the delivery made as cheap to the State of Texas as I possibly could and as quickly as possible in order to get the animals out in the breeding season and I did my best.

Q. Well, who all was doing hauling, Mr. McDonald?

A. At that time?

Q. Yes.

A. Well, Mr. Tate did the majority of the hauling, but at times why, we found it necessary to hire others with a truck to carry an animal to a certain place to make quick delivery.

Q. Did anybody else haul animals down here from Kansas and other States during that time?

A. I think Mr. Robison perhaps sent or brought a load down, but Mr. Robison never distributed the animals. He brought the animals from Tawanda, Kansas, either to Fort Worth, Waxahachie or Austin.

Q. How many were there in that load or two loads, whichever it was?

A. I think Mr. Robison hauled five, the same number that we did; he may have hauled more or less.

A Voice: Mr. Chairman, there is a lot of noise.

The Chair: Members of the Committee, the Chair will ask you to give just a little better attention and let's have just a little better order please.

Q. During the period of time we are talking about, Mr. McDonald, how many animals were shipped into Texas from other States, hauled into Texas from other States other than those hauled by Jim Tate?

A. Mr. Street, I don't remember; I presume the books would give all of that information, if Mr. Morris was gotten to dig it out.

Q. I understood you to say that you were keeping up with this situation?

A. Yes, sir, I did, Mr. Street.

Q. And you don't have any idea how many animals were hauled down here except the ones hauled by Jim Tate?

A. I was watching at that time the delivery of these animals and my memory doesn't recall just who hauled them and at what expense, all of the details.

Q. But in order to keep up with that, you had to know how many animals were being hauled?

A. I did at that time; knew exactly what was done.

Q. But you don't have any idea now?

A. It has been more than a year and a half ago and my memory doesn't recall it; I am sorry.

Q. Mr. McDonald, as I understand it, it became necessary on a number of occasions for you to hire other people to deliver those animals that were brought down here, is that true?

A. That is true, on various occasions.

Q. Then Jim Tate was not fulfilling his contract?

A. He did fulfill his contract, yes, sir.

Q. If he hauled those animals down here and got forty-five dollars per animal and you had to get somebody else to deliver them after they were brought to the concentration point, then he was not fulfilling his contract?

A. Yes, he was.

Q. How was that?

A. Well, we shipped about four car loads in and we were exchanging animals. We had assigned some animals out and had exchanged them from place to place. There was a situation when we wanted to send a certain jack or stallion to a certain location and then for some reason we would want to send it to another location to exchange for a stallion or a jack. It was the breeding season and at the time we were getting one hundred seventy animals from other States and getting them scattered over Texas as large as it is.

Q. When was it that you shipped those four car loads down by rail?

A. Shipped the latter part of January two car loads from Sedalia, Missouri, and then, as I recall, we shipped later one car load from Fairfield, Iowa.

Q. When was that?

A. Well, I think that was some time in May, if I am not mistaken.

Q. Then, you weren't using your trucking system altogether for hauling the animals?

A. No, sir, we used one—I know that one car load came by palace car from Fairfield, Iowa, and were distributed here.

Q. When did those animals arrive from Fairfield, Iowa?

A. My memory does not recall that.

Q. Do you have any idea?

A. My belief is it was possibly in May.

Q. And when were they delivered?

A. They were delivered at various times; I would say within the next two weeks.

Q. How long have you known Jim Tate, Mr. McDonald?

A. I think I have known Jim Tate some fifteen, and possibly eighteen years.

Q. And I believe you said he has been working for your brother up there for some six, seven or eight years?

A. That is correct.

Q. And still working for him?

A. Yes, he is.

Q. Are you acquainted with Jim Tate's financial condition?

A. Fairly well, yes, sir.

Q. What is that condition?

A. Jim Tate is a laboring man with a right smart family and he has to struggle to get by.

A Voice: What is the matter with the Sergeant-at-Arms; why can't he keep order in here?

The Chair: Now, Members of the Committee, a strict enforcement of the rule was called for some time ago and I ask the Sergeant-at-Arms to please make the members get to their desks and seats, and let us have a little better order.

Q. In other words, Jim Tate hasn't got a dollar to put it in common every day language?

A. Well, I wouldn't say that he doesn't have a dollar, but he is a poor man, a honest man.

Q. You testified that after you had paid this $315.00 to your brother for the use of this truck in delivering the animals you found out that that was in violation of the law, that you might be criticized for it or something, and then you decided to sell your brother's truck to Jim Tate, is that right?

A. It was suggested to my brother by me that if he could sell the truck to Mr. Tate and it would be a bona fide deal that we could continue to deliver the animals in that truck using Jim Tate and the truck.

Q. And you knew about Jim Tate's condition at that time?

A. His financial condition?

Q. Yes, sir?

A. I didn't know it exactly, but knew he was a poor man.

Q. You knew that he had been working for your brother for wages, didn't you?

A. Yes, sir, I did.

Q. And what kind of a truck was that?

A. I couldn't tell you the name of the truck; it was a shop made trailer, I know that.

Q. Well, you have seen the truck, haven't you?

A. Yes, sir, I have seen the truck.

Q. Have you any idea about what its value is?

A. I couldn't say; I am a very poor judge of what second hand trailers or cars are worth.

Q. You did know, didn't you, that Jim Tate couldn't pay for that truck to save his life?

A. I had an idea that Mr. Tate could not pay for it cash, but when my brother told me that he had sold the truck to Jim Tate on terms I was very happy, because Mr. Tate is a poor man struggling to make a living and is a good truck driver, and with this contract I felt like working on it that he would not only be able to pay it out, but perhaps give his family things they never had.

Q. Would you say that approximately eleven or twelve hundred dollars was a fair value for that truck?

Mr. Frazer: In view of the fact that this hearing will probably be drawn out until morning I am going to move that we stand at recess until tomorrow morning at ten o'clock.

The Chair: Gentlemen, a motion has been made—

Mr. Quinn: I think it is about time that we got down to night sessions and I make a motion that we recess and come back here at eight o'clock and try to finish this hearing.

(Numerous and sundry cries of no.)

Mr. Jones: I wonder if in the cross-examination we couldn't get to some place where there would be a natural break in the cross-examination, maybe when he has concluded the first count, or the one on which he is now cross-examining the witness, and then recess.

The Chair: Of course, the Chair has no option unless the motion is withdrawn. Now, the gentleman from Robertson moves that the Committee of the Whole stand recessed until nine thirty o'clock tomorrow morning. The question comes now on the substitute motion first to recess until eight o'clock tonight. The

motion to recess to eight p. m., was defeated, whereupon the motion to recess until nine thirty a. m., Thursday, November 21, 1935, was carried

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FIFTEENTH DAY

(Continued)

(Thursday, November 21, 1935)

IN THE COMMITTEE OF THE WHOLE HOUSE

(Mr. Spears in the Chair.)

PROCEEDINGS

Of the House of Representatives of the State of Texas, as a Committee of the Whole, to hear charges against J. E. McDonald, Commissioner of Agriculture.

Thursday, November 21, 1935

The Chair: The Committee will please be in order. Let's proceed, Gentlemen.

Mr. Harris of Dallas:

The Chair: The Chair recognizes Mr. Harris of Dallas.

Mr. Harris of Dallas: Mr. Chairman, and Members of the Committee of the Whole, I think that it is time for this Committee to cast aside the hearing at this time and to investigate something else that has happened around here that is clearly at this time and has been for sometime in violation of the rules of this House. I think that some time ago that the Speaker ruled that any sort of literature that was placed upon a member's desk should be signed or such literature should be taken up. I am not trying to make any point as to anybody that might have placed such literature upon the member's desks. I say this in fairness to both sides; that counsel for Mr. McDonald and my colleagues representing the Board of Managers are my close friends. I know that counsel for the State are not a party to this thing, and wouldn't have had it happen for anything in the world. Likewise, I think, that this Committee of the Whole should be fair to anybody that we investigate as a Committee of the Whole, but when I came to my desk this morning I found literature like this upon my desk unsigned, yet printed or published by some publisher in the State of Texas, and I say to you Members that it is not, that this is not fair to this defendant, or to anybody that we might have on trial here for any undertaking that he is charged in representing the State in any capacity. Now, I have spoken to one or two of the Board of Managers, and to be frank with you they have said that they thought it was a disgrace and shouldn't be allowed. I would like for the Sergeant-at-Arms—I don't know whether one got on Brother Westfall's desk or not, but it was on my desk here at eight-thirty, and I would like for the Sergeant-at-Arms to take such literature up, or else have them sign their names and come up and tell us who did it.

Mr. Hardin: Will you yield?

Mr. Harris of Dallas: Yes, sir, I will yield.

Mr. Hardin: Will you answer to this House how many of them received them; ask the Members how many of them found them lying on their desk this morning.

Mr. Harris of Dallas: I cannot answer for any Member of the House, but can answer for desk No. 105.

Mr. Hardin: You are charging that these things were circulated and yet you don't know whether they were laid on the desks of the Members.

Mr. Harris of Dallas: I don't think that they walked up and were laid on my desk, Mr. Hardin.

The Chair: Gentlemen, let's proceed; call your witness.

Mr. Bradbury: Let's get some order in here before we proceed.

The Chair: All right, Gentlemen, let's have a little better order; the strict rule has been called for heretofore, and let's have a little order. The Sergeant-at-Arms will please have a little order. Let's have a little order and proceed.

J. E. McDonald resumed the stand, and in answer to questions propounded, testified as follows:

Cross-Examination (Continued)

(By Mr. Street):

Q. Mr. McDonald, when we recessed yesterday afternoon, I believe I was asking you something about the truck that you originally hired or leased from your brother for the transportation of jacks and stallions, and this truck was later, according to your tes-

timony transferred over to Jim Tate. Do you know what kind of a truck that was?

A. My recollection is that it was a Chevrolet; it may have been a Ford. I wouldn't be positive, or could have been some other brand. My opinion is that it was either a Ford or a Chevrolet; it might have been an International or GMC.

Q. Do you have any idea what the value of that truck was?

A. I can't say, but with the body, shop made body, my judgment would be somewhere between a thousand and fifteen hundred dollars; however, I am a very poor judge of values of second hand automobiles and trucks.

Q. Now, you testified that you talked with Mr. Claude Teer down in the Board of Control with reference to the transferring of this truck, and Mr. Teer told you that it would have to be a bona fide transfer, didn't you?

A. Yes, sir, I told Mr. Teer that we were right at the rush of the delivery and would like to find some way to continue using the truck considering the expense that we had gone to in equipping it and that I wanted Mr. Tate because he had proven a good man on the job.

Q. Now, in spite of the fact that Mr. Teer told you that it would have to be a bona fide and open and above board transaction, as I understood your testimony yesterday, you made no further investigation when you were told that the truck had been transferred?

A. Well, I was told by my brother and Jim Tate that the truck had been sold to Mr. Tate, and sold on terms such as Mr. Tate could handle the truck, and having implicit confidence in my brother as you have in yours, I didn't make any further investigation.

Q. As a matter of fact, did you not know that Jim Tate could not pay for that truck?

A. I did not. I was very happy when I learned that the truck had been sold to Mr. Tate, a poor laboring man on terms by which he might pay for it, thereby giving him and his family a better living than they had, because Mr. Tate has a wife who is sick and he has lots of doctor bills.

Q. But you did not make any investigation whatsoever to determine what the nature of that transaction was?

A. I did not.

Q. You didn't see whether or not a bill of sale had been placed on record with the Tax Collector of Ellis County, as is required by law?

A. Naturally I didn't when my brother told me that it was bona fide.

Q. You asked your brother and he told you that the truck had been sold?

A. He and Mr. Tate told me that.

Q. You didn't ask anything about the terms?

A. No, sir, I did not; only my brother said that he had sold it to him on terms such as that he could pay for it.

Q. Do you have any idea how much profit Jim Tate made out of these various trips?

A. No, sir, I couldn't tell you.

Q. Do you have any idea as to how much Jim Tate paid, whether he paid anything on that truck, anything at all or not?

A. I have no knowledge of that whatever.

Q. You made no investigation of that?

A. No, sir, I made no investigation; I am kept busy in the Department over there.

Q. And that in spite of the fact that you had been told that this transaction had to be open and above board and bona fide?

A. Yes, sir.

Q. Now, Mr. McDonald, I believe this is in evidence but I want to ask if it isn't; isn't it a fact, that you have used some point in Waxahachie, Texas, as a concentration point for animals shipped into the State?

A. That is true.

Q. When did you start doing that?

A. I couldn't give you the date, but it was sometime in '34.

Q. Do you have a barn, something of that kind up there where you put those animals?

A. Yes, sir, a barn there that is equipped and that was never used for animals and was very desirable for this purpose.

Q. Who owned that place?

A. That place belongs to A. E. McDonald and is rented to W. H. Smith.

Q. That place belongs to your brother, A. E. McDonald?

A. That is correct.

Q. And it is rented, as I understood you to say to W. H. Smith, the father-in-law of A. E. McDonald?

A. Mr. Smith had an arrangement to use that.

Q. I didn't quite understand you?

A. Mr. Smith had some arrangement with my brother.

Q. Mr. Smith, as I understand, is the father-in-law of your brother?

A. That is correct.

Q. How much do you pay Mr. Smith for his services up there in taking care of these animals?

A. I think that we paid him a dollar a day for part of the time, and, I think, some of the time we bought the feed and paid Mr. Smith, I think it was two or three dollars a day.

Q. How long has your brother owned this place?

A. I would say six or eight years, possibly longer.

Q. Mr. McDonald, when you entered into the contract with Jim Tate for the transportation of those animals, did you enter into a written contract?

A. Well, I made Jim Tate a price of forty-five dollars per head for going to the various States, concentrating, feeding in route and delivering the animals and he accepted and wrote me a letter, I believe that there was no contract other than the letter evidencing it.

Q. Do you have that letter?

A. We have the letter, yes, sir, in the file if you will ask some of my employees to bring it forward. Mr. Street, I think you have a photostatic copy of that letter, and if you do, as far as I am concerned, it will answer as well as the original.

Q. Now, at the time you entered into this contract with your brother when you leased his truck for the transportation of these animals before the transfer was made to Jim Tate, what kind of a contract did you have with him?

A. Just a verbal contract that I would pay him so many dollars a day for the use of the truck day and night.

Q. Before you entered into that contract, did you secure the approval of the Board of Control of this State for entering into such a contract?

A. I did not because the law at that time did not require it.

Q. Don't you know, Mr. McDonald, that the law requires the approval of the Board of Control of all of such contracts?

A. I think you are incorrect.

Q. At any rate you did not talk with or secure the approval of the Board of Control for the entering into of that contract?

A. I did not.

Q. Did you get the approval of the Board of Control on the contract that you entered into with Jim Tate?

A. I did not, because the law did not require it at that time. If you will examine the law you will find that the Commissioner of Agriculture is charged with the delivery of his animals.

Q. The Commissioner of Agriculture is also charged with the duty of approving other expenditures of his department, is he not?

A. State your question, please?

Q. I say the Commissioner of Agriculture is also charged with the duty of approving other expenditures of his department, is he not?

A. Yes, sir.

Q. And doesn't the Board of Control have to approve those also?

A. I think that is correct.

Q. Mr. McDonald, I asked you yesterday afternoon about a matter of a claim of $180.00 which your brother put in for the use of his truck and which was turned down by the Comptroller's Department?

A. Yes, sir, you asked me about that.

Q. You recall that?

A. Yes, sir.

Q. And I also asked you about an expenditure of $180.00 to Jim Tate that was made out of the Jack and Stallion Fund which you had on deposit in the Austin National Bank?

A. Yes, sir.

Q. Now, have you investigated your records or made any other kind of investigation to find out the facts with reference to that matter?

A. I did not. I asked Mr. Morris to find out that.

Q. Do you remember anything about the transaction at all, Mr. McDonald?

A. I don't recall it. Mr. Morris, the bookkeeper, ordinarily makes out the account and brings them to my desk and I asked him "Have you checked them over correctly and rechecked them" and he generally tells me yes, and then I sign them. I have a lot of things and I don't know exactly about everyone of them. Perhaps I should.

Q. Then you don't know whether or not as a matter of fact that $180.00 went to Jim Tate or whether your brother got the benefit of it?

A. I couldn't say. If the warrant was made to Mr. Tate I presume Mr. Tate got the money. Perhaps he assigned it to my brother as payment on the truck. I don't know.

Q. Did you ever make any investigation to determine that?

A. No, sir, I did not. I had no occasion to.

Q. Do you know how many jacks and stallions that Jim Tate hauled into the State of Texas?

A. The record will show. I do not recall. I am sorry.

Q. Do you have any idea how many?

A. You mean all told?

Q. I mean all told, yes, sir. I understood you to say yesterday that you kept in close touch with those things.

A. I would have to refer to the records, but I would say, all told, somewhere from ninety to one hundred and ten, perhaps one hundred and twenty.

Q. Do you know how many jacks and stallions were brought into the State of Texas all together by all persons?

A. I think to date we have purchased and assigned to the farmers and ranchmen in Texas two hundred and twenty-eight head, and with the exception of, I would say, twelve or fifteen, they were bought outside of the State.

