INVESTIGATION OF BUREAU OF INTERNAL REVENUE

HEARINGS

BEFORE THE

SELECT COMMITTEE ON INVESTIGATION OF THE BUREAU OF INTERNAL REVENUE UNITED STATES SENATE

SIXTY-EIGHTH CONGRESS

FIRST SESSION

PURSUANT TO

S. Res. 168

AUTHORIZING THE APPOINTMENT OF A SPECIAL COMMITTEE TO INVESTIGATE THE BUREAU OF INTERNAL REVENUE

NOVEMBER 20, 21, 22, 25, 26, AND 28, 1924

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SELECT COMMITTEE ON INVESTIGATION OF THE BUREAU OF INTERNAL REVENUE

JAMES COUZENS, Michigan, *Chairman*

RICHARD P. ERNST, Kentucky.
JAMES E. WATSON, Indiana.
ANDRIEUS A. JONES, New Mexico.
WILLIAM H. KING, Utah.

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THURSDAY, NOVEMBER 20, 1924

UNITED STATES SENATE,
SELECT COMMITTEE INVESTIGATING
BUREAU OF INTERNAL REVENUE.
Washington, D. C.

The committee met at 11 o'clock a. m., pursuant to call of the chairman, in room 410, Senate Office Building.

Present: Senators Couzens (presiding), Ernst, and Jones of New Mexico.

Present also: Earl J. Davis, Esq., and L. C. Manson, Esq., counsel for the committee.

Present on behalf of the Bureau of Internal Revenue: Mr. C. R. Nash, assistant to Commissioner of Internal Revenue; Mr. Robert M. Estes, deputy commissioner, in charge of miscellaneous tax: Mr. Fred Page, assistant deputy commissioner, miscellaneous tax: and Mr. C. W. Jones, chief, review division, miscellaneous tax.

The CHAIRMAN. Gentlemen, this is a meeting following the understanding that we had yesterday. We will now start the meeting this morning, which is one of the meetings that we are to hold regularly, and we will to-day take the testimony of Mr. Walker, who has made complaint to the committee about the handling of the Croker estate. I understood from the committee yesterday that it was perfectly willing to proceed and hear Mr. Walker's testimony at the session this morning.

Is Mr. Walker here?

Mr. DAVIS. He is here.

The CHAIRMAN. Will you take the stand, please, Mr. Walker?

TESTIMONY OF MR. GEORGE B. WALKER

(The witness was duly sworn by the chairman.)

The CHAIRMAN. Mr. Walker, will you state your name for the record?

Mr. WALKER. George B. Walker.

The CHAIRMAN. You had better tell the committee who you are, Mr. Walker, what your particular complaint is, etc.

Mr. WALKER. I was formerly a revenue agent, making State-tax investigations in the Atlanta division, which embraces the States of Georgia and Florida. At the present time I am doing nothing. I intend to go to practicing law.

Mr. DAVIS. What is your business, Mr. Walker?

Mr. WALKER. I intend to practice law.

Mr. DAVIS. Have you practiced law in the past?

Mr. WALKER. Seven years.

Mr. DAVIS. Where?

Mr. WALKER. Macon, Ga.

Mr. DAVIS. Then, following that, you went in the internal-revenue service?

Mr. WALKER. After getting out of the Army, having been injured in the service, I was given a position in the Internal Revenue Bureau.

Mr. DAVIS. Where do you live now?

Mr. WALKER. I have no home now. I rented out my home at Orlando, and I am trying to get a place to live at West Palm Beach, where I intend to practice law.

Mr. DAVIS. When did you enter the internal-revenue service?

Mr. WALKER. February 11, 1920.

Mr. DAVIS. How long did you stay in that service?

Mr. WALKER. Until July 15, 1924.

Mr. DAVIS. In the work that you did while with the Bureau of Internal Revenue, you handled the Croker estate matter?

Mr. WALKER. I did, sir.

Mr. DAVIS. I wish you would go on and relate to the committee the details and the work that you did in that entire transaction.

Mr. WALKER. Some time in the early part of September, or the middle of September, 1923, I received a letter from the agent in charge at Atlanta, notifying me that the transcript of form 706, filed for the estate of Richard Croker, sr., was being transmitted to me by Mr. Oscar Penley, another agent, to whom it had been assigned, and who was contemplating the transfer to another division, and that I was to make an investigation immediately, as the bureau wanted an entire investigation.

Mr. DAVIS. What division was this that you were working for?

Mr. WALKER. The Atlanta division.

Mr. DAVIS. Who was head of that division?

Mr. WALKER. Thomas E. Stone.

Mr. DAVIS. And what was this form that you speak of?

Mr. WALKER. That is the return for the estate tax, the final return. I received that transcript, and went to West Palm Beach and made a preliminary investigation, first conferring with a man by the name of J. B. MacDonald, who had filed this return as the custodian of certain property belonging to the Croker estate.

Attached to that return was a contract between MacDonald and the decedent and his wife, showing a transfer of something over $1,000,000 worth of property to MacDonald. The investigation showed that there was something wrong with that estate somewhere.

Mr. DAVIS. Your investigation?

Mr. WALKER. Yes, sir; the preliminary investigation, and I wired Mr. Stone, who had wired me to meet him in Jacksonville and make a preliminary report. That was along in the early part of October. I met him in Jacksonville about the 25th of October, and rendered a preliminary report.

Mr. DAVIS. In what year?

Mr. WALKER. 1923. At that time I was instructed by Mr. Stone to go to the United States district attorney and secure a subpoena to have Mrs. Bula Croker, the executrix, to come to Florida to

testify and disclose the extent of the estate. The gist of this preliminary report was wired to the bureau, and they made a temporary assessment based on that preliminary report, which was not at all accurate, because I could not at that time get the facts. She would not come to Florida or do anything else that was really conducive to or sufficient to base a tax on.

Mr. DAVIS. Where was she?

Mr. WALKER. She was in New York City. I wired her to appear in Florida, and about the time she got the wire I got one from her collect—it cost me $2.50—giving me the dickens for even having the nerve to ask a woman of her standing to come to Florida and testify before a mere revenue agent; and on top of that wire, I got a wire from the Atlanta office to suspend the subpœna against Mrs. Croker.

Mr. DAVIS. From the Atlanta office?

Mr. WALKER. Yes, sir.

Mr. DAVIS. From whom at the Atlanta office did you get that wire?

Mr. WALKER. Thomas E. Stone, the agent in charge.

Mr. DAVIS. Did he get orders from anybody else?

Mr. WALKER. He got orders from Washington.

Mr. DAVIS. From whom, if you know?

Mr. WALKER. Mr. Estes.

Mr. DAVIS. That was to suspend the subpœna to have Mrs. Croker appear before you?

Mr. WALKER. Yes, sir.

Mr. DAVIS. All right; proceed with your statement.

Mr. WALKER. In the meantime, I had discovered in the First National Bank a lock box, in which I was told—I first went to this bank and asked the officers of that bank whether there was a lock box there in the name of Richard Croker. They said no, that he had never had a lock box in that bank. I was then given a copy of the testimony in the case of Croker v. Croker, which is known in Palm Beach as the Croker Bible. In that testimony there was sworn evidence by both Mrs. Croker and her husband that they did have a lock box at the First National Bank at West Palm Beach, and that there were bonds in there of the city of West Palm Beach and of the city of Miami.

Mr. DAVIS. What was that procedure in the State court, if you know?

Mr. WALKER. Well, I will get to that a little later.

Mr. DAVIS. All right.

Mr. WALKER. I went back to this banker then, and asked to see the lists of his lock box tenants. "Well," he said, "Walker, I guess you have got me; I have got to come clear with you. They have a lock box here." I said, "Why didn't you tell me that yesterday?" He said, "Well, I was instructed not to." I said, "I want to see it."

I went in and took some soap and soaped up the keyway, and placed a seal across the keyway on the box.

I wired Mr. Stone what I had done and served on the bank a notice that if anyone went into the lock box, they were charged with furnishing me a statement of who was in there and what was taken out of it, which they agreed to furnish me.

Two days after I had discovered this lock box, there was filed in the State court there a proceeding by some people, claiming that

there had been a will found in Ireland leaving $200,000, or something like that, to the city of Palm Beach, something else to the Catholic Church, and something to the Y. M. C. A. there or Y. W. C. A., and other money to build a bridge. These people contested the probate of the will that they intended to probate, and a copy of which I had, and asked that a curator be appointed, and that the contents of a certain lock box in the First National Bank be held subject to the order of the court. The probate court then passed an order taking possession of this lock box, and from the 27th of October until the 1st day of December that lock box was in the custody and control of the probate judge of Palm Beach County.

At the time they filed this paper, I was in Jacksonville making my preliminary report to Mr. Stone.

I got back, and I was told by the bank that the court had taken charge of that lock box, and I went to see Judge Robbins, and asked him whether there was any conflicting jurisdiction. He said, "None whatever; whenever you want to see the contents of that box, I will let you see them." I said, "Will it be necessary for me to file a petition?" He said, "I rather you would." I have a certified copy of that petition here.

Mr. DAVIS. Read the petition, giving the committee the contents of it.

Mr. WALKER (reading):

In the county judge's court in and for Palm Beach County, Fla. In probate.
In the matter of the estate of Richard Croker, deceased

To the honorable judge of said court:

Your petitioner, George B. Walker, respectfully shows to this honorable court, that—

1. He is a duly commissioned internal revenue agent of the Treasury Department of the United States of America.

2. That he has been charged with and instructed to investigate and report to the Treasury Department of the United States of America the gross estate and its value belonging to Richard Croker, sr., at the date of his death, or transferred by him prior to his death, without consideration, and in contemplation of death, that the said Treasury Department may determine the amount of Federal estate tax due by said estate.

3. That whereas this honorable court has caused to be served upon the First National Bank of West Palm Beach, Fla., a certain order directing said bank to hold the contents of a certain lock box located in the vaults of said bank subject to the court's order; and whereas it is essential to the proper determination of the gross estate of the said Richard Croker, sr., deceased, that I, as a Government agent, have permission to inspect the contents of said lock box.

4. Your petitioner respectfully prays that this honorable court grant him permission to inspect said contents in the presence of Mr. E. G. L'Engle, attorney for Mrs. Bula Croker, executrix of said estate, and D. L. Southard, as attorney for the petitioners, Joseph Mendell and W. E. Magers, on Saturday, November 10, at 10 o'clock a. m., and that a copy of said permission of the court be served upon Mr. E. G. L'Engle, attorney for Mrs. Bula Croker, executrix of said estate, A. L. Southard, attorney for the petitioners, Joseph Mendell and W. E. Magers, and the First National Bank of West Palm Beach, Fla.

GEORGE B. WALKER,
Internal Revenue Agent.

STATE OF FLORIDA,
County of Palm Beach, ss:

Be it remembered that on this 8th day of November, A. D. 1923, I duly recorded the foregoing petition in the public records of said county.

[SEAL.] RICHARD P. ROBBINS,
County Judge.

Filed November 8, 1923. Recorded in will book 7, page 97.

And attached to that there is a certificate showing that it is a certified copy, as follows:

In the county judge's court of Palm Beach County, Fla.

STATE OF FLORIDA,
County of Palm Beach, ss:

I, May Healy, clerk of the county judge's court in and for Palm Beach County, Fla., the same being a court of record and having probate jurisdiction, do hereby certify the foregoing to be a full and complete copy of petition filed November, A. D. 1923, and recorded in will record No. 7, at page 97, in the matter of the estate of Richard Croker, deceased, as the same appears from the records and files of the county judge's office of Palm Beach County, Fla.

In testimony whereof I have hereunto set my hand and the seal of said court at West Palm Beach, Fla., this the 17th day of November, A. D. 1924.

[SEAL.] MAY HEALY,
Clerk of the County Judge's Court of Palm Beach County, Fla.

The judge said that he would grant me a verbal permission to enter the lock box immediately upon filing this in the court.

I then said to Mr. L'Engle, "Now, Mr. L'Engle, I want to see what is in that lock box. You represent Mrs. Croker in this proceeding"—they were holding a hearing there—"and I would like to get permission to do it, as I have been in this case long enough." He says, "I have no time to take it up with a mere revenue agent." He says, "Tell your troubles to the judge." I said, "Very well, sir; I serve you with a subpœna." And I handed him a subpœna right in open court. When he got that subpœna he kind of thought better of his actions, and he went around to one of the attorneys there, and they told him that he had better pay attention to a Government subpœna, if he was not a big idiot. He went to Jacksonville and then got busy with Mr. Gerow, the collector.

I got busy with Mr. Stone over the long-distance telephone, and he said he would also call up Washington. On the morning of the 9th I was handed a telegram to suspend the subpœna on Mr. L'Engle. I suspended the subpœna. I was blocked again.

I then undertook to see when Mrs. Croker was coming down. She was making promises to Washington and the bureau naturally thought that she would carry out her word. She did not appear at the time, and along about the 15th of November I went over to see her father, Mr. Edmonston, to find out when Mrs. Croker was coming down to West Palm Beach to open that lock box. He said, "I don't know." He said, "She may be here now, for all you know." He says, "Bula will give $10,000 to anybody that will let her get into that lock box before you or the probate court gets into it."

I said, "Do you realize that you are impliedly offering a Government agent a bribe?" "Well," he said, "if you want to be a fool, go ahead."

I came back and wired Atlanta, and asked them to send somebody over to help me. I was up against it.

Mr. Stone wired that he would be there on the 16th. This happened on the 13th.

Instead of Mr. Stone coming down, Mr. A. G. Pratt, the chief tax officer, came. He said he was sent down by Mr. Stone to open that lock box. Mr. Pratt came down and made an independent

investigation, and he wired Mr. Stone to the effect, or asking him to keep Washington from interfering with us any further, that we were going to open the lock box.

We went to the county judge. He said, "All right, gentlemen; we are ready to open it but I have not any key, and you will have to drill it. I will be there, and I want certain witnesses present."

We got a wire that morning from the acting agent in charge—Mr. Stone was in Pittsburgh—that Mrs. Croker had made representations to Washington that there had been certain affidavits filed in court down there to prevent the opening of that lock box and Washington asked for those copies.

We went to the judge, and asked the judge if there had been any such papers filed. He said, "Bula Croker has filed no papers here at all." And then Mr. Pratt wired directly to the bureau that nothing had been filed.

The judge came down, and in the presence of two attorneys for the bank, the attorneys for petitioning creditors, and a friend of Mrs. Croker, whom he subpoenaed himself, the judge himself, and one or two others that I don't remember, and the officers of the bank being present, we then swore in the locksmith, who drilled the box, opened the lock box, and took the inner container out and handed it to me.

We took it in a room, in the presence of the court. The judge first took the papers out, handed them to me, and I counted the bonds, and handed them over to the officer of the bank. He recorded the bonds. They were then handed back to the judge himself, and he put the box back in the box.

Mr. DAVIS. What was the amount of the bonds, and what kind of bonds were they?

Mr. WALKER. There were some $30,000 of West Palm Beach bonds and some $70,000 of Miami City bonds.

Mr. DAVIS. Totaling how much?

Mr. WALKER. Somewhere around $117,000, including interest. That stuff had not been returned for tax.

Immediately after I had opened the lock box an officer of the bank said to me, "Walker, you are going to be made the goat for this." I said, "Why?" He said, "Those birds are going to jump you." "Well," I said, "I did my duty: I did what I was told; I had instructions to open that box."

I rendered my report in December, and from December until March I was hounded by the intelligence section of the bureau. For what reason I do not know. And it was then that I wrote to you, Senator.

Mr. MANSON. You wrote to Senator Couzens?

Mr. WALKER. I wrote to Senator Couzens; yes.

Mr. DAVIS. What was Mr. Croker's age when he died?

Mr. WALKER. Eighty-one.

Mr. DAVIS. What do you figure his gross estate was, including the bonds?

Mr. WALKER. Somewhere around $2,200,000 or $2,300,000.

Mr. DAVIS. What tax did you recommend?

Mr. WALKER. $245,100.21.

Mr. DAVIS. When did you leave the service?

Mr. WALKER. July 15.

Mr. DAVIS. Was there anything done from the time you made your report until the time you left the service in reference to the collecting of that tax?

Mr. WALKER. Not that I know of; and no one else knows anything about it ever being done.

Mr. DAVIS. Whom did you take the matter up with, if anybody?

Mr. WALKER. After I rendered my report I was through with it.

Mr. DAVIS. Did you take the matter up with Mr. Stone later?

Mr. WALKER. No, sir; I never took it up with Mr. Stone at all. After I had rendered my report I was through with the case.

Mr. DAVIS. Were any charges preferred against you?

Mr. WALKER. Yes, sir; I had some charges preferred against me. They were very vague, and I could not understand what they were driving at. They said that I had listened to other people, and I had shown that I was inefficient. I don't just remember what it was, but it was such that no man could really answer it.

Mr. MANSON. Did such charges refer to your conduct of the Croker matter?

Mr. WALKER. Yes, sir.

Mr. MANSON. Did they refer to your opening of that lock box?

Mr. WALKER. No, sir; not specifically. They never made reference to that, merely listening to other people, being influenced by attorneys and others in the conduct of the Croker case.

Mr. MANSON. When you left the service, did you leave voluntarily?

Mr. WALKER. No, sir. They wrote me a letter and said my service had been discontinued, without prejudice, due to a reduction of the force.

