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Report of the Honorary Board

—OF—

Insane Asylum Directors,

SUBMITTING TESTIMONY, EXHIBITS, ETC.

—o—

Proceedings on Hearing Before the Governor.

—o—

ORDER OF REMOVAL

OF INSANE ASYLUM DIRECTORS.

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PRESCOTT, ARIZONA.
COURIER BOOK AND JOB PRINTING ESTABLISHMENT.
1886.

Arizona (Ter) Insane Asylum of Arizona.
Honorary Board of Directors.

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The Honorary Board of Insane Asylum Directors'

Report to the Governor of Arizona.

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To the Honorable C. Meyer Zulick, Governor of Arizona:

SIR:—In accordance with the provisions of Section 25 of an Act, "To establish, maintain and provide for the government of an Insane Asylum," the Honorary Board of Directors of the Territorial Insane Asylum submit the following with the accompanying documentary evidence as their report:

The call for the meeting of the Honorary Board was signed by the Governor, Chief Justice and Secretary of the Territory. The presence of each of the Directors of the Insane Asylum, their Treasurer and Secretary, was invited. The two latter were requested to bring with them the books and papers of their respective offices. Directors Lincoln and Hatch appeared before us. Director Hatch informed our Board that the Board of Directors had instructed their Secretary and Treasurer to refuse compliance with the request to appear before us for examination or to allow them to submit to our inspection the books and papers of their respective offices. Director Hatch laid before us the vouchers of the Treasurer and his balance sheet up to the 20th inst; which, in amounts credited, corresponded with the cancelled vouchers, excpt one to Clark Churchill for $100, which was not produced.

The questions propounded to these Directors are herewith submitted with their answers as far as answered. The first day Director Lincoln answered all questions propounded to him. The second day, Director Hatch, after answering the questions, as shown by the evidence, declined to answer any further questions unless a copy of those answered was furnish-

ed him; which was done. After which, he declined absolutely to answer any questions, or to submit to any further examination before the Board, unless he was furnished with a written copy of all questions which had been propounded to him and his colleague, Director Lincoln, with their answers to the same; saying that he was willing to make answer to any question, provided the answer should not be reduced to writing. This position was concurred in by Director Lincoln: and their demand was refused by the Board.

The refusal of these Directors to answer questions which referred to matters that should have been within their knowledge, coupled with the instructions to their Secretary and Treasurer to disobey our summons to be present before us with their books and papers, leads us irresistibly to the conclusion that it was their deliberate purpose as far as possible to thwart the endeavors of this Board to examine into all their acts and doings as a Board of Directors for the Asylum of the Insane; leaving upon our minds the unpleasant impression that there were facts connected therewith which they were anxious to conceal; for, it seems to us that, if such were not the case, they would freely have placed at our disposal all evidence at their command, and have answered any and all questions touching the administration of their office. As it is, many of the questions propounded, all of which are herewith submitted, remain unanswered by Director Hatch; his answers being given with great reluctance; while Director Lincoln replied to the interrogatories, his ignorance, as manifested by his replies concerning the most ordinary business transactions of the Board, of which he is chairman, is most remarkable.

The official bonds of Directors Lincoln and Stewart and of N. A. Morford, Secretary, we think, are sufficient; as to the bond of Director Hatch, the Board is of opinion, from the evidence herewith submitted, consisting of a certified copy of the valuation of the property of his bondsmen, G. W. F. Johnson and Wm. Christy, (each of whom justified in the sum of $20,000), as shown by the tax rolls of Maricopa and Yavapai counties, that the sureties on said bond are insufficient. Respecting the bond of Wm. Christy, Treasurer, the Board submit the following: The bond bears date May 26th, 1885, in the sum of $50,000, with Geo. W. F. Johnson, M. H. Sherman and Guy Bennett as sureties; each of said sureties for himself, and not one for the other; under oath swearing, "that he is a freeholder, resident within the Territory of Arizona, worth the sum of $100,000, over and above his just debts and liabilities, in unincumbered property situated within the Territory of Arizona, which may be levied upon, and is not exempt from execution;" which bond was approved by O. Lincoln, F. C. Hatch and M. W. Stewart, Directors, on the 29th day of September, A. D. 1885, and filed with T. J. Butler, Territorial Treasurer, on the 24th day of October following. From the evidence herewith submitted, viz: Certified copies of the valuation of the property of the said sureties, as shown by the tax rolls of Maricopa and Yavapai counties for the year 1885, the Board is of opinion that the responsibility of these bondsmen for the amount named is a matter of grave doubt; and, furthermore, that the amount of said bond, even if the securities are sufficient, is inadequate, in view of the fact that there is at this time in the hands of the Treasurer, as shown by the balance sheet herewith submitted, dated April 20th, 1886, the sum of $63,441 50. In our opinion, the Board of Directors was properly organized under the law, and the necessary land for the use and benefit of the Territory of Arizona was legally acquired as provided by Section 1 of the Act.

In relation to contracts and expenditures, the evidence of the Directors shows that the contract for the erection of the building was let, after due advertisement, to the lowest bidder, Messrs. Carle, Croley & Abernathy, according to plans and specifications previously adopted, for the sum of $42,999; upon which two payments have been made, viz: February 8th, $12,258, and March 16th, $11,754 82—aggregating $24,012 82; and that, there was a subsequent additional contract made of $6,590, which, together with the extras, the probable increased cost of which is not known, makes the actual cost of the building uncertain. The balance sheet of the Treasurer shows that the respective amounts drawn by the Directors, as compensation, have been from September 25th to March 16th, a period of less than six months, as follows: Director Lincoln, $1270; Director Hatch, $500; Director Stewart, $460; which said allowances were approved by the Board of Directors; also, there has been disbursed to Director Stewart, for expenses to San Francisco, $421 75, and to F. C. Hatch, for same purpose, $324 25. (The object of these visits it is claimed was to dispose of the bonds); also, there was paid to Clark Churchill the sum of $250, for professional services, and to N. A. Morford, Secretary, $700; to Wm. Christy, Treasurer, salary, $350; and that while the total disbursements up to April 20th were $32,133 50, only $24,012 82 was paid on the contract for building; the balance, $8,129 78, going for salaries, incidental expenses, etc. Section 19 of the Act is as follows: "The compensation of the members of said Board shall be ten

dollars per day each, for each day's actual attendance upon said Board and in traveling to and from the place of meeting; provided, that no member of said Board shall receive compensation in any one year exceeding the sum of one hundred and fifty dollars, except for the year or portions of the same that they shall be engaged in the construction of the buildings hereinbefore provided and for the necessaries employed in the construction of such buildings and improvements an amount not to exceed five hundred dollars to each resident Director, and not over one thousand dollars to each non-resident Director. It is therefore strange that the Board should have audited and paid to one of its members twelve hundred and seventy dollars for six months' service, when the law only entitled him to receive $1,000 for the full year, and that they should pay the resident Director his full salary for a year, six months in advance.

As will be shown further on, the bonds could only be sold at public sale, consequently the expenditure of 766 dollars in visiting San Francisco to sell the bonds was illegal and unnecessary.

The Treasurer of the Territory delivered to the Board of Directors, on the 28th day of September, 1885, 100 bonds of the face value of 1,000 dollars each, bearing 7 per cent. interest. In reference to their sale, Section 12 of the Act, after providing where and how they should be advertised, provides that: "Such notice shall specify the amount of bonds to be sold, the rate of interest they shall bear, the place, day and hour of sale, and that sealed proposals will be received by said Board of Directors for the purchase of said bonds within one month from the expiration of such publication, and at the place, on the day and hour named in said notice, the Board of Directors shall open all sealed proposals received by it, and shall award the purchase of said bonds to the highest bidder or bidders therefor, *provided*, that said Board of Directors may reject any and all bids if they deem it for the advantage of the Territory, *and, provided further*, that they may reject any and all bids unless security shall be furnished by the bidder or bidders for the compliance with the terms of their bids; or if, in the judgment of said Board, such rejection will benefit the Territory; *provided*, they shall not, in any event, be sold for less than ninety-five cents on the dollar of their face value."

The evidence shows that the Board advertised for sale the entire issue of bonds, and it is claimed by Directors Lincoln and Hatch that there were no bidders for the whole issue or any part thereof. It also appears from their evidence that the Board of Directors at this time entered into a verbal agreement, without security, with N. E. Harris, to sell to him, at private sale, the entire issue of bonds at 95 per cent. of their face value, with interest to October 1st, 1885, allowed to the purchaser; that in pursuance of said agreement he paid $9,500 for ten bonds, but failed to take up and pay for the remaining ninety bonds; and that the Board, without further advertisement, took action, as shown by the certified copy of extracts from their minutes of November 12th, 1885, herewith submitted, as follows: "O. Lincoln reported to the Board, that N. E. Harris had failed to take up and pay for the remaining 90 Asylum Bonds, and in compliance with a resolution passed September 28, 1885, authorizing Mr. Christy in case of the failure of N. E. Harris to purchase the remainder of the bonds at the price named in said resolution, i. e. 95 cents and interest to October 1st, 1885. Wm. Christy reported through F. C. Hatch that he had an opportunity to sell the bonds at said price named and asked the approval of the Board to make the sale, which upon motion was approved by the Board, and he was authorized to accept the offer and complete the sale, upon the payment into the treasury of the amount, allowing him one per cent commission in lieu of all expenses for making the sale as per former resolution." This copy of resolution or proceeding of the Board was not sent to the Governor until the 8th day of February, 1886, although both Directors, Lincoln and Hatch, claim it constituted an absolute sale and transfer to Wm. Christy, the treasurer of the Board, of 90 asylum bonds. Director Hatch refused to answer when asked if the above was the entire record attending the sale to Christy, but Director Lincoln said that it was. In his balance sheet it will be seen that on November 19th, 1885, Treasurer Christy charges himself with $86,075, or $100 less than he should have paid into the treasury on this alleged sale, as the following figures demonstrate:

Face value of bonds		90,000
Interest from July 1, '85 to Jan. 1, '86, six months at 7 per cent		3,150
		$93,150
Less discount on face	4,500	
Less 1 per cent commission	900	
Less int. from July 1 to Oct. 1, 3 months at 7 per cent	1,575	
		6,975
Balance		$86,175

The alleged sale of these bonds has every appearance of a job. The Board of Directors sell to their own treasurer and allow him a commission of one per cent for effecting a sale to himself—a novel and original procedure. It was in clear and flagrant violation of the law, the section of which we have quoted above. Let us see how far the interest of the Territory has been considered under this alleged sale. The funding commissioners sold the funded bonds of the Territory in 1883, $260,000 face value, bearing 7 per cent interest and in no particular better securities for investors than these bonds for a premium of $4,000, or 1 and 54-100 per cent above their face value; and there is no reason to suppose that by the exercise of ordinary business care and judgment these bonds could not have been sold at as good or better a rate. There was no necessity for undue haste in their sale, inasmuch as the law limited only the time for the donation and conveyance to the Board of Directors from the county of Maricopa or the city of Phenix of the land for asylum purposes to the 1st of January, 1886. The Board was directed as soon as practicable after receiving said land to cause a draft of plans and specifications to be made, to advertise for and receive sealed proposals for the erection of the asylum building, etc. The Board was empowered to receive from the Territorial Treasurer "the bonds authorized by this act to be issued and sold, or such part of the same as in the judgment of said Board shall be necessary to carry out the purposes of this act." They were not limited as to the time for making the contract or for the commencement of the building. Prudence would have suggested that they make haste slowly and keep within the direction of the law, which provided a public, not a private sale, and absolutely limited the minimum price which they were to receive for these securities to 95 cents of their face value. Instead of which they sold first to Harris ten bonds with three months interest to October 1st for $9,500, or 93¼ per cent of their face value; and the remainder to Christy, $90,000 face value, and interest three months to October 1st, 1885, for the net sum of $86,075, less than 92¼ per cent of their face value. Under these illegal sales the Territory loses the difference between the minimum price at which under the law the Directors were authorized to make the sales, and the price at which the sales were effected. On the sale to Harris $175; on the sale to Christy $2,575, a total of $2,750, and had they been sold at the rate for which the funded bonds were sold three years ago, then the Territory would have been richer by 9,240 dollars than to-day.