Q. I want to ask you a little more about Jim Tate. Does he still have a contract to haul animals in the State?

A. He does not.

Q. When did you cease to do that work?

A. I would have to refresh my memory.

Q. Do you have something to refresh your memory by there?

A. I would have to see the book.

Q. Can you give us some idea, Mr. McDonald, about when he ceased to work for the State?

A. Sometime in 1935. I do not recall exactly.

Q. Sometime in 1935. Was it the early part of 1935?

A. I think perhaps it might have been in May or June. I would not be positive.

Q. I didn't quite understand your last answer, Mr. McDonald?

A. I think Mr. Tate ceased hauling sometime in May, June or July. That may be incorrect. I would have to refer to the record to see exactly what date.

Q. Do you know whether or not that was about the same time that he went up to Dallas and traded the old truck in on a new truck and made the purchase of a new truck in the name of your brother, A. E. McDonald?

A. I knew nothing about the trade of the old truck in on the new truck until Mr. Tate came before the Graves Committee. That was my first knowledge there had been a change in the truck.

Q. One other thing in regard to this leasing or hiring of your brother's truck. I understood you to say, Mr. McDonald, that you had to make some changes and rebuild a bed, or something, to that effect, build in some partitions in the bed of that truck. Is that right?

A. That is correct. The truck, when I hired it from my brother, had a big shop made body on it that I thought was desirable for hauling stallions and jacks and I got permission from my brother to bore holes in that body sufficient to build five stalls, and those stalls were built with material purchased by the Department of Agriculture and by one of our mechanics.

Q. It is a fact there are lots of trucks in Texas?

A. There is a considerable number of trucks in Texas.

Q. And by that I mean there are thousands of trucks in Texas, are there not?

A. Yes, sir.

Q. Now then, out of all that number of trucks that you knew to exist in Texas, how many other people did you talk to with reference to the hiring of a truck?

A. Will you allow me to make a statement, Mr. Street, of facts? It will be right on the question, please, sir?

Q. I would like for you to answer the question?

A. Frankly I did not because didn't—

Q. Just a minute. I don't want to be rude but I want to know whether you did, or not?

A. I did not, Mr. Street.

Q. All right.

A. May I make one statement and if it does not meet with your approval I will strike it from the record?

Q. Go ahead.

A. I will say in that regard that after the Board of Control began buying jacks and stallions Mr. Harry Peterson, the purchasing agent for the Board of Control, tried to hire a truck equipped to haul jacks and stallions and didn't find one in or around Austin and went to Fort Worth, a live stock center, and he failed to find a truck there that he could hire and telephoned me back that he couldn't find a truck equipped for hauling these jacks and stallions. Now, Mr. Street, further answering your question, may I make another statement and if it does not meet with your approval I will have it stricken from the record? It bears directly on the question you asked me.

Q. Go ahead.

A. In my opinion, in my observation, there was not a truck in Texas at that time that I hired my brother's that was equipped for hauling jacks and stallions, with partitions to keep them separated.

Q. And neither was your brother's until you placed the equipment on there, was it Mr. McDonald?

A. That is true.

Q. Since you were on the stand yesterday afternoon, Mr. McDonald,—you remember that I asked you where you paid the transportation charges for all these animals, that is, did you pay them out of warrants on the State Treasury or whether they were paid out of this Jack and Stallion Fund you placed down in the Austin National Bank?

A. I did not look that up, but my recollection is that as long as the fund in the Jack and Stallion account, as long as there were funds in that account, that is where the deliveries were paid. In the summer when the fund was exhausted in the Jack and Stallion account, my recollection is I did pay for some of that out of the breeding fees in the Austin National Bank.

Q. What part of it did you pay out of those breeding fees?

A. I beg your pardon, I don't catch the question.

Q. What part of the transportation charges did you pay out of the breeding fees? That is, how much did you pay?

A. I couldn't tell you. I would have to refer to the record. I am sorry.

Q. Have you referred to the record and made an investigation about that since yesterday afternoon?

A. I haven't had the time.

Q. And you can't tell us anything about it?

A. The records of the Department will show that very clearly, Mr. Street, and I would be very glad to have the records brought forward.

Q. Now, I want to ask you something about these two mares, Mr. McDonald. First of all, how old are your two sons to whom you said these mares were given?

A. I believe J. E. now is twenty-one and Roy is eighteen or nineteen.

Q. How old were they at the time you say these mares were given to them?

A. That was about July, 1934. It would be about fifteen months ago, or sixteen months.

Q. And at that time both of your sons were under age? I mean by that, they were minors, under the age of twenty-one?

A. That is true, I believe.

Q. What kind of mares were those?

A. They were Percheron mares, two black three year old Percheron mares.

Q. Where are those mares now?

A. They are on my farm, my homestead, at Waxahachie, Texas.

Q. You are using them up there on your farm?

A. Yes, sir, they are working.

Q. Yes. And they have been there on your farm during all the time

since they were given to your sons, have they not?

A. They have been there on the farm continuously with the exception of, I think, possibly thirty days that they were on my brother's farm.

Q. And with that exception they have been used there on your farm?

A. That is true.

Q. Working for your benefit?

A. Working for the benefit of my family, yes.

Q. You are the head of your family, are you not, Mr. McDonald? Legally, at least?

A. Legally, at least. Legally I am the head, and in actual fact I am.

Q. Now, then, Mr. McDonald, did you approve of this gift to your sons?

A. Yes, sir, I had no objection to it whatever.

Q. You thought it was the proper thing to do?

A. Yes, sir, I had no objection to it whatever.

Q. Now then, these mares were donated by Mr. J. C. Robison, is that correct?

A. That is correct, as far as I know.

Q. Where does he live?

A. Mr. Robison lives on his breeding ranch in Tawanda, Kansas, or near Tawanda, Kansas.

Q. Now, how many jacks and stallions, Mr. McDonald, have you bought from Mr. J. C. Robison?

A. All told I would say somewhere between fifty and seventy.

Q. In other words, out of the total number of jacks and stallions that you have bought, approximately one-fourth or one-third have been bought from J. C. Robison, is that right?

A. I think that is approximately correct.

Q. The same man that made the present of these two mares to your sons?

A. That is correct.

Q. When those two mares came down there did you make any effort to send them back?

A. I did not.

Q. In fact, I believe you stated yesterday afternoon that you sent your personal check to pay for the freight on the mares for sending them down here?

A. When Mr. Robison gave my boys those mares and sent them down here I wrote him a letter thanking him for sending the animals to my boys and sent him a check and asked him to allow me to at least pay the freight on them if he was kind enough to give the boys the mares, I wanted to pay the freight on them.

Q. And you kept on buying jacks and stallions from Mr. Robison after that, didn't you?

A. We bought one load from him since that time.

Q. How many times had Mr. Robison seen your son, Mr. McDonald?

A. Mr. Robison saw him—my oldest son on the night he spent with him in his home in Tawanda, Kansas, and then he has been in Texas, and visited me here in Austin and I know of two times he saw my son and perhaps he saw him on other occasions, at the Dallas Fair and at the races.

Q. Mr. J. E. Robison, he is in the stock business, is he not, Mr. McDonald?

A. Mr. J. E. Robison is recognized as the largest breeder and dealer in Percherons in America, and one of the most reliable breeders and dealers.

Q. And he raises them to sell?

A. He raises Percherons to sell, and he also deals in them.

Q. In other words, he raises and deals in them for the purpose of making money?

A. Yes, sir; I would think so.

Q. Just like any man goes into any business?

A. I would think so.

Q. And he would not be making any money when he gives away a couple of mares, would he?

A. Well, I would think that is a practice used by commercial people through the country, and whether or not, I think it would not be an exception when he gave my boys a couple of mares in appreciation of the business he got.

Q. Do you know of anybody else to whom he gave a couple of mares, or one mare, or anything else?

A. I could not say. But, Mr. Robison told me that he had given away

to boys a considerable number of mares in his life time.

Q. Do you know of any other boys in Texas that he gave any mares?

A. I do not.

Q. Now, then, what is the value of those two mares?

A. I would think the value of those two mares is something like about two hundred or two hundred and twenty-five dollars now.

Q. You think that is the top or maximum value at this time, do you?

A. That is my opinion. If the mares were sent to Fort Worth and sold on the livestock market now, that they would bring about that price.

Q. Are they worth as much now as they were when you first got them?

A. Approximately. I would think the price is approximately the same. Possibly there has been a slight decline since the boom in 1934. The price is practically the same.

Q. In other words, there has been no material change in the price of these mares within the last few months?

A. Possibly there has been. The colt that was born from the breeding before they got the mares, has been very disappointing to my boys and the people who examined them. And the other mare that lost her colt, the other one that Mr. Robison gave my son and I had her examined and it is questionable whether she will ever breed or not. For that reason, I don't think the mares do now have the value that they had when they came to my farm, for my sons.

Q. You testified before the Committee which lead up to this hearing, did you not, Mr. McDonald?

A. Yes, sir; I did.

Q. I'll ask you to state whether or not, if at the time you testified before that Committee, you didn't give testimony as to the value of those mares?

A. I don't recall, perhaps I did.

Q. I'll ask you if, in the course of your testimony, before that Committee, you were not asked the following questions: "Question: Did Mr. Robison give you two mares?" And didn't you give this answer: "A. He did not give me any mares, but gave my boys J. E. and Roy a couple of mares, three and four years old. One of my boys went on a trip up there and visited in his home and met his boy and he came to Texas to visit the races and was a visitor in my home and gave each of my boys a mare. One of those mares a jack bit on the neck when it was small. However, that does not hurt the mare for breeding purposes but she did not have much sale value. The other mare will not breed and my man investigated her female organs and failed last year to foal and has failed this year. Both of them have a value, I guess, of $175 a piece."

Mr. McDonald: That is incorrect. I noticed that before in the stenographer's report, that stated, as I said about the value of the two mares, and is wrong.

Q. Then you didn't make the statement before that Committee that those mares were worth $175 each?

A. I did not. That's a stenographic error.

Q. And the record is wrong about that?

A. I do say that the record is wrong. I would say, Mr. Street, that it is possible that he misunderstood me, but I say that I didn't say it.

Q. You stated a while ago that Mr. Robison gave those mares as an appreciation of the business that he had received from you, is that right?

A. Well, that, with the explanation that coupled with the fact that he seemed to have taken a fancy to my boys. I would think that from his action, that he appreciated it and the boys and liked my boys, and I would be fair and say that one was the appreciation of the business we gave him.

Q. And also in the expectation of getting other business—more business?

A. I think possibly so.

Q. And you were aware of that situation at the time the mares were accepted?

A. Yes, sir, I was.

Q. And you accepted them, knowing that was the situation?

A. Well, I would not say I accepted them, knowing about any situation. But I would say that he gave the boys the mares in appreciation, and for his respect for the boys.

Q. Now then, when he gave those mares in appreciation of the business that he had received from the State of Texas, do you know why the mares were not given to the State of Texas?

A. Well, I would think that he would give them—the State of Texas was not receiving mares. They were receiving jacks and stallions. I see nothing wrong in it. I didn't at that time and I don't at this time.

Q. And Mr. McDonald, you still think it was alright?

A. I say that he might give my boys a whole flock of mares and that would not influence me in any purchase for the State.

Q. And you would accept them yourself, or permit your boys to accept them?

A. I would not now, no, sir, on account of the criticism that has arisen from some people who would think I was subject to criticism in that they might think that it might influence me.

Q. If you think it would be alright—why would you recede from the position, Mr. McDonald?

A. There has a question arisen in other people's minds as to it being wrong, and it is not my mind, I know I would not be influenced but I like to respect the minds of other people in the matter.

Q. I believe you say you have another son in addition to the two that has been mentioned?

A. I do.

Q. Do you know why Mr. Robison didn't give this son a mare too?

A. I believe the natural thing for one to do was to give a pair of mares.

Q. He just gave one to each son?

A. Yes; he did. My sons live together.

Q. They live together?

A. Yes, sir; live with me.

Q. You have had the use of those mares, except about thirty days ever since they were shipped to you?

A. The mares have been there on the homestead since they were shipped there—right there on the homestead. I know that one of my sons, J. D., expressed a desire to sell the one he had to get money to attend school here in the State University.

Q. That's not the question that I asked you. I asked you if you hadn't had the use of those mares, every since they were shipped to you?

A. They have been there for the use of the family; yes, sir.

Q. Now, Mr. McDonald, I believe you testified you didn't make this statement—Do you know whether or not, Jim Tate, in making delivery of those mares worked and made deliveries day and night on many occasions?

A. Yes, sir; I know on numerous occasions when he would be going day and night, he would go as much as thirty-six hours without stopping. That's my understanding, that he did. I wasn't on the truck with him, but I know that he worked very diligently day and night to make the deliveries.

Q. Did he have anybody helping him on these trips?

A. Many times he did and I think possibly on the particular trips that he made out of Austin, he had assistant.

Q. Do you know who that assistant was?

A. He had different parties.

Q. How did those assistants receive their pay for those trips?

A. We would figure delivery at five dollars a head and he got his pay, I presume, from Mr. Tate. I think on one or two trips I sent Mr. Thurman to save expenses and he went along.

Q. Was any helper ever paid for Jim Tate out of the State funds, by the State, for his help?

A. Not that I know of.

Q. Do you know whether the State did pay for a helper, or not?

A. I don't know. The books will show. If an assistant was sent with Jim Tate, it was because I thought, to my knowledge that it was to the best interest of the State to have someone to accompany him.

Q. This truck that was fixed up for delivering these animals, was it used during the entire time that Jim Tate was delivering animals for the State?

A. I don't know about the truck, but I know and said at the Graves investigation I thought the bed or trailer part was used during the entire delivery, but I don't know about the truck and the chassis.

Q. You don't know what changes they made in the equipment?

A. I think that no material change was ever made.

Q. Do you know anything about it, or did the trucker take care of it, or could you have found out what they were doing with it?

A. I certainly do know in a general way.

Q. Did Jim Tate trade off that first truck that he bought?

A. I don't know. I understand from the testimony that that was the chassis, that he did that one, that was the first.

Q. To that extent you didn't keep up?

A. No, sir, I didn't, I had a contract with Mr. Tate to make delivery and I didn't insist on knowing whether he put a different chassis under that truck or not.

Q. Do you have a copy of the letter that you wrote Mr. Robison thanking him for the animals he gave your sons?

A. I could not say whether there is—whether that is in the file or not.

Q. Will you examine your file and find out if you have?

A. Yes, sir; I am glad to do that. It is possible that I kept it and possible that I did not.

Q. I shall be glad if you will look and see if you can find a copy of that letter?

A. I will be glad to.

Q. (By Mr. Street): Now then I want to ask you something about this or some more about this Jack and Stallion Fund, I believe you call it, that you deposited down in the bank here in Austin, in the Austin National Bank, if I remember correctly, is that correct?

A. I beg your pardon?

Q. I say, this Jack and Stallion Fund that you deposited in a bank here in Austin; I believe you testified that you deposited that in the Austin National Bank?

A. That is correct.

Q. Before you made that deposit in the bank to the credit of that fund, Mr. McDonald, did you collect or did you make a deposit of any procreation fees or breeding fees?

A. It is my recollection that I did make a small amount, possibly five hundred dollars or a thousand dollars, I wouldn't be sure.

Q. As a matter of fact, you deposited $645.00 in the Treasury to begin with, didn't you?

A. I don't remember the amount, but it was something like that; I presume that is correct.

Q. Now then, why, Mr. McDonald, did you change your policy and quit depositing money in the Treasury, and deposit it down there in the bank?

A. The matter of refunds came to my mind; and it was my understanding that money put in the Treasury could not be paid out, except by legislative act, and since this money was in effect, as I considered it, a trust fund under the law, requiring that five dollars be collected for the foal, which means when the colt is born, I changed it so that I could collect that money in the interest of the State and check it out.

Q. Yes, sir, now then, can you tell us approximately how much money was collected as breeding fees?

A. According to my memory it is something around sixteen thousand dollars.

Q. Something around sixteen thousand dollars. Now then, when you deposited the money in the bank down there, Mr. McDonald, did you keep it there so that you could repay the owners of those mares in case there was a failure to foal, or did you check that money out for something else?

A. I kept that money there to make refunds, and to pay for the care and handling of these jacks and stallions.

Q. So you didn't keep it there solely for the purpose of repaying those breeding fees that were paid and the mare failed to foal?

A. That was my intention at first, but when in the summer that Jack and Stallion Fund was exhausted, I did use some of that money in paying caretakers and inspectors.

Q. You used it for the payment of salaries, I mean, of the caretakers, didn't you?

A. I used it for the payment of the caretakers in caring for the stallions and the inspectors, who were looking after the stallions, visiting the different caretakers.

Q. And you also used some of it for paying transportation charges?

A. I did.

Q. And you didn't keep it all there for the purpose of re-paying these breeding fees?

A. No, sir; I knew that only a small percentage of that money would be needed for refunds; about eighty per cent of the mares foaled when bred.

Q. Now then, Mr. McDonald, you considered these fees that were collected as breeding fees as monies belonging to the State, did you not?