Mr. MANSON. Did you ever hear anything to the contrary, as to the reasons why you were removed?

Mr. WALKER. Oh, yes, sir.

Mr. MANSON. State what you know about that.

Mr. WALKER. I had received a letter from Senator Duncan U. Fletcher of Florida, in which Senator Fletcher advised that he had seen Mr. Nash, and Mr. Nash had stated that my record in the service was not very good, and that I had written to Senator Couzens and had not stuck to the truth in my statement to Senator Couzens, and therefore my resignation would be asked for, and that he had seen the letters written to Senator Couzens.

Mr. DAVIS. Did you review the entire case with reference to taxability of it?

Mr. WALKER. Yes, sir. Well, that part of it located in Florida.

Mr. DAVIS. Yes; the real estate, etc.

Mr. WALKER. Yes, sir.

Mr. DAVIS. Was Mr. Stone reprimanded in any way concerning the transaction?

Mr. WALKER. Mr. Stone was reprimanded, and so was Mr. Pratt.

Mr. DAVIS. What happened to Mr. Stone?

Mr. WALKER. Mr. Stone was transferred. He was supposed to be made the agent in charge somewhere out in Texas, at $500 a month less salary than he was getting at Atlanta.

Mr. DAVIS. Do you mean $500 a month less, or a year?

Mr. WALKER. $500 less a year and he would not take it. He made a protest, and they sent him to New York as chief prohibition officer, at a greater salary.

Mr. DAVIS. What hapened to Mr. Pratt?

Mr. WALKER. Nothing happened to Mr. Pratt, except a reprimand, but he is afraid he is going to be hurt every minute.

Mr. MANSON. Do you know what Mr. Pratt was reprimanded for?

Mr. WALKER. For opening the Croker lock box.

Mr. MANSON. And is it the same way with Mr. Stone?

Mr. WALKER. Yes; for having it opened.

Mr. DAVIS. You reviewed that transaction with reference to the various transfers, and so forth?

Mr. WALKER. Yes, sir.

Mr. DAVIS. And you made a recommendation that the tax should be levied?

Mr. WALKER. Yes, sir.

Mr. DAVIS. In the amount that you have mentioned?

Mr. WALKER. Yes, sir.

Mr. DAVIS. What did you base that on?

Mr. WALKER. I based it on evidence disclosed in the volume of the transcript of the testimony in the case of Croker *v.* Croker, from the circuit court of Palm Beach County to the Supreme Court of Florida, in which it was stated that these transfers were made for the purpose of avoiding the Federal inheritance tax.

Mr. DAVIS. And you, as an agent and lawyer, are of the opinion that that tax should be levied and collected?

Mr. WALKER. I am, sir. If it should not be, there should never be another tax levied.

Mr. DAVIS. I am showing the witness a volume of testimony in the Supreme Court of the State of Florida, and in an affidavit of Elwyn N. Moses, at page 272, it states the following:

> Mr. Croker told me that he felt that the inheritance tax law was not just, and I gathered from the general tenor of his remarks to me that he would like to convey the property so as to avoid the payment of an inheritance tax. He said that he considered that the deed would have that effect, and he asked me about it.

And then it goes on to state other things.

Mr. MANSON. Who is the man that made that affidavit?

Mr. WALKER. Elwyn N. Moses, the man who drew these deeds of transfer.

Mr. MANSON. Was he referring there to the conversation which took place at the time the transfers were executed?

Mr. WALKER. Yes, sir.

Mr. DAVIS. After the transfers of the real estate were made, is there any evidence in this volume which has been introduced with reference to whether Mr. Croker deemed this a transfer in reality, or whether he still owned the property?

Mr. WALKER. From his own testimony it appeared he still considered that he owned the property and that the placing of the title in his wife was merely a matter of convenience.

Mr. DAVIS. Refer to that specifically, if you know about it.

Mr. WALKER. On page 516 of this volume of testimony Mr. Crawford questioned the witness as follows:

> Q. Mr. Croker, you said you had a map showing your holdings in Palm Beach.—A. Yes.
>
> Q. Have you got it here with you?—A. I don't know whether it is here or not. Is that it, Bussey?

He was referring there oo Mr. Bussey, who was Mr. Croker's attorney.

Mr. BUSSEY. Yes.

Q. Does that map show your present holdings?—A. On the ocean front north there is 450 feet that is not on there. That map was drawn before that. I bought 450 feet since.

Q. Will you indicate on the map what you own at this time?—A. All the white. There is my house, this is the front. I own from here down to there. [Witness indicating on map.] I own 11,307 feet.

Mr. MANSON. Was the property referred to in that testimony property which was transferred?

Mr. WALKER. Yes, sir.

Mr. MANSON. The property which, under your report, you claimed should be considered a part of the estate?

Mr. WALKER. Yes, sir.

Mr. MANSON. Was this testimony given subsequent to that transfer?

Mr. WALKER. Yes, sir; subject to the transfer.

Senator JONES of New Mexico. Did the transferred property include all of that mentioned?

Mr. WALKER. Well, no, sir; it does not include all of it, because some out of this was sold subsequent to this testimony. There was a selling and exchange of property going on all the time between the Crokers and other people.

Mr. DAVIS. Who was handling the sales? Was Mr. Croker handling them?

Mr. WALKER. He and she together. He made some sales and took back some mortgages. He took those mortgages in her name. There is some testimony here as to that.

Mr. MANSON. Do you recall testimony in that record to this effect, that transfer was made to Mrs. Croker in order that she might be protected in the case of his death?

Mr. WALKER. Yes, sir; there is such testimony in here.

Mr. MANSON. And that they were made to her in order that she might have the property on his death?

Mr. WALKER. Yes, sir.

Mr. DAVIS. How were those transfers made?

Mr. WALKER. Well, in some purchases the title was taken originally in Mrs. Croker's name, and those purchases were entered into by Croker himself. In other words, in order to get around the common law, they were transferred to a lady by the name of Alice Eccleston and transferred by her on the same day, practically the same transaction, to Mrs. Croker, or transferred to Richard Croker and his wife, Bula Croker, as tenants by the entirety.

Mr. DAVIS. With reference to the death of Croker, when were those transfers made?

Mr. WALKER. Some of them were made very nearly five years prior to his death.

Mr. DAVIS. And from then on up to what period before his death were they made?

Mr. WALKER. Oh, the time he left for Ireland, somewhere in 1920 or 1921. They then deeded all of the property that they had left, except the Wigwam, which was the home place of J. B. MacDonald, under this contract which was attached to the return, by which he was to pay them $150 per front foot.

Mr. DAVIS. And these transfers ran up to about what time before his death?

Mr. WALKER. Well, I would say within a year or a year and a half, because then they had transferred everything they had, except the home place.

Mr. DAVIS. With respect to the bonds again, what evidence did you get from your investigation with reference to the ownership of those bonds?

Mr. WALKER. In this volume of testimony here, it shows that Mrs. Croker considered those bonds the bonds of her husband. When Mr. Penley and I conferred with Mrs. Croker, after we had gone into the lock box, she said her husband gave her these bonds as a wedding present. Mrs. Croker and Mr. Croker were married some time around Thanksgiving Day, 1914. The bonds were not dated until the 1st day of January, 1917. That was the date of issue—or 1916—and she saw that that would not do, and the next day, in conference between the deputy collector, Mr. Owens and myself, with Mrs. Croker, she said she purchased the bonds with her own money. That is entirely different from the sworn statement here, in which she says that her husband purchased them for Mr. Manly. So that of the three statements I concluded that the one she swore to in here was realy the truth, and recommended that they be taxed on that basis. Mrs. Croker did not have a dollar when she married Richard Croker.

Mr. DAVIS. Did the Croker estate, at any time during this period, make a return?

Mr. WALKER. There was a return made by J. B. MacDonald as custodian of certain personal property. There was a return prepared by me at the request of the collector, showing what I had found up to that time.

Mr. DAVIS. What did the MacDonald return show with reference to that property?

Mr. WALKER. $34,000 in cash and a claim against it for $30,000, leaving net $4,000.

Mr. DAVIS. And that only showed a gross estate of $4,000?

Mr. WALKER. Yes. Mrs. Croker made a return after I had opened the lock box, in which she showed a gross estate of $5,000.

In the meantime, during the time that I was making this investigation, an agent of the intelligence section, a man by the name of Williams, came to West Palm Beach. Mr. Kirkpatrick, an income-tax agent who was working on the income-tax feature of it, recommended some $800,000 odd tax against the estate, and that has not been collected either. Mr. Williams came down, and we told him about the thing, and he says he was not interested in that case, that he was going around to make some investigation and ask Washington to go to work and make a fraud case, because he knew it was a fraud. Everybody down there knew that. He came back after two or three hours and said Washington would not permit him to go into making any fraud charges against the Croker estate, and he would just have to let it go.

But after I had made my report—they first sent a man down by the name of Kanopek.

Mr. MANSON. You said "they."

Mr. WALKER. I don't know who they are—somebody up here in Washington was inspecting, through the intelligence section, my handling of the lock-box matter.

Mr. DAVIS. Those assignments are made by the head of the intelligence unit?

Mr. WALKER. I do not know who made them.

Mr. DAVIS. Do you know who sends intelligence agents out when they go out to make reports?

Mr. WALKER. No, sir. Kanopek came down and he did not find anything. Then they sent Williams. Williams told me, "I can't find where you have done anything wrong, but I have to make an adverse report on you."

Mr. DAVIS. Did he say in what respects?

Mr. WALKER. No; that is all he said about it.

Mr. MANSON. Did you ask him why he had to make an adverse report?

Mr. WALKER. No.

Mr. MANSON. How long was this before you wrote to Senator Couzens?

Mr. WALKER. It was two or three weeks before. In my answer to Mr. Williams's charges I made a request for a hearing before the Commissioner of Internal Revenue.

Mr. MANSON. Did you ever get it?

Mr. WALKER. No, sir; I never got it.

Mr. DAVIS. Did these intelligence agents ever investigate specifically about the Croker estate?

Mr. WALKER. Well, that is what they came there for. Kanopek did not. He never came to see me, but Williams did.

Mr. DAVIS. Did he take a statement from you?

Mr. WALKER. Yes; I made a statement, and he took certain volumes and other things from my files, and he said he wanted to use them in his report, and he gave me a receipt for them.

Mr. DAVIS. Did you report that the box was opened under a court order and in the presence of the court?

Mr. WALKER. Yes; I had a certified copy, my retained copy of my file, that I filed with the court. He took that.

Mr. MANSON. Did his questions to you refer exclusively to your conduct with respect to opening the lock box?

Mr. WALKER. Yes, sir.

Mr. MANSON. From the questions he asked you did it appear that that was the only matter that he was investigating?

Mr. WALKER. Yes, sir.

Mr. DAVIS. Did you see anyone in the unit after this—after you got notice that you were relieved?

Mr. WALKER. Do you mean to say any of the Government agents?

Mr. DAVIS. Yes.

Mr. WALKER. I have seen them around. They are afraid to say anything to me.

Mr. DAVIS. Did you talk to anyone in the Estate Tax Unit about this situation.

Mr. WALKER. I went over to see Mr. Estes when I was in Washington the last time, and he asked me to write him a statement, which I did.

Mr. DAVIS. About what?

Mr. WALKER. About my view of the Croker case from beginning to end.

Mr. DAVIS. Did Mr. Estes in any way seem to find any criticism of you concerning your conduct in that matter?

Mr. WALKER. I have never received a reply or acknowledgment, sir.

Mr. DAVIS. I mean, at the time you went to see him.

Mr. WALKER. Oh, he did not say much about that. He said that in justice to myself I should write an explanation.

Mr. DAVIS. Did you do that?

Mr. WALKER. Yes, sir.

Mr. DAVIS. Have you ever heard from it?

Mr. WALKER. I have never received a reply to it.

The CHAIRMAN. Is Mr. Estes here?

Mr. ESTES. Yes, sir.

Mr. DAVIS. Yes; this is Mr. Estes sitting here, Senator.

Mr. MANSON. You have referred to instructions to cancel one subpoena against Mrs. Croker and one subpoena against her attorney. Did you make any other efforts to subpoena either Mrs. Croker or her attorney?

Mr. WALKER. Well, I got one other instruction to suspend all efforts to have Mrs. Croker come to Florida and testify.

Mr. DAVIS. When was that?

Mr. WALKER. Some time around the 1st of November—between the 1st and 10th of November.

Mr. MANSON. Was that after this——

Mr. WALKER. No; it was before I opened the lock box.

Mr. MANSON. Yes.

Mr. WALKER. You see, my investigation was complete, except knowing what were the contents of that lock box, and until I knew the contents of that lock box I could not conscientiously make a report to the agent in charge of the complete investigation, and Mrs. Croker was determined that I should never see the contents of that box if she could keep me from it.

I want to say this, that Mrs. Croker has pulled the wool over the eyes of the officials here in Washington, telling one story to the officials in Washington and telling another one to the people down there in Palm Beach.

Mr. DAVIS. Did she have counsel here in Washington?

Mr. WALKER. She had a man by the name of Mooney in New York, and he had a man here in Washington telling the bureau what was going on. She also had an attorney down there telling us that the bureau had promised them that they were not going to do anything, which I knew was all a pack of lies.

Mr. DAVIS. Who was that attorney?

Mr. WALKER. Bert Winters and E. G. L'Engle.

Mr. DAVIS. He told you there would not be anything done about the matter?

Mr. WALKER. Yes, sir.

Mr. DAVIS. Does your report cover that?

Mr. WALKER. No; I did not put that in my report, because I knew that that was based on a bunch of lies Mrs. Croker was offering up here.

Mr. DAVIS. Did you have any conferences with Mrs. Croker?

Mr. WALKER. Several times.

Mr. DAVIS. What was said during those conferences about this matter?

Mr. WALKER. Well, she said it looked pretty bad to go into a lock box, and that she could not see where she had done anything wrong. She did not feel bitter toward us, that we had found the contents and she guessed she would have to pay taxes on them; but if she had gotten to it first she would not have to pay any taxes on them.

Mr. DAVIS. Did you say something to me about these bonds going to pay the attorney fees, or something like that?

Mr. WALKER. I understood the conversation down there that the thing that started all of the disturbance was this, that Mrs. Croker had promised these bonds to Mooney in New York as part of his fee, and when the Government got hold of them and seized them, that made Mooney mad. Naturally, it would, knocking him out of a $117,000 fee.

Then he got busy to see how much stink he could raise to get our fellows, who tried to protect the Government, out of the service, Now, that is simply hearsay. I have no proof of that, but that is the general understanding at West Palm Beach as to the conditions as to why we people were hounded, that he brought pressure upon the bureau simply because he was cut out of his fee.

Mr. DAVIS. Mr. Walker, did your chief, Mr. Stone, ever find any fault with your conduct during this whole transaction?

Mr. WALKER. No, sir. In fact, I was complimented. I have a letter in which it is said that the bureau was with me in the investigation, and they thought I had conducted it all right.

Mr. DAVIS. So that Mr. Stone never criticised you or reprimanded you in any way?

Mr. WALKER. No, sir.

Senator ERNST. Mr. Davis, was there any question as to the authority for the proceedings which he took in getting at the contents of that lock box?

Mr. DAVIS. Not if he followed the instructions that he had from the superior officer to go there with Mr. Pratt. Was it Mr. Pratt?

Mr. WALKER. Yes.

Mr. DAVIS. And Mr. Pratt came there with that order and you went with him?

Mr. WALKER. Yes, sir.

Mr. DAVIS. So that you acted under the instructions of your superior officer in the bureau?

Mr. WALKER. Yes.

Mr. DAVIS. A man by the name of Pratt?

Mr. WALKER. Yes, sir.

Mr. MANSON. The fact of the matter is that the box was opened up by orders of the probate court?

Mr. WALKER. No, it was not. It was opened by permission of the probate court.

Mr. DAVIS. And in the presence of the court?

Mr. WALKER. In the presence of the court, because it was in the custody of the court at that time.

Senator ERNST. I am trying to get at what authority he had for any steps he did take. You have not made that clear, but that appears to be the fact from a reading between the lines. What is the fact about it?

Mr. WALKER. I had a telegram from Mr. Stone, or rather Mr. Pratt had. Mr. Pratt was sent down there to open the lock box, and he wired for permission to go into the box after he had made his independent investigation, and a wire came back, "If you think the Government's interests is in jeopardy, proceed as requested." That was signed by Thomas E. Stone, the agent in charge. That was the authority on which we asked the court for permission to view the contents of the lock box.

Mr. DAVIS. So far as you know, was there any fault found with your action in taking the steps that you did take to get at the contents of the box?

Mr. WALKER. As I understand it, the American Bankers' Association rather severely criticized the method we pursued in getting into the box. There was quite a lot of newspaper criticism for going into the box, because we Government agents could not go out and tell the public just the reason for the methods that we pursued, and the newspapers down there were hostile to us anyway, and the truth of the matter never came out. There was a lot of criticism.

Senator ERNST. Mr. Davis, what I am trying to get at is this: Is there any such authority for a Government agent going into a lock box? I doubt it.

Mr. DAVIS. If the investigation is made on orders of their superiors, the only thing to do is to carry out the orders.

Senator ERNST. That is not the point that I am making. Did his superior have such authority? Was there any such authority for getting at the contents of the box? I do not believe that there is any.

Mr. DAVIS. Under the court's permission and in his presence, I would say yes.