By the Treasurer's first balance sheet it is shown that the entire expenditure of the Board of Directors up to the 8th of February, 1886, seven months after the issue of the bonds, was 4,824.12 dollars, and the total up to this time is 32,130.50 dollars. The act limits the expenditure of the Board to 75,000 dollars and requires that the unexpended balance shall be covered into the Territorial treasury. By section 11 they were authorized to demand and receive such part of the bonds as was necessary in their judgment to carry out the provisions of the act. By their demanding and receiving the entire issue, 100,000 dollars, is it to be supposed that they considered the entire amount necessary to carry out the provisions of an act under which they could only expend 75,000 dollars? and that it was necessary to sell the entire issue of bonds at once, when the money was only required from month to month for more than a year to come? Ordinary business judgment would have demanded that the bonds be sold as necessity required, thus saving to the Territory fully five thousand dollars in interest which will have been paid upon the unexpended and unexpendable balance in the hands of their Treasurer. The insecurity of the money in the hands of the Treasurer must be apparent from the following facts: It is shown by the testimony of Directors Hatch and Lincoln that in accepting the bond of Wm. Christy, with Guy Bennett, M. H. Sherman and Geo. W. F. Johnson as sureties, each of whom, as before stated, justified in the sum of $100,000; that no examination was made by the Board or any one of the Directors to ascertain the financial responsibility of these bondsmen for the large sum in which they obligated themselves to the Territory; no list or inventory of their property was required, the bond being approved by the Board without question. The evidence herewith submitted shows that the entire valuation upon which M. H. Sherman paid taxes in Maricopa county was $1,300, all of which was exempt from execution; that the only assesable values upon which he paid taxes in Yavapai county were an interest in a ranch and stock, assessed for $12,556—to Sherman and Mehrens, and a lot in the city of Prescott, valued at $450; also, that the assessable property of Guy Bennett, in Maricopa county, was limited to $3,215, and in Yavapai county, to his interest in an undivided two-thirds interest in 8 lots in the city of Prescott, assessed at $4,000, and an interest in ranch and stock, assessed to Bennett & Christy, for $11,350; these being the only counties in the Territory in which it is claimed they own any property. The total assessed property of George W. F. Johnson, as far as we can ascertain, in any part of the Territory, was a homestead in Maricopa county,

valued at $3,420, upon which was a mortgage of $2,000 and exempt from execution. These facts were as accessible to the Board of Directors as to us, and it is incomprehensible that any set of officials with due regard for the trust reposed in them could accept such a bond with such inadequate security, and turn over to their Treasurer the large amount of money which he is at present supposed to hold, especially, as Johnson and Christy were also sureties on the bond of Director Hatch, justifying in the sum of $20,000, each. While it is admitted that the assessment roll is not conclusive evidence of the financial responsibility of a bondsman, yet, it was certainly the plain duty of the Board, when the sureties were assessed in such a meagre sum, to ascertain the nature of the remainder of their property, how situated and where within the Territory located, that went to make up the $100,000,—in which sum each justified, especially, as the only assessable property of one of the sureties was a homestead, covered by a mortgage.

Under the law, the Directors were required to see that the moneys derived from the sales of the bonds were safely kept by the Treasurer to the credit of the Board. Neither Directors Hatch or Lincoln were able to tell us whether, as a matter of fact, Treasurer Christy had actually covered into their treasury the sum of $86,075,—with which he is charged as the amount accruing from the alleged sale to him of 90 bonds, or where the amount now supposed to be in his hands, viz, $63,441 50, is deposited; they each distinctly say, they do not know; but as all warrants drawn by the Board of Directors upon their Treasurer have been paid by the Valley Bank of Phœnix, of which Treasurer Christy is Cashier, it is pertinent to enquire what is its responsibility as the depository of such a large sum of money, belonging to the Territory. The only information we have upon the subject is that furnished by the assessment roll of Maricopa county for the year 1885, a certified copy of which assessment accompanies this report, and is as follows:

Balance Capital Stock Assessable	$ 8,400 00
Bank Furniture	1,500 00
Horses, mules, wagons, harness, tents, excavators and commissary stores	8,100 00
Total	$18,000 00

It is true that the capitalization of the Bank is $50,000; but it is not shown, and Directors Hatch and Lincoln were unable to tell us how much has been paid up, or whether the

above constituted all the available assets of the Bank. It was the imperative duty of the Board of Directors first to see that the money was paid into their treasury as fast as the bonds were sold and delivered, also, at all times to be informed as to where it was kept, and the financial responsibility of the bank or banks in which it was deposited; but they seem to have given themselves no concern in the premises, accepting without question the statement of their Treasurer that he had covered into their treasury the purchase money for the bonds sold, without requiring any evidence whatever, as to where he had placed the amount, relying upon his doubtful bond for the safe keeping of the same, which in our judgment shows wanton neglect of duty as public officials and a total disregard of all business rules and requirements.

From the foregoing statement of facts and conclusions drawn from the evidence herewith submitted, it is evident to us that the Board of Directors of the Territorial Insane Asylum have been guilty of neglect of duty and official misconduct; and, that by openly violating the law under which they were created, and by extravagantly disbursing, carelessly guarding and recklessly jeopardizing the security of the public monies under their control, have made it our duty to recommend, as we do, their removal from office.

JAMES A. BAYARD.
OSCAR L. MAHONEY

Prescott, April 29th, 1886.

My name is not affixed to this report for the following reasons:

First: The report is, as required by law, addressed to me as Governor, and it seems as a rather anomalous proceeding for me to sign a report directed to myself.

Second: While sitting as a member of the Honorary Board of Directors and familiarizing myself with all the facts as established by the evidence and exhibits, yet I deem it inconsistent with a faithful and impartial performance of duty, as Governor, to join in any report thereon, inasmuch as the Statutes of Arizona confer upon the Governor the power of removal of officials for neglect of duty, official misconduct or incompetency in manner prescribed by law. In my jndgment it is an unwise and absurd law that places the Governor or Chief Justice upon a Board whose action may be subject to review by either of them in their official capacity.

C. MEYER ZULICK.

Prescott, April 29, 1886.

I do not deem it consistent with my position as one of the Judges of the Territory to express an opinion one way or the other upon the questions discussed in the foregoing report.

When my attention was first called to the law designating the Chief Justice of the Territory as one of the members of the Honorary Board, I then thought, and so said, that such designation was a mistake and the law in that regard unwise. Subsequent reflection has confirmed me in this opinion.

A Judge, and especially a Judge of a Court of last resort, should carefully avoid labors or discussions aside from the duties pertaining to his office that will in the slightest degree interfere with the discharge of those duties in a fair, calm and unprejudiced manner. I think it my duty to decline to further act in such capacity. J. C. SHIELDS.

Prescott, April 29, 1886.

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TESTIMONY.

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Schedule A.

QUESTIONS TO DIRECTOR HATCH.

Q. When was your Board last in session?

A. In March last.

Q. Have your colleagues been present at Phenix since then?

A. No, sir.

Q. What authority did your Secretary and Treasurer have to refuse or fail to comply with the respectful request of this Board to be present at this meeting with their books and papers?

A. I immediately, on getting your notice, wrote Dr. Lincoln and went in person to Wilcox and met Mr. Stewart, and we agreed not to allow the Secretary or Treasurer to comply with the request of your Board.

Q. Then the fact is, your Secretary's written refusal to be present with the minutes of your Board was directed by he Directors?

A. Yes, sir; we concurred with him, and refused to allow them to be taken from his office, and directed him to do it.

Q. Have you brought the minutes of your Board with you?

A. No, sir.

Q. Nor the books, accounts and papers of the Treasurer?

A. No, sir; have balance sheet and vouchers.

Q. Have you balance sheet of Treasurer to April 1, 1886?

A. Yes.

Q. Please let us see it and any other papers you may have.

A. Yes, sir; I will go and get them; they are at my room at the Williams House. (Goes after them.)

Q. You now have them?

A. Yes, sir; here is report of Treasurer up to April 20th.
Q. What balance does it show in his hands?
A. $63,441.50.
Q. Where is that balance deposited, and in whose name?
A. Have no official knowledge on the subject; it is in the hands of the Treasurer of the Board. Christy says a part of it is in New York City, part in California, and part in the Valley Bank.
Q. How do you know it is in the Treasurer's hands?
A. I only know what he says.

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Schedule B.

TESTIMONY OF DIRECTORS LINCOLN AND HATCH.

Q. Where are the official oaths which should be attached to the bonds?
A. Lincoln—Don't know, I took my oath.
A. Hatch—Mine is with the bond.
Q. What amount has each Director drawn, and what number of days has the Board been in session?
A. L. Books must show; don't know.
A. H. Same answer.
Q. To whom and when were these bonds sold? Price and quantity?
A. L. To Wm. Christy, November 12, 1885. Minutes will tell, at 95 and one per cent commission off. It was an absolute sale.
A. H. The Board sold them to Colonel Christy; $90,000 worth.
Q. Why were they not sold at public sale, as mandatorily directed by statute?
A. L. They were advertised and no bids received.
A. H. No bids at all.
Q. What bids did you get for entire quantity or any part thereof?
A. L. No bids at all.
A. H. Did not get any; think not; positive none for entire quantity.
Q. Did the Board keep a permanent record in their office of the number of bonds received by the Board, the bonds sold, the name of the purchaser and the price received?
A. L. Think they did.
A. H Yes, sir.