A. I considered it was money belonging to the Jack and Stallion Fund, yes, sir.

Q. Well, when you say the Jack and Stallion Fund, you mean the State of Texas, don't you?

A. In the Jack and Stallion Fund, which is an account of the State of Texas.

Q. Yes, sir; that is a part of the money belonging to the State of Texas?

A. That is a part of the money belonging to the Jack and Stallion Fund of the State of Texas.

Q. Yes, sir, now then, where did you get your authority, Mr. McDonald, for establishing or setting up a fund down in the Austin National Bank, composed of State money?

Mr. Felts: As to that question, Mr. Chairman, we would object that that is a conclusion, and a question of opinion as to a matter of law.

The Chair: Gentlemen, the wide latitude that I allowed heretofere relative to what the law was, and the reasons for doing certain things, in view of that, I am going to respectfully overrule the objection.

Mr. Bradbury: Mr. Chairman, I move that the Committee stand at ease for ten minutes.

The Chair: Motion has been made that the Committee stand at ease for ten minutes.

The Committee thereupon stood at ease for a period of ten minutes.

The Chair: The Committee will please be in order.

Mr. Street: The Committee isn't all here, Mr. Chairman, and I would like to wait until they get here.

The Chair: Mr. Sergeant-at-Arms will you break up that bear tale that Coke Stevenson is telling about that bear hunt that he just went on?

Mr. Street: Are you ready, Mr. Chairman.

The Chair: Let's have a little order, please. Let's proceed, gentlemen.

Mr. Street: I will ask the stenographer to read the last question, Mr. Chairman.

The Court Reporter thereupon read the foregoing question as follows:

"Q. Yes, sir, now then, where did you get your authority, Mr. McDonald, for establishing or setting up a fund down in the Austin National Bank, composed of State money"?

A. What is the question?

Q. (By Mr. Street): The question was as to where you got your authority for establishing a fund down in the Austin National Bank, composed of funds which belonged to the State of Texas?

A. I got it from the statute, as I construed it, that it was not mandatory on me to collect this money until there was a foal, that that was in my discretion, and I did the thing in the interest of the State, and to save the State a financial loss; that was my business judgment.

Q. Now, regardless of when you collected these fees, Mr. McDonald, that is, whether you collected them at the time of the breeding or collected them later, isn't it a fact that the statute specifically provided as to what you should do with those funds when they were collected?

A. It provided that I should collect not to exceed five dollars for a foal, which I construed as meaning when the colt was born; and in order to save the State a financial loss, in my integrity and my business judgment, I collected these funds and put them in the bank as escrow funds.

Q. I will ask you, Mr. McDonald, if the statute didn't have this provision with reference to the disposition of the breeding fees which you collected: "for the services of such animals so distributed, the Commissioner of Agriculture is authorized to make a charge of not exceeding five dollars for the colts foaled. The amount so collected by the Commissioner of Agriculture shall be remitted by him through the State Comptroller to the State Treasury and shall be deposited to the credit of the Special Racing Fund."

A. I will ask that you read that again; pardon me.

Q. "For the services of such animals so distributed, the Commissioner of Agriculture is authorized to make a charge of not exceeding five dollars for the colts foaled. The amount so collected by the Commissioner of Agriculture shall be remitted by him through the State Comptroller to the State Treasury, and shall be deposited to the credit of the Special Racing Fund." Isn't that the statute under which you operated from about January or February, 1934, up to the present time, Mr. McDonald?

A. There was an amendment to the statute, which I don't recall, but that is the law, as I remember.

Q. Yes, sir, in other words, the law said that when you collected those fees you should turn them over to the Comptroller of the State, or through the Comptroller to the State Treasury, isn't that right?

A. Except the fees collected where the mare never did foal, yes, sir.

Q. When you collected those fees, you did not turn them over to the State Treasurer through the Comptroller, did you?

A. I did not, because I construed the collection of those fees for a foal, which, in my judgment and my observation, justified me in collecting the fees and holding them in escrow, rather than otherwise, which would have meant a financial loss to the State.

Q. Doesn't the statute say that the fees which you collected without reference to whether you collect them at the time of breeding or later shall be turned to the State Treasurer through the Comptroller?

A. The statute says the fees collected for the foal shall be placed in the treasury.

Q. And you didn't do that. Well, I believe you stated there were some sixteen thousand dollars of those fees collected and which you placed on deposit down in the Austin National Bank?

A. That is approximately correct.

Q. And you wrote numerous checks on that account, didn't you?

A. I did.

Q. In writing the checks on that account to the various persons to whom they were written for transportation, for payment of caretakers' fees, and for the payment of inspectors and other checks that you wrote on that fund, did you secure the approval of the Comptroller or of the Board of Control or the State Treasurer, or either of them?

A. Not with those funds placed to the credit of the State Jack and Stallion Fund in the Austin National Bank, I did not.

Q. In other words, you deposited those funds down there and checked them out as you saw fit?

A. Well, I checked them out as needed to carry on the jack and stallion work in a practical manner.

Q. Now, you stated yesterday, in response to a question from the counsel representing you that every dollar that came in as a result of this breeding program was used for the benefit of the State of Texas and the people of the State, didn't you?

A. I will have to ask you to repeat that question, please.

Q. I say, you stated in substance, in response to a question asked by your counsel, that you used every dollar which you had taken in on this program for the benefit of the people of this State?

A. That was my intention, yes, sir.

Q. All right, now then, the statute creating or which provides for purchasing and using of State owned jacks and stallions, is commonly known as the Texas Racing Law, isn't it?

A. I think that is correct.

Q. And isn't it a fact that that statute provides that one-fourth of all the proceeds derived under the act shall go to the benefit of the available school funds of this State?

A. The law, as amended at the First Called Session of the Legislature, after the racing law was passed, I think, provides for twenty-five per cent to go to the School Fund.

Q. Yes, sir, now then, of this amount that you collected and placed on deposit down here in the Austin National Bank, did you ever, at any time, deposit one-fourth of that in the treasury to the benefit of the available school fund?

A. I did not.

Q. Then, the school children of this State did not get the benefit of that

part of those fees to which they are entitled, did they?

A. I never did construe the law that the service fees from the jacks and stallions—

Q. (Interrupting): Just answer the question, please, Mr. McDonald.

Mr. Felts: Mr. Chairman, I think the witness should have the privilege of answering the question in his own way; he is trying to answer it.

The Chair: What is the question?

Mr. Street: The question was this, Mr. Chairman, that the school children of Texas, did not get the benefit of the one-fourth of the breeding fees that were collected and deposited down here in the Austin National Bank, as is provided for in the statute.

The Chair: Now, that's the statement; what's the question?

Mr. Street: That is the question, Mr. Chairman; I meant it as a question. Mr. Chairman, what I meant was—

The Chair: Well, if the witness knows the fact, he may answer, Mr. Felts.

Mr. Felts: The witness is trying to answer it.

The Chair: If the witness can answer it, of course, he will answer it, but I will have him answer according to what he knows.

A. I beg your pardon, Mr. Chairman, but that might require a little explanation. It is my opinion—

Q. (By Mr. Street): Pardon me just a minute, Mr McDonald; the question is as to whether or not you deposited that money, or one-fourth of that money which you received as breeding fees to the benefit of the available school funds of this State; did you do that?

A. I did not.

Q. All right; then the school children of this State did not get the credit or the benefit of the one-fourth of those fees to which the law entitles them, did they?

A. I think that the jacks and stallions would have suffered, if I hadn't, in that emergency used some of those breeding fees to pay the caretakers in order that they might supply food for the animals, and I think that the method that I pursued was more beneficial to the school children of Texas than otherwise.

The Chair: Let's have a little bit better order, gentlemen, please. The Chair is as anxious to get away from here as anybody else. I am due in Port Arthur, Texas, this morning, and I would like to wind this up, and I think that if you want to hear this and conclude this you ought to give it a little better attention. I think that you owe it to yourselves and all the parties concerned, and the Chair is going to appeal to you to have a little bit better order, if you please.

A Member: Why don't you call on the Sergeant-at-Arms to keep order, Mr. Chairman?

The Chair: I want first to try to appeal to them; I don't want to be sicing the Sergeant-at-Arms on anybody; I just appeal to the membership of the Committee, please, to give a little bit better order and attention.

A. Mr. Street, may I ask you a question: in that emergency, when there were no funds to care for the State owned jacks and stallions, and in my judgment, I used that money for that purpose, isn't it true that the funds coming in later could be used to defray the expenses and that money that I used be in effect a loan, for which the State school children would not suffer?

Q. Mr. McDonald, I will answer your question with another question: do you know of any authority under the laws of this State whereby the funds belonging to the school children, or to any other fund, may be borrowed for any other purpose than that which the law specifies they will be used for?

A. I have a precedent. When one of the Governors, I think it was Governor Colquitt—

Q. (By Mr. Street): Pardon me, Mr. McDonald, but I didn't ask you anything about a precedent; I just asked you if there is any law which authorizes the borrowing of such funds?

A. And I was stating that there had been a precedent set for such an action; I believe the law requires that all the funds collected be put in the State Treasury, and a former Governor, when—I know of no occasion.

Q. And as a matter of fact, that wasn't any loan at all, was it?

A. Well, perhaps not.

Q. No, sir, you never did consider it as any loan, did you?

A. Yes, sir, I did. I thought if there was any question about it at some future time that the money should be taken from the taxes coming in and be put in the Treasury where the school children would get their part.

Q. Now, where were you going to get the money to replace that which had been used?

A. From the taxes coming in today from the race tracks of Texas.

Q. Doesn't the law still specify that one-fourth of those shall be used for the school fund and also specify exactly what is to be done with every penny of it?

A. Yes, sir, but if the Jack and Stallion Funds from the proceeds used that money it could be taken from that and repaid to the school fund.

Q. But in order to do that you would have to borrow again from some other fund?

A. I would not.

Q. Then, just explain to the Committee how that could be done?

A. From funds coming into the Jack and Stallion funds instead of buying additional jacks and stallions that money could be placed in the Treasury to that same amount so that the school children got theirs. That would be a matter of good business; I think I should be commended for in the emergency using that fund to take care of those jacks and stallions.

Mr. Felts: Just answer the question, Mr. McDonald, unless an explanation is called for.

A. I thank you, Mr. Felts. Mr. Felts, I want to say to you and to the Committee of the Whole that my purpose is to give you full explanation as quickly as possible.

Q. At any rate regardless of what might be done in the future, up until this time the one-fourth of those breeding fees, which were collected and placed on deposit down there in the bank, have not been placed in the State Treasury to the benefit of the Available School Funds, have they?

A. Not to my knowledge.

Q. Along this same line, Mr. McDonald, I believe that you testified, and the evidence shows that beginning on the first day of January, 1934, you entered into contracts with various caretakers of animals over the State with reference to the amount of salary which they should have, is that correct?

A. That is correct.

Q. Now, then, I believe the contract introduced in evidence provides that you should pay those caretakers fifteen dollars per month each, is that correct?

A. That is correct.

Q. And that in addition to the fifteen dollars a month those caretakers should each be entitled to receive and retain a maximum of three breeding fees during the month, is that correct?

Q. And you entered into that contract with the various caretakers over the State?

A. That is correct.

Q. And that contract has been in force since that time, has it?

A. No, it has not.

Q. When was it terminated?

A. I believe the first day of June of this year.

Q. In other words, for seventeen months that contract was in effect?

A. No, sir, it was not.

Q. Well, how long was it in effect?

A. From January 1, 1935 until, I believe, June 1, 1935.

Q. Then, it was January 1, 1935 instead of 1934, is that right?

A. That is correct.

Q. Then it was five months that the contract remained in effect?

A. I believe that is correct, Mr. Street.

Q. And during that time you permitted the caretakers to collect and retain not to exceed three breeding fees, or fifteen dollars per month?

A. That is correct.

Q. Will you tell this Committee your authority in law to permit those caretakers to retain those breeding fees when collected?

A. I will have to make a little explanation; I hope you will bear with me.

Q. If you will, please answer the question first, Mr. McDonald, and then I will permit you to make the explanation?

A. Ask the question.

Q. The question was, can you tell this Committee your authority in law for permitting those caretakers to retain the breeding fees which you did permit them to retain under that contract?

A. I construed the law which says that the Commissioner of Agriculture shall make contracts with caretakers as my authority and which I did.

Q. You didn't construe that provision of the law which says that when fees are collected, they shall be remitted to the State Treasury; you didn't take that into consideration in your construction of the law?

A. Yes, sir, I did, because during that time the fees were remitted to the Treasurer to the credit of the jack and stallion suspense account; during that period every dollar collected was remitted to the State Treasury.

Q. Were those breeding fees which were retained by the various caretakers remitted to the State Treasury?

A. They were not; that was compensation for taking care of them.

Q. But those fees were collected?

A. Yes, sir, those fees were collected.

Q. And not remitted to the State Treasury?

A. No, sir, used as part payment of the caretaker.

Q. Then, don't you feel that that provision of the law requires them to be repaid?

Mr. Felts: Mr. Chairman, now, all of those facts have been admitted; we have no objection to it except that it is repitition.

The Chair: The Chair asks the gentlemen on both sides not to repeat any more than possible. I know that sometimes we can't remember some of these things.

Mr. Street: I will be just as brief as possible.

The Chair: For what purpose does the Gentleman from Travis arise? The Chair has called for order several times and I am going to request a little bit of order, and I ask the Sergeant-at-Arms to enforce the rules, if he can, and if he can't to let me know. If you want a little recess, just go out and come back when you get ready, but I think you should be, that we ought to be considerate of the other fellow's feelings and that we ought to give those an opportunity to hear who want to hear, and I am going to appeal to you once more to please to give a little better attention and keep a little better order.

Q. Now, Mr. McDonald, in case a mare that was bred to a State owned stallion or jack failed to foal, and a breeding fee had been collected, and it became necessary and proper to repay to the man who had paid that fee the amount which had been paid, then, how was he repaid?

A. If the mare that was bred was in excess of the fifteen dollars allowed, in other words, the money was collected for the three maximum services failed to breed it was refunded out of the Jack and Stallion Fund just the same as if when he was paid the thirty dollars in cash.

Q. Now, let's take one of the first three breeding fees which were retained by the caretaker, suppose one of those men, who paid one of those fees was entitled to receive his money back, where would you get it?

A. Out of the Jack and Stallion Fund.

Q. In other words, out of the Treasury of the State of Texas, is that right?

A. That is correct.

Q. Then, in that kind of a case, the caretaker would have had the benefit of the five dollars and the State of Texas would have to repay something they never received?

A. I think that is not correct, because in the former contract they were paid thirty dollars per month, and the refund would have been made if it had been collected in cash at that time, and, then, they were being paid fifteen dollars cash, and fifteen dollars received from three breeding fees; the caretaker rendered the same service that he did under the thirty dollar contract.

Q. He wasn't getting thirty dollars a month salary?

A. Yes, he was, if he bred thirty mares.

Q. I am talking about the total and not the salary?

A. Yes, he was getting fifteen dollars a month and a maximum of three breeding fees. If he bred one mare he

received twenty and if he bred two mares he received twenty-five.

Q. If he kept those fees and the owner of the mare, the man who had paid the money received his money back, he got it from the State of Texas, didn't he?

A. It would be exactly the same status as it was where he got thirty dollars cash.

Q. But that wasn't the question, Mr. McDonald; if one of those mares failed to foal, then the State repaid the owner the fee that he had paid?

A. That is true.

Q. And the man who had collected the fee, and was permitted to retain it, kept the money that he had received, didn't he?

A. That is correct.

Q. Now, going back a little bit, Mr. McDonald, to the two mares which you said were gifts given to your son; what were the names of those two mares?

A. My boys yesterday gave me the registration papers, and I have them here today. (Referring to registration papers) One was named Alma, A-l-m-a, and one was named Almeda, A-l-m-e-d-a.

Q. When those mares were sent down here. were there any kind of papers, such as a bill of sale, anything of that kind sent along with them, or sent at a subsequent date?

A. No bill of sale was rendered, as well as I remember, at about the time, or perhaps shortly after; maybe at the time the registration papers were mailed to the boys.

Q. Are those the registration papers that you have in your hand?

A. They are.

Q. May I see them just a minute, please?

A. (Papers handed counsel by witness.)

Q. Was any kind of transfer sent down?

A. No written transfer that I know of, except the registration papers that were sent to the boys.

Q. Was any invoice sent down?

A. No invoice was sent down.

Q. I will ask you if you didn't receive an instrument of some kind, I don't know whether I have the correct viewpoint as to whether it was called a bill of sale, a transfer, or invoice, or some other name, but an instrument which recited that those two mares, Alma and Almeda were sold by J. C. Robison to J. E. McDonald?

A. No, sir.

Q. And don't you have an intsrument of that kind among your files at this time?

A. Not that I know of.

Q. If it were in your files you would know about it?

A. I am not sure about that. I would presume that I did. My secretary tends to a lot of things. I may have overlooked it.

Q. I have here a photostatic copy of an instrument, Mr. McDonald, that I will ask you to examine and tell the committee whether or not you have ever seen the original of this?

A. Possible this was called to my attention at the time it came, but at present I have no recollection of it. I cannot be positive about seeing it. It is possible that I did

Q. Do you think you have seen it, or not, Mr. McDonald?

A. I have no recollection of seeing this before, Mr. Street, but I will not say that I did not. Many hundreds of letters come to my desk daily, or weekly.

Mr. Street: Now, who has those registration papers?

Mr. Felts: Here they are.