Senator ERNST. I just wanted to get at the fact on this point, because that does seem to me to be a question that has not been made clear, and I would like to get some light on it.

Mr. JONES. There is an order from Washington.

The CHAIRMAN. We will take that up after the witness is through.

Mr. WALKER. I might say in that connection that this letter from Washington granted permission to open it.

Mr. DAVIS. To whom?

Mr. WALKER. It was addressed to Mr. Thomas E. Stone.

Mr. DAVIS. Signed by whom?

Mr. WALKER. By Mr. Estes or Mr. Page, I do not know which.

Mr. MANSON. Have you seen that letter?

Mr. WALKER. Yes, sir; and that was the authority on which Stone acted.

Mr. MANSON. Let me ask you this: In the first place, you had been lied to by the officers of the bank as to the existence of the box?

Mr. WALKER. Yes, sir.

Mr. MANSON. You knew that Mrs. Croker had a home and spent a good share of her time in Ireland?

Mr. WALKER. Yes, sir.

Mr. MANSON. Did those facts have anything to do with your belief that it was necessary to get at the contents of that box to protect the interests of the Government?

Mr. WALKER. It has in this way: There is testimony in here where they had transferred some $700,000 worth of securities from lock boxes in this country to Ireland at the time they went over there, and I felt that if we did not get in there and view the contents, or it was not seized in some way to protect the Government, it would be removed from the jurisdiction of this country. After I had opened the box I found that Mr. Mooney was mad because he did not get his fee. Of course, I do not know whether that is true. That is one of the rumors.

The CHAIRMAN. Have you completed your story now, Mr. Walker?

Mr. WALKER. Yes, sir.

The CHAIRMAN. Mr. Nash, are you in charge of the gentlemen who are here representing the bureau?

Mr. NASH. Yes, sir.

The CHAIRMAN. Have you anything you would like to have us hear while you are here?

Mr. NASH. Senator Couzens, I think, in view of the testimony that has been given by the witness, we ought to submit the report of the special intelligence agent for the committee to review, if they wish. It will explain why Mr. Walker was investigated and what was found.

I think also we ought to submit some facts as to the handling of this case. Mr. Walker has made some statements that are not exactly correct. For instance, there has been an assessment made in this case in the amount which Mr. Walker first recommended.

The CHAIRMAN. Has that ever been paid?

Mr. NASH. Sir?

The CHAIRMAN. Has any of it been paid?

Mr. NASH. The assessment has been forwarded to the collector at Jacksonville for collection. I do not know whether it has been collected or not, but the property of the Crokers is under a lien, and the interests of the Government are protected. I am not familiar with all of the details of the case, but I think we ought to be given an opportunity to present our side of it.

The CHAIRMAN. You would prefer some time to prepare for that?

Mr. NASH. No; we can do it to-morrow or at the next meeting of the committee.

The CHAIRMAN. Is that satisfactory?

Senator ERNST. Oh, yes.

The CHAIRMAN. I mean, will it be satisfactory to hear that to-morrow?

Senator ERNST. Yes; if you can get ready by to-morrow, Mr. Nash, or on Monday, but not on Saturday.

Mr. NASH. Yes; give us some little time to prepare to present our side of the case. I would also like to have the witness held, because I think he ought to be subject to cross-examination.

The CHAIRMAN. Will to-morrow be satisfactory? Will you be ready?

Mr. NASH. To-morrow will be satisfactory.

The CHAIRMAN. That will give you plenty of time?

Mr. NASH. Yes, sir.

Mr. DAVIS. I have a copy of Mr. Walker's report here in full, and I would just as soon submit that.

The CHAIRMAN. I think it would be better, Mr. Davis, that the department be allowed to marshal their own facts in their own case.

Mr. DAVIS. All right.

The CHAIRMAN. And we will hold Mr. Walker until to-morrow.

Mr. DAVIS. With Mr. Walker's right to submit a copy of his report as to the whole transaction?

The CHAIRMAN. Yes, sir.

Senator ERNST. Yes; we want all of it.

The CHAIRMAN. Yes.

Mr. MANSON. Have you ever seen a copy of this report that they refer to?

Mr. WALKER. No, sir; I have never seen it. It is secret.

Mr. DAVIS. What do you know about this property which is under lien?

Mr. WALKER. It was placed under lien—I did not intend to overlook that, but I did not state it fully. There was a lien filed on my preliminary report.

Mr. DAVIS. On account of the report that you made?

Mr. WALKER. Yes; based on my report.

The CHAIRMAN. So that, as a matter of fact, the Government has been protected all the time?

Mr. JONES. Absolutely.

Mr. WALKER. Yes. They have been protected since my preliminary report; since I made my report.

Senator JONES of New Mexico. When was the assessment made?

Mr. NASH. The first assessment was made based on Mr. Walker's preliminary report, according to Mr. Walker's statement of the case; that is why the lien was filed. That is not the procedure. When an assessment is made under the law, that assessment becomes a lien against the property of the taxpayer, and the collector just gives formal notice to the clerk of the United States court that the property is subject to lien, in order that innocent purchasers may be protected. The report itself which the agent submits does not bring about a lien. It is not until after the assessment is made and the collector gives formal notice that we have any lien.

The CHAIRMAN. Are you through with Mr. Walker, Mr. Davis?

Mr. DAVIS. Is there anything else concerning that whole transaction now that you wish to state?

Mr. WALKER. I just want to say this for the benefit of the officers of the bureau: I think they had the wool pulled over their eyes by somebody else; that they have never got the truth of this whole case, and they would never give me an opportunity to put the truth up to them. I could not get anything beyond Atlanta.

Mr. DAVIS. Did the statement that you gave to Mr. Estes go into the matter fully?

Mr. WALKER. No, sir; it did not cover it as far as I could, but it covered as much as a man could in a letter. There are certain details which can be thrashed out and if I had the opportunity I could have submitted documentary proof of all of it.

The CHAIRMAN. This matter, then, boiled down, Mr. Walker, is that your complaint is that the department did not handle the case properly with respect to the lock box, and that is the only complaint you have?

Mr. WALKER. Yes, sir. My complaint is this, that the bureau interfered with the field agent in making his investigation, which had never been done, so far as we in the field knew in any other case. It was the first case where they had ever been interfered with, and the interference did not give us an opportunity to explain the entire situation. They sent some sort of a half-witted Wop of an intelligence agent down there and let him make the charges instead of sending an official with some discretion to go into the thing.

The CHAIRMAN. There seems to be a question as to the legality of opening this lock box.

Mr. WALKER. Yes, sir.

The CHAIRMAN. And if that is the case, you could not criticise the department for perhaps going somewhat slowly in the matter?

Mr. WALKER. Yes, sir; but we would welcome a thorough investigation of any of us that had to do with it. That is all we are asking for.

The CHAIRMAN. Your principal complaint, as I get it, is that it is not a question of the legality of opening the lock box or the conduct of the department with respect thereto, but the fact that they dismissed you for your actions in that connection, with regard to which you think they were not justified.

Mr. WALKER. That is it exactly.

Mr. MANSON. In carrying out orders, after you had been ordered to do it.

The CHAIRMAN. Well, I understand that, Mr. Manson, but I also got the impression that the opening of the box was an inspiration on the part of the witness and it did not originate in the department itself.

Mr. WALKER. No, sir; it did not.

The CHAIRMAN. Then I would say that the department itself had a perfect right to question the judgment of the agent in opening the box.

Mr. WALKER. Absolutely, sir.

Mr. DAVIS. When did you call for a hearing before the commissioner?

Mr. WALKER. When I filed my answer to Williams's charges I asked for a hearing, oral or written, before the commissioner.

Mr. DAVIS. And you were never granted a hearing?

Mr. WALKER. No, sir. I also wrote an expalantion to Mr. Estes a few weeks ago and asked for a hearing before the commissioner.

Mr. DAVIS. That is all.

The CHAIRMAN. You have no suspicion—at least your testimony has not indicated any to me—that there was any dishonesty or corruption in the department in the conduct of this case?

Mr. WALKER. No, sir; I have not. It is purely a case of misunderstanding and blockheadedness on the part of both sides. It was a blunder.

Mr. DAVIS. Whom do you mean when you say "both sides"?

Mr. WALKER. Well, it was a blunder like this: It was a blunder in that Atlanta office in allowing me to be made the goat, and a blunder on the part of the bureau in not giving me a chance to explain.

The CHAIRMAN. I think, so far as the committee is concerned, Mr. Davis, we have heard all that has occurred to this witness, and we had better stop here and give the bureau a chance to prepare by to-morrow morning.

Mr. JONES. I might say that Mr. Walker, perhaps, will recall that he was ordered by the department that under no circumstances was he to open that box until he had heard from Washington. That was by long distance. I don't know whether you were on the other end of the line or heard the conversation?

Mr. WALKER. No, sir; I never heard any such conversation.

Mr. JONES. And then they went ahead the next day and opened it up against express instructions.

Mr. DAVIS. Under the instructions of a superior officer, he said. I would do the same thing.

Senator ERNST. Well, let us wait until to-morow before we argue that.

Mr. JONES. His superior was Mr. Estes.

Mr. WALKER. But, Mr. Jones, just between you and me, I had no communication with Mr. Estes.

The CHAIRMAN. I would now like to take up some other matters which are not pertinent to this particular case.

Mr. DAVIS. I might say that when we go into this matter to-morrow we will want Mr. Jones here again.

The CHAIRMAN. I think Mr. Nash will bring all of those people down here.

(Whereupon, at 12.10 o'clock p. m., the committee went into executive session.)

EXECUTIVE SESSION

The committee met in executive session, and the following proceedings were had:

Present: Senators Couzens (presiding), Ernst, and Jones of New Mexico.

Present also: Earl J. Davis, Esq., and L. C. Manson, Esq., of counsel for the committee.

The CHAIRMAN. Since the committee has agreed to go ahead with these meetings from day to day, I would like to ask Mr. Davis if he has prepared a program for each day's meetings, so that we will not flounder around and be jumping from one thing to another, with irrelevant discussions as to the method of procedure?

Mr. DAVIS. Yes.

The CHAIRMAN. Now, I saw in the press this morning that I had made some request of the committee about the prohibition feature, which was not even mentioned.

Mr. DAVIS. And I got a communication from as far as Chicago about that.

The CHAIRMAN. It is perfectly ridiculous. I do not know where it originated, as it was never discussed. What I said to the press men after the meeting was that we did not have time to discuss the prohibition question, but that it was to be taken up later.

While we are here, I would like to have Mr. Davis tell us what they have done and what they are doing in connection with the prohibition investigation.

Mr. DAVIS. We have had one man working on that situation.

The CHAIRMAN. And that man came from the Department of Justice?

Mr. DAVIS. George Storck. Yes; he was formerly with the Department of Justice.

The CHAIRMAN. And he has only been loaned to us, has he not?

Mr. DAVIS. Well, he has been relieved from that service while he is with us and I imagine he will go back after we have finished here.

We have also had one or two stenographers from Senator Couzens' office, who have been giving us a good deal of their time. What we have done in regard to that is this: We have endeavored to find out from the inside the way the prohibition law is working out. We have taken, for instance, the permit matters, and we have gone into the release of alcohol by the permit system. We have found that thousands and thousands of gallons have been released and diverted into illegitimate channels. That has been caused by forged permits, and in some cases by tip-offs on the inside. If there is a permit to release 5 gallons, somebody on the inside will tip it off, giving the form number, so and so, for 5 gallons, and somebody will see that that forged permit is increased to a thousand gallons, carrying the same number. That runs up into hundreds of thousands of gallons.

Mr. Storck has reviewed some of the big alcohol concerns, has gotten from the records and files of those concerns the amount released through illegitimate channels, what the tax on that would be, and how the releases have gone into illegitimate channels.

Then, he has gone into distilleries, and is attempting to show the procedure there and how some illegal releases have taken place there.

He has several specific instances of those.

Then, we find that in the use of wines—for instance, for sacramental purposes—it is going out to so-called rabbis, who are no more rabbis than you or I, and that amounts to hundreds of gallons of this wine.

We have endeavored to find the high spots in that phase of it. He has taken the files in each case and has gone down through those files, and has shown what the situation is.

He has made reports of one alcohol concern that has had thousands—yes, hundreds of thousands—of gallons released, and what the tax on that would amount to. It runs away up into big figures. I believe that the permit evil, under the present law, is the greatest evil.

The CHAIRMAN. I would like to ask whether you know whether this alcohol is being denatured before it is released?

Mr. DAVIS. Sometimes it is, and sometimes it is not.

The CHAIRMAN. Just why is it that it is denatured in some cases and not in other cases?

Mr. DAVIS. That is due to the use that it is to be put to by the concern to which it is released, I think.

The CHAIRMAN. Is there not some use to which this industrial alcohol can be put, where it is not necessary or desirable to denature it?

Mr. DAVIS. Yes; I understand so.

The CHAIRMAN. When will Mr. Storck have his report ready?

Mr. DAVIS. Perhaps Mr. Storck is here, and he can review the whole thing.

The CHAIRMAN. I t[illegible] he had better write that out.

Mr. DAVIS. All rig[illegible] I shall have him do that. I think his report will be rather voluminous as it is now, but I will have him make a synopsis of it showing the things that we have gone into.

The CHAIRMAN. One of the evils that I have observed in reading over the reports is not only in connection with the question of it being in violation of the prohibition act, but it involves a loss to the Government of hundreds of thousands of dollars in taxes.

Mr. DAVIS. Yes; yes. We have tried to figure it out.

The CHAIRMAN. On account of these illegitimate releases?

Mr. DAVIS. Yes, sir.

Mr. CHAIRMAN. It has nothing to do with the question of prohibition at all. It is a question of the Government taxes, as well as the illegal use of the alcohol. I think the committee ought to find out why we do not get these taxes, even after it has been released.

Mr. DAVIS. We try to show in our report the amount of taxes involved and all of that.

The CHAIRMAN. Yes; I think you ought to make up a summary of it. As you say, the reports are long, but a summarized report could be made giving the totals, regardless of specific amounts assessable in these companies. I understand that in the Fleischmann case there was a settlement at a very unreasonable amount, an amount that was in no way adequate.

Mr. MANSON. I think it was $75,000, out of millions of dollars involved in the transaction.

Senator ERNST. Is that the Fleischmann Yeast Co.?

Mr. DAVIS. Yes.

The CHAIRMAN. I think you had better prepare something for tomorrow, and we can take that up after we hear this case. There is nothing else just now.

(Whereupon, at 12.15 o'clock p. m., the committee adjourned until tomorrow, Friday, November 21, 1924, at 11 o'clock a. m.)

INVESTIGATION OF BUREAU OF INTERNAL REVENUE

FRIDAY, NOVEMBER 21, 1924

UNITED STATES SENATE,
SELECT COMMITTEE INVESTIGATING
BUREAU OF INTERNAL REVENUE,
Washington, D. C.

The committee met at 11 o'clock a. m., pursuant to adjournment on yesterday, in room 410, Senate Office Building.

Present: Senators Couzens (presiding), Ernst, and Jones of New Mexico.

Present also: Earl J. Davis, Esq., and L. C. Manson, Esq., of counsel for the committee; Mr. C. R. Nash, assistant to the Commissioner of Internal Revenue; Nelson T. Hartson, solicitor, Internal Revenue Bureau; Robert M. Estes, Deputy Commissioner, Miscellaneous Tax Unit; Fred Page, Assistant Deputy Commissioner, Miscellaneous Tax Unit; Charles W. Jones, chief review division, Miscellaneous Tax Unit; Frank Frayser, Special Intelligence Unit, agent in charge Richmond division.

Mr. DAVIS. The representatives of the bureau were going to ask Mr. Walker some questions this morning. Do you want to present some other matters before taking up Mr. Walker's testimony?

Mr. NASH. Yes, sir; I would like to have Captain Frayser, of the Intelligence Unit, testify.

TESTIMONY OF MR. FRANK FRAYSER, SPECIAL INTELLIGENCE UNIT, AGENT IN CHARGE RICHMOND DIVISION

(The witness was duly sworn by the Chairman.)

Mr. HARTSON. What is your name, Mr. Frayser?

Mr. FRAYSER. Frank Frayser.

Mr. HARTSON. Are you in the employ of the Government?

Mr. FRAYSER. Yes, sir.

Mr. HARTSON. In what capacity?

Mr. FRAYSER. I am special agent in charge of the Richmond division of the Special Intelligence Unit.

Mr. HARTSON. How long have you been in the Special Intelligence Service of the Bureau of Internal Revenue?

Mr. FRAYSER. Since June, 1919.

Mr. HARTSON. Have you had any previous experience in the bureau, besides the special intelligence service?

Mr. FRAYSER. No.

Mr. HARTSON. Were you in the employ of the Government before you went to the Bureau of Internal Revenue?

Mr. FRAYSER. Yes, sir.

Mr. HARTSON. In what capacity?

Mr. FRAYSER. In 1903, I was clerk-stenographer in the Post Office Department, holding such position until January, 1907, when I was appointed post-office inspector.

Mr. HARTSON. How long were you in the Post Office Service?

Mr. FRAYSER. I was post-office inspector until April, 1918, the last year being post-office inspector in charge of the Washington division.

Mr. HARTSON. You were a post-office inspector up until 1918?

Mr. FRAYSER. Yes, sir.