Q. Why did not the Board forward to the Governor a certified copy of this record as soon as the bonds had been sold, as directed by law?
A. L. That was the neglect of the Secretary.
A, H. Thought it was done.
Q. What was the contract price for the building and the estimates of the Board for the necessary expenditures for the construction of fences, superstructures, improvements upon land, purchase of furniture apppliances to render such grounds and buildings suitable and convenient for occupation and use for the Asylum of the Insane?
A. L. Don't remember; minutes will show.
A. H. Contract for building was $42,999; no certain estimates as to balance.
Q. Then the entire estimate of the Board for the construction of necessary buildings, etc., was what?
A. L. Can't tell
A. H. Our intention was to keep within the appropriation.
Q. Did your Board advertise the contract for building? If so, in what papers?
A. L. We advertised; don't remember, know Miner-Journal was one.
A. H Yes, sir; Gazette, Herald and Miner.
Q. Who were the bidders and what were the bids?
A. L. Minutes will show.
A. H. Several; seven or eight.
Q. Was the contract awarded to the lowest responsible bidder?
A. L. I think it was.
A. H. It was
Q. When was the first money paid to the contractors, and what amount has been up to this time?
A. L. Can't tell; minutes will show.
A. H. February 8th; amount in full $24,012.82.
Q. Why were not the payments on this contract made when due?
A. L. Because the Board was not in session. Minutes and contract will show.
A. H. They were paid at convenience of Board and contractor.
Q. Have the conditions of original contract been changed?
A. L. Not changed; additions were made and not contract changed.

A. H. No changes to annul first contract; additional contract made.

Q. In what particular, at what time, and at what probable increased cost?

A. L. Do not know.

A. H. $6,590 increased, and extras on account, etc., uncertain.

Q. Did the Board cause publication of sale of bonds, as directed in section 12, and in what papers?

A. L. Yes; books will show.

A. H. Yes, and in papers as per balance sheet.

Q. Why did you not re-advertise?

A. L. Don't know; thought there was no use, and there was no money in hand.

A. H. No answer to make.

Q. By what authority did the Board of Directors assume the right to sell these bonds at private sale and to its own Treasurer?

A. L. Found authority by the law, I suppose.

A. H. No answer to make.

Q. What contract of sale did the Board have with Mr. Harris? Did he give any security?

A. L. Nothing but a verbal contract; no security.

A. H. Same answer.

Q. What is Mr. Christy's business?

A. L. Cashier of the Valley Bank, Phenix.

A. H. Same answer.

Q. Who is President of the Valley Bank?

A. L. Moses H. Sherman.

A. H. Same answer.

Q. Who are Mr. Christy's bondsmen?

A. L. M. H. Sherman, Guy Bennett and Geo. F. Johnson.

A. H. Same answer.

Q. Then are we to understand that the Treasurer of your Board is the Cashier of the Valley Bank, and the President of the Bank and one of its Directors are sureties upon his bond, and this Bank the depository of your Treasurer?

A. L. Yes; don't know as to the depository.

A. H. Yes as to Christy and Sherman; not certain as to Bennett.

Q. The minutes of the Board of November 12, 1885, certified to by the Secretary, attested by Director Hatch as Secretary pro tem, and approved by O. Lincoln, President, records that Wm. Christy was to make the sale for the Board upon the payment into the Treasury of the Board of the amount, allowing him one per cent commission for making the sale. Is that the only recorded evidence and action of the Board on this question?

A. L. I think it is; yes

A. H. Answer reserved. Subsequently declined.

Q. Who drew the interest on the coupons, and when and to whose credit does the books show that it was placed?

A. L. Don't know.

A. H. Answer reserved. Subsequently declined.

Q. Had the bonds or any portion of the same, at this time been placed by Mr. Christy, and if so, to whom and at what price?

A. L. Don't know anything about it.

A. H. No answer to make.

Q. Were these bonds disposed of in regular order of serial numbers?

A. L. I think so.

A. H. Yes, sir; I know it.

Q. Were any of these bonds at any time hypothecated, and if so,, to whom and on what account?

A. L. No, sir.

A. H. Not to my knowledge.

Q. From one to ten and ten to twenty inclusive went to Harris and Potter, to whom did 21 and 22 go?

A. L. Don't know.

A. H. One to ten to Harris, all the balance to Christy.

Q. The next recorded sale was to Mr. Potter, 69 to 79 inclusive, when was this sale made, by whom, and at what price?

A. L. Don't know.

A. H. We had nothing to do with it; it was Christy's matter.

Q. Serial numbers from 23 to 68 inclusive, representing $45,000 face value, at this time was unsold, where were they, in whose hands, and for what account?

A. L. Don't know.

(Question not asked of Hatch).

Q. What has been the net sum realized from the sale of this entire issue of bonds, and at what dates do the records of the Board show the sums as having been paid into their Treasury?

A. L. $95,000 received: don't know.

A. H. Refer you to Treasurer's account.

Q. In what depository was the funds placed?

A. L. In the Treasurer's hands; that is all we know.

A. H. Same answer.

Q. How much of the fund has been disbursed, and where is the balance deposited, and in whose name?

A. L. Don't know how much has been disbursed; the money is in the Treasurer's hands.

A. H. The balance sheet shows; have no official knowledge, suppose in hands of Treasurer of the Board; don't know where, except we look to Valley Bank for payment.

Q. How do you know it is in the Treasurer's hands.

A. L. He says so.

A. H. Same answer.

Q. So Mr. Christy is a salaried officer of your Board, and to what extent?

A. L. He is; gets $50 per month.

A. H. Same answer.

Q. What percentage was allowed upon the sale of these bonds as commission?

A. L. One per cent for the $90,000.

A. H. Minutes show; same answer.

Q. Was any farther commission paid by Christy or any one else in negotiating this sale; if so, to whom, and how much?

A. L. Don't think there was; dont know; no.

A. H. No, sir.

Q. What is the character of the Valley Bank and its capitalization?

A. L. Don't know.

A. H. Can t give figure; consider it safe.

Q. How much of the capital stock has been paid up and is assessable for taxation.

A. L. Don't know.

A. H. Same answer.

Q. You say that the salary of your Treasurer was fixed at $50 per month, what was the salary fixed for the Secretary?

A. L. $50 per month now; did get $100, and at one time $25; at the March meeting it was cut down, because the Governor complained, Col. Hatch said.

A. H. Same answer.

Q. What is his name and business?

A. L. N. A. Morford, editor of paper.

A. H. Same answer.

Q. The financial responsibility of the Treasurer is fixed by law and your Board fixed his bond at $50,000; his responsibilities and duties are great; the Secretary's duties are simply clerical, chiefly to record the proceedings of your Board; on what principle was it that the Board fixed his salary at double that of the Treasurer?

A. L. It was increased to that amount as security for the purchase of $90,000 bonds; that was all Christy asked.

A. H. I thought it was too large, and was not favorable to it; it was on motion cut down.

Q. By what authority did your Board pay Attorney-General Churchill the sum of $250 for legal services, he being the law officer of the Territory and obligated by law to give his opinion in writing to your Board as Territorial officers without fee upon any question of law relating to the duties of your office?

A. L. Mr. Attorney-General said he had no authority to give his opinion as Attorney-General on title to the land.

A. H. Mr. Churchill was employed as attorney for the Board on two occasions; first, to examine and pass on the title papers for our land; second, to draw bonds and contract on building.

Q. Have you his vouchers for these payments?

A. L. No.

A. H. Yes, sir. (Produces 73; voucher 26 not in bundle).

Q. Your Board approved the bond of Treasurer Christy for $50,000, the three sureties, M. H. Sherman, Guy Bennett and Geo. W. F. Johnson, justifying each under oath in the sum of $100,000, what, if any, examination was made by you or either of the Directors to ascertain their financial responsibility for such a large sum of money?

A. L. Would rather not answer that question; the other Directors had more to do with it than I did. I was present at all the meetings.

A. H. Our Act called for bond of $10,000; wishing to be safe we decided to raise said bond to $50,000. I consider that Sherman, Johnson and Bennett's bond is good to that amount, and am willing to see that the bond is changed and raised to full amount of balance on hand if thought necessary.

Q. Did you know that Wm. Christy and Geo. W. F. Johnson were also on the bond of Director Hatch for $20,000, each justifying under oath for that sum?

A. L. I did not.

A. H. Yes.

Q. Did you not consider it your duty in the discharge of an official trust before approving a bond for $100,000 penal sum, which placed $100,000 of the bonded indebtedness of the Territory in the hands of your Treasurer with no security than this bond, to examine closely into the personal responsibility of each of the sureties?

A. L. I depended on Mr. Hatch.

A. H. I examined into it to my own satisfaction and considered Mr. Christy's bond for $50,000 perfectly good,

Q. Did you require of these sureties a statement under oath of the specific real and personal properties possessed by them over and above their just debts and liabilities in unincumbered property situated within this Territory, which could be levied upon and is not exempt from execution, such being the condition of their bonded obligation?

A. L. I don't recollect; I relied upon Mr. Hatch.

A. H. No, sir; I did not think it necessary.

Q. Why not?

A. L. I relied upon Colonel Hatch.

(Not asked of Director Hatch).

Q. Did you not know that assessment rolls show that G. W. F. Johnson's entire possessions within this Territory were assessed at $3,420, covered by a mortgage of $2,000, and that he did not own a dollar's worth of property not exempt from execution?

A. L. No, sir; did not know anything about the responsibility of Johnson or Christy.

A. H. No; I know nothing as to his assessment rolls, but from personal knowledge consider him as good security on both bonds.

Q. Did you know that the responsibility of Guy Bennett is limited to $10,990, and that of M. H. Sherman to $8,028, as shown by the assessment rolls of Yavapai and Maricopa counties, the only counties in the Territory in which it is claimed they own property?

A. L. No, sir; I don't know anything about these sureties or their responsibility.

A. H. Satisfied myself Mr. Bennett owned real estate in both counties, and was good security on Christy's bond; as to Sherman was also satisfied he was good security with the others for that amount.

Q. Were you aware of the fact that the entire assessable assets of the Valley Bank, the depository of this large amount entrusted for safe keeping in the hands of your Board, consisted only of balance capital stock assessable, $8,400; bank furniture, $500; and an accumulation of precarious personal property, such as horses, mules, wagons, harness, tents, excavators and commissary goods, claimed to be late the property of one Murphy, a contractor on the Arizona Canal Company, as the records of Maricopa county disclose?

A. L. Don't know.

A. H. That statement I am satisfied is not correct of Valley Bank.

Q. On what business principle does your Board justify itself in selling the entire issue of bonds, viz: $100,000 face value bearing 7 per cent interest. which with accrued interest and 1 per cent commission deducted from the price obtained, viz: 95 cents of face value, makes the price realized about 92 cents, when the Territory has outstanding warrants, not paid for want of funds, bearing 10 per cent interest, and the limit provided by law for the completion, the purchase price of the lands, all furniture and improvements necessary for the use of said asylum is absolutely restricted to $75,000, permitting the money realized from the sale to remain idle in the hands of an irresponsible custodian, bearing no interest, but furnishing capital upon which an unsafe bank could at the expense of the Territory make from 1½ to 2 per cent per month, when the law mandatorily directs that no bonds should be sold for less than 95 per cent net of their face value?

A. L. Before answering that I shall want time to consider.

A. H. Have to consider this question before answering. (Answer afterwards declined).

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Schedule C.

QUESTIONS.—ANSWERS ORIGINALLY RESERVED BY DIRECTOR HATCH, AND AT HIS REQUEST COPIES FURNISHED HIM, WHICH HE THEN DECLINED TO ANSWER.