Mr. McDonald: May I see that instrument again, please?

Mr. Fox: Yes, sir.

Mr. McDonald: Mr. Street, I notice that this letter has no date.

Q. Well, I was just trying to find out if you knew anything about it, regardless of whether it may be dated, or not?

A. Mr. Street, I have no recollection of having seen this letter. There are so many letters coming through my office perhaps I did. I wouldn't want to say positively. I see the letter is not dated.

Q. That isn't a letter, is it? That is more in the nature of a certificate of transfer or bill of sale, or something like that. In other words, it is a statement, isn't it, that two mares were sold to J. E. McDonald and contains a description of the two mares, is that right?

A. It says "Registered Percheron mares sold to J. E. McDonald." That may be accurate, or it may be because in registration they could have registered differently, but the registration papers are correct. This letter may not be correct.

Q. Suppose you read the contents of that instrument, whatever we call it, a letter or something else?

A. Marked in the corner in pencil is "Per" with a dot under it. "White Waterfalls Farm, Tawanda, Kansas. J. C. Robison, Importer and Breeder of Percheron Horses, Shorthorn Cattle and Duroc Hogs. Registered Percheron mares sold to J. E. McDonald, Waxahachie, Texas. Alma No. 271—black long star, snip, left hind foot white. Foaled May 15th, 1930. Sire Klinger 195654. Dam Maggie, 153642. Bred May 5, 1934 to Damascus No. 206408. No. 272—Almeda, black strip, right hind foot white. Foaled May 10th, 1931. Sire, Klinger 195654. Dam Maggie, 153642. Bred May 7, 1934 to Damascus No. 206408." No signature and no date.

Q. Now, I notice that these registration papers bear different dates. One is dated the 27th of July, 1934 and the other is dated the 25th day of July, 1934. Do you know why those papers bear different dates?

A. I have no knowledge of why the different dates. May I read those registration papers?

Mr. McLean: There is no necessity unless counsel wants them. It is just killing time.

Mr. Street: We have no objection at all if he wants to read them.

Mr. McLean: We don't offer them. If you do, we have no objection.

Q. Those registration papers are on the same two mares, aren't they, Mr. McDonald?

A. Yes, sir.

Q. That is, Alma and Almeda?

A. That is my understanding and I presume they are correct.

Q. Mr. McDonald, in the purchase of jacks and stallions for the State did you ever pay any commission to anyone for making the purchases?

A. Possibly I paid a commission or allowed Mr. Blackwell, who helped to buy from the farmers, two truck loads, a small amount for his services, which I think was in line.

Q. Did you ever pay a commission to a man named Stinson?

A. I think also Mr. Stinson of Fort Worth purchased some jacks for which I allowed him twenty-five dollars for his services. Mr. Thurman could not make all the points and that was one way I had of paying him, I think a very good one, and within my rights.

Q. At any rate you did pay him a commission sometime about the 15th day of June, 1934,—G. W. Stinson sent you a bill in which among other things there was a charge of fifty dollars for commissions?

A. I think he was employed to buy a couple of jacks, or some jacks, on which I told him I would give him a commission or allow him to make a profit of twenty-five dollars a head for his services, yes, sir. That was perhaps cheaper than sending Mr. Thurman or my other purchasing agent.

Q. May I see those registration papers again, please?

A. Yes, sir.

Q. Is it customary for registration papers on horses to contain the name of the owner?

A. I think that is customary.

Q. I notice that no name of the owner is contained on either one of these?

A. Mr. Street, will you state your first question again?

Q. I asked you if it was customary for the registration papers for horses to contain the name of the owner of the horses?

A. I couldn't say. I think that the transfers are generally made and the registration papers contain the name of the present owner or the party to which they are transferred.

Q. I notice that these two registration papers do not contain the name of any owner?

A. I presume that is regular, that the books of the society give the name of the party selling or transferring. I am not sure about that.

Q. At any rate, Mr. McDonald, your boys could not present these registration papers to any person and prove that they were the owners of these mares, could they?

A. Yes, sir, they could.

Q. How?

A. Because the registration papers say they are sold or conveyed to J. E.

and Roy McDonald,—J. E., Jr., and Roy.

Q. Possibly I have overlooked that, Mr. McDonald?

A. I can show it to you.

Q. You are correct. I was mistaken.

A. Am I correct, Mr. Street?

Q. Yes, sir.

A. Thank you.

Q. I see that it says owned by J. E. McDonald, Jr., and Roy McDonald, Austin, Texas.

A. That is correct.

Q. And the other one contains the same thing, owned by J. E., Jr., and Roy McDonald, Austin, Texas?

A. That is correct.

Q. Is this a joint ownership of the two mares?

A. They were given to the two boys and at my suggestion,—they asked me "Daddy, which one should I have" and I suggested to the boys that the older boy take the older mare and the younger boy take the younger mare and that is the way they divided them.

Q. Now then, do you know why one of these instruments bears date the 27th day of July and the other one the 5th day of July?

A. I have no knowledge of why there are different dates. Pardon me, I might suggest — —

Mr. Felts: You have answered the question, Mr. McDonald.

Q. Do you know whether or not these are the first and only registration papers that have ever been sent down here in connection with these two mares?

A. That is the only registration papers that has ever been sent down here as far as I know, and that is my belief.

Q. Mr. McDonald, do you recall the dates that these two mares were sent here to your sons?

A. I don't recall the date, but as I remember it was sometime in July.

Q. Of what year?

A. Of 1934.

Q. 1934? But you don't remember the exact date?

A. I do not, I could determine that by looking at my records.

(Questions by Mr. Fox):

Q. Mr. McDonald, I believe you said you are a native of Ellis County, is that correct?

A. That is my residence.

Q. You own some property in Ellis County?

A. I do.

Q. Would you mind—how much property do you own, Mr. McDonald?

A. In Ellis County, I have a farm home of seventy-five acres, adjoining the City of Waxahachie.

Q. That's all the property that you own?

A. That's all the property I own in Ellis County, all the real estate.

Q. Do you own any other property in any other County?

A. I do. I have one hundred one acres of land in Limestone County.

Q. Is that all?

A. That's all the real estate.

Q. Do you owe any money on this property?

A. I do.

Q. Considerable, or small amount?

A. I owe nothing on the Ellis County property at all.

Q. Mr. McDonald, the transaction that I want to ask you about, that occurred sometime in March, I believe, when Mr. Fraze was sent to Springfield, Missouri to buy some animals. I'll ask you first, in what department does Mr. Fraze work in the Department of Agriculture?

A. He is Chief of the Weights and Measures Division of the Department.

Q. Has he been there all the time?

A. Every since I have become Commissioner.

Q. I mean since you were elected Commissioner. He has been in that Department since you have been Commissioner?

A. He came in with me; yes, sir.

Q. I'll ask you this, how many different times that you sent Mr. Fraze out to buy animals or did you ever send him out to buy animals?

A. My recollection is that I sent him on the first trip after employing Mr. Thurman.

Q. When was that?

A. I would say, perhaps in February or March of 1934.

Q. In February or March, 1934?

A. Yes, sir.

Q. Where did they go?

A. They went to Springfield, Missouri, and adjacent territory.

Q. Will you relate what happened on that trip, in the way of buying animals?

A. Mr. Fraze and Mr. Thurman, working with Mr. Blackwell, who was kind enough to help them, located some stallions, they purchased four stallions for the State of Texas.

Q. Four stallions? What business was Mr. Blackwell in?

A. I can't recall, only he had one stallion which I purchased from him.

Q. Is he in the jack and stallion business?

A. It is my understanding that he is not, but he helped in the deals to the State on the jacks and stallions.

Q. That is not his main business?

A. I could not say. But it is not my understanding that it is.

Q. You say they bought four animals on this first trip?

A. I believe that is correct.

Q. How much did they cost?

A. As I remember, a thousand and fifteen dollars.

Q. One thousand and fifteen dollars? Do you remember the exact date?

A. I do not.

Q. Did you know what animals they were going to buy, or did they call you by wire, or come back and report to you the animals or how did they handled it?

A. I have made it a custom when I send men out to buy animals, different people, to call me and describe the animals, breeding, color, age, size and weight and otherwise.

Q. Do you think you gain anything by that method?

A. I think so. I think by doing that it would save at least seventy-five dollars per head on what we paid them.

Q. What do you base that on—how do you explain that?

A. Later on we had to pay that much—something like that. And that's what I base my judgment on.

Q. Were they the same animals?

A. Not the same animals, not the identical animals but similar animals.

Q. Then they were not the same animals?

A. I would say not exactly the same animals. You can't get two animals that are exactly the same.

Q. That's a guess on your part, that it will save it?

A. I don't think it is a guess.

Q. You are positive?

A. I am positive, yes, sir, in my judgment, it is true.

Q. Who were those animals paid for by?

A. Mr. M. S. Fraze financed the deal.

Q. Why did a man in your employ have to finance the deal?

A. The farmers up there from whom we were purchasing them were not satisfied to invoice them, and we had the assistance of Mr. Blackwell, and they didn't want to invoice them to the State of Texas, but they wanted the cash.

Q. They wanted the cash for them?

A. Yes, sir.

Q. Did they get the cash?

Mr. Felts: Mr. Chairman, we can stay here just as long as anybody else, but this has all been gone over by the other witnesses and from the records read.

The Chair: The Chair is going to try to be fair about this matter and will state that each side should confine their questions to new matters or matters not heretofore gone over.

Mr. Fox: We will be as brief as possible, Mr. Chairman.

Mr. Fox: What I am getting at, Mr. McDonald, is this: When you had full authority from the State of Texas to buy animals out of certain funds, what I am getting at, is just why you purchased animals in this manner, by permitting an employe of your department to go out and furnish the money to buy animals with and pay for them, that's what we want explained to us, and what if these particular animals should die, after he had bought and paid for them?

A. The animals were bought in that manner because we hadn't established our method and plans of buying them and dealing in them. It was all new. We had a lot of things to learn and I sent Mr. Fraze as my personal representative. I could not accompany Mr. Thurman, personally on his first trip.

And I sent Mr. Fraze with him. I wanted someone with him.

Q. I am sure that Mr. Thurman was alright. Why did you permit one of your employes to furnish his money when these animals might have died and then he would have lost it?

A. It was my honest desire to buy animals for the State of Texas, as quick as possible and to buy them on the best terms.

Q. Why did you permit your man to take that risk, yourself?

A. Because it was my interest in the Jack and Stallion Fund and that business in the State.

Q. Then you were willing for your employe to stake his money and earnings for the benefit of the State of Texas?

A. It is, and he was willing to do it.

Q. A great hearted man?

A. He is.

Q. I want to ask you about another transaction in which Mr. Fraze was interested?

Mr. Felts: Mr. Chairman, We make the same objection, that this has all been gone over twice. From the witnesses, and the testimony that has been read from the former record.

Mr. Fox: Yes, Mr. Chairman, when they went over this yesterday, we didn't go into it and this is on cross-examination.

The Chair: The Chair will hold that in all matters of cross-examination they have a right to go into it.

Mr. Felts: They went into it and they have gone into it in having the testimony read and the charges read.

The Chair: I think that is a matter of cross-examination and they have a right to go into it as a matter of cross-examination, but no matters that have been fully gone into will be permitted to be gone into further, but any matter that appears to be in issue, or any matter that was gone into on direct-examination, may be gone into on cross examination. And the objection is overruled.

Mr. Fox:

Q. Mr. McDonald, I think it was on March 23, 1934, when you and Mr. Fraze arranged to finance the purchase of several animals, that were being bought, that I would like to have explained. Please explain to the committee about that transaction?

A. Alright, I think that was the second trip, with Mr. Thurman—when Mr. Thurman and Mr. Blackwell went to Springfield, Missouri, to buy another load of stallions, and when Mr. Thurman and Mr. Blackwell found them, and they wanted them financed in the same way or something similar to the manner in which they were financed before. When they wanted the money I went down to the Austin National Bank, here in Austin, and borrowed eight hundred dollars. They had found the farmers with the animals, but before the animals had been purchased, they had been offered but they had not decided at that time what animals would be purchased and hadn't determined whether they would have to pay for all of them or whether part of them could be invoiced to the State.

Mr. Blackwell said he thought it would take about eight hundred dollars and I went down to the Austin National Bank and borrowed eight hundred dollars on my own note, which was to pay for these animals for the people of the State of Texas, and when the animals were finally purchased the amount was nine hundred and fifty dollars, instead of eight hundred dollars. I mentioned this to Mr. Fraze, and he assisted me in the livestock purchases and he said "I can let you have the money for you need it and I have it," and he and I went down to the Western Union Telegraph Company, and I gave the Western Union my check for eight hundred dollars and Mr. Fraze either gave them the money or his check for the additional one hundred and fifty dollars. I would not say, for sure, whether he gave a check or whether he gave the money. I do know that the nine hundred and fifty dollars was wired or otherwise sent to Springfield, Missouri, for the purpose of buying the animals.

Q. (By Mr. Fox): All right. After that was done, were the animals bought?

A. The animals were bought.

Q. By whom?

A. Either Mr. Fraze or Mr. Blackwell; I wouldn't say which.

Q. Was Mr. Fraze in Missouri?

A. Mr. Fraze was in Austin.

Q. Well, how could Mr. Fraze buy animals in Missouri when he was in Austin?

A. The animals were bought by Mr. Thurman and Mr. Blackwell, and pos-

sibly invoiced to Mr. Fraze and he sent the money when he collected it.

Q. Just what did you say; I didn't catch that last.

A. Mr. Thurman with Mr. Blackwell's assistance bought the animals.

Q. And shipped them to Texas?

A. And they were trucked to Texas.

Q. Do you know from whom they were bought in Missouri?

A. They were bought, as I understand, from different farmers who had animals for sale, and as I remember, invoiced possibly by Mr. Blackwell or possibly by Mr. Fraze.

Q. Well, you don't know for sure by whom?

A. I would have to refer to the records.

Q. Well, if the records show by Mr. Fraze, that he invoiced them to the State of Texas, that would be correct, would it not?

A. That would be correct, yes sir.

Q. Do you know how much Mr. Fraze invoiced them to the State of Texas for?

A. Whoever invoiced them, as I remember it, invoiced them for $970.00.

Q. Why was that done?

A. At my suggestion.

Q. What was your purpose?

A. My purpose in invoicing them to the State of Texas for twenty dollars more than the animals cost was for the purpose of defraying any interest that was on the notes, or any expense incurred in communications or any incidental expenses.

Q. Well, I will ask you this question—

A. (Interrupting and continuing): which was included in the purchase price.

Q. Where did you get the authority to borrow money for the State of Texas and charge interest?

A. I presume that possibly I didn't have any authority to borrow money for the State of Texas, but I did have the authority to purchase animals for the State of Texas, as my judgment dictated.

Q. Do you think that you can borrow money and use the State's money to pay interest with?

A. I think I can—I think I did the legal thing when I included in the purchase price the interest which that represented.

Q. You think every head of every department has that right?

A. I couldn't say about that.

Q. Do you think they ought to have it?

A. I wouldn't say that.

Q. But you think it is all right for you to assume that authority?

A. I think the law at that time which charged me with the responsibility of purchasing jacks and stallions gave me that authority.

Q. Then your answer is that any method was all right so long as you were getting the jacks and stallions for the State of Texas, is that correct?

A. I would not say that.

Q. Well, what would you say?

A. I would say as long as I used a practical, business method, and got the jacks and stallions for the State of Texas in an economical manner, that I was within my rights.

The Chair: For what purpose does the gentleman from Jones rise?

Mr. Lindsey: I move we recess until 2 o'clock.

The Committee thereupon took recess until 2 o'clock on motion of Mr. Lindsey.

Afternoon Session

Thursday, November 21, 1935

The Chair: The Committee will please be in order. Are you ready to proceed, Gentlemen?

Mr. Fox: Yes, sir, we are ready to proceed.

Mr. Felts: Mr. Chairman, the witness was requested to bring some kind of a record and it has occasioned just a few minutes delay in getting the record.

The Chair: All right.

Mr. Street: Mr. Chairman, it has been brought to our attention that a question and answer that was asked of, and given by one of the witnesses was apparently and inadvertently left out of the record. Those of you that have Journals if you will turn to page 652, about at the middle of the second column on that page, there was a question left out at the end of Mr. Felt's examination. I believe the Re-

porter has found that question and answer in his notes and we will ask him to read that question and that answer and ask that it be included as part of the transcript of the record.

The Chairman: I think if the record of the reporter shows that the question was asked and answer given that it wouldn't be necessary to make a motion because it is the duty of the reporters to make a record of the question asked and answers given, and the Chair, unless there is some objection will order the reporter to carry forward in the transcript the question and answer left out. All right, the reporter will read for us his record of the question and answer that was left out and it will be carried forward in the Journal of tomorrow, or rather today.

Mr. Tom Leach: Mr. Chairman, the question is in the record; there is only two words that seem to have been omitted from the answer. I haven't seen the transcript. I don't know whether the answer is in the transcript or not. The question is as in the Journal. "Q. Now, Mr. Hunter, to be perfectly fair, and I know you want to be perfectly fair, do you have anything in the world to base your conclusion on, a single fact, on which to base your suspicion that J. E. McDonald would destroy a public record of this State"? The answer, "A. Judge, I say I don't have." Now, that is not in the record, "and I say, I was there, I didn't have any choice, I didn't have any choice, so far as the facts were concerned, I was there and I was doing my duty to these people of Texas."