Mr. HARTSON. And the last year you were in charge of the Washington division as post-office inspector?

Mr. FRAYSER. Yes, sir.

Mr. HARTSON. Then, when the war started, or in 1918, did you change your employment?

Mr. FRAYSER. Yes, sir: I received a commission as captain in the military intelligence of the General Staff.

Mr. HARTSON. How long were you in the military intelligence service?

Mr. FRAYSER. From April, 1918, until June, 1919.

Mr. HARTSON. Mr. Frayser, have you any knowledge of the investigation by the Special Intelligence Unit of the Bureau of Internal Revenue of Mr. Walker's participation in the Croker investigation in West Palm Beach?

Mr. FRAYSER. As special agent in charge of the Richmond division, I placed the case in the hands of Special Agent Lew Williams assisted by Special Agent Joseph E. Kanipe, for investigation.

Mr. HARTSON. You mention the name of Williams. Who is Mr. Williams, and what do you know of him?

Mr. FRAYSER. Mr. Williams is special agent of the Richmond division of the intelligence service, and was so appointed in 1922, the early part. I had previously met him while in the military intelligence service at San Francisco, Calif. He was then chief clerk of the office of military intelligence at San Francisco, and in such capacity he attended to the routine of the office, and made investigations also. He took the examination for special agent later on, having engaged in some other work after his relief from the position of chief clerk in the military intelligence, some time after the war closed, and after taking the examination was appointed a special agent himself. I have the record here.

Mr. HARTSON. Well, I want to ask you a question or two before you produce that record, Captain Frayser.

For the purposes of identification, is Mr. Williams the man who was referred to yesterday by Mr. Walker as "a half-witted Wop," do you know?

Mr. FRAYSER. If he was referring to the man that had charge of the investigation of his work in handling the Croker estate, he must be.

Mr. HARTSON. Now, Mr. Williams was assigned, as I understand it, by you, as the agent of the special intelligence service to investigate Mr. Walker's investigation of the Croker estate; is that correct?

Mr. FRAYSER. Yes, sir.

Mr. HARTSON. Who made the assignment of Mr. Williams to that duty?

Mr. FRAYSER. I did.

Mr. HARTSON. You did personally?

Mr. FRAYSER. Yes, sir.

Mr. HARTSON. Was there any reason why you picked Mr. Williams to do it—any special reason?

Mr. FRAYSER. I thought he was perfectly capable of handling it, and he was the logical man. He had charge of most of our investigations down in Florida?

Mr. HARTSON. In your opinion, is he and was he an experienced man?

Mr. FRAYSER. Yes, sir.

Mr. HARTSON. I would like to have you tell the committee, if you will, what your estimate is of Mr. Williams's capabilities to conduct such an investigation as the one you assigned him to, in order that the committee may know what the opinion of Mr. Williams's superiors is regarding his efficiency as a special intelligence investigator.

Mr. FRAYSER. I considered Mr. Williams a very intelligent man, well equipped, and a man of excellent tact and judgment, and thoroughly capable of handling the investigation.

Mr. HARTSON. How did the Croker matter first come to your notice, Captain Frayser—to your personal notice?

Mr. FRAYSER. I was engaged on some work here in Washington, and received a telegram from Agent Williams— that was in October, 1923—that two of the revenue agents were engaged in an investigation of the Croker estate, and that there were allegations of fraud.

Senator JONES of New Mexico. Allegations of fraud by whom?

Mr. FRAYSER. Allegations of fraud on the part of the revenue agents, and he suggested that a case might be made out for investigation by our unit, in conjunction with the revenue agents. I made an inquiry at the estate tax office, Mr. Estes's office, and not knowing anything specially about the case, excepting the information contained in this telegram, I asked the opinion of Mr. Estes or his chief clerk—I have forgotten which—as to the likelihood of their being fraud, and I was told that, so long as there had not been any evidence of fraud requiring any investigations by the special intelligence, they concluded that the revenue agents could handle it.

Mr. HARTSON. At the time you made the assignment in this case to Mr. Williams, was he instructed to return an adverse report against Mr. Walker?

Senator JONES of New Mexico. I would like to know first what caused the assignment after you inquired at the Bureau of Internal Revenue and ascertained there that there was no ground to believe that fraud was involved. What caused you then to make an assignment at all?

Mr. FRAYSER. I was coming to that. So the special intelligence unit took no further action. The investigation was continued by the revenue agents. Later on—I think maybe three months afterwards; over two months afterwards, anyhow—there was a complaint made as to the action of the revenue agents.

Senator JONES of New Mexico. Who made the complaint?

Mr. FRAYSER. I think the complaint came from a report sent through to Mr. Irey, the chief of our unit, originating in the estate tax office.

Senator JONES of New Mexico. Now, you say you think. Have you any definite record evidence of it?

Mr. HARTSON. I think we can clear that up definitely. I assume the witness has no personal knowledge of what started the investigation before he came into it.

Senator JONES of New Mexico. That is what I am trying to get at.

Mr. HARTSON. We will be glad to satsify you, Senator, in another way.

Senator JONES of New Mexico. Well, I would like to be satisfied in my way.

Mr. FRAYSER. I think I can, by reference to some papers, find out where it originated. Generally, on our case jacket, the jacket under which an investigation is started——

Senator JONES of New Mexico. I would like to have you develop somehow just how this whole matter started, who started it, and why.

Mr. HARTSON. If the Senator will permit me——

Senator JONES of New Mexico. Well, I will now, if you will just do that.

Mr. HARTSON. This witness, as the Senator no doubt knows, is chief of the special intelligence district in which this investigation arose. Now, what brought it to his attention is something that we will have to develop by another witness.

Senator JONES of New Mexico. I think not. I think he is the man to know why he started this thing.

Mr. FRAYSER. Our investigations are started by direction of the chief of the Intelligence Unit here in Washington. My office is down in Richmond.

Senator JONES of New Mexico. What did he bring to your notice? Did he direct this thing be done?

Mr. FRAYSER. He directed it.

Senator JONES of New Mexico. Have you that direction here in writing?

Mr. FRAYSER. I think I have the jacket in this case here. [After examination of papers.] I have not got that copy here, but I can give you my recollection of it.

Senator JONES of New Mexico. Well, I should prefer that you state generally your recollection, and then you will furnish the letter, will you?

Mr. FRAYSER. We can furnish that letter; yes.

Senator JONES of New Mexico. Yes.

Mr. FRAYSER. I think that is in the file in the chief's office.

The case came down to my office in Richmond, based on a letter from an official of the bureau—I think it was Mr. Estes—that his instructions with regard to the investigation and the opening of the box—the safe-deposit box—had been disregarded, and he wished an investigation made to place the responsibility, especially for the failure to comply with his instructions. That is the substance of it.

Mr. HARTSON. Captain Frayser, as I understand it now, there were two phases of the special intelligence unit's participation in this matter. There was the first phase that you have referred to as

the possibility of developing fraud in the case and assisting the internal-revenue agent in producing any evidence of fraud, if there was any available?

Mr. FRAYSER. Yes, sir.

Mr. HARTSON. After you had made some preliminary investigation of that kind, you satisfied yourselves that there could not be anything done, so far as the special intelligence unit was concerned, on the fraud features of it, and discontinued your participation in it to that extent?

Mr. FRAYSER. Yes, sir.

Mr. HARTSON. And then, two or three months——

Senator JONES of New Mexico. Let me see if I understand that correctly. I understood him, in the first place, to say that there were allegations of fraud as between the internal-revenue agents, and not fraud in connection with the returns of the estate.

Mr. HARTSON. Well, I would be very glad to have that cleared up.

Senator JONES of New Mexico. Which was that, Mr. Frayser?

Mr. FRAYSER. That there were allegations of fraud on the part of the persons under investigation in the estate, that they were concealing some of the assets of the Croker estate.

Senator JONES of New Mexico. Then, I did not understand you right awhile ago when you said there was fraud among the internal-revenue agents.

Mr. FRAYSER. No, sir; you did not. If I said that, I made a mistake.

Senator JONES of New Mexico. Well, I am quite sure you said it, but I am glad to have that corrected.

Mr. FRAYSER. Well, I could not have said it, or I do not see how I did. I mean to say that the revenue agents had reported to Williams, according to his telegram to me, that there appeared to be fraud, and he asked if the special intelligence unit should not come into the investigation. The telegram did not give very full details.

Then I went to Mr. Estes's office and inquired as to the likelihood of a development of fraud, and I was told that there did not appear to be any fraudulent concealment or anything in the nature of fraud, and they did not think there was any case for us to come into on that assumption.

Mr. HARTSON. Then, so far as your unit is concerned, you, in a sense, withdrew from the matter after, as I recollect your testimony, maybe two or three months?

Mr. FRAYSER. Yes, sir.

Mr. HARTSON. And then it came up again?

Mr. FRAYSER. Yes, sir.

Mr. HARTSON. I believe you have said it came up on a complaint that had been reported to you that Mr. Walker, or some internal revenue agent, had opened that safe-deposit box contrary to instructions that had been issued to him; is that correct?

Mr. FRAYSER. Yes, sir.

Mr. HARTSON. And that is the second phase of the case, so far as your unit is concerned?

Mr. FRAYSER. Yes, sir.

Mr. HARTSON. When that complaint or report of these instructions came to you to investigate this opening of the safe-deposit box in West Palm Beach, what did you do?

Mr. FRAYSER. I sent the papers, which were referred to me, to Special Agent Lew Williams.

Mr. HARTSON. Have you those papers there?

Mr. FRAYSER. I just looked for the letter that came from Mr. Irey's office, but I could not find that.

Mr. HARTSON. Captain Frayser, when you referred this matter, as you testified that you had done, to Mr. Williams, did you issue any instructions to Mr. Williams as to the nature of the report that he should turn in concerning Mr. Walker?

Mr. FRAYSER. I did not.

Mr. HARTSON. I would like to have you tell the committee just the way you made the reference of this matter to Mr. Williams.

Mr. FRAYSER. I sent him the jacket containing all the papers that were originally sent to the Intelligence Unit, and I am not sure whether I wrote him a special letter of instructions or not.

Mr. HARTSON. If you have that letter of instructions, I would like to have you produce it and read it to the committee.

Mr. FRAYSER. If I sent it, it would likely be in here—that or a copy (after examination of papers)—no; there is no letter here from me to Mr. Williams, and it is quite likely that the case was sent down there without any special instructions at all. When they receive a case jacketed and duly numbered by our unit, it is the custom to proceed to investigate immediately on receipt of it, and to handle it in the regular way. I think it quite likely I did not send any letter of instructions. However, if I did, I will be glad to produce the letter later on.

Mr. HARTSON. Yes; I would be glad to have you produce such a letter if you wrote one.

Mr. FRAYSER. Yes.

Mr. HARTSON. Can you ascertain definitely whether you did or not?

Mr. FRAYSER. Yes, sir.

Mr. HARTSON. And then be able to report to the committee.

Mr. FRAYSER. Yes.

Senator JONES of New Mexico. Have you a copy of the files that were sent to Williams?

Mr. FRAYSER. Yes, sir. The jacket that we use as a cover page generally is retained in the office of the chief of the intelligence unit.

Senator JONES, of New Mexico. We would like to see that also.

Mr. FRAYSER. You can get that right here in Washington.

Senator JONES of New Mexico. You have it here?

Mr. FRAYSER. Here in the Washington office.

Senator JONES of New Mexico. We would like to get that.

Mr. FRAYSER. Yes, sir. Now, this file contains some of the correspondence between Mr. Stone, the revenue agent in charge at Atlanta, and the Commissioner of Internal Revenue, and copies of telegrams and so forth, in addition to which is the report of the special agent, Lew Williams, with the exhibits collected by him in the course of his investigation.

Senator JONES of New Mexico. Captain Frayser, the report that Mr. Williams made after you had referred the file to him for investigation is in the files that you have now on the desk?

Mr. FRAYSER. Yes, sir.

The CHAIRMAN. I think this would be an opportune time for you to read that report into the record.

Mr. HARTSON. That is what I was going to proceed to ask him to do, Senator. Will you read that report, Mr. Frayser?

Mr. FRAYSER. Yes, sir.

Mr. HARTSON. I would like to identify it first by asking you, Captain Frayser, who prepared the report?

Mr. FRAYSER. The report was prepared by Lew Williams, special agent.

Senator JONES of New Mexico. Would it not also be well to get his record that was transmitted to Mr. Williams, with his instructions and any data that was furnished to Mr. Williams?

Mr. HARTSON. I think it should all go in, Senator.

Senator JONES of New Mexico. Yes.

Mr. HARTSON. I think that is true. However, Captain Frayser seems to have difficulty in locating some of the files that went with his reference of the case to Mr. Williams.

Senator JONES of New Mexico. I should suggest that we leave open a space here to put in that, so we can consider that thing from the beginning and go right down and know just what it is all about.

Mr. HARTSON. That is quite right.

The CHAIRMAN. You will see that that is done, Mr. Hartson?

Mr. HARTSON. I will; yes, sir.

Mr. FRAYSER. This report is written on the usual letterhead.

The CHAIRMAN. Will you read it as loud as possible?

Mr. FRAYSER. Yes, sir. [Reading:]

TREASURY DEPARTMENT.
INTERNAL REVENUE SERVICE. SPECIAL INTELLIGENCE UNIT,
Jacksonville, Fla., April 18, 1924.

Office of Lewis Williams, special agent. SI-3595—

That is our office number for the case—.

CHIEF SPECIAL INTELLIGENCE UNIT,
Bureau of Internal Revenue, Washington, D. C.:

This case, based upon a communication of Deputy Commissioner R. M. Estes, dated December 5, 1923, relates to charges of incompetence against Revenue Agents George B. Walker and A. G. Pratt, of the Atlanta, Ga., office, to the effect that they, in disregard of the law and regulations and contrary to instructions given by the bureau, forcibly entered on November 17, 1923, safe deposit box No. 298 at the First National Bank, of West Palm Beach, Fla., rented in the names of Richard Croker and Bula Croker, the last named being surviving wife of the former, whose estate was under examination by Revenue Agent Walker under the supervision of Revenue Agent in Charge Thomas E. Stone.

Investigation was made at West Palm Beach, Palm Beach, and Jacksonville, Fla., and at Atlanta, Ga., on various days during the period from January 18 to date, concurrently with other matters.

Revenue Agent in Charge Thomas E. Stone is in charge of the Atlanta division of the Income Tax Unit, to which office he was assigned in 1921 after the abolishment of his former position of supervising Federal prohibition agent. Agents Walker and Pratt were under Mr. Stone's general direction in the investigation in question, as indicated in telegram to Deputy Commissioner Estes on November 22, last, signed by Mr. Baugh, as acting agent in charge, copy of which is submitted as Exhibit No. 1.

Revenue Agent A. G. Pratt is in charge of the estate tax division of the office of the revenue agent in charge, Atlanta, Ga.

Revenue Agent George B. Walker, it is learned, has been in the service two years and eight months; is said to be a licensed attorney in the State of

Florida; is at present working in the Atlanta division of the Income Tax Unit, with post of duty at Orlando, Fla., and, according to record of the Atlanta division office, devotes most of his time to collateral investigations in Florida in connection with estate tax matters. Not copy of individual personnel report, Exhibit No. 2, herewith.

General inquiry, examination of files and inspection of records disclosed that the Croker estate tax liability examination is based on bureau letter dated September 12, 1923, apparently predicated on a letter from Collector D. T. Gerow, of the district of Florida, to the Commissioner of Internal Revenue under date of September 6, 1923, copy of which is submitted as Exhibit No. 3.

In the original bureau letter of September 12, 1923, it was suggested: "The examining officer should consult with the office of the collector, who will furnish the names of individuals who should be seen before Mr. McDonald is interviewed." Note paragraph 2, page 1, of statement of Agent Pratt, February 12, 1923, herewith inclosed as part of Exhibit No. 4.

AGENT WALKER'S METHODS OF INVESTIGATION

Agent Walker began the examination by holding a conference at Jacksonville, Fla., on October 15, 1923, with Mr. J. B. McDonald (an agent of the Croker's), who on August 27, 1923, filed Form No. 706, relative to the Croker estate, attaching thereto copy of certain contract (copy herewith as Exhibit No. 5), disclosing the bulk of the property holdings of the Croker's in Palm Beach County, Fla. Mr. McDonald introduced to Agent Walker the same day a Mr. A. V. S. Smith, an attorney representing the Croker children, viz, Richard Croker, jr., Howard Croker, Mrs. Ethel White, and daughter, Elizabeth Morris. Attorney Smith, Agent Walker states, claimed to have just returned from Ireland, where the Croker estate has been a subject of litigation in the rival claims of Mr. Croker's children and his second wife, Mrs. Bula Edmonson Croker.

Mr. A. V. S. Smith furnished Agent Walker with voluminous records, transcripts of testimony, etc., and according to Agent Walker, told him that Mr. Richard Croker, jr. (one of the children), had been in touch with the bureau and offered this evidence, which had been accepted by the bureau. See page 2 of Agent Walker's written statement, dated February 22, 1924, herewith submitted as part of Exhibit No. 6.

On October 25, 1923, Agent Walker called at the First National Bank, of West Palm Beach, Fla., and, after ascertaining that a safe-deposit box, No. 298, was shown on the books of the bank in the names of Richard and Bula Croker, sealed the box by pasting over the locks a strip of paper bearing the inscription, "Treasury Department, Internal Revenue Service, Atlanta, Ga." See copy of written notice served on the First National Bank, West Palm Beach, Fla., under date of October 25, 1923, by Agent Walker, in connection with this matter, inclosed with this report as Exhibit No. 7.