Q. Dr. Lincoln on his examination said yesterday that the bond of Treasurer Christy was placed at $50,000, and not $10,000, as required by law, for security as purchaser of $90,000 bonds, do you concur with the Doctor in this statement?

Q. Do you consider it sound business judgment to sell and actually deliver to a man $90,000 of good available securities, allow him to remain absolutely the custodian of the securities and the proceeds thereof, require from him no condition as to the deposit of the money or security for the same, pay him $50 per month salary, and allow him a discount of one per cent commission and three months accrued interest for the privilege of becoming the purchaser?

Q. Did you and your colleagues consider that a bond for $50,000 was sufficient against a purchaser for $90,000 of bonds?

Q. What date did you advertise for bids for the sale of bonds?

Q. Then the fact is, these bonds as shown by the minutes of your Board were sold to Christy on the 12th of November, 1885, at private sale, Mr. Christy being your Treasurer, without readvertisement as provided by law, and without any agreement with him in writing as to the conditions of purchase and sale or security for the same?

Q. You as Director approved the bond of Wm. Christy as Treasurer of your Board, the bond was executed May 26, 1885; how do you reconcile the fact of the bond bearing that date, the obligatory conditions of which were that he should faithfully perform the duties of his office of Treasurer as required by law, with the claim made by yourself and Mr. Lincoln that the indemnity was fixed at $50,000 because he was the purchaser of the bonds?

Q. Are not these the facts; that the bond of Mr. Christy was filed wholly as Treasurer of your Board, and that you and your colleagues neglected to require from him any security whatever on account of this sale of bonds to him made on the 12th of November, 1885; six months after the execution of his bond as Treasurer?

Q. Are you not personally well acquainted with Wm. Christy, G. W. F. Johnson and M. H. Sherman?

Q. Do you know of their business responsibility?

Q. Christy and Johnson qualified in the sum of $20,000 each on your bond on the 16th day of May, 1885, as Director ten days later you approved the bond of Christy with Johnson as one of the sureties, who qualified in the sum of $100,000; did you not know at that time that Johnson did not own a dollar's worth of property in this Territory exempt from execution, and that his homestead, which was exempt, was covered by a $2,000 mortgage?

Q. Did you loan or cause to be loaned to the said Johnson $2,000 or any other sum upon mortgage on his homestead?

Q. Did you know this property has been since sold; if so, can you state state who now owns and occupies it?

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Schedule D.

OFFICE OF DIRECTORS OF INSANE ASYLUM,
PHENIX, ARIZONA, Feb. 9, 1886.

HON. C. MEYER ZULICK, Governor of Arizona.

DEAR SIR: In accordance with the provisions of an "Act to establish, maintain and provide for the government of an Insane Asylum,' passed by the Thirteenth Legislative Assembly of Arizona, and approved March 9, 1885, I have the honor to transmit to you the following certified copy of the records of the Board of Directors of the Insane Asylum concerning the sale of bonds. Minutes of November 12, 1885:

O. Lincoln reported to the Board that N. E. Harris had failed to take up and pay for the remaining ninety Asylum bonds, and in compliance with the resolution passed September 28, 1885, authorizing Wm. Christy in case of the failure of Mr. Harris to purchase the remainder of the bonds at the price named in said resolution, i. e., 95 per cent and interest to October 1, 1885. Wm. Christy reported through F. C. Hatch that he had an opportunity to sell the bonds at said price, and asked the approval of the Board to make the sale, which upon motion was approved by the Board, and he was authorized to accept the offer and complete the sale upon the payment into the Treasury of the Board of the amount, allowing him one per cent commission in lieu of all expenses for making the sale, as per former resolution.

* * * * * *

Approved: O. LINCOLN, President.
Attest: F. C. HATCH, Secretary pro tem.

I hereby certify that the above is a true and correct copy of the record of the Board of Directors of the Insane Asylum, respecting the sale of bonds not heretofore reported.

N. A. MORFORD, Secretary of the Board.

PRESCOTT, April 27, 1886.

HON. C. MEYER ZULICK.

DEAR SIR: The receipt of the Directors of the Insane Asylum of Arizona to the Territorial Treasurer for the bonds authorized by the Thirteenth Legislative Assembly is dated September 28, 1885.

T. J. BUTLER, Territorial Treasurer.

PRESCOTT, April 22, 1886.

HON. C. MEYER ZULICK,

DEAR SIR: I paid on coupons of Insane Asylum bonds as follows:

Coupon No. 1, bonds 1 to 10, Jan. 2, 1886, to E. H. Harris	$ 350
Bonds 11 to 12 to Lt. T. H. Barry, Jan. 8	70
Bonds 13 to 23, Bank of Prescott for Valley Bank, Jan 15	350

Bonds 23 to 100, Bank of Prescott for Valley Bank, Jan. 2 2,730

Very Respectfully, $3,500

T. J. BUTLER, Ter. Treasurer.

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Schedule E.

MEMORANDUM OF PROPERTY UPON WHICH M. H. SHERMAN AND GUY BENNETT PAID TAXES IN YAVAPAI COUNTY, AND AMOUNT PAID FOR THE YEAR 1885.

Guy Bennett and Christy in City of Prescott, two-thirds undivided interest in lots 44, 45, 46, 47, 48, 49, 50, block 20, $500 each; amount of assessment $4,000; tax $133.12.

Government title to Cienega ranch	$1,200
675 stock cattle	8,775
40 stock horses	800
One stallion	100
Five saddle horses	275
Wagons, harness and furniture	200
	11,350

Tax, 377.72.

M. H. Sherman, in City of Prescott, lot 1 in block 20, $450; taxes, 14.97.

Mehrens and Sherman, government title to 160 acres of land on Beaver Creek	$1,200
Ranch on mountain	100
595 stock cattle	8,330
80 calves	320
38 mares	1,140
Six horses	220
22 horses 2 year old	440
18 yearling colts	180
One stallion	100
Three wagons	120
Three sets of harness	60
Farming tools	75
Three dozen chickens	12
Seventeen hogs	119
House and furniture	100
Blacksmith outfit	40
	12,556

Tax, 417.84.

I certify the above to be correct, as taken from the assessment roll for the year 1885.

W. J. MULVENON, Sheriff.

By G. C. Waddell, Under Sheriff.

Assessment of M. H. Sherman for the year 1885 of personal and real property in Maricopa county:

Lots 3, 4 and 5, N. add. to Phenix, block 8	$100
Sec. 25, T. 3, N. R. E., 640 acres	800
Two horses	100
Buggy and harness	100
Mortgage against Mrs. Swilling	200
	1,300

I, N. M. Broadway, Sheriff and Ex-officio Tax Collector for Maricopa county, do hereby certify that the above and foregoing is a true and correct list of all the property both real and personal assessed to M. H Sherman, and as appears on the tax roll of Maricopa county for the year A. D. 1885.

Witness my hand this 26th day of April, 1886.

N. M. BROADWAY,

Sheriff and Ex-officio Tax Collector for Maricopa county

Territory of Arizona, }
County of Maricopa. }

I, W. R. Morris, County Recorder of Maricopa county, Arizona Territory, do hereby certify that M. H. Sherman appears as surety on the official bond of N. M. Broadway, Ex-officio Assessor of Maricopa county, in the penal sum of two thousand dollars, as appears of record in my office.

Witness my hand and official seal this 26th day of April, 1886. W. R. MORRIS, County Recorder.

Assessment of Guy Bennett for the year 1885 of personal and real property in Maricopa county:

Tract of land on S. W. ¼ sec 5. T. N. R. 3 E., known as Balz tract, 70 acres	$2,800
Two horses and wagon	150
Mower	50
Harness	15
Ten head beef steers	200
	3,215

I, N. M. Broadway, Sheriff and Ex-officio Tax Collector for Maricopa county, do hereby certify the above and foregoing is a true and correct list of all the property, both real and personal, assessed to Guy Bennett, as appears on the tax roll of Maricopa county for the year A. D. 1885.

Witness my hand this 26th day of April, 1886.

N. M. BROADWAY,

Sheriff and Ex-officio Tax Collector for Maricopa county.

Assessment of G. W. F. Johnson for the year 1885 of personal and real property in Maricopa county:

S. E. ¼ sec. 20, T. 2, N. R. E. 160 acres	$2,500
Three head of horses	150
One lame horse	15
One cow	25
Twenty-two blooded hogs	330
Twenty-two blooded hogs	220
Old wagon and harness	10
Buggy and harness	50
Mower and rake	25
Plow and harrow	20
H. & K. furniture	50
Gold watch	25
	3,420

I, N. M. Broadway, Sheriff and Ex-officio Tax Collector of Maricopa county, do hereby certify that the above and foregoing is a true and correct list of all the property, both real and personal, assessed to G. W. F. Johnson, as appears on the tax roll of Maricopa county for the year 1885.

Witness my hand this 26th day of April, 1886.

N. M. BROADWAY,

Sheriff and Ex-officio Tax Collector Maricopa County.

Incumbrances on southeast quarter of section 20 in township 2, north of range 3, in the years 1885 and 1886, being the property of F. C. Hatch, but formerly the property of G. W. F. Johnson.

Mortgage given by G. W. F. Johnson to John M. Mullen for two thousand dollars July 7, 1885, recorded in book 3 of mortgages, pages 500, 501, 502, record of Maricopa county. Cancelled February 18, 1886.

Mortgage given by G. W. F. Johnson and Mary F. Johnson to John B. Smith for twelve hundred dollars, February 17, 1886, recorded in book 4 of mortgages, pages 72, 73 and 74, records of Maricopa county. Uncancelled.

Transfers of above property since said above dates:

Deed made by G. W. F. Johnson and Mary Frances Johnson, his wife, to Frank C. Hatch, February 27, 1886, recorded in book 12, pages 353, 354 and 355 of deeds, records of Maricopa county.

Territory of Arizona, }
County of Maricopa. } ss.

I, W. R. Morris, County Recorder in and for said county, do hereby certify that the above and foregoing is a correct statement of abstract of the above named property while owned by G. W. F. Johnson and F. C. Hatch to this date, as appears of record in my office.

Witness my hand and the official seal the 26th day of April, 1886.

[SEAL] W. R. MORRIS, County Recorder.

Assessment of Wm. Christy for the year 1885 of real and personal property in Maricopa county:

House and two lots at Mesa, 2½ acres	$ 450
N. E. ¼ section 1, T. 1 N., R. 2 E., 160 acres	1,500
One horse and two ponies	100
Six hogs	20
One wagon	50
One heifer two year old	20
Mower, rake and harness	60
Mortgage against J. S. Mosier	50
	2,250

I, N. M. Broadway, Sheriff and Ex-officio Tax Collector of Maricopa county, do hereby certify that the above and foregoing is a true list of the property, both real and personal, assessed to Wm. Christy, as appears on the tax roll of Maricopa county for the year A. D. 1885.

Witness my hand this 26th day of April, 1886.

N. M. BROADWAY,

Sheriff and Ex-officio Tax Collector Maricopa county.