Mr. McLean: And Mr. McDonald and counsel think and they know it was inadvertently left out, but that was a serious matter, so far as his trial before this House is concerned, and therefore by agreement of the Committee of Investigation and the Gentlemen representing the State from the Attorney General's office, it is agreed that it shall be inserted in the record.

The Chair: I think it should be.

Mr. McLean: I thank you, sir.

The Chair: Are you ready Gentlemen?

Mr. Fox: Yes, sir.

Mr. McLean: We are.

J. E. McDonald, resumed the stand for further examination, and in answer to questions propounded, testified as follows:

Cross Examination

(Continued)

(By Mr. Fox):

Q. Mr. McDonald, just before noon, I believe we were down to that part of your testimony concerning the transaction wherein Mr. M. S. Fraze billed the State of Texas for three animals, I believe in the amount of $970.00, and you stated that those animals actually cost $950.00. Now, I want to know where that twenty dollars went?

A. I will be glad to tell you; when the invoice was given to me, when the invoice was about to be prepared, Mr. Fraze told me that the amount was $950.00, which I already knew, and there were some incidental expenses, and I told him to make the invoice for $970.00, twenty dollars more than the actual cost of the animals in Springfield, Missouri to take care of what incidental expenses there might be, which was in fact included in the purchase price.

Q. Well, what did you do with that twenty dollars?

A. Mr. Fraze when the draft came, as I remember, went to the Austin National Bank and paid the $800.00 note that I had given the bank to make this purchase, and took out his $150.00 and then he came back and says, "Mr. McDonald, we have around $18.00," I don't remember, but seventeen to eighteen dollars, and says, "what must I do with this." I called Mr. Morris our bookkeeper in and says, "Here is $18.00, or whatever the amount was in excess of the amount needed, and to put that in his jack and stallion cash or petty account, and that was done.

Q. Is this account kept in the Treasury Department, or is it in your own department?

A. That little petty account we have there is in the Department of Agriculture. As far as I know, that was the only money ever put in that account.

Q. Then, your books will show a deposit in this account of something like $18.00, is that correct?

A. I think that will be found correct.

Q. And you say that is all the money that was ever put in this account?

A. I am not sure of that. My recollection now is it was; possibly more was put there.

Q. Well, I don't understand why it was necessary to put this money in this particular account when you had billed the State of Texas $20.00 too much; what were you going to use it for?

A. I was going to use it for taking care of any incidental expense that might have occurred; we had bought those stallions by this method at least seventy-five dollars under the market price per animal, and I thought that could be included as part of the purchase price.

Q. Well, what were the expenses, and did you pay them out of this petty cash fund?

A. The expenses was something like two dollars and that left about eighteen dollars.

Q. What was that two dollars for?

A. Well, I think possibly it was the interest, or maybe a telegram: I wouldn't be sure, the books would show.

Q. Well, Mr. McDonald, I am asking you for the information about that twenty dollars?

A. I have given it to you the best I know. Ask any specific question and I will be delighted to give you my answer.

Q. All right; what went with the eighteen dollars after it went into the petty cash fund?

A. Our books will show that. I believe Mr. Morris used it to buy a new ledger or record, possibly; I wouldn't say. Mr. Morris can tell you, our bookkeeper.

Q. Why didn't you return it to the State Treasury?

A. Possibly that would have been the better way to have done it, but we needed a little cash in that account, and it being a small amount I put it there.

Q. Do you mean to state that whenever you needed any money in the petty account that you billed the State of Texas to get it?

A. No, sir, I do not. I think that was the only time such ever occurred. I didn't know what amount it would take, and the excess money of the twenty dollars was put in the petty account of jack and stallions for uses and purposes of the State of Texas.

Q. Out of what fund did you pay the telegrams wiring the money to Missouri. Did you pay it out of the petty cash fund?

A. I think not. I think at that time, at the time I added the twenty dollars, I thought the telegrams would have to be paid, but I believe Mr. Morris and Mr. Fraze advised me it had been paid out of the jack and stallion fund, out of the department expense.

Q. So that fund of practically eighteen dollars was spent for various and sundry things, which would not come under the regular course of purchasing for your department, is that correct?

A. I wouldn't say so.

Q. What do you say?

A. The books will show what it was spent for.

Q. I am asking you; if you are not familiar with the books, you should bring the books with you.

A. That is a small amount which I had directed to go into the funds as I told you and for the interest of the State of Texas; I didn't get one penny out of it.

Q. Mr. McDonald, no one accused you of taking one penny; I am talking about your method of conducting business in your department.

A. I have given you the facts in the case.

Q. Mr. McDonald, I want to know, rather the Committee wants to know something more about this transaction that you had with the Republic National Bank of Dallas, wherein you borrowed a certain amount of money from this bank, and, I believe that you stated yesterday that you purchased animals with the money?

A. That is correct.

Q. Well, how much did you borrow and how many animals did you buy, and what was the price of each?

A. I borrowed from the bank on my note $3300.00.

Q. Exactly $3300.00?

A. Exactly $3300.00 is my recollection.

Q. Well, what did you do with it?

A. I used $3225.00 or $3250.00 whichever the amount may have been.

Q. You don't know the exact amount?

A. It was, I think, one of those figures, thirty-two hundred twenty-five or thirty-two hundred fifty, whichever it might be. That was more than the amount needed to make the purchase from Ramsey E. Snell of Murfreesboro, Tennessee, three jacks and two stallions. I think I can give you the figures; I think we paid $1100 for the grand champion jack; we paid $750.00 for the grand champion two year old jack; we paid $500.00 for a stallion, and $400.00 for a stallion, and I don't remember the other price. What does that amount to?

Q. How many animals did you say you bought?

A. I bought five.

Q. But I am asking you, Mr. McDonald, for the figures?

A. I remember the figures on them that I gave you, and I think the total amount was thirty-two hundred twenty-five or thirty-two hundred fifty.

Q. That is only four animals that you have —

A. I am not positive of the price of the fifth animal.

Q. Would it be the difference?

A. It would be the difference between the amount I gave you and thirty-two hundred and twenty-five dollars or thirty-two hundred and fifty dollars, which ever it might have been. Something around five hundred dollars, I think.

Q. That would make about four hundred and seventy-five dollars, is that correct?

A. I had an idea around five hundred dollars. I presume four hundred and seventy-five dollars is correct.

Q. That would be five hundred dollars if you use thirty-three hundred dollars?

A. I did not use thirty-three hundred dollars.

Q. You used thirty-two hundred and fifty?

A. I used something less than thirty-three hundred dollars,—Thirty-two hundred and some dollars.

Q. Did you go to Tennessee and purchase these animals yourself?

A. I was in Tennessee at the opening of the State Fair and remained there for four days visiting the breeding farms in that State to get acquainted with conditions and prices, what they might have to offer, but I did not buy at that time but one stallion. I bought from Mr. Baird a stallion for four hundred dollars to be called for within thirty days. Then I returned to Texas and by telephone bought the other four head from Mr. Snell. Mr. Snell, however, paid for the Baird horse and included him in the thirty-two hundred dollars and the shipment was made from Snell.

Q. Is he in the Jack and Stallion business in Tennessee?

A. Mr. Snell is a dealer and breeder of jacks and stallions, and he told me that jacks and stallions had been bred on that farm for one hundred and fifty years.

Q. If the amount of money you borrowed at the bank according to records was thirty-two hundred and thirty one dollars, would that be correct?

A. If the record shows that, that is what it was and—

Mr McLean: That is all.

Q. How did you go about getting your money back?

A. As I remember the invoice was billed by Mr. Snell and as I remember I asked him to wire his endorsement of the warrant to the Republic National Bank and then I paid off the note.

Q. How did you endorse that warrant, Mr. McDonald?

A. I don't remember at the present time. At that time I endorsed it in a practical business manner. I don't remember now.

Q. What would be the practical business manner in the case we are deciding now?

A. I think one invoice was made to Mr. Snell and the warrant was possibly either to me or Mr. Snell,—I think Mr. Snell,—and my recollection is I wired Mr. Snell since he had already gotten his money to wire the bank his endorsement. I believe that is correct.

Q. Was it deposited to your account alone or was it deposited to the

account of J. E. McDonald and R. E. Snell?

A. I presume it was deposited to the account of J. E. McDonald.

Q. You presume so. Did Mr. Snell have any account there, or was he in partnership with you in this matter?

A. He was not a partner with me in this matter. If he had an account in that bank I did not know it.

Q. Mr. McDonald, if anyone wanted to trace back on the record to determined just exactly what these animals cost would it be possible to go to the sellers from your records?

A. It certainly would.

Q. How would that be possible when you stated that you purchased the animals from several different parties and had one warrant made out?

A. I did purchase these animals from two different parties. In other words, when I was in Tennessee attending the opening of the State Fair and looking over the jack and stallion situation I did buy a stallion,—contracted to buy it from Mr. Baird,—a stallion for the price of four hundred dollars, the stallion to be paid for when delivered to our truck within thirty days, and during that thirty days I bought the four head from Mr. Snell and Mr. Snell sent out to Mr. Baird's place and got the stallion and paid Mr. Baird and billed him for the four hundred dollars and I think plus about six dollars delivery charges from Snell's place into Murfreesboro.

Q. That you could not be positive and there would be no way in which to check back and determine exactly, from what you have said,—you said you thought so?

A. I presume in the Department you will find an invoice showing exactly what each animal cost and from whom purchased.

Q. Mr. McDonald, was Mr. Snell ever in the State of Texas to your knowledge?

A. I have no knowledge of Mr. Snell ever being in the State of Texas.

Q. I will ask you how Mr. Snell could sign an affidavit setting out that the State of Texas owed him thirty-two hundred and thirty-one dollars, signed before a Notary Public in the State of Texas, Travis County?

A. I presume that affidavit and invoice was mailed by my bookkeeper to Mr. Snell for his signature. That would be my idea.

Q. Do you think Mr. Snell would sign an affidavit of that type and not in the presence of the Notary Public of Travis County?

A. I could not say.

Q. What type of man is Mr. Snell?

A. He is regarded as one of the highest type men in his section, a man of considerable wealth.

Q. Mr. McDonald, can you then state how this affidavit was sworn to before M. A. Morris, a Notary Public for Travis County, working in your department, I believe?

A. I could not.

Q. How many transactions did you have wherein you bought the animals in this manner? I believe we have talked about three today. Were there any other transactions wherein you purchased animals in this indirect way?

A. I think that was the only three.

Q. Did you or did you not purchase any jacks and stallions in Iowa?

A. I couldn't say that we purchased any jacks and stallions in Iowa. The jacks and stallions that came from Iowa were purchased from J. C. Robison, as I remember it. It is possible that we did buy some but I do not recollect it.

Q. And you do not know from whom, if any were purchased, except from Mr. Robison?

A. My recollection is that we purchased no jacks or stallions from Iowa except those purchased from Mr. Robison, that he bought in Iowa.

Q. Didn't you state heretofore that about three loads were bought in Iowa?

A. I stated, I believe, that two or three loads were shipped from Iowa. One load of stallions came by Palace car from Iowa that we purchased from Mr. Robison.

(Questions by Mr. Bradbury):

Q. Mr. McDonald, in taking up Charge No. 10 relative to these cotton transactions. May I ask if you are acquainted with Mr. Robert Harriss of New York City?

A. Yes, sir, I am acquainted with Robert Harriss of New York City.

Q. How long have you known Mr. Harriss?

A. Quite a number of years.

Q. Was he formerly a citizen of Texas?

A. He was born in Dallas, Dallas County, Texas.

Q. How long has he been in New York?

A. I couldn't say how long, but several years.

Q. Is he a member of the firm of Harriss & Voss?

A. He is the senior member of the firm of Harriss & Voss.

Q. What is the business of this firm?

A. The business of this firm is the brokerage business and the handling of spot cotton.

Q. Have you ever had any business with this firm?

A. I have.

Q. Personal or public?

A. Personal.

Q. Have you ever had any public business with him, official business?

A. No, sir, no public business with him other than I worked with Mr. Harriss on agricultural matters.

Q. All the correspondence read in the record day before yesterday between you and Harriss & Voss, and between Harriss & Voss and you, did that relate in any way to any public or official business, or was it all private business?

A. Both, I believe.

Q. Then you have had some official business with them?

A. I have, as I stated a moment ago, some official business with him in regard to agricultural legislation in Washington.

Q. You state that you have bought cotton from a brokerage firm, in New York, Mr. McDonald?

A. Yes, sir, I have.

Q. And in doing so, did you ever put up any margin on any of the cotton you bought and how much?

A. I did not.

Q. How much cotton was the most you ever purchased from them at any one time?

A. I think three hundred or two hundred, two or three hundred bales.

Q. And didn't put up a penny margin?

A. That's correct.

Q. Between July 31, 1933, and February 28, 1935, did you draw any profits from these operations?

A. I did.

Q. Approximately, what were the profits?

A. I would say around twenty-five hundred dollars. Somewhere in that neighborhood, maybe a little more or maybe a little less.

Q. Mr. McDonald, in one of the letters in the record here, you stated in one paragraph as follows: "I certainly appreciate the consideration shown me, has meant a lot to me financially and I would appreciate you watching my account and keeping me fully advised. I have worked hard to put this program over and feel that I am entitled to make some real money out of the advance, and with your assistance feel that I can.

With great appreciation and best regards, I am,

Sincerely your friend ,

J. E. McDONALD,

Commissioner of Agriculture."

Will you please explain to this committee that paragraph?

A. It means just what it says.

Mr. Bradbury: That's just what I thought.

Mr. Bradbury: In another letter here in which you wrote to "Mr. Robert Harriss, 60 Beaver Street, New York City, New York,

Dear Mr. Harriss:

Today I drew a sight draft in the amount of five hundred ($500.00) dollars on Harriss & Voss, 60 Beaver Street, New York, and of course you will debit my account with that amount. The profits in the cotton purchased for me certainly have been a help and I appreciate it more than I can tell.

While Texas has had considerable showers, the State is badly in need of a general two or three inch rain.

While I am getting some very alarming reports on the crops, I know that they are not fully justified because the Texas crop is still in pretty bad condition.

Now please keep me advised on the market, and with appreciation and regards I am,

Sincerely your friend,

J. E. McDONALD,

Commissioner of Agriculture."

Q. Will you please tell the Committee the meaning of this correspondence?

A. The meaning of that correspondence is just simply this: My friend Harriss, before I became Commissioner of Agriculture and afterwards—since I have become Commissioner, if I wanted to buy cotton, he, knowing that I was a man of limited means but would take care of it, he would buy whether I had funds there or not.

Q. In another paragraph in that letter, which I have explained and read, it says: "Now please keep me advised on the market, and with appreciation and regards, I am,

Sincerely your friend,

J. E. McDONALD,

Commissioner of Agriculture."

A. I will say that Robert Harriss, before I was elected Agricultural Commissioner and since that time, has never at any time, advised me on the trend of the market, but he has always told me that the cotton farmers of Texas ought to have twenty-five cents a pound for their cotton.

Q. That didn't have anything to do with you playing the cotton market, through a bunch of gamblers?

A. That was a legal transaction, and they were legitimate brokers and I resent their being called anything else, and I have been buying through them for a number of years.

Q. Now, if you traded through the firm of Harriss & Voss—

A. First the firm of Harriss, Voss & Ivers, and then Harriss & Voss later on, I would say for fifteen years perhaps, through them directly and indirectly.

Q. Now, I notice here a telegram to you from Mr. Robert Harriss in which he asks you, or wires you as follows: "There will be very important meeting in Washington next Monday April Twenty-third in connection with agriculture and silver. Believe most advisable for you to be there. Please telegraph if you can arrange this. Think your expenses will be paid. Best regards. Robert Harriss."

Q. In this connection did Mr. Harriss pay your expenses to Washington on that trip?

A. He paid at least part, perhaps all of it.

Q. Was that private business or was it official business, Mr. McDonald?

A. Official business, and private business.

Q. And a gambling firm paid your expenses?

A. No, sir, they are not, I resent their being so called.

Q. They were your brokers?

A. Yes, sir, they were brokers.

Mr. Bradbury: Another telegram: "Believe important interest Texas farmers you be here Friday morning appear before Senate Agriculture Committee will be glad contribute one hundred dollars towards expenses of farmers in this good cause please answer via Postal Telegraph care Hamilton Hotel best regards.

ROBERT HARRISS."

Mr. McDonald: What do you want to know about it?

Mr. Bradbury: I just want to know if you went on that trip and if he paid your expenses?

A. My recollection is I did go to work for Mr. Harriss and in addition for the farmers of the South.

Mr. Bradbury: Another letter says: "Inclosed find statement of account for trip to Washington, which I trust you will find in order."—There was included in this letter an account for a railroad ticket and Pullman, Pullman, Pullman, Pullman, Pullman and Pullman, and meals fourteen at twenty-eight dollars, phones and wires, cash and hotel and cash and hotel—will you please explain the expenses which are charged in that letter?

A. I presume that was the expenses incurred in attending this agricultural meeting in Washington with Mr. Harriss and he was the man who was to pay my expenses and relieve the State of Texas of my account.