On November 3, 1923, Agent Walker served the First National Bank with an internal revenue agent's subpœna, Form 789, requesting the bank to produce the contents of the Croker safe-deposit box on November 6 following. On that date, however, Agent Walker withdrew the subpœna demand, as will be noted from the notation on the bottom of the paper in the following words: "This subpœna has this day been withdrawn, November 6, 1923." See copy herewith as Exhibit No. 8.

Apparently the withdrawal of the subpœna was made pursuant to instructions which were communicated to Agent Walker by the Atlanta division office, as is evidenced by telegram dated November 9, 1923, from Agent Walker to Agent in Charge Stone, reading as follows: "All phases Croker investigation except examination contents lock box are completed; as this is suspended, must I remain or proceed to other work elsewhere?"

In this connection it is learned that Deputy Collector W. A. Owens had been directed by the collector's office to prepare, from figures to be furnished by Agent Walker, an amended estate return (Form 706), and at Agent Walker's request telegraphed Collector Gerow at Jacksonville as follows: "Mrs. Croker, through Associated Press, states that lock box in bank here contains $110,000 negotiable bonds and other valuable papers; do you think it advisable to issue warrant for distraint in order to seize same?" Collector Gerow decided against distraining of said securities after communicating with bureau, and Agent Walker was so advised.

Special Agent Lewis Williams happened to be at West Palm Beach, Fla., on other matters, and was called upon on November 7, 1923, by Agent Walker, who complained that he had disclosed fraud in connection with the Croker estate examination, and that evidently due to the influence of Mrs. Croker at Washington, the matter was being quashed and he, Walker, had been ordered to suspend further examination. Note carbon copy of Special Agent Williams's memorandum report dated November 12, accompanied by copy of telegram dated November 7, submitted as Exhibit No. 9.

Reference is also made in this connection to letter of Agent Walker to Agent in Charge Stone, dated November 4, second paragraph of which reads as follows: "I have been told several times last week that Mrs. Croker had enough influence in Washington, or could get enough, to block the investigation as well as the payment of the tax. I hope this is not true as I have worked hard and faithfully on this case and have enough evidence to not only justify the assessment of the tax, but the penalty also, and in addition to convict her of the grossest fraud ever perpetrated upon the United States Government in an estate tax matter." Carbon copy of the letter in question is inclosed herewith as Exhibit No. 10.

It is pertinent to note further, as regards this feature, that Agent in Charge Stone wrote to Deputy Commissioner Estes under date of November 9, 1923, as follows: "Agent Walker states that Special Agent Williams of the Intelligence Unit is now in Palm Beach and has interested himself in the Croker estate; that Agent Williams exhibited to him a telegram he had sent to Washington asking that the Croker jacket be forwarded to him immediately, or to have some other agent sent to Palm Beach from Washington. The purpose of Agent Williams's action is not apparent to this office but it is felt that the investigation can be best conducted without the intervention of the Intelligence Unit at this time. It is suggested, therefore, that the Intelligence Unit be requested to withdraw from the case until the investigation now in process by agents of this office has been completed."

On October 27, 1923, Attorney D. L. Southard, acting on behalf of Mr. Joseph Mendel and W. E. Magers, representing the city of West Palm Beach and Y. M. C. A. of West Palm Beach, respectively, filed a petition in the probate court of West Palm Beach for the appointment of a curator of the estate of Richard Croker, sr., alleging that there had been found another will of the said Richard Croker, sr., deceased, whereby he had bequeathed something like $400,000 to the city of West Palm Beach and the further sums of $50,000 each to the West Palm Beach Y. M. C. A. and the St. Ann's Catholic Church, of West Palm Beach. This cause of action is apparently based on the same information as that furnished by Attorney A. V. S. Smith and Mr. J. B. McDonald to Agent Walker on or about October 24, 1923, as hereinbefore reported.

On the above-mentioned petition a hearing was had before Probate Judge R. P. Robbins on November 8, 1923, which Agent Walker attended. On motion of Mr. E. J. L'Engle, of Jacksonville, attorney for Mrs. Bula Croker, the hearing for the appointment of a curator was continued to November 29, 1923. At this juncture Agent Walker served an internal revenue agent's subpœna, Form 789, on Attorney L'Engle, demanding the production of the contents of the Croker safe-deposit box at the First National Bank of West Palm Beach.

With respect to this feature it seems that Agent Walker and Attorney L'Engle had some words over the authority of Agent Walker, resulting in Attorney L'Engle appealing to the collector of internal revenue for the district of Florida, as disclosed in attached correspondence, to wit: Exhibit No. 11, letter from Revenue Agent in Charge Stone to Collector Gerow, dated November 10, 1923; Exhibit No. 12, letter from Collector Gerow to Agent Walker, dated November 10, 1923; Exhibit No. 13, letter from Agent Walker to Collector Gerow, dated November 11, 1923; and Exhibit No. 14, letter from Collector Gerow to Agent Walker, dated November 14, 1923, wherein Mr. Gerow invites Agent Walker to come to Jacksonville to meet Attorney L'Engle. This, it is found, Agent Walker did not do, and the matter of the subpœna on Attorney L'Engle appears to have been dropped by the revenue agents.

Simultaneously with the serving of the revenue agent's subpœna on Attorney L'Engle on November 8, 1923, Agent Walker filed a petition, copy of which is submitted as Exhibit No. 15, in the probate court at West Palm Beach, requesting the judge to grant an order permitting him to inspect the contents

of the safe-deposit box in the presence of the court, of attorneys for the city of West Palm Beach and the Y. M. C. A., of the attorney for Mrs. Croker, and of such other persons as the court might direct to be present.

ADVICE FROM BUREAU NOT TO TAKE FORCIBLE ACTION

On November 11, 1923, Agent in Charge Stone sent telegram (herewith submitted as Exhibit No. 16) to Agent Walker reading as follows: "Commissioner advise Bula Croker representative will be Palm Beach next few days with key to lock box to open same. See that box securely sealed to assure your presence at time box is opened. I will arrive Palm Beach Tuesday evening."

On November 12, 1923, Agent in Charge Stone wrote to Agent Walker, transmitting copy of bureau letter dated November 9, 1923, together with a copy of a letter from Mr. Edward J. Mooney, attorney, of New York, representing Mrs. Bula Croker, facsimiles of which are submitted as Exhibits Nos. 17 and 18, respectively, concerning which Agent in Charge Stone advised Agent Walker as follows:

"You will note that Mr. Mooney states that Mr. McLaren will arrive in West Palm Beach several days before November 22, 1923, and requests that the lock box be not opened until Mr. McLaren arrives. Should Mr. McLaren arrive at West Palm Beach before I do you will immediately call upon him to open the box without further delay, and you will then make a thorough transcript of all of the documents, papers, etc., whatsoever contained therein and not let them out of your sight during the examination of this estate."

Note letter from Agent in Charge Stone inclosed herewith as Exhibit No. 19.

The bureau letter of November 9 (Exhibit 17) specifically states: "* * * It is believed that the best interests of the Government will be served by awaiting action in connection with the opening of the safe-deposit box until Mrs. Croker's representatives are present, which will be on on before November 22, as indicated in the latter from the attorney, copy herewith. * * * If dilatory tactics on the part of the representatives of the estate develop, the bureau will, upon receipt of such information, authorize you to proceed as the circumstances may require."

These instructions were further confirmed by telegraph from Deputy Commissioner Estes to Agent in Charge Stone, under date of November 9, 1923, as follows: "Attorneys assure complete disclosure re Croker estate, believe best interest Government served by not forcibly opening box to-morrow unless you are in possession of facts bureau does not have; explanation follows."

Agent in Charge Stone did not go to Palm Beach, but instead sent Revenue Agent A. G. Pratt, in charge of estate tax matters in the Atlanta division office.

On November 16, 1923, Agent Pratt telegraphed from West Palm Beach to Agent in Charge Stone, as follows:

"We should inventory contents box before appointment curator by probate court on 22d. Probate court order was in force only required holding contents box intact but recognizes Government officers' right to open any time. Attorney Croker estate not here as promised. Further delay detrimental to present administration and seriously hamper investigation. We will forcibly enter box Monday, 19th. Ask bureau not to interfere."

To this telegram Agent in Charge Stone sent telegram (inclosed as Exhibit No. 20) on the same date, as follows:

"Replying to your wire even date, if Government interest jeopardized proceed as requested."

Note that in Agent Pratt's telegram he does not ask for authority to open the box, but states: "We will forcibly enter box Monday, 19th. Ask bureau not to interfere."

FORCIBLE ENTRY OF THE SAFE DEPOSIT BOX

On November 17, 1923, Agent Walter served a second revenue agent's subpoena, Form 789, copy of which is inclosed as Exhibit No. 21, on the First National Bank of West Palm Beach, making demand that it produce the contents of safe-deposit box No. 298 that day at 12.30 o'clock in the afternoon.

According to the statement of Mr. J. L. Griffin, president of the First National Bank of West Palm Beach, which is herewith submitted as Exhibit No. 22, Revenue Agents Walker and Pratt appeared at the bank on November

17, 1923, and served the subpoena and demand, in response to which the bank officials informed the revenue agents that the bank officials had no way of opening the safe-deposit box inasmuch as it required both keys, one in their possession and the other in the possession of Mrs. Bula Croker. Agent Walker, it is said, then proposed to have a locksmith open the box, to which the bank officials object. However, after Agent Walker stated that the case had been passed upon in a similar contingency, in which the Supreme Court of the United States ruled, giving an agent of the Revenue Department full power and authority to perform such act, the bank officials offered no active resistance, and at the direction of Agent Walker the Croker safe-deposit box was opened by a locksmith, Mr. C. L. Wilson, of West Palm Beach, who bored a hole in the lock with a steel drill, thus causing release of the tumblers. After the contents of the safe-deposit box were inventoried the same were replaced and the deposit box was relocked, the locksmith filling in the drilled hole with alloy.

The bank officials demanded and received a written statement from Agent Walker regarding the forcible entry and inspection of the contents of the safe deposit box, copy of which is inclosed herewith as Exhibit No. 23, and which contains a list of those present at the opening, there being, besides the bank officials and revenue agents present, Probate Judge R. P. Robbins, Mr. D. L. Southard, attorney for the city of West Palm Beach in the suit against Mrs. Croker, and a Mr. E. D. Anthony, an associate of Mr. J. B. McDonald. It will be noted that neither Mr. L'Engle, of Jacksonville, attorney for Mrs. Croker, nor anyone else representing Mrs. Croker was present. There is no record of Attorney L'Engle or other attorneys of Mrs. Croker having been notified.

The Croker safe deposit box was found to contain approximately $110,000 in municipal bonds, as had been previously given out by Mrs. Croker or her attorneys; in reference to which note copy of inventory of the bonds in question, prepared by the bank, in the presence of Agents Pratt and Walker (originally authenticated by them), inclosed herewith marked "Exhibit No. 24."

It will be noted that in this inventory Agent Walker is designated as "Agent United States revenue collector's office." No representative of the collector's office was present at the opening of the safe deposit box, and the same, it appears, was entered against the advice of Collector D. T. Gerow; in reference to which note first paragraph, page 4, of this report.

In two conferences between Collector D. T. Gerow and the undersigned on January 21 and February 11, 1924, Collector Gerow stated that he had never seen Revenue Agent George B. Walker and that Agent Walker never consulted him (Gerow) regarding the Croker estate matter; notwithstanding the instructions referred to in letter of Revenue Agent A. G. Pratt, Exhibit No. 4, that the examining officer should consult with the office of the collector. Collector Gerow further stated that after the Croker safe deposit box was forcibly entered by the revenue agents he, Gerow, had Deputy Collector Owens seal the box on distraint, and that after conference with Mrs. Bula Croker at Palm Beach, about January 17 last, she willingly turned the bonds over to the collector's custody pending final determination of the estate tax liability. Collector Gerow also explained that previous to this, to wit, on or about October 27, 1923, when the bureau communicated to the collector's office the temporary assessment as a result of Agent Walker's preliminary report on the Croker estate, Deputy Collector Owens was detailed to proceed to levy on the Croker property at West Palm Beach, but on learning of Agent Walker's intention to force open the Croker safe deposit box Deputy Collector Owens was withdrawn from the assignment.

EXTENT OF RESPONSIBILITY OF REVENUE AGENT IN CHARGE STONE

Revenue Agent in Charge Thomas E. Stone was interviewed by the undersigned at Jacksonville on January 26, 1924, and stated that the bureau left it discretionary with him to go into the Croker safe-deposit box, and that he, Mr. Stone, in turn left it to the discretion of Agents Pratt and Walker; that he, Mr. Stone, issued no instructions one way or the other; that the manner in which the safe-deposit box was forced open was an error; and that he regretted it because it had caused censure of his office by the bureau; but that he believed that it was done in the interest of the Government; that he had been to Washington since and had a conference with the commissioner concerning

it; that the bureau had all the files; and that he, Mr. Stone, thought it was a closed incident so far as he or his office was concerned.

In a subsequent interview with Special Agent Joseph E. Kanipe, at Atlanta, on February 12, 1924, Agent in Charge Thomas E. Stone stated that his consent to opening the Croker safe-deposit box, evidenced by his telegram to Agent Pratt on November 16, was based on a telephone conversation with Deputy Commissioner Estes on November 15. Note paragraph 3, page 2, of memorandum of Special Agent Kanipe, herewith enclosed as Exhibit N. 25.

Agent in Charge Stone also stated, in the interview with Special Agent Kanipe on February 12, in answer to inquiry as to the section of the law under which the safe-deposit box was opened, that there was no law for it; that the box was not legally opened, and that he fully realized a big mistake and blunder had been made.

That Mr. Stone himself did not know just how to proceed to gain access to the safe-deposit box in question is evidenced by his letter of November 17, 1923, to the commissioner, copy of which is submitted as Exhibit No. 26, and in which Agent Stone requests instructions as to what steps should be taken to force inspection of contents in said safe-deposit box or any other depository supposed to contain evidence bearing upon matters under examination.

As will be noted from report of Special Agent Paul Anderson concerning interview which he and Special Agent Frank Frayser had with Deputy Commissioner R. M. Estes at Washington, and on the 19th ultimo, Mr. Estes states that he had only one conversation over the telephone with Revenue Agent in Charge Stone concerning the matter of forcibly entering the box; that that conversation was on November 9; that in the conversation no authority was given for the forcible entry; and that nothing was said which could be construed as authority therefor. He further stated that it was the understanding in that conversation that the agents would await the arrival of the representative of Mrs. Croker, who was expected in Miami within a few days. Mr. Estes's statement in this regard is supported by testimony of his assistant, Mr. Fred E. Page, and Mr. Charles W. Jones, chairman of committee of reviews and appeals, who were in Mr. Estes's office at the time of the conversation. For full details in this matter, attention is invited to the report of Special Agent Anderson, accompanied by the written statements of Mr. Estes and his associates, herewith submitted in file marked "Exhibit No. 27."

Mr. Fred E. Page stated, as will be noted from his memorandum included in file, Exhibit No. 27, that Mr. Stone, on a visit to Mr. Estes's office, subsequent to the opening of the box, informed him, in response to queries, that Mr. Estes had instructed him not, in any event, to make forcible entry into the box unless he received specific instructions from the bureau so to do; and that, if he had been handling the investigation directly, he would not under the instructions given have forcibly opened the box. Note that the statement of Mr. Page is corroborated by Omer J. Veley and Henry K. Melcher, officials of the estate-tax division, who were present at the time.

EXPLANATION OF REVENUE AGENT PRATT

Agent A. G. Pratt was interviewed at Atlanta February 12, 1924, and submitted a written answer, previously referred to, Exhibit No. 4. In this answer, three pages, Agent Pratt fails to mention any instructions received subsequent to October 28, 1923, and looking to the substance of his narrative it is to the effect that after obtaining the opinions of J. B. McDonald and T. T. Reese, both of West Palm Beach, that delay might be dangerous and after considering the possibility of some one acting for Mrs. Croker opening the box in the absence of the Government's representatives, the Croker safe-deposit box was forced open with the expectation of finding some valuable evidence, on the strength of the theory that the Croker's had been in the habit of keeping their valuable papers in a safe-deposit box.

In the first paragraph on page 2 of Mr. Pratt's statement he says that "when the investigation had proceeded to the point of abstracting the title, it was found that deeds for many conveyances of many parcels were not of record." Inquiry on this point elicited the information from Agent Walker—interviewed at Jacksonville February 21, 1924—that Mrs. Bula Croker was found in possession of two parcels of land according to deeds of record, deeded direct to her by persons not previously of record as owners thereof, involving the following property transfers: Warranty deed from Fred L. Crane and wife to Bula E. Croker March 25, 1919, consideration $100 and other valuable considerations;

100 square feet East Olive Street, West Palm Beach, valued at $25,000 (maximum); and warranty deed from Minnie J. Anderson to Bula E. Croker, March 22, 1919, lot 3, section 27, West Palm Beach, valued at $15,000, which, "it was suspected," may have been transferred for convenience only to convey title to Mrs. Croker and thus prevent the property being considered as estate of Richard Croker, sr. It will be noted that original deeds are dated and were recorded in 1919; total value of both parcels being $40,000.