Territory of Arizona, }
County of Maricopa. }

I, W. R. Morris, County Recorder of Maricopa county, Arizona Territory, do hereby certify that Wm. Christy appears as surety on the following official bonds recorded in my office in amounts as follows, to-wit:

On bond of F. B. Trott, County Surveyor of Maricopa county, in the penal sum of one thousand dollars. On the bond

of N. M. Broadway, Ex-officio Tax Collector of Maricopa county, in the penal sum of twenty-five hundred dollars.

Witness my hand and official seal this 26th day of April, 1886.

[SEAL] W. R. MORRIS, County Recorder.

Assessment of Valley Bank of Phenix for the year 1885, of personal property in Maricopa county, A. T.:

Balance of capital assessable	$8,430
Bank furniture	1,500
Seventy-four head of mules at $80	5,920
Three head horses	150
One saddle horse	75
Eight freight wagons	800
Six old farm wagons	300
Two saddles	25
Twenty sets of harness	200
Four tents	50
Two excavators	500
Commissary goods	50
	18,000

I, N. M. Broadway, Sheriff and Ex-officio Tax Collector of Maricopa county, do hereby certify that the above and foregoing is a true and correct list of all the property, both real and personal, as assessed to the Valley Bank of Phenix appearing on the tax roll of Maricopa county for the year 1885.

Witness my hand this 26th day of April, 1886.

N. M. BROADWAY,
Sheriff and Ex-officio Tax Collector Maricopa county.

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Schedule F.

LETTER FROM M. W. STEWART.

WILCOX, A. T., April 19, 1886.

TO THE HONORARY BOARD OF INSANE ASYLUM COMS.

GENTLEMEN: I regret that important business will prevent my attending your meeting on the 22d instant, as requested by your note of recent date.

Very truly yours,
M. W. STEWART, Director.

LETTER FROM N. A. MORFORD.

OFFICE OF THE INSANE ASYLUM DIRECTORS,
PHENIX, ARIZONA, April 20, 1886

HON. C. MEYER ZULCK, GOVERNOR, J. C. SHELDS, CHIEF JUSTICE, AND JAS. A. BAYARD, TER. SEC'Y.

HONORED SIRS: Your note of 12th inst. duly at hand and contents noted. The Board of Directors of the Asylum are of opinion that the books and papers of my office must not be removed therefrom, and I am subject to their decisions. I therefore presume that my presence will not be desired, unaccompanied by the books and papers requested, at the meeting of the Honorary Board of Directors on the 22d inst.

Very respectfully your obedient servant,
N. A. MORFORD, Sec'y B'd Directors Insane Asylum.

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Schedule G.

BALANCE SHEET OF TREASURER.

Wm. Christy, Treasurer, in account with the Board of Directors of the Insane Asylum of Arizona Territory.

	DR.	CR.
September 29th, to cash received from Board of Directors from the sale of bonds	$ 9,500 00	
September 29 paid the following warrants:		
No. 1, Times Democrat, advertising		$ 33.75
No. 2, S. F. Daily Report		30 00
No. 3, New York Graphic		150.00
No. 4, Dewey & Co		20 00
No. 5, Denver Republican Publishing Co		40.00
No. 6, New York Tribune		56.80
No. 7, Dodge Bros. & Pray, stationery		9.00
No. 8, Goldman & Co., furniture		25 00
No. 10, Arizona Publishing Co., advertising		116.00
No. 9, Jos. A. Hoffman, book		3.00
No. 11, A. L. Bancroft & Co., blank books		34.60
No. 12, N. A. Morford, printing and advertising		64.50
No. 13, M. W. Stewart, expenses, etc		421 75
No. 14, M. W. Stewart, services as Director		290.00
No. 15, Valley Bank, exchange and Interest		32 15
No. 16, O. Lincoln, services and expenses		286.80
No. 17, F. C. Hatch, services		160.00
No. 18, F. C. Hatch, cash advanced		41.65
No. 19, F. C. Hatch, expenses		344 25
No. 20, N. A. Morford, services as Secretary		100 00
No. 21, M. W. Stewart, incidental expenses		8.00
No. 22, Hiller & Johnson, forty copies finances of Arizona		10.00
No. 23, Hiller & Johnson, office rent		43 75
September 29th by balance		7,179.00
	$9,500.00	$9,500 00
October 22, 1885, to Balance	$7,179 00	

October 22, by paid the following warrants:		
October 3. 24, Oscar Lincoln, services		$ 140.00
October 3, 25, F. C. Hatch, services		80.00
October 3, 26, Clark Churchill, legal fees		150.00
October 22, 1885.		
27, Gazette Printing and Publishing Co., advertising		10.00
28, N. A. Morford, services as Secretary		100.00
29, N. A. Morford, printing and advertising		21.50
30, O. Lincoln, services		170.00
31, O. Lincoln, cash advanced		2.25
32, F. G. Parker, counseling architect		10.00
33, F. C. Hatch, cash advanced		13.55
34, F. C. Hatch, services		70.00
35, M. W. Stewart, services		130.00
36, Frank Ingoldsby, copying		7.00
37, Schoenfeld & Heyman, furniture		114.07
November 21, 1885.		
38, Geo. E. Mowry, P. M., stamped envelopes		22.20
39, Frank Fry, office rent to December 1st		50.00
40, M. W. Stewart, services		40.00
41, W. R. Morris, making abstract of title		5.00
42, W. F. Wood, stationery		4.05
43, N. A. Morford, salary as Secretary		100.00
44, F. C. Hatch, services		100.00
45, N. A. Morford, printing		23.85
46, O. Lincoln, telegrams		3.05
47, O. Lincoln, services		210.00
48, F. C. Hatch, expenses		47.35
49, Wm. Christy, salary as Treasurer		150.00
50, J. C. Martin, printing		10.00
Nov. 19, to sale of bonds by Board of Directors	$86,075.00	
Nov. 21, by balance		91,470.13
	$93,254.00	$93,254.00
Dec. 16, to balance	$91,470.13	
Dec. 16, paid the following warrants:		
51, J. M. Gregory, lumber		$ 14.36
52, Rosenthal & Kutner, nails		2.10
53, Thomas Rankin, right of way		10.00
54, F. Minor, lumber		18.24
55, John Averisch, making ditch		70.00
56, John Averisch, making ditch		30.00
57, Grand Canal Co., water rent		100.25
December 24th.		
58, Frank Fry, rent to January 1		25.00
59, Catton Bros., stationery		4.80
60, N. A. Morford, salary as Secretary		100.00
61, O. Lincoln, services		190.00
62, F. C. Hatch, cash advanced		8.00
63, C. A. Marriner, surveying		43.00
64, Herrick & Co., livery hire		6.00
65, Trask & Kays, merchandise		7.00
66, F. C. Hatch, services		90.00
February 8th		
67, Carle, Croly & Abernathy, on building		12,258.00
68, C. A. Marriner, surveying		38.00
69, Tanton & Kellner, merchandise		69.00
70, F. C. Hatch, seed wheat		68.02
71, F. C. Hatch, rent of water right and cash advanced for extra water		73.35
72, J. S. Drew, clearing asylum lands		320.00
73, C. Churchill, legal services		100.00
74, M. W. Stewart, telegrams		6.40

74½, Dodge Bros. & Pray, stationery		63.50
75, F. C. Hatch, hire of team		200.00
76, O. Lincoln, telegrams		5.00
77, F. C. Hatch, cash advanced		20.30
78, John Averisch, seeding land		137.50
79, John Averisch, plowing land		208.00
80, N. A. Morford, salary as Secretary		100.00
81, Frank Fry, rent		50.00
82, Wm. Christy, salary as Treasurer		150.00
83, O. Lincoln, services		150.00
84, Valley Bank, alfalfa seed		23.45
85, M. W. Stewart, services		90.00
February 8th, balance		76,621.36
	$91,470.13	$91,470.13
Wm. Christy, Treasurer, in account with the Board of Directors of the Territorial Insane Asylum, debtor		
February 8th to balance last report	$76,621.36	
March 16th paid the following warrants:		
86, N. A. Morford		$ 200.00
88, P. Minor		5.04
89, E. O. Slocum		55.33
90, W. T. Woods		12.50
91, E. J. Bennitt		6.00
92, Wm. Christy		50.00
93, Watson & Barnes		280.00
94, Rosenthal & Kutner		33.25
95, Catton Bros		5.30
96 H. Goldberg		11.26
97, Wm. Christy, Treasurer		247.85
98, F. C. Hatch		7.70
99, F. C. Hatch		54.61
100, F. C. Hatch		50.00
101, F. C. Hatch		5.00
102, F. C. Hatch		21.15
103, Wm. Christy, Treasurer		82.00
104, M. W. Stewart		100.00
105, M. W. Stewart		5.25
106, Carle, Conoly & Abernethy		11,754.82
107, O. Lincoln		130.00
108, Frank Fry		25.00
87, S. F. Webb		37.80
Balance		63,441.50
	$76,621.36	$76,621.36
April 20th, Balance	$63,441.50	

WM. CHRISTY, Treasurer Board of Directors.

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Schedule H.

MINUTES.

PRESCOTT, April 22, 1886.

The Honorary Board of Insane Asylum Commissioners met at 10:30 a. m. in the office of the Governor.

Present—C. Meyer Zulick, Governor; J. C. Shields, Chief Justice; James A. Bayard, Territorial Secretary; R. L. Long,

Territorial Superintendent of Public Instruction and O. L. Mahony, County Physician of Maricopa county.

On motion Governor Zulick was elected Chairman and Jas. A. Bayard Secretary of the Board.

Communication from N. A. Morford, Secretary of the Board of Directors of the Insane Asylum, refusing to produce books and papers connected with this office on the ground that the Board of Directors objected, read.

Dr. O. Lincoln appeared before the Board and was examined in reference to the proceedings of the Board of Directors of the Insane Asylum in the sale of the asylum bonds, contracts, expenditures, etc., in connection with the erection and construction of a suitable Asylum for the Insane.

On motion the Board adjourned to 10:30 a.m., Friday, the 23d.

JAS. A. BAYARD, Secretary of Board

Approved, C. MEYER ZULICK, President

FRIDAY, April 23, 1886.

Board met at 10 a. m.; all members present.

Minutes of previous meeting read and on motion approved.

Dr. Lincoln and Colonel Hatch appeared before the Board. Colonel Hatch stated that Colonel Christy, Treasurer of the Board, was sick and unable to be present, and that the Board of Directors were unwilling to allow the books and papers of his office to be removed from Phenix. Colonel Hatch also stated that by the authority of his Board Mr. Morford had refused to produce the books of his office. The Board then proceeded to examine Colonel Hatch. On motion the Board adjourned to 2:30 p. m.

Board met 2:30 p. m. pursuant to adjournment; all members present.

Colonel Hatch requested that a copy of all questions upon which he had reserved his answers be furnished him. On motion the following resolution was adopted:

Be it resolved, That a copy of the questions remaining unanswered by Colonel Hatch be furnished him.

On motion Board adjourned to 7:30 p. m.

Board met at 7:30 p. m.; all members present.

Colonel Hatch appeared and declined to answer the questions, a copy of which had been furnished him at his request.