Q. Was that official or private business?

A. That was official business.

Q. Does the State of Texas provide money for those trips?

A. They do not.

Q. Mr. McDonald, you stated on direct examination yesterday that all the

transactions you had with Harriss & Voss didn't cost the State of Texas one penny. Is that statement correct, or not?

A. It is my statement that at no time did my transactions with Harriss & Voss cost the State of Texas one penny.

Q. Didn't your stenographer write these letters and telegrams, paid for by the State?

A. Possibly she wrote all of them.

Q. And didn't they use the office and the stationery of the State?

A. Yes, sir, and some instances they were written on blank forms.

Q. And some of them written on your official stationery?

A. Yes, sir.

Q. You were Agricultural Commissioner of the State of Texas when that was going on?

A. Yes, sir.

Q. You were running your office for personal gain?

A. That's not true.

Q. How many firms had you had dealing with—brokerage firms and had paid your expenses before you were Commissioner of Agriculture?

A. I had been called upon by brokerage firms before I was Commissioner of Agriculture and had participated in meetings and I went to many states prior my election, to meetings.

Q. About what is the total amount of cotton you purchased from Harriss & Voss?

A. I imagine I could say, all told, since I have been Commissioner, in all, not exceeding eight hundred or one thousand bales.

Q. And not one time did you put up any margin?

A. Not one time, no, sir.

Q. Can you tell me the amount of profit you have made during your operations with Harriss & Voss?

A. I think that my profits would run around twenty-five hundred dollars, and might I state I over-drew my account and when I closed my account sometime last year, I owed them around four hundred dollars and I sent them my personal check to cover it.

Q. You stated that one time you owed them something like five hundred dollars?

A. Something over four hundred dollars and less than five hundred dollars.

Q. And during all the time and the time you over-drew you didn't have to put a margin and didn't have a margin up with them?

A. No, when they closed on the cotton I had, I lost on the cotton something like between four and five hundred dollars.

Q. If you had no margin up, that was the same as a loan from them to you?

A. I would not call it a loan. Possibly you might call it a loan. When the cotton was sold instead of a profit I had something like four hundred dollars or five hundred dollars loss, for which I sent them my check. That closed the deal. If I had a profit I drew it out, and if a loss, I settled it up with my check.

Mr. Bradbury: Turn the witness back.

Mr. Street: Mr. Chairman, this morning I asked Mr. McDonald to bring over a copy of a letter and he has brought it and I want to offer it in evidence at this time.

The Chair: Admit the letter in evidence.

Mr. McLean: Are there any members of the Legislature who desire to ask Mr. McDonald any questions?

The Chair: I'll state to counsel that before going into the Committee of the Whole a resolution was adopted which provided that no member other than the Board of Managers, and counsel for the Respondent are permitted to ask any questions unless they are first reduced to writing and then tendered to either side to be propounded to the witness, and I'll ask that the members of the Committee of the Whole please observe that resolution.

Mr. Felts: Mr. McDonald, you are excused.

Mr. Street: The letter referred to will be marked instead of being read at this time, in the interest of time and it will appear in the record.

Mr. Street: It has been suggested that we read the letter.

The Chair: Do you want the letter read?

Mr. Street: Yes, sir, Mr. Chairman.

The Chair: Very well, the Reading Clerk will read the letter.

The Reading Clerk, Mr. Dunn, read the letter:

"August 11, 1934.

Mr. J. C. Robison,
Towanda, Kansas.

Dear Mr. Robison:

Absence from the office accounts for the delay in answering your letter of August 5, and thanks for the certificate and I am enclosing my check for $75.00 for the delivery of the mares you gave the boys.

I appreciate your words of congratulation on the vote I received in the July primary, and I have just learned this morning that we will not have a run-off; I am indeed grateful for the wonderful vote given me, as it shows that the people of Texas have confidence in me and my administration.

I am glad that you are getting a load of stallions that will be a real credit to our livestock movement, to be shown at the Dallas Fair.

There is some demand for good type mares and I think a car load, such as you describe in your letter, could be sold at the Fair this fall for from $150 to $225, and I wish you would advise me what a car load of good type Percheron mares, of from two to six years old can be bought for, F. O. B. Kansas, Missouri or Iowa.

Regarding the Dallas Fair furnishing stalls and feed for car of mares, it would be best for you to write J. A. Moore, Agricultural Agent, Dallas Fair, for information; you might state to him that you are a friend of mine and that I suggested that you write him.

There is quite a bit of sentiment in Texas for repeal of the Racing Law, and one of the two candidates for Governor, is making the repeal a plank in his platform. It is my opinion that this law will not be repealed at the Regular Session in January, but there will be a desperate fight made for repeal; of course if this law should be repealed that would cut off the purchase of stallions and jacks, and this is a thing for you to keep in mind. Anyway this will not affect the car load I am buying to be shown at the Dallas Fair.

With kindest regards, I am,

Sincerely yours,

J. E. McDONALD,
Commissioner."

JEMcD/cy

Senator McGregor: Mr. Chairman, and Gentlemen of the Committee, I want, for the convenience of the Committee, in order to put in the record, read the rule governing the jockey fund, and some statutes relating thereto, so that they will be before the members of the House at the same time. Subdivision 4 of Rule—

The Chair: Pardon me Senator for the interruption, but we want to get clear what it is that you are reading.

Senator McGregor: I am reading Subdivision 4 of Rule 152 of the Racing Commission, regulating this Jockey Fund.

The Chair: That's one of the rules of the Racing Commission, and not a statute?

Senator McGregor: Yes, sir. (Reading): "Money received from these license fees to be held and regarded as a voluntary subscription or contribution by applicant to a fund to be created by the Texas Racing Commission for the purpose, among other things, of caring for jockeys, injured while in the discharge of their duties, upon tracks under the jurisdiction of this commission. Distribution and expenditures of the funds thus created to be wholly within the direction of the Texas Racing Commission, part of which may be used for the purpose of defraying any expense incident to its administration or for such other purpose as the commission may deem expedient." Now, I want to read in connection with that—

Mr. Street: In order that we may take things as they come, Senator, as I understand, that has reference to fees collected from jockeys and others connected with the race tracks?

Senator McGregor: And fines; that's fines levied by the Stewards; it does not mean fines levied by any court of competent jurisdiction in this state.

Mr. Street: But that does not refer to what we have been calling the procreation fund or fees?

The Chair: Senator, they can't hear you.

Senator McGregor: It is the fault of the machine and not mine, Mr. Chairman.

The Chair: Can the members of the Committee hear the Senator?

Several Voices: No.

Senator McGregor: All right, it is mine then.

Another voice: Let the Clerk read it.

Senator McGregor: No, I will read it myself. I haven't done anything in this hearing yet, and I want to do something. I have just read Subdivision 4 of Rule 152. Now, I want to read a section from the racing law, authorizing that rule: (Reading): "The Racing Commission shall have the power and it shall be its duty to prescribe and enforce reasonable rules and regulations which all horse races and exhibitions of riding horses are held under this Act; likewise prescribe and enforce rules governing the conduct of all persons who engage in or carry on the racing or such exhibitions of horses." The source of revenues, the primary source of revenue, under the Racing Act, are derived from licenses to hold races—

Mr. Street: Mr. Chairman—

Senator McGregor: I am just stating the relevancy of the Act, Mr. Chairman.

Mr. Street: I just don't want him to make any speech at this time.

Senator McGregor: I am not; I am just stating the relevancy of the Act. The primary sources of revenue —

Mr. Pope: Mr. Chairman.

The Chair: For what purpose does the gentleman from Nueces rise?

Mr. Pope: I want to turn on the microphone.

The Chair: I understand it has got on it all it can take now, Mr. Pope.

Senator McGregor: The primary sources—you can cut this thing off and then you could hear me—the primary sources of revenue under the Racing Act are derived from the license fees to hold race meets, and a fraction of it, of course, from the parimutuels. Now, the law says that these funds, when received by the Treasurer, shall be held by him, and credited as a Special Racing Fund. Ultimately, this fund is supplemented by—

Mr. Street: Mr. Chairman, I don't like to be interrupting all the time, but—

Senator McGregor: I am reading the statute, Mr. Street.

The Chair: Let's try to get a little order, and get along a little faster please. The Chair doesn't want to rebuke anybody or hurt anybody's feelings, and I know that you don't intend to do anything wrong, Senator McGregor, but I am just going to ask you, for the sake of time, and in order to expedite the matter a little bit, to try to restrain yourself all you can from commenting on the statute and just get it read.

Senator McGregor: I am satisfied that Mr. Street didn't understand that I was reading this section from the statute.

Mr. Street: We have no objection to his reading that statute or any other statute or any rule of the commission; what we are objecting to are his comments on the statute.

The Chair: Now, Senator, the Chair is going to give you ample opportunity to comment on the statutes later on, but he is going to ask you now to please confine yourself to reading the statute.

Senator McGregor: If I have violated any parliamentary rules, it has been induced or caused by the physical effort of talking on this machine, because I think I am well enough known in this House for them to know that I am a sticker for the rules. I make that statement as an apology or as a statement of fact. "This fund—" reading now from the statute, Mr. Street—"when received by the Treasurer shall be held by him, and credited as a Special Racing Fund—"

A Member: Senator is that the law?

Senator McGregor: That's the law I was reading, Judge.

The Member: Who passed that law?

Senator McGregor: You helped do it —No, you voted against it. I helped do it. Now, this is another provision of the law: "For the service of such animals so distributed, the Commissioner of Agriculture is authorized to make a charge of not exceeding Five Dollars ($5.00) for colts foaled. The amount so collected by the Commissioner of Agriculture shall be remitted by him through the State Comptroller to the State Treasurer, and shall be

deposited to the credit of the Special Racing Fund." Now, there is another provision in the racing law: (reading): "An amount equal to twenty-five per cent (25%) of the funds then remaining in the Special Racing Fund shall be used by the Commissioner of Agriculture of the State of Texas to purchase, transport, and deliver for distribution well-bred and approved stallions and jacks throughout the State of Texas, and, in connection therewith, defray the actual reasonable expense incident to the purchase, transportation and maintenance of such animals, in order thereby to promote the breeding of better live stock in the State of Texas."

Mr. Street: Now, Senator, if you don't mind me requesting you to do so, would you mind reading the first part of that paragraph, a part of which you have just read, so that we can get it all before the House at one time; that's my purpose in asking it.

Senator McGregor: Well, I did read it all; you are just asking me to read it again. I don't want to be left in the attitude of not having read it all.

Mr. Street: I did not so understand it when you read it.

Senator McGregor: (Reading): "For the service of such animals so distributed—"

Mr. Street: Pardon me again, Senator, it is the other one; the last one that you read.

Senator McGregor: (Reading) "The amount so collected"—I did read it. "The amount so collected by the Commissioner of Agriculture shall be remitted by him through the State Comptroller to the State Treasurer, and shall be deposited to the credit of the Special Racing Fund."

Mr. Street: Now, the section that I had reference to was the section where you started in with: "an amount equal to twenty-five per cent of the funds then remaining," that's the part I was asking about.

Senator McGregor: "An amount"—I offered all that I intended to offer, but if you want me to read anything in connection with it, I will be glad to do it.

Mr. Street: I wish you would please do so.

Senator McGregor: (Reading): "An amount equal to twenty-five per cent (25%) of the funds then remaining in the Special Racing Fund shall be used by the Commissioner of Agriculture of the State of Texas to purchase, transport, and deliver for distribution well-bred and approved stallions and jacks throughout the State of Texas, and, in connection therewith, defray the actual reasonable expense incident to the purchase, transportation and maintenance of such animals, in order thereby to promote the breeding of better live stock in the State of Texas."

Mr. Street: Senator, the part I had reference to now, is immediately preceeding the part that you just read.

Senator McGregor: All right; you want that whole paragraph read?

Mr. Street: Yes, sir, please sir.

Senator McGregor: (Reading): "After providing for the operating expenses of the Racing Commission as aforesaid, an amount equal to twenty-five per cent (25%) of the funds remaining in the Special Racing Fund shall by the Treasurer of the State of Texas be paid into and credited to the available Public Free School Fund of the State of Texas." And then I read: "An amount equal to twenty-five per cent (25%) of the funds then remaining in the Special Racing Fund shall be used by the Commissioner of Agriculture of the State of Texas, to purchase, transport, and deliver for distribution well-bred and approved stallions and jacks throughout the State of Texas, and, in connection therewith, defray the actual reasonable expense incident to the purchase, transportation and maintenance of such animals, in order thereby to promote the breeding of better live stock in the State of Texas." Now then, under another charge in this act of impeachment, I want to read the Nepotism Statute, in order that it may be written into the record, and be available to the members of the committee. (Reading): "Nepotism. "No officer of this State or any officer of any district, county, city, precinct, school district, or other municipal subdivision of this State, or any officer or member of any State, district, county, city, school district or other municipal board, or judge of any court, created by or under authority of any general or special law of this State, or any member of the Legislature, shall appoint, or vote for, or confirm the appointment to any office, position, clerkship, employment or duty, of any

person related within the second degree by affinity or within the third degree by consanguinity to the person so appointing or so voting, or to any other member of any such board, the Legislature, or court of which such person so appointing or voting may be a member, when the salary, fees, or compensation of such appointee is to be paid for, directly or indirectly, out of or from public funds or fees of office of any kind or character whatsoever." Then I want to read Section 5996—

Mr. Fox: Mr. Chairman, I was out when this procedure started, but it occurs to me that if we want the law read that we might have the Reading Clerk to read the law; I don't think we have arrived at that stage of the game yet though, have we?

The Chair: Nobody made any objection; nothing was said; he offered to read certain statutes, rules and regulations, and Mr. Street said it was all right with him, and they have been reading them here. Now, do you want to register some objection against that procedure, and if so, what?

Mr. Street: Do you mean Article 5996?

Senator McGregor: Yes, sir, Article 5996.

Mr. Felts: Senator McGregor would be glad for the Clerk to do the reading in his place, Mr. Chairman.

Mr. Fox: It is altogether immaterial to me who reads it.

Senator McGregor: I would be glad if the Clerk would read it.

The Chair: For what purpose does the gentleman from Atascosa rise?

Mr. Jones: I just wanted to ask, since the Statutes are available, and since they are plainly written, and every person in this House can or is presumed to be able to read, what can the purpose of this be other than to encumber the record by copying into the record the Statutes as they exist?

The Chair: Now, Mr. Jones, the Chair is in hearty accord with you—

Mr. Jones: Then, as a member of this Committee, not on the Board of Managers, I move to urge the objection that it is unnecessary and cumulative and cumbersome, and of no good to this Committee.

Mr. Pope: Mr. Chairman.

The Chair: For what purpose does the gentleman from Nueces rise?

Mr. Pope: I want Mr. Jones, or the Chair or somebody else to cite me some rule of this procedure that authorizes the record to be complete without the law; the law is in the case, and it is necessary that they know the law if they rule upon the charges according to law.

The Chair: Will you permit the Chair just a minute to give you his idea about it, and then you can do as you please. In the ordinary case that is tried, either civil or criminal, of course the judge gives instructions to the jury and charges them the law. Now, in this particular character of case, the House of Representatives, sitting as a Committee of the Whole, passes upon it. Now, the question is as to whether or not the membership of this Committee as a whole desires to have these statutes read into the journal for their benefit and use, and in order to determine that question, there being some doubt on that proposition, I am going to leave that to a vote of the Committee.

Mr. Pope: Mr. Chairman, one more question.

The Chair: Mr. Pope.

Mr. Pope: When the Articles charge violations of certain laws, without enumerating those laws, and then if the defense desires to offer the statutes in justification of what has been done, I submit that that law should be in the record from the viewpoint of both sides, the one that the Committee relies upon to charge the offenses and the one that the lawyers that defend rely upon as justification of the defendant's conduct, I say they both ought to be in the record. There is no provision in the impeachment law that authorizes the Chair or the Court or anybody else to say what is the law, and unless it is read in here or else the whole statutes submitted to the Committee, I don't see how they can pass upon the charges.

The Chair: Now, Mr. Pope, the Chair answering that will state that ignorance of the law, of course, is not any excuse by you or anybody else, but this House or Committee of the Whole can do as they please; they have the right to regulate themselves and make any rules as to their conduct. Now, the Chair is going to put the question to the Committee of the Whole.

Mr. McGregor: My purpose, Mr. Chairman, in offering to read the statutes was because the statutes are not available. Judge Jones is mistaken, I had to search this House before I could find one statute, and the fact that I had the trouble suggested to me that it ought to be read and put before the Members of the House. Now, if the Statutes are available it is all right. It is immaterial to us. We are going to rely on those statutes and wanted to do it for the convenience of the Committee, and then you would have the statutes before you.

Mr. Jones: Now, we are rather in the position that you have read into the record part of the law relied upon, and that part of the law not specially read would not be in the record, and these gentlemen would, perhaps, I don't know whether they would or not, take advantage of the fact and say that you haven't read into the record the law that we are relying on. I state that the Statutes of Texas as written are admissible and it is a waste of time and a waste of the State's money to read into this record the statutes that are available to every member of this House.

Mr. Pope: Mr. Chairman.

The Chair: The Chair recognizes the Gentleman from Nueces.