Agent Pratt further states that as a result of the breaking open of the safe-deposit box "the interests of the Government have been conserved and the value of $118,000 in securities uncovered." It will be noted that the presence of the bonds in the safe-deposit box was known and admitted before its opening. Refer to telegram quoted on page 4 of this report and Agent Walker's own statement in Exhibit No. 6. Furthermore, as a matter of fact, the distraining or taking possession of property is not within the province of revenue agents, but falls among the duties of the office of the collector of internal revenue.

In response to formal letter of charges to Mr. Pratt under date of the 17th ultimo, he submitted reply dated 2nd instant, included in the file marked "Exhibit No. 4," claiming that the safe deposit box was opened under authority of law, since Agent Walker had obtained an order from the judge of the probate court authorizing the opening of the box.

The same claim having been made by Revenue Agent Walker, I made inquiry of Judge Richard P. Robbins, of the county court, who sat in probate court in the claims of heirs of the Croker estate, to ascertain whether he had assumed to give the agents any authority for the forcible entry. In reply, as will be noted in a signed statement of the 16th instant, herewith inclosed as Exhibit No. 28, he states that, previous to the opening of the box, he had issued an order to all persons having in their hands personal property belonging to the estate of Richard Croker to hold same intact pending determination of a petition then being considered for appointment of a curator; that Mr. Walker afterwards filed a petition requesting authority to open the safe deposit box; but that his application was not acted upon and no authority was given by him to enter the box; and that in conversation with Mr. Walker he advised him that he did not believe his opening the box would conflict with any order that he had issued from the probate court. Judge Robbins further stated that he denied the petition for appointment of a curator; and that there was no order in the probate court authorizing the opening of the box in question by any person.

EXPLANATION OFFERED BY REVENUE AGENT WALKER

Agent Walker was interviewed by the undersigned at Jacksonville on February 21, 1924, and questioned as to his conception of authority under which he acted in opening the box, his reasons for concluding the Government's interests were in jeopardy, and for forcing the box on November 17 when he had been advised from Washington that Mrs. Croker's representative would disclose the contents not later than November 22; and the connection, if any, of his action in opening the box, with the rumor that a will was therein.

The first eight pages of Agent Walker's answer to my queries (Exhibit No. 6) deal with the manner of his investigation of the Croker estate, and in substance are to the effect that he made the investigation on information furnished him by Mr. J. B. McDonald, former agent of Richard Croker, sr., Mr. A. V. S. Smith, attorney for the Croker children contesting the property rights of the widow, and Mr. T. T. Reese, president of the Farmers Bank and Trust Co. of West Palm Beach, competitor of the First National Bank of West Palm Beach, whereat Mrs. Croker had the safe-deposit box referred to.

With regard to the inquiry as to how he concluded that he had authority to break open the safe-deposit box, Agent Walker sets up paragraphs of the letter from Commissioner Estes dated November 9, 1923, previously referred to in this report (Exhibit No. 17), and at the same time attempts to show that the forcing of the Croker safe-deposit box was done under the authority of the probate court of West Palm Beach.

In answer to query as to what were the reasons which led Agent Walker to conclude that Government interests were in jeopardy in connection with the safe-deposit box, Agent Walker cites that he had been offered $10,000 bribe by Mr. Max E. Edmonson, of Palm Beach, father of Mrs. Bula Croker, to allow Mrs. Croker surreptitiously to remove the bonds from the safe-deposit

box in question; and that a number of circumstances suggested that some one acting for Mrs. Croker might secretly abstract the contents of the receptacle.

No specific answer was received from Agent Walker to last query in which he was asked why the box was opened on November 17 in face of the advice that attorneys for Mrs. Croker would arrive in Palm Beach to assist in disclosing contents of the safe-deposit box not later than November 22.

With reference to the interest of the city of West Palm Beach in the matter of disclosing contents of the Croker safe-deposit box, as evidenced by the presence of Attorney D. L. Southard at the opening of the said box on November 17, 1923, the following telegram, sent by Attorney Southard to Deputy Commissioner Estes on November 10, 1923, is self-explanatory:

"Representing petitioners curator proceedings probate court here acting behalf West Palm Beach Auditorium and Y. W. C. A., large beneficiaries under will Richard Croker, November, 1919, which is subsequent to will October, 1919, probated in Ireland making Mrs. Croker sole beneficiary, we have been cooperating with your investigating officers for discovery assets and Croker November will, which Mr. and Mrs. Croker testified here in 1920 had been signed and was irrevocable, and ask that you continue investigation here with instructions open box in bank probate court has consented so all assets and testamentary papers may be found; pending such opening continue your Government seals on box, this in justice my clients, and Government interests curatorship postponed Mrs. Croker's request until 22d account her continued absence New York and Washington; meantime court consents your agent opening box. If any doubt, suggest sending district attorney here investigate."

The conclusion is reached that Attorney A. V. S. Smith, acting for the Croker children, and Attorney D. L. Southard, acting for petitioners on behalf of the city of West Palm Beach et al., designed to use Revenue Agent George B. Walker to gain access to the Croker safe-deposit box under the cloak of the authority of the United States, to accomplish the disclosure of its contents, which they were unable to do under due process of law in such cases provided.

As stated on page 16 of this report, Revenue Agent Walker, in replying to formal letter of charges, claims in his answer under date of March 30 last, included in file marked "Exhibit No. 6," that the box in question was opened under an order of the probate court of Palm Beach County, which, as heretofore stated, the judge, Richard P. Robbins, denies that he granted. Note the judge's written statement submitted as "Exhibit No. 28."

Agent Walker's attitude throughout seems to have been in opposition to the policy of the bureau not to use drastic action and to accord the taxpayer and her representatives courteous treatment. In view of the repeated expressions of desire that the box should not be opened until Mrs. Croker's representative arrived in Miami, the action of Agent Walker in making the forcible entry, even if the judge of the probate court had consented, can only be considered in the light of insubordination.

In this connection attention is invited to copy (accompanying Special Agent Anderson's report, Exhibit No. 27) of a letter noted in the files of Deputy Commissioner Estes' office written on May 20, 1920, to the head of the estate-tax division of the bureau, in which Agent Walker very discourteously criticizes the bureau with reference to disallowance of an item of salary and certain expenditures made by him: indicating tactless disregard of authority similar to that characterizing his action in disobeying instructions of the bureau with regard to the entry of the safe-deposit box.

CONCLUSION

The erroneous procedure in connection with the forcible opening of the Croker safe-deposit box is, in my opinion, due in a large measure to the vacillating attitude of the supervising officer, to wit, Revenue Agent in Charge, Thos. E. Stone. The developments in this investigation establish that Agent in Charge Stone has certainly displayed a lack of discernment and executive ability in this matter.

Evidence herein adduced establishes that the forcible opening of the Croker safe-deposit box at West Palm Beach, Fla., on November 17, 1923, was accomplished without due process of law by Revenue Agent George B. Walker, assisted by Revenue Agent A. G. Pratt, with the tacit consent of Revenue Agent in Charge Thos. E. Stone, in direct violation of instructions issued by Deputy Commissioner R. M. Estes with reference to this specific matter; and that these officers, Agents Stone, Pratt, and Walker, have acted in disregard of

Bureau suggestions in other respects during the conduct of their examination of the Croker estate. (Note particularly paragraphs 4 and 5 of page 2 of this report.)

I recommend that Revenue Agent in Charge Thos. E. Stone be reprimanded for his failure to require the revenue agents assigned to this investigation to comply with bureau instructions.

With reference to Revenue Agent A. G. Pratt, I recommend that he be reprimanded for his participation in the forcible entry of the safe deposit box.

In consequence of the inefficiency and the insubordinate attitude manifested by Revenue Agent George B. Walker, I recommend his transfer to another division and that he be not assigned to work in connection with major cases for a period of not less than six months.

That is signed by Lewis Williams, special agent.

Accompanying the report, there is a large number of exhibits.

Mr. HARTSON. I think, Mr. Chairman, those exhibits should go in along with the report, because the committee will no doubt remember there were a number of conclusions that the reporting officer arrived at, which he claims are supported by the exhibits in the file. The whole thing should go in. Whether the committee wants to hear those exhibits read or not is another matter.

The CHAIRMAN. If there is no objection, they may go in the record.

Mr. HARTSON. I would like to have the letter from the probate judge read. That is a matter of a good deal of interest, and it is referred to in the report of Mr. Williams.

The CHAIRMAN. I think we have spent enough time on that now. If we want to look it up, we can do so later.

Mr. HARTSON. It is all there as one of the exhibits.

Mr. FRAYSER. I have read the substance of it.

The CHAIRMAN. Yes; I think so. Do you want to ask Agent Walker anything now, or are you through with this witness?

Mr. HARTSON. I am through with this witness; yes, sir.

Mr. MANSON. I wonder if they can produce the documents that were referred to?

The CHAIRMAN. Yes. I think Agent Walker had better take the stand now. He has already been sworn in this case.

TESTIMONY OF MR. GEORGE B. WALKER—Resumed

The CHAIRMAN. You may proceed, Mr. Hartson.

Mr. HARTSON. Mr. Walker, you told the committee yesterday, I believe, that there were no specific charges made against you in your conduct in this Croker estate case?

Mr. WALKER. There were no charges which any intelligent man could have answered.

Mr. HARTSON. Well, do you mean by that that there were no charges made at all?

Mr. WALKER. There were charges made, but if you have a copy of the charges there that you will read to the committee, you will find——

Mr. HARTSON. Were they made in writing?

Mr. WALKER. Yes.

Mr. HARTSON. And did you have a copy of those charges made in writing?

Mr. WALKER. I did.

Mr. HARTSON. You saw them. You arrived at the conclusion that no intelligent man could obtain any definite idea what was being complained about from a reading of those written charges?

Mr. WALKER. Yes, sir.

Mr. HARTSON. I would like to have the committee see those written charges.

The CHAIRMAN. I wish you would read them into the record, because I would like to help to decide whether they were intelligent or not.

Mr. HARTSON. I am reading from a copy of a letter dated March 17 from Lewis Williams, special agent of the Special Intelligence Unit, and directed to Mr. George B. Walker at Orlando, Fla., in which it says:

I am compelled to advise you that the following charges have been preferred against you:

(*a*) That you did in disregard of the law and regulations and contrary to instructions issued by the bureau forcibly enter on November 17, 1923, the safe deposit box No. 298 at the First National Bank of West Palm Beach, Fla., standing in the name of Richard and Bula Croker, the last name surviving wife of Richard Croker, sr., whose estate was under examination by you at that time.

(*b*) That you did display a lack of sound judgment in the pursuit of certain of your duties and allow yourselves to be led and influenced in your official acts by attorneys and other interested persons in the matter of the Croker estate, to the detriment of the service and in a manner not becoming an official of your position.

The balance of the letter reads as follows, but I assume that those paragraphs (*a*) and (*b*) constitute the definite charges:

The above set forth charges reflect incompetence in the pursuit of your duties as an internal revenue agent, and I have to address you in this matter to enable you to be further heard in your own behalf—(bide your written statement dated at Orlando, February 22, 1924)—and to require you to show cause why you should not be removed or otherwise disciplined.

Please make answer hereto in writing within five days from date of receipt of this communication, addressing me at the internal revenue office, post office building, Tampa, Fla.

The CHAIRMAN. Mr. Walker, did you not understand those charges?

Mr. WALKER. No, sir; because the charges should have specified in what manner I had listened to people, because in the revenue service the only we way could do anything was to listen and get information from people, and I could not see where, in the regulations, I had violated any regulations of the bureau. They did not specify the regulations. Neither did they specify the instructions that I had violated.

The CHAIRMAN. An opportunity to reply was given you in that letter, and it seems to me that any intelligent individual would see that those charges were specific. If you did not agree with the charges, or if you wanted more details, that was the question for you to raise; but, so far as the charges are concerned, I think any intelligent person, from a reading of that letter, would understand what the charges were that were made against you.

Mr. WALKER. Yes; but I could not answer the specific charges until I knew just what they wanted me to answer.

Mr. HARTSON. Mr. Walker, did you not have an interview with Mr. Williams, who preferred these charges against you, in which the details were gone into by you and Mr. Williams orally?

Mr. WALKER. No, sir; I had a conversation with Mr. Williams only, in February, in which Mr. Williams told me at that time, after taking a part of the stuff out of my file, that he could not see where I had done anything wrong, but he had been instructed to make an adverse report against me.

Mr. HARTSON. Mr. Williams told you that, did he?

Mr. WALKER. Yes, sir.

Mr. HARTSON. At what time?

Mr. WALKER. In the revenue office in Jacksonville, in the presence of Revenue Agent J. B. Dodge and one or two more of the force.

Mr. HARTSON. Who else was present besides you and Mr. Williams?

Mr. WALKER. James B. Dodge was one of them.

Mr. HARTSON. Who were the others?

Mr. WALKER. I don't know the others. They were income-tax men.

Mr. HARTSON. There were others present, were there?

Mr. WALKER. Yes, sir.

Mr. HARTSON. Will you repeat again just what Mr. Williams told you?

Mr. WALKER. He said he could not—that is, I had done nothing wrong, but he had been instructed that he would have to make an adverse report against me.

Mr. HARTSON. I would like to have you more definite and specific as to what he did say with reference to the nature of the report to be adverse to you.

Mr. WALKER. That he was instructed to turn in an adverse report against me.

Mr. HARTSON. A moment ago, if I understood you correctly, you said that he would have to turn in an adverse report against you.

Mr. WALKER. Yes; that he was instructed to turn in an adverse report against me.

Mr. HARTSON. He was acting under specific instructions to turn in an adverse report against you?

Mr. WALKER. I so understood him; yes.

Mr. HARTSON. And that was made in an oral statement in January, did you say?

Mr. WALKER. February.

Mr. HARTSON. February, 1924?

Mr. WALKER. Yes, sir.

Mr. HARTSON. And in the presence of James B. Dodge, revenue agent?

Mr. WALKER. James B. Dodge was in the room, and one or two revenue agents in the office room in the post-office building at Jacksonville.

Mr. HARTSON. In the revenue office room in the post-office building in Jacksonville, and there were others present whose names you do not remember?

Mr. WALKER. No, sir.

Mr. HARTSON. Mr. Walker, I will hand you a letter dated June 23 from Orlando, Fla., directed to Hon. C. D. Nash, and ask you if that is your signature appended thereto?

Mr. WALKER. Yes, sir.

Mr. HARTSON. Would you kindly read that letter to the committee?

Mr. WALKER. Yes, sir. Before reading that letter——

Mr. HARTSON. I would like to have you read that letter.

Mr. WALKER. Then I will introduce another one in evidence in connection with this. Now, this letter I wrote to Mr. Nash——

Mr. HARTSON. Will you kindly read the letter and then you can explain it afterwards.

Mr. WALKER. I will read it; sure.

Hon. C. R. NASH,
Acting Commissioner Internal Revenue, Washington, D. C.
(Personal.)

You do not mind my reading this, Mr. Nash?

Mr. NASH. Not at all, sir.

Mr. WALKER (reading):

SIR: Your letter of the 18th instant advising me of the discontinuance of my services as internal revenue agent, effective July 15, 1924, received this evening.

I fully appreciate, Mr. Nash, your position, and do not feel unkindly toward you or anyone in the bureau. I am merely paying the price of loyalty to my friends and superiors in assuming the entire blame in the Crocker investigation, and to advice of friends, or at least I thought them such, in pursuing a wrong course in laying my side of the affair before Hon. James Couzens, who is supposed to be a friend of the one I supposed was my friend and would treat my communication as confidential.

The agent of the Intelligence Unit, who was conscientious and, I believe, did his duty in the investigation, I regret to say, did not get the full facts, for I accepted all the blame; and, as the matter is now a closed incident and as I am conscious of having done my duty and obeyed orders, I prefer to leave the service feeling that while my disciplinary punishment hurts I regret only that part of the whole affair that in any way pertains to having appealed to Hon. James Couzens.

I attach hereto a copy of my letter to the revenue agent in charge asking for the allowance of my accrued leave and additional leave sufficient to make 30 days, which I feel I am entitled to.

Assuring you that my object in addressing you personally was solely to permit you to know that I hold no ill feelings toward you or anyone in the bureau, I beg to remain,

Very truly yours,

GEORGE B. WALKER.

I wish to introduce in evidence now a letter, in which the letter I wrote to Senator Couzens as a confidential letter is alleged to have been received by Mr. Nash, a letter from Senator Duncan U. Fletcher, of Florida.

Mr. MANSON. Go ahead and read that letter, Mr. Walker.

Mr. WALKER. This is a letter from United States Senator Duncan U. Fletcher, dated June 16, 1924:

UNITED STATES SENATE,
COMMITTE ON COMMERCE,
June 16, 1924.

Mr. GEORGE B. WALKER,
Orlando, Fla.
(Personal.)

DEAR MR. WALKER: Referring to yours of June 11, I called this morning to see the Commissioner of Internal Revenue personally in your behalf.

As is not unusual, I found he was out of the city.

I saw his assistant, Assistant Commissioner Charles R. Nash, who has charge of such matters.