Communication from Directors Hatch and Lincoln was laid before the Board asking for a copy of all questions that had been propounded to them during their examination.

Messrs. Hatch and Lincoln then stated to the Board that they would decline to be examined further unless a written copy of the questions already propounded to them and their answers thereto was furnished to them. Colonel Hatch stated that he was willing to answer any verbal questions of the Board on condition that the answers should not be recorded.

Colonel Hatch and Dr. Lincoln were temporarily excused.

On motion the following was adopted:

Be it resolved, That the communication from Messrs. Hatch and Lincoln be laid upon the table, and that at the next session of this Board an opportunity be again tendered Colonel Hatch of answering the unanswered questions, a copy of which has been furnished him, and that a copy of this resolution be furnished Colonel Hatch.

Dr. Mahoney stated that he had several patients very sick in Phenix, and asked to be excused from further attendance upon the Board; granted.

On motion the Board adjourned to 10 o'clock a. m., Saturday, April 24th.

JAS. A. BAYARD, Secretary of Board.

Approved, C. MEYER ZULICK, President.

APRIL 24, 1886.

Board met at 10 a. m.; all members with the exception of of Dr. Mahoney being present.

Colonel Hatch and Dr. Lincoln appeared before the Board. Colonel Hatch declined to answer the questions, a copy of which had been furnished him, to which at the previous meeting he had reserved his answers.

Colonel Hatch stated that he desired to present a written communication to the Board. Governor Zulick objected to Col. Hatch's communication being received by the Board on the ground that "Col. Hatch as a witness respectfully invited to come before the Board and answer plain, fair questions respecting the books, accounts and doings at the Board of Directors of the Territorial Asylum by his refusal has placed himself outside of the bounds of any courtesy at the hands of this Board, and like any other recalcitrant witness, is not entitled at this time to present this communication, he having positively and absolutely refused to answer the questions asked by the Honorary Board."

Judge Shields moved that Col. Hatch's communication be received by the Board.

The motion was lost by the following vote:

Yea—Judge Shields, R. L. Long.

Nay—Governor Zulick, Jas. A. Bayard.

Dr. Lincoln then stated that he desired to present a written communication to the Board. Governor Zulick objected to Dr. Lincoln's communication being received by the Board on

the ground that "Dr. Lincoln verbally states that his communication asks for a copy of the questions asked and the answers made by him during his examination by the Board, which at the time of his examination were read to him; and for the further reason that this request has already been made by him and refused by the Board, he having with Col. Hatch declined to be further examined."

Mr. Bayard moved that Dr. Lincoln's communication be received by the Board.

The motion was carried by the following vote:

Yeas—Judge Shields, R. L. Long, Jas A. Bayard.

Nay—Governor Zulick.

Dr. Lincoln and Colonel Hatch were now excused from further attendance on the Board.

Dr. Lincoln s communication was read and on motion laid upon the table.

The following motion was offered by Judge Shields, seconded by Mr. Bayard, and passed by a unanimous vote:

Resolved, That inasmuch as any further intelligent or profitable investigation into the books, accounts and doings of the Board of Directors is precluded by the non-production of the books of said Board, as well as by the refusal of the members thereof to answer any further questions except upon the conditions announced by them and appearing upon our minutes, it is the sense of this Honorary Board that the investigation do now close so far as the taking of oral testimony at the present time is concerned, and a report be forthwith made of the proceedings so far had by us to the Governor of the Territory, in accordance with law. Nothing in this resolution shall be so construed as to interfere with an examination of the building hereafter, or with the taking of such further proofs as may hereafter be deemed proper.

Motion was made and passed that Mr. Bayard be directed to prepare a report to be submitted to the Honorary Board, and that in case any member of the Board should be unable to be present when the report was submitted, that a copy of the same should be forwarded to such member or members.

On motion the Board adjourned to meet at 7 p. m., Thursday, April 29, 1886

PRESCOTT, A. T., Thursday, April 24, 1886.

Board met at 7 p. m.; members present—Gov. Zulick, Judge Shields and Mr. Bayard.

Mr. Bayard laid the report before the Board. The report was then read and signed by Mr. Bayard.

Governor Zulick and Judge Shields presented to the Board their reasons for declining to affix their names to the report, and requested that these statements should be appended to the same.

Dr. Mahoney and Mr. Long being absent, it was ordered that a copy of the report be forwarded to them for their consideration, to be returned by them at their earliest convenience, and that on its receipt the Secretary of the Board should transmit the report, together with the minutes, testimony and evidence now in the hands of the Honorary Board to the Governor of the Terrritory for his consideration.

On motion Board adjourned subject to the call of the President, Governor Zulick.

JAS. A. BAYARD, Secretary of Honorary Board.

Approved, C. MEYER ZULICK, President.

ORDER FOR A HEARING.

On the 29th of April Governor Zulick sent to Directors Lincoln, Hatch and Stewart each a copy of the following notification—charge and specifications:

EXECUTIVE DEPARTMENT OF ARIZONA,
OFFICE OF THE GOVERNOR.
PRESCOTT, ARIZONA, April 29, 1886.

SIR: In conformity with the provisions of section 12, chapter 13, Compiled Laws of the Territory of Arizona, I hereby notify you that your removal from the office of Director of the Territorial Insane Asylum is sought to be made upon the grounds of neglect of duty and official misconduct, a copy of the charge and specifications is hereunto annexed. The hearing thereon will be heard at the executive office, before me as Governor, on Thursday, the 6th day of May, A. D. 1886, in the city of Prescott, at 10 o'clock in the forenoon.

Respectfully,
C. MEYER ZULICK, Governor.

CHARGES.

That Oscar Lincoln, M. W. Stewart and F. C. Hatch, Directors of the Insane Asylum of Arizona, have been guilty of neglect of duty, official misconduct and incompetency.

SPECIFICATIONS.

First. In neglecting to transmit to the Governor a certified copy of the record of the bonds received, sold, the name of

the purchaser and price received, as soon as the bonds were sold, as directed by law.

Second. In selling at private sale $100,000, face value, of Insane Asylum bonds when the law authorized and directed that the same be sold at public sale.

Third. In selling $100,000, face value, of Insane Asylum bonds for less than ninety-five cents of their face value, contrary to law.

Fourth. In delivering ninety bonds to Wm. Christy without security or written contract of conditions of sale, failing to require of him the payment into the treasury of the Board, the proceeds of such sale.

Fifth. In failing to have official knowledge that the money entrusted to the Treasurer was kept in a safe and reliable depository.

Sixth. In extravagantly expending the public funds by paying $100 per month to one N. A. Morford, as Secretary of the Board.

Seventh. In misappropriating the sum of $766 to defray the expenses of Directors Stewart and Hatch to San Francisco.

Eighth. In the illegal payment of $1,270 as compensation to Director Lincoln.

Ninth. In the approval of the official bond of Wm. Christy, Treasurer, in the sum of $50,000, without advising themselves respecting the competency of the sureties thereon, thereby jeopardizing the public moneys under the control of the Board.

Tenth. In instructing the Secretary and Treasurer of the Board to refuse compliance with the request of the Honorary Board of Directors of the Insane Asylum to appear before them in person with the books and papers of their respective offices for investigation.

Eleventh. In the refusal of Directors Hatch and Lincoln to answer questions propounded by the Honorary Board of Insane Asylum Directors, pertaining to their doings as directors of the Insane Asylum.

Twelfth. That they, with undue haste, in violation of business judgment and discretion withdrew from the Territorial Treasurer and forced upon the market the entire issue of bonds, viz: $100,000,; thus materially lessening the chances to secure a fair price for the same; and, providing money far in excess of the requirements of the Board to the financial disadvantage of the Territory, both in the low price secured for the bonds and the loss of interest on the money necessarily idle in their treasury.

PROCEEDINGS BEFORE THE GOVERNOR.

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10 A. M. MAY 6, 1886.

The Directors appeared by counsel, J. C. Herndon, of Prescott, and Judge Edwards, of Phenix. Governor Zulick opened the proceedings by saying: "An Act to establish, maintain and provide for the government of the Insane Asylum in the Territory of Arizona" was approved March 9, 1885. The full power and authority to manage the affairs of the Asylum is entrusted to a Board of Direction composed of three members, nominated by the Governor and confirmed by the Council, Territorial officers. Oscar Lincoln, M. W. Stewart and F. C. Hatch were nominated by Gov. F. A. Tritle and duly confirmed by the Council of the Thirteenth Legislature of Arizona, and assumed the responsibilities of such office. Section 25 of the Act provides for an Honorary Board of Directors, whose duties shall be to inspect said Asylum, to investigate the books, accounts and doings of the Board of Directors and of all the officers of said Asylum, etc., and make a report thereof, together with such suggestions as they may deem proper, to the Governor, on or before January 1st of each year. The Honorary Board of Directors met and made a report to me, as Governor, which report, together with the evidence and exhibits attached thereto is made a part of the records of these proceedings. The result of their examination and suggestion is the basis of my official action in this matter. The Compiled Laws of the Territory, section 12 and chapter 13, empowers the Governor with removal of any Territorial or County officer, for neglect of duty or official misconduct, when, in his opinion, the public good requires such removal "upon notice, however, of the grounds upon which such removal is sought to be made, and a hearing thereon at such time and in such manner and form as the Governor may prescribe."

With this report, accompanying evidence and exhibits before me, as Governor, I would fail in my discharge of public duty did I not promptly have this hearing. It will be observed that I declined, as a member of Honorary Board of Directors, to commit myself to any opinion or conclusion whatever as to this report, and refused to sign it, deeming it, as I have stated, inconsistent with my sense of impartial duty to form or express any opinion on the subject, as it is my official duty to impartially and calmly hear this case, free from any prejudice whatever against these respondents. I shall enter into the performance of this responsible duty imposed upon me by law, with but one view—that is to subserve the public good and do equal and exact justice to these respondents. If they have conducted their official trusts with reasonable care, attention and fidelity, confining their official acts to legal limitations, the opportunity will, by this examination, be offered to establish it. If they have, as is charged and specified, and as reported by the Honorary Board of Directors, been guilty of neglect of duty and official misconduct, they, by this examination, have an opportunity to fairly be heard. For no political or personal reasons, innocent mistakes of fact or error in judgment, or matter frivolous in its nature or techical error should they be removed; but they should be held to that character of service in the discharge of official duty that a careful business man would require in his private business under like circumstances and absolutely at all times within the strict requirements of the law.

Applying these principles to the case under consideration, the hearing now to be had remains to determine the measure of these respondents' stewardship. As the law making power of the Territory has left us with no mode of procedure in this case, save "such manner and form as the Governor shall prescribe," and as it is necessary to establish rules to control and govern the investigation, I have prescribed the following rules which will be adopted and recorded hereafter ifnecessary. [Which were read.]

The counsel for respondents asked for a continuance, so as to prepare an answer to these charges, until Monday, May 10th, which was granted.

10 A. M., MAY 10th.

Respondents through their counsel filed the following:

In the matter of the charge and specifications against F. C. Hatch, Oscar Lincoln and M. W. Stewart, Directors of the Territorial Insane Asylum of Arizona, pending before his Excellency, C. Meyer Zulick, Governor.