Mr. Pope: That is all right. Mr. Jones states a correct position with reference to the statute being available, I want to say that all of these facts are available also to each member of the Committee and each citizen of Texas, but that is not the question. We could go out probably and find out all of these facts, but I don't know of any decision in the impeachment law that authorizes the application of any particular statute or commands any particular Member of the Committee to go out and search for the facts. The charge has been made that certain laws have been read; those are the laws, we think which should be read into the record by both sides, and if the defense is relying on certain statutes in justification for the count the defense has the right to have them in there as well as advising the Committee what the law is.

Mr. Hunt: Before putting this motion, I assume that counsel for both sides will have an opportunity of arguing the law before this House and just want to include that motion that the Reading Clerk read the statute, that is, in case the motion is carried.

Mr. Jones: Now, Mr. Chairman, I am serious about this matter, because, in the first place, I don't want to take up the time of this Committee in some useless and unnecessary procedure as I stated before.

The Chair: Now, Members of the Committee, let's have a little order please.

Mr. Jones: As a matter of argument, of course, the statutes are and will be available and can be given here. If we were away from Austin it would be proper to read the law into the record, but to read it and put into the record and just refer to it in argument I again say is useless, and I don't think it would enlighten this House.

The Chair: Now, let me have attention please, Members; I want to be fair to everybody. I have tried all through this proceeding to do that and still want to do it. Now, some of you want the statutes read into the the record, for what purpose, I don't know, and some don't. Now, what I am going to do is to submit to the Committee of the Whole as to whether or not they want the statutes involved in this proceeding, such statutes as either party wants read into the record by the Reading Clerk. Now, all in favor the motion please vote yea—the motion is this, now please let me have your attention; the motion is that the Statutes and Rules and Regulations of the Racing Commission, and such other statutes of the State of Texas as the parties involved in this proceeding deem pertinent, that they be read into the record and printed in the Journal. Now, those in favor of that motion—

Mr. Dunlap of Hays: I move that the motion be tabled.

The Chair: Mr. Dunlap of Hays moves to table the motion. Now, those in favor of the motion to table vote yea and those opposed vote nay.

(A vote on the motion to table was taken.)

The Chair: There being sixty-three yeas and forty-seven nays, the motion to table prevails.

Mr. Quinn: I would like to call for enforcing the rule that a member go to his desk and push the button instead of hollering here loud enough to hear him three or four city blocks.

Mr. Dunlap of Hays: Inasmuch as the motion has carried that they be not read, I make a motion that those which have been read for the purpose of being incorporated in the record be expunged from the record.

Mr. Pope: Is that a debatable question?

A number of voices: No.

Mr. Pope: All right, show me.

Mr. Alsup: I want to raise a point of order against Mr. Dunlap's motion.

The Chair: What is it?

Mr. Alsup: I want to raise the point because as you have stated the motion that will be taken care of; they said they didn't want it in the record.

The Chair: The vote was only as to such reading of the statutes as may have come after the making of the motion.

Mr. Alsup: What was the motion put before the House?

The Chair: The motion put before the House was as to whether or not all parties desired to have them incorporated in the Journal for the benefit of the membership of the Committee of the Whole.

Mr. Alsup: That is right.

Mr. Pope: I think maybe we can settle this by agreement of both sides. It is not essential that these laws be read, but would it be agreeable for each side to file as part of the record, a citation of the law to which or rather on which each side depends?

The Chair: I think that is a good idea.

Mr. Felts: Mr. Chairman, the defendant's counsel do not want to inconvenience the Committee in any manner, and if it will be inconvenient or expensive to read all of the statutes into the record, we will be only too glad to wait and present them in argument at a later time.

The Chair: The motion of Mr. Dunlap is withdrawn. Now, let's have a little order please; let's proceed gentlemen.

Mr. Felts: We rest.

Mr. Fox: The Committee would like to recess for about ten minutes.

The Chair: Motion has been made that the Committee of the Whole stand at ease for ten minutes. Any objections? The Chair hears none and the Committee of the Whole will stand at ease for ten minutes.

The Chair: The Committee will please be in order.

Mr. Street: Mr. Chairman, we want Mr. Morris, M. A. Morris.

M. A. Morris, having been previously sworn by the Chair, in answer to questions propounded, testified as follows:

Direct Examination

(Questions by Mr. Street):

Q. Mr. Morris, I believe you have already testified one time before the Committee?

A. Yes, sir.

Q. You are the bookkeeper down at the Department of Agriculture?

A. Yes, sir.

Q. Do you have with you the checks that were written on the Jack and Stallion Fund down at the Austin National Bank?

A. Yes, sir.

Q. I will ask you to look at those checks and see if you have one in the sum of $180.00 payable to Jim Tate?

A. Yes, I do.

Mr. Street: Mr. Chairman, I want to offer that check in evidence and will ask the Reading Clerk to read it.

(Thereupon, the Reading Clerk read the following to the committee:)

"No. 539. Delivery of Jacks-Stallions Kansas to Texas points. Austin, Texas, Oct. 27, 1934. Pay to the order of Jim Tate $180.00. One Hundred Eighty and no/100 Dollars. State Jack-Stallion Account by J. E. McDonald, Commissioner. To the Austin National Bank, U. S. Government Depository, Austin, Texas."

Q. Read the endorsements.

(Thereupon, the Reading Clerk read the following endorsements.)

"Jim Tate. Pay to the Order of Any Bank, Banker or Trust Co., previous Endorsements Guaranteed, October 29, 1934, Republic National Bank and Trust Company, Dallas, Texas.

Pay to the order of Any Bank or Banker, prior Endorsements Guaranteed Oct. 29th, 1934, Waxahachie Bank & Trust Co., Waxahachie, Texas.

Pay to the Order of Any Bank or Banker, Prior Endorsements Guaranteed, Oct. 31, 1934. San Antonio Branch Federal Reserve Bank of Dallas, San Antonio, Texas. Paid 11-1-34." Under that there are some other figures, the last two are one seven but I can't tell what the first is.

Mr. Street: That is all right.

Q. Now, Mr. Morris, without going into or taking up each check in detail, do you have a large number or a considerable number of other checks there with you on that same account?

A. Yes.

Q. By whom are each of those checks signed?

A. J. E. McDonald, Commissioner.

Q. What were the purposes for which those checks were given, or at least some of the purposes if you don't remember them all?

A. Paying the salaries of the caretakers for the jacks and stallions.

Q. Were any of them given for any other purpose?

A. Yes, sir. You will find some of them, a very few, given for traveling expenses, and this one check you have there was for delivery of jacks and stallions from Kansas to Texas.

Q. Is that the only one you have in all those checks for delivery of animals?

A. Yes, sir.

Q. Just the one?

A. The one check, yes, sir.

Mr. Street: That is all.

Cross Examination

(Questions by Mr. McLean):

Q. Do you know how much money there is now to the credit of the Jack and Stallion Fund?

A. Approximately twenty-five thousand dollars.

Q. And where is that money?

A. In the State Treasury.

Mr. McLean: That is all.

(Witness excused).

Mr. Street: We want to recall Mr. West, please.

The Chairman: Call Mr. West.

C. L. West, having been previously sworn by the Chairman, in answer to questions propounded, testified as follows:

Direct Examination

(Questions by Mr. Street):

Q. Mr. West, you have heretofore testified before this Committee, have you not?

A. Yes, sir.

Q. I believe you testified that you made an audit of the Agricultural Department?

A. Yes, sir.

Q. Among other things in the making of that audit did you ascertain how many jacks and stallions had been purchased by the State of Texas or by the Agricultural Department for the State of Texas?

A. I made that ascertainment under the audit of the Racing Commission.

Q. I believe you stated the other day that you did audit the Racing Commission also?

A. Yes, sir.

Q. Now then, how far did that audit extend, that is, down to what dates did that audit extend?

A. Of the Jack and Stallion part we started in at the beginning of purchases in February, 1934, and ended December 31, 1934.

Q. During that period of time what do the records show as to how many jacks and stallions were purchased in behalf of the State of Texas?

A. One hundred seventy-seven.

Q. Did the records show how those animals were shipped to Texas?

A. Yes, sir.

Q. Will you tell the Committee, please, how those animals were shipped, and the number that were shipped by each method?

A. There was a total of 177 animals, 56 were shipped by rail, 8 by J. C. Robison by truck, 10 by A. E. McDonald by truck and 52 of them were purchased within the confines of the State of Texas, making a total of 177 animals.

Q. Do the records show how many were brought into the State by Jim Tate?

A. 51.

Q. Now then, Mr. West, did you also examine the records of the Comptrol-

ler's Department and ascertain the amount of money that has been paid to Jim Tate for bringing animals into the State of Texas?

A. Yes, sir.

Q. Do you have that amount?

A. I don't have the total of it, no, sir.

Q. Did you ascertain from that record in the Comptroller's office, that is, from payments made to Jim Tate, did you ascertain how many animals he had brought into the State?

A. Yes, sir. The bills as presented to the Comptroller show the number of animals Jim Tate hauled at each load.

Q. And what was the number?

A. 51.

Q. That is the total number that he hauled?

A. Yes, sir.

Q. Was Jim Tate paid for hauling fifty-one animals into the State out of the State Treasury, through the Comptroller?

A. He was paid for hauling 51. He was paid for hauling 51 animals through the State Treasury and Comptroller out of the Jack and Stallion funds.

Q. Now, then, if Jim Tate was paid $180.00 out of the Jack and Stallion Fund down in the Austin National Bank for hauling four animals into the State of Texas, then is there any records that you found in either of the departments as to where he hauled those four animals into the State?

A. No, sir. If he has been paid for four animals, hauling that many into Texas, our inventory would have been short four animals.

Mr. Street: That is all.

Mr. McLean: That is all.

(Witness excused.)

Mr. Bradbury: Mr. Chairman, the Board of Managers, in behalf of the Committee of the Whole, closes its case.

Mr. Felts: Mr. Chairman, Counsel for Mr. McDonald closes the case.

The Chair: It has been suggested here that the resolution adopted by the House of Representatives is that there be no speeches or arguments made by any member of the Committee of the Whole until after the arguments have been concluded for the Respondent and the State. The Chair suggests that those members of the Committee of the Whole who wish to be heard, that they come down and let me have their names, those who want to be heard on this matter. Has there been any agreement between opposing Counsel as to how much time each side will want to present its case to the Committee of the Whole? I would suggest that you Gentlemen get together on that and then we will see if it meets with the will and approval of the Committee of the Whole.

Mr. Latham: Point of inquiry.

The Chair: State your inquiry.

Mr. Latham: It is my understanding in prior proceedings when there was more than one charge presented to the House, that each charge was voted on separately and individually. Is that correct?

The Chair: I don't think it is. I have read all of them and I have some of them here that you can see, right at the page if you want to look at them. I have a resolution here signed by several men,—I don't know whether you are one of them, or not, —asking that the charges be submitted separately for a vote, and when they get through I intend to lay out these resolutions—

Mr. Latham: That brings me to the inquiry I started out to make. Is it the idea of the Chair that all arguments will be made and then the issues be submitted to the House for their vote, contingent, of course, on whatever resolution is adopted prior thereto, or since they are separate, will the individual count be open again for arguments on the individual count?

The Chair: I hope not. My idea, if the Committee of the Whole sustains me, was this, that we have the arguments written and then have the argument of any member of the Committee that has to argue the question, and then I intend to lay out first the resolution which calls for a separate and distinct vote on each count. Then, if that was adopted, then the Committee of the Whole would vote on each count separately, independently and a part, one from the other. If, on the other hand, the resolution is voted down, I intend to lay out one of these other resolutions that vote them all together.

Mr. Latham: Then it is the Chair's idea, subject to the will of the Committee of the Whole, the arguments would be made once and for all and then in the event we vote separately the separate count will be submitted without further argument.

The Chair: That would be the Chair's idea. Do you think that is a good idea?

Mr. Latham: I think the Chair is correct again.

The Chair: Thank you.

The Chair: Let's have a little order please.

Mr. Reed of Dallas: Mr. Chairman—

The Chair: The gentleman from Dallas is recognized.

Mr. Reed of Dallas: I don't want to be recognized right now. I just wanted the Chair to state clearly just now, just what is going to be the next move.

The Chair: The next move, as I understand it, Mr. Reed of Dallas is, under the resolution adopted is for the arguments to be made by the Board of Managers, or their representatives who are representing the State, and the gentlemen, who are representing the respondent in this case.

Mr. Duvall: I was addressing my remarks to the Chair, and of course relative to the resolution submitted by Representative Calvert, which amounts to a demurrer, or a motion for an instructed verdict, regardless of what you might do concerning the articles of impeachment presented, you have presented to you a motion to consider the resolution which Mr. Calvert has present and in the due order of pleadings, if this is to be followed, certainly the motion for an instructed verdict ought to be considered by the Chair and by the Committee. Prior to your consideration of the arguments made for and on behalf of the Respondent and for and on behalf of the Committee representing the House. Consequently I am asking the Chairman to lay out the resolution submitted by Mr. Calvert, which seeks to dispose of the entire group of charges as a unit.

The Chair: The Chair will make his position clear, but I am going to be perfectly fair to the House, and to the representatives of the Board of Managers, representing the State, and counsel representing the State and to the counsel representing the Respondent. According to the resolution and as the Chair understands it, the counsel representing the State should be heard first, and counsel representing the Respondent, before any speeches should be heard of any of the members of the House or anything else be done. The Chair is, therefore, going to hold that this is the order to proceed upon and is not going to allow speeches on a resolution or the resolution to be presented and discussed until the arguments have been had by both sides, unless the committee itself should determine otherwise, it is under the control of the Chair and the Chair is going to carry out the will of the resolution passed by the House. And it is now in order to have the arguments by both the representatives of the State and the representatives of the Respondent, and then when that is done the Chair will pass upon the matter of what resolutions will be presented. This one presented by a member of the Committee to consider the motion for an instructed verdict, if you please to call it such. Do you or not, think that the members of this Committee will want to be heard on this resolution?

Mr. Dunlap: I think so.

The Chair: Then I'll not lay it out. I am only following the will of the House as expressed in the resolution that was adopted. Let me read you a portion of the resolution which you adopted as follows:

"Resolved, That no speeches or argument shall be made by any member of the Committee of the Whole until all evidence has been submitted by both the proponents of the charges and the Commissioner of Agriculture, J. E. McDonald, and until the arguments by the proponents of said charges and or their selected representatives as well as the arguments of the Commissioner of Agriculture, J. E. McDonald or his selected spokesmen and representatives have been concluded."

That resolution was adopted by the House and this Chair is going to strictly follow the instructions contained in that resolution and we will proceed with the arguments to be submitted by the proponents of the charges, the Board of Managers and their representatives, and the arguments of the attorneys for the Com-

missioner of Agriculture, J. E. McDonald. It is not my will, but the will of the House of Representatives, Mr. Duvall.

Mr. Duvall: Mr. Chairman, the resolution should be presented, to the members of the Committee. This resolution which the Chairman has just read contains no inhibition of any kind against the offering of a resolution at any time which calls for an instructed verdict in this transaction. When you get down to the consideration of each of the charges contained in the resolution requiring this committee to sit to consider impeachment charges, then arguments could be made by only the counsel for the Respondent and members of the Board of Managers on behalf of the Committee, but prior to that time without doing violence to the terms of the resolution, which the Committee has adopted, the motion to dismiss would be in order at any time, or for an instructed verdict would be in order at any time. A motion to consider the question would be in order at any time.

The Chair: Gentlemen, this chair doesn't want to be placed in a position and is not going to be placed in a position of being unfair in any way. I am just trying to do what I conceive to be right. I want to call the attention of the members of the Committee to another proposition. In all these proceedings that have been held heretofore, there have been no resolutions offered and none acted upon, so far as I can find, until after the arguments have been made and you have heard them. I have the proceedings here on my desk, and if you will take these cases I have here on my desk you will find in each and every case, that the arguments are offered and no resolutions are offered until that has been done and I am convinced that that proposition is right, and we are confronted with the further proposition here that if we begin offering resolutions here, as a matter of expediency it is not right, for there would be one resolution and then another, and I have nothing in mind but to do what is right about it, but the Chair is going to hold that the arguments for both sides should be heard before any resolutions are submitted to the Committee, and in order to get through with this proposition, we ought to have these arguments in accordance with the resolution and precedents heretofore established. Now the Chair is going to rule that and if you want to appeal from it, I shall be glad to put it for you, but in the face of this rule that has been established and the resolution that the House has adopted, there is no use arguing with me, but if any gentleman wants to appeal I'll be glad to put the motion for him.

Mr. Calvert: You remind me of a Justice of the Peace. I have been trying to be recognized for sometime. He says to the defendant, "do you want to plead guilty or do you want me to find you guilty." I think this Committee would have a right, if it cared to, I think it would have a perfect legal right, if they cared to, to stop the proceedings after the first witness had testified and offer a resolution or otherwise dispose of the matter. Here's what I want to say to the Chair: I think it would be a proper proceeding for this resolution to be read. I don't want to argue it, but want it presented. I don't want to argue them either before or afterwards, or at any time, but when counsel goes to discuss whether articles are to be voted or what course is to be taken in the matter, they should have before them proper procedure, and they would not have that before them unless the resolutions are laid out and read before they proceed.