I told him that I came to see him respecting the order transferring you to Trenton, N. J., and proceeded to refer to numerous letters I had received in

your behalf and to the facts set forth in your communication. I managed to get the essential facts before him, when he interrupted by saying that he was thoroughly familiar with the Croker affair; that he had the reports of the Intelligence Unit, which showed conclusively that you had exceeded your authority and was justly blamable—in fact, that all the officers and agents connected with that matter were subject to criticism, including Stone, Gerow, yourself, and others.

He said the matter had been fumbled and badly handled in an arbitrary and unsatisfactory way, but he said that was not the only complaint to be made of you—that you had not given good service and that if you had stuck to the truth in your communications to Senator Couzens there would not be so much fault found, but that you had been writing to the committee, or Senator Couzens, and that your statements were untrue.

He further said that there had been a reduction in force ordered and that you had been notified that your resignation would be accepted.

I am giving you the substance of his statement, which surprised me greatly, but I found the case was closed, and you have doubtless received before this communication calling for your resignation.

I need not say that you were at least hasty in taking the matter up with the Couzens' committee and that very likely settled the case against you.

I raised the question regarding your having done that and Mr. Nash promptly replied that he had seen the letters.

I was very desirous of being of help to you in the matter but they regard it as settled.

As you suggest, I return herewith your communications (copies) to Hon. Thomas E. Stone and Mr. Lewis Williams, of March 30.

Very truly yours,

DUNCAN U. FLETCHER.

The CHAIRMAN. I would like to ask Mr. Nash at this point whether that is substantially correct?

Mr. NASH. I have a copy of the letter which Mr. Walker forwarded to you and it was to that that I referred when I was talking to Senator Fletcher. I did not tell him that I had seen the original letter.

The CHAIRMAN. Will you tell the committee where you got the copy of the letter from?

Mr. NASH. The copy was sent to the bureau by the revenue agent in charge at Atlanta and I presume Mr. Walker had furnished him with a copy.

The CHAIRMAN. But you do not claim that you got this information out of my office?

Mr. NASH. No, sir.

The CHAIRMAN. You did not see the original letter?

Mr. NASH. I did not see the original letter and I did not tell Senator Fletcher that I had seen the original letter, but I told him I had a copy of the letter which Agent Walker had written to Senator Couzens, or I had seen a copy of the letter. I did not have the copy in my possession.

The CHAIRMAN. The agent at Atlanta showed you this copy?

Mr. NASH. He evidently had received it from somebody in Atlanta and had forwarded it to the bureau.

The CHAIRMAN. Did you furnish the agent at Atlanta with a copy of that letter, Mr. Walker?

Mr. WALKER. Not that I recall, sir.

The CHAIRMAN. You may have done it without recalling it?

Mr. WALKER. They may, in looking over the files, have gotten a copy of my letter, because Mr. Pratt and Mr. Stone and myself went over very carefully anything we sent to the bureau, and I had several copies among these papers of that letter.

The CHAIRMAN. Then, why did you charge me with exposing that letter to Mr. Nash?

Mr. WALKER. Well, it appeared to me, sir, that that letter had been exposed, because I did not know that there was any copy out, and I don't know where that copy came from now; but it would appear to me on its face, Senator, that a confidence was violated when they allowed him to get a letter like that.

The CHAIRMAN. Well, was there any confidence violated that you conceive of?

Mr. WALKER. Well, I sent those letters marked confidential, and asked that they should be treated as confidential.

The CHAIRMAN. Do I understand that you still believe that the letters that I received were exposed? Do you still believe that?

Mr. WALKER. No, sir; I do not. I found out afterwards, but at that time I did think so, and that was the occasion of that letter. It looked like the whole world had turned against me, that I did not have a friend in the world.

Mr. NASH. The letter of transmittal from the revenue agent, Thomas E. Stone, reads as follows——

Mr. HARTSON. Wait a minute, Mr. Nash—the letter of transmittal of what?

Mr. NASH. The letter of transmittal of Revenue Agent Stone, with a copy of Agent Walker's letter to Senator Couzens:

With further reference to my wire of even date, I am inclosing herewith a copy of a letter dated March 23, 1924, received this morning from Internal Revenue Agent George B. Walker, Orlando, Fla., addressed to Hon. James Couzens, United States Senator, Washington, D. C., relative to the investigation of the Croker estate.

The CHAIRMAN. I want to say at this point that I would be glad to have this straightened out, because there seems to be an impression in my office that you, perhaps, had agents go through my desk at night and extract communications.

Mr. HARTSON. May I ask Mr. Walker a question with reference to the letter dated June 23, marked personal, and sent by Mr. Walker to Mr. Nash, acting commissioner, the language used in this letter appearing as follows:

The agent of the Intelligence Unit, who was conscientious, and I believe did his duty in the investigation, I regret to say did not get the full facts——

What agent did you have reference to there—Mr. Williams?

Mr. WALKER. Yes.

Mr. HARTSON. If Mr. Williams were acting under specific instructions to find an adverse report against you, Mr. Walker, would he, in your judgment, be acting conscientiously and in line with his duty?

Mr. WALKER. Obeying orders; yes, sir.

Mr. HARTSON. You think, although he did something in violation of his own judgment, he would be acting conscientiously?

Mr. WALKER. Yes, sir.

Mr. HARTSON. That is your conception of conscientious action?

Mr. WALKER. Sir, I served in the Army for two years, and I never questioned an order I got from a superior.

Mr. HARTSON. Well, that may be true, Mr. Walker, so far as one's following instructions or following orders is concerned; but

is not a man's conscience his own personal idea of what is right or wrong?

Senator ERNST. I think we understand that.

The CHAIRMAN. So far as I am concerned, I have heard enough of this case, with this exception, that I would like to have Mr. Nash answer a few questions concerning his reason for the delaying the subpœnaing of Mrs. Croker and some other things which appear to Agent Walker as being obstacles in his way of investigation.

Mr. NASH. Senator Couzens, I am not familiar with the details of the case, but Assistant Deputy Commissioner Page, of the Estate Tax Unit, who is familiar with the various phases of the case from the time it started up to the present time, is here, and I think he can testify more intelligently along that line.

Senator JONES of New Mexico. What I would like to have an explanation of is why the Washington office should undertake to direct its agents in field as to details of procedure, without conferring with those agents in the field as to the advisability of their actions in Washington.

The CHAIRMAN. I think, Senator, you will agree to putting Mr. Page on the stand and let him answer. He is the man who is familiar with the case.

Mr. Page, will you take the stand, please.

TESTIMONY OF MR. FRED PAGE, ASSISTANT DEPUTY COMMISSIONER, MISCELLANEOUS TAX UNIT

(The witness was duly sworn by the chairman.)

Senator JONES of New Mexico. Will you state your name and official position, Mr. Page?

Mr. PAGE. Fred E. Page, assistant deputy commissioner, Internal Revenue Bureau.

Senator JONES of New Mexico. When did this case first come to your notice, Mr. Page?

Mr. PAGE. In the fall of 1923.

Senator JONES of New Mexico. Who brought it to your attention?

Mr. PAGE. Mr. McLaren, an attorney from New York, representing the Croker estate, called at the office, and produced a telegram received by Mrs. Croker from Agent Walker.

Senator JONES of New Mexico. Have you got that telegram?

Mr. HARTSON. We have a copy of it here, Senator.

Mr. PAGE. I just gave Mr. Nash a copy of it.

Mr. HARTSON. Yes; I have it here.

Mr. PAGE. The telegram reads as follows:

WEST PALM BEACH, FLA., *November 1, 1923.*

MRS. BULA CROKER,
Hotel Savoy, New York City:

Unless you appear here within 36 hours will have you brought here forcibly. Answer.

G. B. WALKER,
Revenue Agent.

Mr. McLaren stated that Mrs. Croker was in the trial of a case up in New York; that the heirs had started litigation, and she was in the midst of that trial; that it would be impossible for her to go to West Palm Beach at that time, but he would have a representa-

tive appear down there, with a key to this box, within a stated time, and open it.

Senator JONES of New Mexico. What was the date of that telegram?

Mr. PAGE. November 1, 1923.

The CHAIRMAN. You were here yesterday when Agent Walker testified, were you not, Mr. Page?

Mr. PAGE. Yes, sir.

The CHAIRMAN. And during his testimony there were a number of incidents that he recited in which he was estopped from proceeding with the investigation. Do you remember that?

Mr. PAGE. Yes, sir.

The CHAIRMAN. Will you tell the committee just why these alleged orders were given, such as not to forcibly open the box, not to subpoena Mrs. Croker down there at that particular time, and as to other incidents which he recited?

Mr. MANSON. And the cancellation of the subpoena of the attorney.

The CHAIRMAN. Or any other case that Agent Walker complains of as being estopped in his investigation.

Mr. PAGE. Well, sir; the bureau had been advised that the agent contemplated breaking into this box. We could not see any necessity for it. The Government had its lien for 10 years. We filed notice of the lien in the clerk's office there at West Palm Beach, and we thought the Government's interests were fully protected.

The CHAIRMAN. Just at that point, would you say that the Government's interests were fully protected? If the box were opened by Mrs. Croker and the contents removed, that would not have protected the Government, would it?

Mr. PAGE. No, sir; we could not prevent a representative of the estate from absconding with any property, before having attempted to establish its tax liability. Here is the whole situation, Senator. We have definite instructions in regard to how to go at those things. We have a manual, which is given to every man in the field, and in this particular instance those instructions were disregarded by the agent. I could read, if you would care to hear it——

The CHAIRMAN. I do not think that is necessary to say there are instructions, but I would like to get this clear. Do you mean to say that if the Government had evidence that there was a possibility or probability that certain of the assets of the estate might be removed, so that the Government could not get access to them, you have no remedy?

Mr. PAGE. I know of none, except possibly by injunction.

The CHAIRMAN. You know of none? Is that your understanding, Mr. Hartson?

Mr. HARTSON. Senator, if such information came to any internal revenue official, by going immediately to the United States attorney and having the United States attorney apply to the Federal judge for a search warrant or such process as might be lawful, the court would issue it and would prevent any such thing as this taking place, and that could be done in this instance. There is no doubt about it.

The CHAIRMAN. Now you are getting down to what I can not understand. Was there any such action taken or contemplated in this case?

Mr. HARTSON. Apparently none. There seems to have been no reference here to the United States attorney or to the orderly processes of the court.

The CHAIRMAN. In view of the experience of the agent with the father of Mrs. Croker, did it not occur to you that some action—legal, of course—might be taken to prevent the removal of the assets that were in that box?

Mr. HARTSON. Probably, what might occur to me, Senator, may not have occurred to those who had it in charge at that time.

The CHAIRMAN. I am asking you what your opinion is. Would you, in a like case, not have thought some legal action was necessary under the circumstances?

Mr. HARTSON. I think, if the officials there had what seemed to them evidence which could be relied upon, sufficiently definite to warrant the reasonable belief that somebody would go to that box when the agent was away and open it and dissipate the assets in some way, the thing should then have been to go immediately to the United States attorney, but I do not know whether the evidence in the possession of Mr. Walker was sufficiently reliable to warrant any such action on his part as that.

The CHAIRMAN. I did not hear your last statement.

Mr. HARTSON. I say, I do not know whether the evidence in Mr. Walker's possession was sufficiently reliable to warrant his taking that action or not.

The CHAIRMAN. I would like to ask Mr. Estes right here if he thought that the information in the possession of Agent Walker was sufficient or strong enough to jeopardize the Government's position?

Mr. ESTES. I did not, Senator. We had a written agreement from a reputable attorney in New York that he would disclose all of the assets in the box. He signed an agreement in my office, after consultation with my assistant, that he would send a representative down to West Palm Beach at a certain time before November 22, and in the presence of our agent he would disclose all of the assets in the box. Now, that statement is in the files, signed by this attorney.

The CHAIRMAN. Yes; but sometime back of that, I understand that Agent Walker, in conference with Mrs. Croker's father, was, if not directly offered, suggested a bribe for permission to remove the contents of the box before the Government got at it.

Mr. ESTES. He never reported that fact to the bureau, and besides that we had a lien on all of the property there. The Government has been protected at every step in the proceedings.

Senator JONES of New Mexico. Let me ask you this question right here—how could you have a lien on something that you did not know anything about?

The CHAIRMAN. Yes.

Senator JONES of New Mexico. You did not know what was in that box. How did you know that you could get evidence to prove that the party owed the Government anything without finding out what the contents of that box were?

Mr. ESTES. The assessment had been made on Mr. Walker's recommendation.

Senator JONES of New Mexico. Yes; but how could Mr. Walker know or prove his case without getting into that box? How could you fix the amount due to the Government without knowing what was in that box?

Mr. ESTES. Of course, we were assured by the attorney that the contents of the box would be shown.

Senator JONES of New Mexico. Had you not also been assured that these things had not been reported as a part of the estate in the beginning?

Mr. ESTES. What they were hunting for, Senator, primarily, I think, was an additional will.

Senator JONES of New Mexico. Well, what made you think that Walker was hunting for a will?

Mr. ESTES. Our lien on the property in West Palm Beach is against about $3,000,000 worth of property.

Senator JONES of New Mexico. Yes; but how could you substantiate the amount for which you would claim a lien unless you knew what was in that box? If you had evidence there that they were concealing something, how could you prove anything as to what they were concealing?

Mr. ESTES. We did not have that evidence, Senator.

Senator JONES of New Mexico. But Agent Walker evidently had evidence of it, because he had found that there were contents in that box which had not been disclosed.

Mr. ESTES. I would have to go back a little bit further and explain the service of Agent Walker. Agent Walker is not what we would call a first-class agent. Agent Walker had never been intrusted with the investigation of large and important estates. He has been doing what we call collateral work; that is, where the major report must come from another State, and they have some assets in other States. He has been confining his services to that work in Florida. We asked in our instructions to the revenue agent in charge that O. H. Pendle be assigned to this case, because we wanted that handled very carefully, but, for some reason, he was busy, and Agent Walker was assigned to this case.

Senator JONES of New Mexico. Well, was not Agent Walker in charge of it, and why did you not communicate with him and find out from him why he was doing this?

Mr. ESTES. I would have to explain further. You know, in our unit, Senator, we communicate directly with the agent in charge of that division, and he, in turn, communicates with the agents under him. We never communicate directly with the agent himself, unless an emergency arises. All of my correspondence, long-distance telephone, and telegrams, were with Agent Stone in Atlanta, who, in turn, had charge of Mr. Walker.

Mr. MANSON. Then, as I understand it, you never issued any instructions directly to Mr. Walker in regard to the Croker estate?

Mr. ESTES. Never. You see, Mr. Manson, how perfectly impossible it would be. We have 275 men in the field.

Mr. MANSON. Yes; I understand that.

Mr. ESTES. And if I communicated directly with my agents in the field, it would take all of my time.

Mr. MANSON. Yes. Under your method of organization, it was Mr. Walker's duty to take his orders from Mr. Stone, was it not?

Mr. ESTES. Certainly.

The CHAIRMAN. Let me ask you this question, Mr. Page: You handled this matter from the beginning of the controversy?

Mr. PAGE. From the time the controversy arose; yes.

The CHAIRMAN. Well, during the time that you were handling this case and sending instructions to Agent Walker not to enforce the subpœnas on the attorney and on Mrs. Croker, and not to forcibly open the box—during all of this time, you had the information that Agent Walker had; is that correct?

Mr. PAGE. I think so.

The CHAIRMAN. Well, you say you think so. Was it not possible during all of this time for Mrs. Croker to have appeared at West Palm Beach and have opened the box and extracted the contents therefrom?

Mr. PAGE. It might have been; yes, sir.

The CHAIRMAN. Then that part of the estate of the Crokers was in jeopardy of being lost to the Government?

Mr. PAGE. Possibly.

The CHAIRMAN. Yes; and during all of that time no action was taken to enjoin the opening of the box, to legally enjoin the opening of the box, was there?

Mr. PAGE. No, sir; but that was a part of Agent Walker's duty. He just simply went at the thing in the wrong way.

The CHAIRMAN. You mean that he himself should have gotten an injunction?

Mr. PAGE. Our instructions were explicit. They state that where an agent summons a person to produce documentary evidence of any property, and that sort of thing, and they fail to do it, they apply to the district court. Walker could summons people. If they disobeyed, however, he could not punish them.

Mr. MANSON. Will you refer to that instruction?

Mr. PAGE. Yes, sir; I will read paragraph 152 of the manual of instructions to field agents:

> The authority to summon a witness for attendance at any particular place apart from his residence or usual place of business for the purpose of giving testimony or producing books or documents for inspection, is an authority which must be exercised only in unusual cases where it is absolutely necessary in the interest of the bureau. Ordinarily, the examining officer should visit in person the residence or place of business, and resort to the use of this authority only after all efforts to obtain information or an interview in the usual manner have failed. When any person is to be summoned, written notification should be given on the form to be provided for that purpose, and a copy retained in the files of the case. This notice may be sent over the signature of the examining officer, but where convenient and practicable it should preferably be sent over the signature of the revenue agent in charge. Whenever convenient, it is also preferable that the office of the revenue agent in charge be specified as the place of attendance. In the event the notification is ignored, the matter should be reported to the bureau by the revenue officer in charge with a request for further instuctions. It should be noted that section 1318 of the act establishes a method to compel compliance.

Now, section 1318:

That is any person is summoned under this act to appear, to testify, or to produce books, papers or other data, the district court of the United States for the district in which such person resides shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, or other data.

Mr. MANSON. You are referring to the instructions that were issued by your office to Mr. Stone?