PLEA TO THE JURISDICTION.

Now come the above respondents and plead that his Excellency, the Governor of the Territory of Arizona, has no jurisdiction of the subject matter:

First. The Governor has no judicial power to hear, or try, or try and determine the subject of this action, on the written charge and specifications, or any of them, on file herein.

Second. The judicial power of the Territory of Arizona is vested in the Supreme Court, the District Courts and the inferior Courts created by law.

Having fully plead to the jurisdiction, the respondents pray that said charge and specifications and the proceedings herein be dismissed.

E. J. EDWARDS and
HERNDON & HAWKINS,
Their Attorneys

DEMURRER.

The said respondents, subject to action on the plea to the jurisdiction pleaded, demur to the said charge and specifications, and to each of them, because of the face thereof, and of each of the same, it appears that his Excellency, the Governor, etc., has no jurisdiction of the subject of the action, and has no judicial power neither to hear, nor to try, nor to try and determine the subject of the action, nor the written charge nor the specifications, nor any of them, and so the respondents pray that the same be dismissed.

Argued by E. J. Edwards for respondents.

9 A. M. MAY 11th.

Plea and demurrer argued by A. C. Baker for the people, J. C. Herndon for respondents, and submitted.

11 A. M. MAY 13th.

Governor read the

FOLLOWING OPINION

denying plea to jurisdiction and overruling demurrer:

The respondents, in the matter of the charge and specifications against them, as Directors of the Territorial Insane Asylum of Arizona, pending before me as Governor, enter a plea to the jurisdiction, and a demurrer. It is claimed the Governor has no jurisdiction of the subject matter

1st. That he has no judicial power to hear or try, or try and determine, the subject of this action, on the written charge and specifications, or any of them, on file herein.

2d. The judicial power of the Territory of Arizona is vested in the Supreme Court, the District Court and the inferior Courts created by law.

Having fully plead to the jurisdiction, the respondents pray that said charge and specifications and the proceedings herein be dismissed.

The question raised by this plea to the jurisdiction and demurrer is both important and novel. It involves the authority of the chief executive officer of the Territory respecting a material question affecting the tenure of public officials. A question of more serious public importance to this Territory can scarcely be raised, and consequently its manifest importance demands for its consideration that unprejudiced deliberation which I have given it.

It is claimed by counsel of respondents that there is no grant of power of removal by the Governor in the Organic Act. Among the powers vested in the Governor, it is declared "He shall commission all officers appointed under the laws of the Territory, and shall take care that the laws thereof be faithfully executed." Here, then, is a general power conferred, and a duty enjoined. It is a well settled and accepted doctrine of constitutional construction that the grant of a constitutional power, or the enjoinder of a constitutional duty, confers by implication the exercise of the one and in the performance of the other, every particular power necessary Chief Justice Marshall, in the elucidation of this constitutional maxim, tersely says: "The government which has a right to do an act, and has imposed on it the duty of performing that act, must, according to the dictates of reason, be allowed to select the means." McCullough vs. Maryland, 4th Wheaton, 423.

The imposition upon the executive by organic act of the duty "to take care that the laws be faithfully executed" necessarily implies the power to see that the enforcement of the execution of the laws is through the agency of capable faithful public officers. Mr. Madison, in debating this question in the House of Representatives shortly after the adoption of the constitution, said: "It is absolutely necessary that the President shall have the power of removal from office. It will make him in a peculiar manner responsible for their conduct and subject him to impeachment himself if he suffers them to perpetrate with impunity high crimes or misdemeanors against the United States, or neglects to superintend their conduct so as to check their excesses. Of the constitutionality of this declaration I have no manner of doubt.' The same principle applies to the Governor of this Territory, for how can he comply with his sworn duty to see that the laws are faithfully executed if he is denied the power to remove faithless, incapable or dishonest officials?

This question has received the most searching and comprehensive discussion of the ablest jurists and constitutional lawyers of the country since 1789, and the whole subject of the theory of the constitution affecting the power of appointment and removal from office has been closely examined and it is the accepted doctrine that the power of removal in the President extends to every officer of the government, except the judiciary, who hold for life tenure and whose removal from office for cause can only be effected by impeachment.

As has been well said in maintaining the power of removal by executive action, it resulted from the nature of the power and the convenience and even necessity of its exercise, that it was clearly in its nature a part of the executive power and was indispensible for a due execution of the laws and a regular administration of the public affairs. Chancelor Kent, (1st Kent 311) with marked decision, says "it may now be considered as firmly and definitely settled, and there is good sense and practical utility in the construction." Justice Story accepts it as a question closed after forty years of experience and the unanimous judgment of the Supreme Court of the United States (13 Peters, 259) sanctions the doctrine by holding that "the power of removal is an incident to the power of appointment." Accepting this as fundamental doctrine it necessarily follows that the power granted by the fundamental law to appoint necessarily carries with it the incidental power of removal; that is, in all offices where the tenure is during pleasure. Where the tenure is fixed by the law, with absence of restrictive power of removal, and an absolute authority by law for the Governor to remove for cause, it seems idle to contend no such power exists.

The Directors of the Insane Asylum are not constitutional officers; they are creatures of the Legislature, and the law that brought them into existence provided that "they shall severally be nominated by and with the advice and consent of the Legislative Council, appointed by the Governor of said Territory, and severally hold office for the term of two years and one for term of four years." Their qualifications are the same as other Territorial officers. That these commissioners were appointed under a law which prescribed their term for two and four years does not carry with it an implication that they shall continue in office during that term however they misbehave. The case of Keenon vs. Perry, 24 Texas, is directly in point. There the learned Chief Justice expressly says: "There can be no question of the power of the Governor to remove for the specified causes." In that case, like the one under consideration, the office though its tenure was limited by law, was held at the dis-

cretion of the Governor, for the power of removal was exclusively vested in him for specified cause. It was a discretion of removal governed by law and to be exercised only in the cases provided by law, viz: Neglect of duty, official misconduct and incompetency. Such is exactly this case. In the case of Newsome vs. Cook, Miss. 7 Am. Repts. 686, it was held by Chief Justice Peyton that an act of the Legislature providing that in all cases in which the Governor "shall have the power under this act by the terms of the constitution to appoint to office he shall also have the power of removal from office was not unconstitutional." The learned Chief Justice saying: "The Legislature thought proper to confer the power of removal upon the Governor, and in doing so we are not prepared to say it was an assumption of Legislative power not authorized by the constitution. This Court would hesitate before it would declare the action of a co-ordinate department of the government unconstitutional and void, unless it was clearly and undoubtedly so, for it is a wise and salutary rule, in regard to judicial construction of constitutional provisions that, in cases of doubt, every possible presumption and intendment will be in favor of the constitutionality of the act in question, and that the Courts will interfere only in cases of clear and unquestioned violation of the fundamental law."

The case of the people, ex. rel. Findley vs. Jewett, 6 Cal. 291, quoted by counsel for respondents, does not reach this case. The decision was based entirely upon the provisions of Art. 11, Sec. 7, of the Constitution of California, which provided "when the duration of any office is not provided for by this Constitution, it may be declared by law, and if not so declared, such office shall be held during the pleasure of the authority making the appointment, nor shall the duration of any office not fixed by the Constitution exceed four years. In that State the power of removal by the Executive was circumscribed and could only exist in the cases enumerated in the Constitution. California cases quoted do not conflict in principle with the above cited cases, for the reason that the Governor's power of appointment was limited to filling vacancies except the single instance of Secretary of State. "The evident intention and spirit of the Constitution of the State was to limit the patronage of the Executive within very narrow limits"—not having been invested with the "principle," i. e. the power of appointment, the Governor could not exercise the "incident," i. e. the power of removal.

The case of Dallem vs. Wilson, 53 Mich. Rpts., upon which counsel for respondents rely so much, turned upon the

construction of a constitutional provision of the State. Article 12, Sec. 7, of the Constitution of Michigan provides that "the Governor shall have power and it shall be his duty, except at such times as the Legislature may be in session, to examine into the condition and administration of any public office and the acts of any public officer elective or appointed, and to remove from office for gross neglect of duty, or for corrupt conduct in office, or any other misfeasance or malfeasance therein either of the following State officers, viz: The Attorney-General, * * * or any other officer of the State, except legislative and judicial, elective or appointed, and to appoint a successor for the remainder of their respective unexpired term of office, and report the causes of such removal to the Legislature at its next session." This was an amendment to the State Constitution, ratified by the people in 1862. In 1871 the Legislature of that State created a statute providing that the Secretary of State, Auditor-General, and all State and County officers, except the State Treasurer and Judges, may, for official misconduct or habitual or wilful neglect of duty, at any time during the recess of the Legislature, be removed and the vacancies be supplied during such recess by the Governor. The Governor undertook to remove a trustee of the Michigan Institute for the education of the deaf and dumb, and appointed the relator in that case to fill the vacancy occasioned by such removal. The removal was sought to be made under the statute above quoted, and the Court held that the statute furnished no valid basis for the power of removal because it was repugnant to the Constitution. By Article 12 of Michigan Constitution, a Court of Impeachment for removals from office was created, the House of Representatives being the power of impeachment, and the Senate the tribunal before whom the impeachment was to be tried. The Court for the trial of impeachment was prohibited from sitting until the final adjournment of the Legislature. So that the only way in which removal from office of State officers could be accomplished, before the amendment of 1862, was by impeachment preferred by the House of Representatives. By this amended Constitution the Governor was authorized to remove for specific causes. The syllabus of this case is, that "the Governor's power of removal can only be exercised for the specific causes mentioned in the Constitution, and upon charges which shall specify the particular acts or neglects relied on to make out the cause alleged, and the respondents must have notice of these charges and specific allegations, and reasonable notice of the time and place when and where he will have an opportunity for a hearing thereon upon which he may produce proof; and the

Governor has judicial power to examine into and pass upon these charges." The action of the Governor was not sustained because he failed to comply with the requirement to give notice and accord a hearing. A careful examination of this case and the authorities cited under it, only strengthen me in the conviction of the wisdom of the Legislature of Arizona in providing that any officer whose removal is sought to be made, under charge, shall have an opportunity to be heard, in manner and form as the Governor may prescribe. The New Jersey authority, State vs. Prichard, Am. Law Reg. Vol. 12, 514, also relied upon by counsel for respondents. is in no way analagous, and fails to reach the propositions we are considering. The points of inquiry were two-fold: "First. Does a public office, by the mere fact of the malfeasance of the incumbent with respect to it, and anterior to any judicial judgment upon the subject, become forfeited? Second. If such forfeiture does not occur, can the Governor of the State adjudge the question and declare a vacancy?" The Governor of New Jersey had declared that there was a forfeiture of public office because of the conviction of the incumbent for an infamous crime, consequently a vacancy, and appointed a successor to fill such vacancy. The learned Chief Justice held that "the conviction of an infamous crime does not *ipso facto* work such a forfeiture of public office as to make the office vacant." And "the right to remove a State officer for misbehavior in office does not appertain to the Executive;" and further, that "such an act is judicial, and belongs to the Court of Impeachments." His reasonings and findings being based upon the fact that, under the Constitution and laws of the State of New Jersey, no power whatever was vested in the Governor to make removals. He alone had the power to fill vacancies, not the authority to create them; and, that under the Constitution of that State, the right to remove a State officer was a judicial proceeding belonging exclusively to a Court of Impeachment. The learned and exhaustive opinion delivered in this case by this eminent jurist, was directed solely to the consideration of the rights of the Executive of New Jersey, under the Constitution of that State, which absolutely prohibited the Governor from removing a State officer, under any consideration, and only granted him the power of filling a vacancy happening during the recess of the Legislature in any office which is to be filled by the Governor or Senate or by the Legislature in joint meeting, and maintaining with force the additional position that such removal, under the Constitution of that State, could only be considered by the Court of Impeachment, a special judicial tribunal fixed by the Constitution and empowered with the authority; and that there was no other power in the State that could effect a removal. The distinction between this case and that now under consideration, is that the right of removal did not pertain to the Executive of New Jersey, either by the Constitution or Statutory law, while in this Territory the right, not only by inference, appertains through the organic law, but by direct Statutory enactments, as provided by Section 12, Compiled Laws, specifying grounds for removal and the mode of procedure. One was in defiance of law, and the other is sought to be done in strict accordance with law.