The Chair: I suggested that procedure to Mr. Duvall five minutes ago. I told Mr. Duvall to have this resolution in order that all parties might know what course they might take. I think Mr. Duvall will tell you that I suggested that. I have no objection to that. The Chair has no objection if the Committee of the Whole wants the resolutions prepared and read prior to the time these arguments are made. I want to say I am in sympathy with the idea and with that thought.

Mr. Calvert: I think the Committee would have the right to send up any Resolution any time, any member would, any time he desired, to send it up and to have it laid out.

The Chair: Now, Bob, I want to be fair, and you know I want to be fair, but now just take it from a practical point of view. Suppose you offer a resolution here and amendments are sent up to it and this fellow wants to amend it and that fellow wants to amend it, don't you think we would get in a pretty bad predicament before we got very far? After counsel have spoken and we are ready for the con-

sideration, then I think it is proper for resolutions and amendments.

The Chair: You want to move that the resolution be read prior to the time the argument is made.

Mr. Calvert: I move that the resolutions be read and that no member be permitted to argue these resolutions until all counsel have been permitted to argue the case, in accordance with the resolution heretofore adopted.

The Chair: All right, the motion has been made, members of the Committee, that the resolutions on the Speaker's desk be read—

Mr. Padgett: A parliamentary inquiry, Mr. Speaker—

The Chair: State your inquiry.

Mr. Padgett: As I understood you were not going to permit arguments on the resolutions—

The Chair: Not until the counsel for each side has spoken, they have that right and then the resolutions may be taken up.

The Chair: Are you ready to vote. Now, everybody get to your seats except the Board of Managers, they have a right to stay here. The motion has been made by Mr. Calvert, that the resolutions on the Speaker's desk be read and that prior to the arguments.

Mr. Adamson: Mr. Speaker, I move to table that motion.

The Chair: Mr. Adamson moves that that motion of Mr. Calvert be tabled. The motion now is on the motion to table the motion of Mr. Calvert. Those favoring the motion to table vote "aye" and those opposed "no."

The Chair: Now the question recurs on the motion by Mr. Calvert that the resolutions be read and House Resolution No. 36 be complied with; those in favor of that motion say "aye" and those opposed to it "no". (After the vote). The ayes have it and the motion prevails. The Clerk will read the resolutions on the Speaker's desk.

The Reading Clerk thereupon read the following Resolution.

"Simple Resolution, by McConnell:

Whereas, The impeachment charges pending against J. E. McDonald in the House of Representatives, sitting as a Committee of the Whole, contained ten or eleven specific charges of official misconduct, nepotism, etc.; and

Whereas, These charges and a proper and careful consideration thereof are of grave importance to the people of Texas on the one hand and to Mr. J. E. McDonald on the other; and

Whereas, Because of the diversified nature of some of the charges, it is imperative that when the House votes upon these impeachment proceedings in order to insure a careful and judicious consideration of each of the charges they should be voted on separately;

Therefore, We hereby move that Honorable Franklin Spears, presiding as Chairman of the Committee of the Whole, submit for our consideration and vote each of said counts separately rather than voting on all of the same at one time." Signed by McConnell, Lindsey and Gray.

The Chair: Read the following resolution.

The Reading Clerk thereupon read the following Resolution:

"Simple Resolution

Whereas, House Simple Resolution No. 36, adopted by the House of Representatives of the Forty-fourth Legislature, First Called Session, provided for an investigation of the evidence pertaining to certain charges therein made against the Commissioner of Agriculture; and

Whereas, Pursuant to the provisions of such resolution, the House of Representatives, sitting as a Committee of the Whole House, has been in session for several days and has examined many witnesses and made diligent inquiry into the evidence pertaining to the charges made in the said House Simple Resolution No. 36; and

Whereas, The Committee of the Whole has heard all witnesses produced by the steering committee appointed under the terms of House Simple Resolution No. 36, for the purpose of establishing the truth of the matter contained in such charges and cross examination of such witnesses by attorneys for the Honorable J. E. McDonald, Commissioner of Agriculture, respondent, and has heard the testimony of the said J. E. McDonald, respondent; and

Whereas, It is the opinion of the Committee and it so finds, that A. E. McDonald, brother of J. E. McDonald, Commissioner of Agriculture, was paid various sums of money from funds allocated to the Department of Agriculture for expenses in connection with the purchase and distribution of jacks and stallions in the State of Texas under and through a subterfuge perpe-

trated upon the State by the said A. E. McDonald and one Jim Tate, of which payment and subterfuge the said J. E. McDonald, respondent, had knowledge or by the exercise of ordinary diligence could have known; and

Whereas, It is further the opinion of the Committee and it so finds, that said J. E. McDonald, respondent, appropriated and used funds belonging to special accounts under his supervision, to other and different purposes and channels than those for which said funds were directed under the law, but that such funds were not embezzled or misappropriated by the said J. E. McDonald for his personal use or gain; and

Whereas, The Committee is of the further opinion and it so finds, that the said J. E. McDonald interested himself in his official capacity in proposing and sponsoring codes and rules for private industries and lent the weight of his office to such codes and to the control of such industries to the detriment of some individuals engaged in such industries as a means of earning a livelihood, and that in so interesting himself in such codes and regulations the said J. E. McDonald, respondent, was acting without authority of law but was misleading citizens of this State in the belief that said J. E. McDonald was acting officially and with the sanction of the law; and

Whereas, The Committee is of the further opinion and it so finds, that the said J. E. McDonald, respondent, used his office and the dignity that is attached to such office for the purpose of inducing certain individuals and brokers to extend him favors and credits, which said favors and credits he intended to and did turn to his own personal financial gain; and

Whereas, It is the further opinion of the Committee and it so finds, that the said J. E. McDonald, respondent, either accepted or permitted members of his family to accept, with his knowledge and consent, gifts and presents in the form of certain livestock at a time when the said respondent was engaged in the purchase of livestock for and on behalf of the State of Texas, and at a time when the acceptance by the said J. E. McDonald and/or the members of his family, of such gifts and favors, cast a cloud of suspicion upon the purchases being made by the said J. E. McDonald; and

Whereas, The Committee is of the further opinion and it so finds, that the said J. E. McDonald, respondent, did destroy certain telegrams and letters and other instruments in writing, composing a part of his private or official files at a time when the said respondent and his office were the subject of an investigation by a Legislative Committee, and at a time when the destruction of such records cast a suspicion upon the acts of the said J. E. McDonald; and

Whereas, It is the further opinion of the Committee and it so finds, that the said J. E. McDonald, respondent, has not been guilty of such high crimes or misdemeanors, or of such official misconduct as would warrant the voting of articles of impeachment against him, but it is the opinion of the Committee and it so finds, that the said respondent, J. E. McDonald, has been guilty of acts and conduct that ill become a State Official or the dignity of the office of Commissioner of Agriculture of the State of Texas, such acts and conduct being the result not of a wilful and malicious mind or intent but rather of ignorance or a lack of understanding of his official duties, or a lack of recognition of the dignity of his official position, or a lack of diligence in the performance of his duties; now therefore be it

Resolved, That no further proceedings in this hearing or matter be had and that it is the sense of this Committee that the said J. E. McDonald, by reason of his negligent and indiscreet acts and conduct, is deserving of the censure of this Committee and the House of Representatives; and be it further

Resolved, That the adoption of this resolution shall be and constitute a censure and reprimand of the said J. E. McDonald, Commissioner of Agriculture, respondent, for his acts and conduct above set out." Signed by Calvert, Thornton, Butler of Karnes, Roane.

The Chair: Another Resolution.

The Reading Clerk thereupon read the following resolution:

"Whereas, Under and by virtue of House Simple Resolution No. 36, adopted by the House of Representatives of the Forty-fourth Legislature, First Called Session, it is therein provided that an investigation shall be had of the evidence pertaining to certain charges made against J. E.

McDonald, Commissioner of Agriculture; and

"Whereas, Pursuant to the provisions of said Resolution, the House of Representatives, sitting as a Committee of the Whole House, has been in continuous session for several days, and has examined many witnesses and considered much documentary evidence and made diligent inquiry into all the evidence pertaining to the charges made in House Simple Resolution No. 36; and

"Whereas, The Committee heard all witnesses produced by the Board of Managers, and also all witnesses produced for and on behalf of the Commissioner of Agriculture pertaining to said charges; and

"Whereas, It is the opinion of the Committee, and it so finds that said J. E. McDonald, Commissioner of Agriculture, has been guilty of indiscretions and irregularities in the conduct and management of the affairs of his office, but that no money has been embezzled and the financial interest of the State has not suffered thereby; therefore, be it

"Resolved, That it is the sense of this Committee that said indiscretions and irregularities are not of sufficient seriousness to warrant the adoption of impeachment charges; and, be it further

"Resolved, That this Committee make its report to the House recommending that no impeachment charges be preferred against the said J. E. McDonald, Commissioner of Agriculture." Signed by Duvall, Roach of Hunt and others.

The Chair: Are you ready to proceed?

Mr. Reed of Dallas: Now, Mr. Chairman, you have stated that the next order of business would be the argument of counsel.

The Chair: Yes sir, in order to get something before the Committee as to how much time, it is necessary to of course, set some arbitrary figure; in order to get something before them, the Chair would like for you gentlemen to make a request, and then I can put the request to the Committee as a Whole in the form of a motion.

Mr. Reed of Dallas: I have talked to counsel for the respondent and to members of the Board of Managers, and we have just suggested this plan, not meaning that it will all be used, but with the idea that it will give the Committee something to work on, and that is, that I understand that two will speak from each side—

Mr. Aikin: Two.

Mr. Reed of Dallas: Mr. Aikin mentioned the names of two or three members of the Committee, but you understand that now we are talking about counsel for Mr. McDonald and the Board of Managers when I say that it has been suggested that possibly two members of each counsel speak, and that we have just arrived at a figure of two hours for each side—

Several Voices: No, no.

Mr. Reed of Dallas: Let me finish; I know you have been here long enough to know how long that sounds, and I know it sounds ridiculous to you members, but I told you that we were giving you some plan to work on and somebody has to do it. Naturally, if I am going to have a law suit, I am going to sue for more than I am expecting to get, and now I am asking for more time than I am going to use.

Mr. Wells: Mr. Chairman, may I make a motion?

The Chair: Yes, Mr. Wells.

Mr. Wells: In view of the fact that this impeachment proceeding has taken quite a number of days and lots of testimony has been introduced here, I don't see how they can do it in less than two hours. Now, we can sit here and yell "no," when somebody suggests taking two hours argument to the side, but if this thing has been important enough to spend several days listening to the testimony, I think it is important enough to spend two hours in argument.

Mr. Alexander: Mr. Chairman.

The Chair: Mr. Alexander.

Mr. Alexander: I make the substitute motion that each side be given one hour, to be allocated as they see fit.

Mr. Quinn: Mr. Chairman.

The Chair: Mr. Quinn.

Mr. Quinn: I don't believe it will change a vote to argue this from now until tomorrow night, and for that reason, I think that one hour is sufficient.

The Chair: Let's have a little order please. All right, Mr. Aikin.

Mr. Aikin: I think one hour is agreeable to the Board of Managers, but I want to get our point of view before the Committee. We have two Members of the Committee who desire to speak. with this understanding; three members of the Committee, but one Member of the House will substitute and go to bat for one of this Committee, and this Board of Managers is going to ask that he be permitted to commence.

Mr. Fox: Mr. Speaker, I think we can clear this thing up, as I understand it, counsel for both sides will be allowed to speak. And, if you will give us a few minutes, I think we can agree on this time.

Mr. Butler: Do you have any request at this time from any other Members of the House besides Members of the Committee?

The Chair: Yes, sir, we do; we have three at this time.

Mr. Butler: All right, don't you think we ought to have all this limited?

Mr. Beck: Mr. Chairman, I would like to make an inquiry if we are going to limit the speeches to an hour on each side, do I understand that?

The Chair: That is a proposal by Mr. Alexander. I have two motions one to allow two hours to each side and the substitute to limit them to one hour to the side.

Mr. Beck: I think because the Board of Managers are after all the House Members, and I think they can hold up the House end of it, even in spite of the distinguished Senator from Austin and others, and I would like to make a motion, a substitute motion to that by Mr. Alexander that only the Board of Managers and the counsel for Mr. McDonald speak; that no Member of the Committee speak other than the Board of Managers and counsel for Mr. McDonald.

The Chair: I have a motion here and a substitute; let's vote on that.

Mr. McConnell: Mr. Chairman, I want to be fair about this thing, but do you think with ten or eleven specific charges and four days evidence that the counsel on both sides, representing the Respondent on one side and the State on the other can fairly present their case within one hour?

The Chair: Mr. McConnell, the Chair doesn't want to anwer that question. Wait a minute now.

Mr. Wells: I made the motion that we give each side two hours; I want to withdraw that motion and make it in this form, realizing that the counsel for the defense and the Members for the State, counsel on each side are fair and doubtless will not infringe on our plans or our good nature and I make a motion that they be allowed to decide how much time they need and that we leave it entirely to their discretion.

The Chair: Suppose we stand at ease for about five minutes and let them get together on it. Motion has been made that the Committee on the Whole stand at ease five minutes, and hearing no objection the motion is carried.

After a recess of five minutes the following proceedings were had:

The Chair: Now, Members of the Committee let me have your attention, please. I understand the parties have all agreed on the time, and time will be kept on them if it is agreeable to the Committee, and when the time is up we will let them know. They have agreed on an hour and a half to the side and if there is no objection to that, the Chair is going to allow an hour and a half to each side.

Now, there is one other question, and that is the printing of these speeches in the Journal. Now, the Chair does not believe that this should be done but I am going to leave it to the Committee of the Whole.

The motion was made that the speeches be not reported and printed in the Journal which motion was carried.

A motion was made to recess until nine-thirty a. m., tomorrow morning, another motion made to recess until 8:00 o'clock to-night and another motion to recess until 8:30 in the morning.

The Chair: The first vote will be on the motion to recess until 8:00 o'clock tonight.

A vote being taken on the above motion resulted in 56 ayes and 74 noes; the motion being declared lost by the Chair.

The Chair: The next vote will be on the motion to recess until tomorrow morning at 8:30. (The vote was here taken.)

The Chair: There being 69 ayes and 55 noes on a record vote, the motion prevails and the Committee of the Whole, accordingly, stands recessed

until eight-thirty tomorrow morning, the roll call being as follows:

Yeas—69

Adkins
Alsup
Bourne
Bradbury
Broyles
Burton
Butler of Brazos
Cagle
Canon
Clayton
Collins
Cowley
Craddock
Crossley
Daniel
Dunagan
Dunlap of Kleberg
England
Fuchs
Glass
Good
Graves
Hardin
Harris of Dallas
Head
Hodges
Hofheinz
Hoskins
Huddleston
Hunt
Hunter
Jones of Shelby
Jones of Wise
Keefe
King
Knetsch
Lange
Lanning
Leath
Lindsey
Lotief
Mauritz
McConnell
McFarland
McKee
Moore
Morris
Morrison
Petsch
Pope
Roach of Hunt
Roane
Roark
Russell
Sessions
Shofner
Stanfield
Stinson
Stovall
Tarwater
Thornton
Tillery
Venable
Waggoner
Westfall
Wood of Harrison
Wood of Montague
Worley
Youngblood

Nays—55

Adamson
Aikin
Alexander
Atchison
Beck
Bradford
Butler of Karnes
Calvert
Davis
Davison of Fisher
Davisson of Eastland
Dickison
Dunlap of Hays
Duvall
Dwyer
Fain
Farmer
Fisher
Fox
Frazer
Gibson
Gray
Hanna
Harris of Archer
Hartzog
Herzik
Hill
Holland
James
Jones of Atascosa
Latham
Lemens
Leonard
Lucas
Luker
McCalla
McKinney
Moffett
Newton
Olsen
Padgett
Palmer
Patterson
Quinn
Reed of Bowie
Reed of Dallas
Riddle
Roach of Angelina
Rutta
Scarborough
Steward
Tennyson
Walker
Wells
Young

Absent

Ash
Caldwell
Celaya
Colquitt
Colson
Cooper
Ford
Greathouse
Howard
Jackson
Jefferson
Jones of Falls
Morse
Reader
Roberts
Rogers
Settle
Smith
Spears

Absent—Excused

Bergman
Fitzwater
Hankamer
Hyder
Nicholson
Payne

FIFTEENTH DAY

(Continued)

(Friday, November 22, 1935)

IN THE COMMITTEE OF THE WHOLE HOUSE

(Mr. Spears in the Chair.)

The Committee of the Whole House met at 8:30 o'clock a. m., and was called to order by Mr. Spears.

IN THE HOUSE

(Mr. Stevenson in the Chair.)

Mr. Spears, Chairman of the Committee of the Whole House, reported to the House that the Committee desired to rise and report that the Committee had completed its labors as regards the matter before them and recommended the adoption by the House of Representatives of the following resolution, by Mr. Calvert, as adopted by the Committee of the Whole House:

Whereas, House Simple Resolution No. 36, adopted by the House of Representatives of the Forty-fourth Legislature, First Called Session, provided for an investigation of the evidence pertaining to certain charges therein made against the Commissioner of Agriculture; and

Whereas, Pursuant to the provisions of such resolution, the House of