In this connection it may be proper to enquire what constitutes the judicial power in this Territory? The Organic Act of New Mexico says it is vested in a Supreme Court, District Court, Probate Court and Justice's. The Organic Act of Arizona says the judicial power shall be vested in a Supreme Court, to consist of three Judges, and such inferior Courts as the Legislative Council may by law prescribe. Their jurisdiction is limited by law. The original judicial power vested by the Constitution was left to the Legislative power of the land to organize and define, while the residue of judicial power, distributed to inferior Courts, was left exclusively to the Legislature And the Legislature was empowered by the Constitution to pass laws for carrying into execution all powers except its own; consequently the limitations of the judicial power were practically controlled by legislative enactment. Nowhere is there a grant to the judiciary power to appoint or remove public officers. The question of appointment and removal of public officials is pre-eminently a political question as contra-distinguished from a judicial question, and pertaining exclusively to the Executive; and Legislative departments are removed from interference by the Courts. Such is the case also with the pardoning power, the action of the Executive to put down insurrection, reconstruction after insurrection, because they merely pertain to political rights as distinguished from the rights of individuals. The Courts have invariably refused to take cognizance of political questions and remanded them to Executive or Legislative consideration, thereby recognizing the principle that the political and judicial departments should not mingle. When a court exercises the political functions of the Executive or Legislature, it ceases to be judicial, and necessarily loses its influence as an arbiter of law, subjects itself to the mutations of politics, ceasing to be a constitutional check, destroys the popular respect for law and shatters the influence of its ministerial officers. So hold all sound commentators of constitutional law

How then can it be maintained as strenuously insisted upon by counsel for these respondents that there was conferred by the Legislature judicial powers upon the Executive by the passage of Sec. 12, Chap. 13, of the Compiled Laws. It affected only a political question in which the Legislative and Executive departments of the government had exclusive control. It was outside of the domain of judicial cognizance, and if so removed the legitimate sequence is inevitable that the Legislature did not and could not thereby have delegated to the Executive any judicial power inconsistent with or repugnant to the well defined powers of the judicial department of government. It may be admitted that upon their directing notice of the grounds upon which such removal is sought to be made, and a hearing thereon "at such time and in such manner as the Governor may prescribe," that they clothed the Executive with such judicial forms as were absolutely necessary for the purposes of notice and hearing as were required, and he was authorized to prescribe, but it did not invest him with the powers of the judiciary, or divest him of his responsibilities as an Executive, or deprive him of his constitutional right of removal from office when in his opinion the "public good required it." It was a mere grant of necessary incidental judicial forms for the purpose of the better facilitating an Executive act, stripping it of arbitrary characteristics and affording those whose rights are involved a full hearing and an opportunity for vindication. It is a political power exercised under judicial forms. This is a well defined and accepted principle of Government.

Congress after the acquisition of California created a Board for the settlement and determination of the Mexican land grants within the territory of that State. This Board had and exercised judicial powers to inquire into and examine the validity of all grants, patents were issued upon their reports affirming such validity. When their acts were called in question before it, the Supreme Court of the State speaking through Justice Field declared that the powers of this tribunal, vested as it was with all the paraphernalia of a Court, belonged "to the political arm of the government of the United States, and cannot be exercised by Courts of justice." 13 Cal. Moon vs. Wilkinson, pages 482–489.

Congress created the land department which passes upon the qualification of an applicant and the acts he has performed to secure the title to public land. It is constituted as a special tribunal with power to hear testimony, pass upon its competency, credibility and weight. In that it exercises judicial

functions. Yet it has been frequently held by the Supreme Court of the United States when brought to its notice in a collateral proceeding as to matters of fact properly determined by it that it is conclusive; its judgment is the judgment of a special tribunal, it being also a political power exercised under judicial forms.

In the attempt to sustain the plea to the jurisdiction it is boldly asserted that the action of the Territorial Legislature by the passage of Sec. 12, Chap. 13, Com. Laws, was unconstitutional. The inconsistency of the positions assumed by counsel for respondents on the question of jurisdiction is somewhat remarkable. They first contend that the Governor has no judicial power, yet ask him to declare the action of a co-ordinate department of the government unconstitutional and void. Should I sustain the plea to the jurisdiction I would be usurping those powers which belong exclusively to the judicial department of the government.

To sustain this plea and demurrer with knowledge that neither the legislative or judicial branches of this government have any control whatever over the subject of removal of officers would be an abandonment of the rights of the people, as it would be a declaration that public officers can with impunity be recreant to public trusts, the peoples treasury be depleted by wilful extravagance and unlawful expenditures with no legal power to prevent it by removing faithless officials. In so doing I would disregard my sworn duty to see that the laws are faithfully executed. The plea to the jurisdiction is not sustained and the demurrer is overruled.

Respondents excepted and filed answer of general and special denial to charge and specifications.

The Governor said he was ready to proceed with the hearing, which was acquiesced in by counsel on both sides.

The Governor then prescribed the following rules to govern the hearing:

Rule 1. Counsel designated by the Governor to have the right to appear and conduct the hearing in behalf of the people, the respondents personally, or with their counsel on behalf of respondents.

Rule 2. All witnesses examined to be sworn before testifying, the oath to be administered by the Governor.

Rule 3. Any witness refusing to answer proper questions after fully understanding them, or refusing to be controlled or governed, or in any other manner contumatious, so as to deprive either party of a fair examination, the right is hereby re-

served in furtherance of justice to strike all testimony that such witness may have given.

MAY 13, 1886, 2 P. M.

J. A. Bayard was duly sworn, and as Secretary of the Honorary Board of Insane Asylum Directors identified the original report of the Board, the testimony and exhibits, the minutes and the entire record of proceedings, which was offered as evidence; objected to; objection overruled, and same admitted. Cross examined by Mr. Herndon.

Thos E. Farish was sworn, and identified copy of charge and specifications forwarded to each of the respondents, and notice of hearing, which was offered as evidence; objected to; objection overruled and same admitted. Cross examined by Mr. Herndon.

Mr. Baker rested his case.

Respondents, through their counsel, refused to introduce any evidence whatever in defense.

The Governor then said: "I now again offer these respondents, through their counsel, a full opportunity to be heard in defense and vindication from these charges and specifications, offering them every possible opportunity to produce the books of their Treasurer and the minutes of their Board, the opportunity to be sworn in their own behalf, or call and have examined any other witnesses whose testimony could be considered pertinent and necessary in their defense."

This offer counsel for defense declined, and an adjournment was taken until 10 o'clock Friday.

10 A. M. MAY 15th.

Respondents appeared by counsel and the Governor read the following order of removal:

This proceeding was commenced and based upon the facts given before the Honorary Board of Directors of the Insane Asylum of the Territory.

It was made the duty of the Board under the 25th section of the act to establish, maintain and provide for the government of an Insane Asylum, "to investigate the books, accounts and doings of the Board of Directors and of all the officers of said Asylum, at least once a year, and to make a report thereof, together with such suggestions as they may deem proper, to the Governor of the Territory, on or before January first of each year." This Board convened and made a report based upon facts ascertained, which, in their judgment, for the reasons fully therein set forth, justified them in recommending that inasmuch as "it is evident to us that the Board of Directors of the Territorial Insane Asylum have been guilty of neglect of duty and official misconduct and that by openly violating the law under which they were created, and by extravagantly disbursing, carelessly guarding, and recklessly jeopardizing the security of the public moneys under their control, have made it our duty to recommend, as we do, their removal from office."

Notice to each of these Directors, with a copy of the charges and specifications, fixing a time and place for hearing them before the Governor, was duly served upon them. Two of the Directors, Messrs. Lincoln and Hatch, appeared in person, and all three, including Director Stewart, appeared by counsel. They interposed a plea to the jurisdiction and a demurrer.

The people were also represented by counsel; the arguments of counsel were heard, the plea was not sustained and the demurrer was overruled. The respondents filed answer of general and special denial of charge and specifications, hearing was commenced under prescribed rules for its government, the case of the people was presented and rested.

The counsel for the respondents declined and refused to go into any defense or produce any testimony, still objecting to the jurisdiction. The facilities for a full hearing was again offered them by the Governor in the following language: "I now again offer these respondents, through their counsel, a full opportunity to be heard in defense of and vindication from the charge and specifications, offering them every possible opportunity to produce the books of their Treasurer and the minutes of their Board, the opportunity to be sworn and testify in their own behalf, or call and have examined any other witness whose testimony could be considered pertinent and necessary in their defense."

Through their counsel the respondents refused further to be heard, thus declaring their unwillingness to be heard, or produce books or papers, or witnesses in their defense. Applying the principles heretofore announced by me to this case, it remains for me to determine whether or not the record, exhibits and evidence show such a state of facts that to remove the Directors would subserve the best interest of the Territory.

The records and evidence before me fully warrant the conclusions and recommendations of the Honorary Board. It is my opinion the public good requires the removal of these Directors for neglect of duty and official misconduct as charged and specified.

Wherefore, it is ordered and directed by the undersigned, the Governor of the Territory of Arizona, that the Directors of

the Insane Asylum of Arizona, viz: M. W. Stewart, Oscar Lincoln and F. C. Hatch, be and they are each of them hereby removed from the respective offices they have heretofore held, of Insane Asylum Directors, and discharged from all powers, duties and responsibilities in any manner connected with the said offices.

C. MEYER ZULICK,
Governor of Arizona.

Prescott, May 15, 1886.

The following notification of removal was mailed to each of the Directors:

PRESCOTT, May 15, 1886.

SIR: You are notified that by an executive order made this day by me, as Governor of the Territory of Arizona, you were removed from the office of Insane Asylum Director, and discharged from all powers, duties and responsibilities in any manner connected with said office, on account of neglect of duty and official misconduct.

Very Respectfully,
C. MEYER ZULICK, Governor.

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