Mr. PAGE. Yes, sir.

Mr. MANSON. With reference to the opening of this box, are you not?

Mr. PAGE. Yes, sir.

Mr. MANSON. The only written instruction that has been mentioned here was a letter stating that the box was not to be opened unless the interests of the Government were jeopardized; is not that true?

Mr. PAGE. Well, that was in one paragraph of the letter.

Mr. MANSON. Have you that letter?

Mr. PAGE. Yes, sir.

The CHAIRMAN. While he is looking that up, I would like to ask Agent Walker if at any time you appeared before the Federal court and the district attorney to get an order to prevent this box being opened by the estate?

Mr. WALKER. No, sir; I did not, because I think the bureau was still under the impression that the box was in the custody of Mrs. Croker. It was in the custody of the probate court. By order of that court, the judge has absolute custody, and I petitioned the man who had the custody, the judge of the probate court, for permission to go into it.

The CHAIRMAN. As a matter of fact, if that was true, then the Croker estate could not have opened the box and extracted the contents.

Mr. WALKER. They could only have done it surreptitiously.

The CHAIRMAN. How could they have done it surreptitiously if the bank was restrained by the court from letting anybody open the box?

Mr. WALKER. It was; yes, sir. When I was told that Mrs. Croker would give $10,000 to anyone that would permit the contents of that box to be taken out, knowing the character of H. L. Donald, the cashier of that bank, who had first deceived me as to the existence of that box, and who had fought any attempt on the part of the Government to ascertain what was in it, I had no reason to suppose but what Mrs. Croker was already there or some agent of her's and they could go in and take a key, unlock the box and get the contents out.

The CHAIRMAN. Why did you not get a restraining order from the Federal court there to prevent the bank from letting them go in?

Mr. WALKER. Because I would have to restrain the probate court also, and it would have been a conflict of jurisdiction between the State and the Federal courts.

The CHAIRMAN. So you took jurisdiction and went and did it yourself?

Mr. WALKER. No, sir.

The CHAIRMAN. That appears to be the case.

Mr. WALKER. I went into it with the consent of the probate court, who had it in his custody.

The CHAIRMAN. Proceed, Mr. Page.

Mr. PAGE. I will read this letter dated November 9, 1923:

INTERNAL REVENUE AGENT IN CHARGE,
Atlanta, Ga.:

Referring to telegram re Croker estate November 9, there is inclosed a copy of letter from the attorney which is self-explanatory.

It is the position of the bureau that it should not act unnecessarily harsh, but at the same time it will not tolerate dilatory tactics on the part of the representatives of the estate. The bureau is aware of the fact that the agent may be in possession of information which may make it necessary that immediate action be taken in a particular case and in such cases does not desire in any way to interfere with the activities of the agent in connection with investigations where such contingencies arise.

In this case it appears from information in this office that the New York attorney, Edward L. Mooney, has been on the case but one week and on each of the calls of Mr. McLaren, his representative, the office has been assured that a full disclosure of the estate would be made. Based on the belief that these assurances are sincere it is believed that the best interests of the Government will be served by awaiting action in connection with the opening of the safe-deposit box until Mrs. Croker's representatives are present, which will be on or before November 22, as indicated in the letter from the attorney (copy herewith). In view of the further fact that the special delivery forwarded under date of November 8 has not yet been received, this letter is forwarded in explanation of the telegram forwarded this morning, November 9. If on the examination of the report transmitted by you information is disclosed which warrants the opening of the box Saturday, November 10, you will be instructed to proceed. As stated in telegram dated November 8, the bureau is with you in this investigation and it is not desired to take any action which will interfere with you or your efforts.

It may be said that from the information now in hand it would seem that it will be unnecessary to open the safe-deposit box before action is taken in the probate court, especially in view of the fact that no person has access to this box except in the presence of the representatives of the Bureau of Internal Revenue and of the probate court. As stated in letter dated November 5, if dilatory tactics on the part of the representatives of the estate develop, the bureau will, upon receipt of such information, authorize you to proceed as the circumstances may require.

In view of the foregoing it is suggested that the opening of the safe-deposit box be delayed until the arrival of the representatives of the estate, but not later than November 22, unless you have positive evidence on the part of the representatives of the estate which will not admit of delay.

R. M. ESTES,
Deputy Commissioner.

Senator JONES of New Mexico. Did not that leave it up to the discretion of Mr. Stone?

Mr. PAGE. It might be up to that time, Senator, but this letter was followed by a long-distance telephone from Mr. Estes to Mr. Stone, telling him under no circumstances to open that box until he receives specific instructions from the bureau. After this letter was written——

Senator JONES of New Mexico. Why did you so tell Mr. Stone over the telephone? What information did you have which warranted your changing that letter and giving verbal instructions over the telephone?

Mr. PAGE. We had an agreement signed by the attorney for the Croker estate.

Senator JONES of New Mexico. Now, do you think that that agreement would suffice under the circumstances of this case?

Mr. PAGE. Possibly not. Mr. Estes and I took the matter up with Mr. Nash after the sending that letter and we went over the matter thoroughly with Mr. Nash. He said he did not——

Senator JONES of New Mexico. Well, did you recall the letter?

Mr. PAGE. No, sir.

The CHAIRMAN. I would like to ask Agent Walker at this point if he has seen a copy of that letter that Mr. Page has just read?

Mr. WALKER. I got a copy of it after the box was opened, sir.

The CHAIRMAN. Were any of the contents of that letter ever conveyed to you by Mr. Stone?

Mr. WALKER. Yes, sir; a copy of it was sent to me.

The CHAIRMAN. Before you opened the box?

Mr. WALKER. Well, Mr. Pratt had a copy of it. He gave me a copy of it. I saw a copy before, but I did not have one in my file until I requested one.

The CHAIRMAN. From the time you saw that letter until the time you opened the box what happened to justify you in forcibly opening the box?

Mr. WALKER. Well, I saw a copy of that. I had to go before that. Before I saw a copy of this letter Mr. Edmonston made this remark that I just stated about $10,000. I telephoned Atlanta by long distance for heaven's sake to send somebody down there to help me; that I was going to get into trouble. Mr. Stone wired me that he would be there himself when I communicated this over the telephone. Instead of that he sent Mr. Pratt.

Mr. MANSON. Right in that connection I would like to have you read that telegram and give the date of it.

Mr. WALKER. On November 16 he wired Mr. A. G. Pratt——

Mr. MANSON. Who wired Mr. Pratt?

Mr. WALKER. Mr. Thomas E. Stone [reading]:

A. G. PRATT,
Revenue Agent, Palms Hotel, West Palm Beach, Fla.:

Replying to your wire even date, if Government's interest jeopardized proceed as requested.

That is signed "Stone."

Mr. MANSON. What did that have reference to?

Mr. WALKER. That had reference to the information I had as to how they would probably get into that box.

The CHAIRMAN. What was the information that you had that they would probably get into that box?

Mr. WALKER. That if anybody would let them get into it they could have $10,000. You see, we were 300 miles away from any United States court, sir.

The CHAIRMAN. Yes; but you had no information from the time you first took this up until November 17, and yet you would not wait for four or five days more until the representative of the estate came down there.

Mr. WALKER. We had this information that Mrs. Croker was of such a character that no dependence could be placed on her from information that Mr. Pratt secured. He was the man who authorized the opening of the box for that purpose. He gathered information from prominent people with whom he talked that Mrs. Croker would probably tell us that they would be there on a certain

day, and then would probably come down two or three days ahead, and when we got into the box we would find nothing.

Senator ERNST. You did not have any confidence in the fact that the probate court, who had charge of the box, would see that she did not get into it?

Mr. WALKER. Well, it did not make any difference with the judge of the probate court whether she got into it or not. He was not interested in that stage of it. He was interested only in issuing the order of the court, which was a mere routine, holding it until the time that the court should decide who was to take charge of it.

The CHAIRMAN. You now say that the responsibility was on Agent Pratt, and not upon you?

Mr. WALKER. No, sir; I do not say the responsibility was upon him. I assume all the responsibility. I agreed to do it.

The CHAIRMAN. But you just said a while ago that Agent Pratt was the man that ordered the box opened.

Mr. WALKER. He was the man that came down from Atlanta on instructions from Agent Stone to open the box, by reason of which the telephone conversation that we had instead of Mr. Stone himself coming.

The CHAIRMAN. Does Mr. Nash or Mr. Hartson want to introduce anything further?

Mr. HARTSON. I would like to ask Mr. Walker what formal report he made to his superiors about this attempt to bribe him, and whether, if such a report was made, it was in such form that it could be placed in the hands of the United States attorney for prosecution?

Mr. WALKER. Have you read my report of the case?

Mr. HARTSON. Yes; I have read your report, but I have not access to the exact page.

Mr. WALKER. On page 61 of that report—if you want me to read it, I will read it to you.

The CHAIRMAN. What is the date of that report?

Mr. WALKER. December 21. This is the complete report of the bureau on the case.

Senator ERNST. I know; but that was afterwards. He was talking about what information came to you prior to your opening the box as to this attempt to corrupt you.

Mr. WALKER. I communicated that over the long-distance telephone to Mr. Thomas E. Stone, my immediate superior.

Senator ERNST. That was not here?

Mr. HARTSON. No; it was not.

Senator ERNST. It did not reach Washington.

Mr. DAVIS. I show you a wire from Mr. Pratt, chief estate-tax officer, to Mr. Stone, dated November 16, 1923, with reference to this matter, and I will ask you to read that.

Mr. WALKER. This is dated November 16, 1923, and is addressed to Mr. Stone, agent in charge, Atlanta, Ga. [Reading:]

We should inventory contents box before appointment curator by probate court on 22d. Probate court order was in force, only requires holding contents box intact, but recognizes Government officer's right to open any time. Attorney Croker estate not here, as promised. Further delay detrimental to present administration and seriously hamper investigation. We will forcibly enter box Monday, 19th. Ask bureau not to interfere.

That is signed by Pratt, chief estate-tax officer.

Mr. DAVIS. Pratt was the agent in charge and was your senior officer?

Mr. WALKER. He was the chief estate-tax officer, and sent there by the agent in charge to make the investigation and see that the box was open.

The CHAIRMAN. To whom was that telegram addressed?

Mr. DAVIS. That was addressed to Stone, agent in charge, Atlanta, Ga. Is this the reply to that telegram?

Mr. WALKER. Yes, sir.

Mr. DAVIS. Read that.

Mr. WALKER. It is dated Atlanta, Ga., November 16, 1923, and is addressed to A. G. Pratt, revenue agent, Palms Hotel, West Palm Beach, Fla. [Reading:]

Replying to your wire even date, if Government interests jeopardized, you will proceed as requested.

That is signed "Stone."

Mr. DAVIS. Under those instructions and under the circumstances, you feel that you and Pratt acted in good faith and in accordance with the authority you then had?

Mr. WALKER. Yes, sir. That is what we considered our duty to be.

Mr. MANSON. I would like to ask Mr. Page one further question.

Have you the telegram to Mr. Stone which was referred to in the letter of Mr. Estes?

Mr. PAGE. I think so. [After examination of papers.] This is dated November 9, 1923, and it is addressed to the internal-revenue agent in charge, Atlanta, Ga. [Reading:]

Attorneys assure complete disclosure re Croker estate. Believe best interests of Government served by not forcibly opening box to-morrow unless you are in possession of facts bureau does not have. Explanation follows.

Mr. MANSON. The letter you have just read is the letter of explanation referred to in that telegram?

Mr. PAGE. Yes, sir.

Mr. MANSON. Now, is there anywhere in the field any suggestion to Mr. Stone that the proper procedure here is to apply to the Federal court?

Mr. PAGE. No, sir.

The CHAIRMAN. I want to interject at this point the statement that the manual is very specific, in not only stating the procedure but in quoting the law in that connection. It is all in that manual.

Senator JONES of New Mexico. That is your interpretation of the language here. I did not hear anything in the regulations as read that prohibited any direct procedure.

Mr. PAGE. Well, only in connection with compelling——

Senator JONES of New Mexico. Now, as I understood those regulations, they went on to say not to use direct methods unless the situation was unusual.

Mr. PAGE. That is right.

Senator JONES of New Mexico. And as I take it, it was considered by these people that that situation was unusual and demanded prompt action, and there is nothing in the regulations to the contrary.

Mr. DAVIS. And that seems to be borne out by the telegram.

Senator JONES of New Mexico. That telegram there certainly bears out that interpretation, that you did not want them to do this unusual thing unless the situation there was such as, in their opinion, would warrant it and make it necessary. Nowhere have I seen the suggestion from you or any other official that they should not use their judgment about this matter.

Mr. PAGE. Well, this telegram and letter were followed by directions given by Mr. Estes to Mr. Stone over the telephone.

Senator JONES of New Mexico. Why did you assume to give over the telephone a direct order countermanding this letter, and on what evidence did you think it would justify you in taking the matter into your own hands and directing the field agents?

Mr. PAGE. Mr. Estes and I went over to the commissioner's office and took the matter up with Mr. Nash. We put all the evidence before him, and we all agreed there——

Senator JONES of New Mexico. You did not have any evidence, did you, as to what was going on down there in Florida?

Mr. PAGE. Yes; we had a great deal of evidence.

Senator JONES of New Mexico. Where did you get it?

Mr. PAGE. Well, different sources.

Senator JONES of New Mexico. Well, what sources?

Mr. PAGE. From the attorneys, from the agent. We had correspondence. I might say this, Senator, to clear up this one point: The impression that we had was that the probate court had the property sealed up and that the box would be opened on the 22d of November.

Senator JONES of New Mexico. Where did you get that impression?

Mr. PAGE. It was reported by Mr. Stone, the agent in charge.

Senator JONES of New Mexico. Have you got his report?

Mr. PAGE. I think so.

Senator JONES of New Mexico. Let us see it.

The CHAIRMAN. It is 1 o'clock, gentlemen.

Senator ERNST. Do you want to go any further with this matter?

Senator JONES of New Mexico. Yes, sir; I do. I have not got all the information about it that I want as yet.

The CHAIRMAN. We will adjourn now until 11 o'clock to-morrow morning.

(Whereupon, at 1 o'clock p. m., the committee adjourned until to-morrow, Saturday, November 22, 1924, at 11 o'clock a. m.)

INVESTIGATION OF BUREAU OF INTERNAL REVENUE

SATURDAY, NOVEMBER 22, 1924

UNITED STATES SENATE,
SELECT COMMITTEE INVESTIGATING
BUREAU OF INTERNAL REVENUE,
Washington, D. C.

The committee met at 11 o'clock a. m., pursuant to adjournment on yesterday.

Present: Senators Couzens (presiding), Ernst, and Jones of New Mexico.

Present also: Earl J. Davis, Esq., and L. C. Manson, Esq., of counsel for the committee.

Present on behalf of the Bureau of Internal Revenue: Mr. C. R. Nash, assistant to the Commissioner of Internal Revenue; Mr. Nelson T. Hartson, solicitor, Internal Revenue Bureau; Mr. Robert M. Estes, deputy commissioner, Miscellaneous Tax Unit; Mr. Fred Page, assistant deputy commissioner, Miscellaneous Tax Unit; Mr. Charles W. Jones, chief review division, Miscellaneous Tax Unit; Mr. Frank Frayser, Special Intelligence Unit, agent in charge Richmond division.

The CHAIRMAN. I believe Mr. Page was on the stand yesterday when we adjourned. Are you ready to proceed, Mr. Page?

Mr. PAGE. Yes, sir.

Mr. HARTSON. I assured the committee that there would be produced this morning that portion of the file which covered the transmittal of this case to Mr. Frayser, who is the agent in charge of the Special Intelligence Unit for the district where this investigation took place. Those memoranda were in the file at the time Mr. Frayser was on the stand yesterday, and he had them in his possession, but he was unable to find them at that time. We have them here now, as they were here yesterday, and will turn them over to the stenographer, if it is agreeable to the committee, and have them included in the record, or either Mr. Page or Mr. Frayser can read them to the committee.

Senator JONES of New Mexico. I think you might as well read them, because, otherwise, we would not know what is in them.

The CHAIRMAN. Mr. Page, will you read them, please, or Mr. Frayser?

Mr. PAGE. I think Mr. Frayser had better do that.

The CHAIRMAN. Very well.

Mr. FRAYSER. This case was sent to the Richmond office, the headquarters of the Richmond division, which includes Florida. The

case jacket, as we call it, covered the papers. This is the case jacket [pointing to top sheet]. It has at the top—

Case No. SI-3595.
Name: G. B. Walker and A. G. Pratt (revenue agents).
Post office: West Palm Beach, Fla.
Subject: Investigation in connection with opening of safe-deposit box of Mrs. Croker.
Referred by Assistant Deputy Commissioner of Justice. Date (of reference), December 6, 1923.
To: Richmond division. Date, December 11, 1923.
Date returned: April 18, 1924.

There is a notation under the print headings:

Papers and original report of Special Agents Williams and Frayser.
Sent to acting commissioner April 29, 1924, recommending reprimand for Pratt and Agent in Charge Stone and transfer of Walker to some other division.

Then there is a stamped impression here of receipt in the record files.

When the file came down with this cover sheet, it had certain papers inside, before the investigation was started, the top one being dated Washington, December 6, 1923, on the regular letterhead of the Commissioner of Internal Revenue, reading as follows:

Memorandum for Commissioner Blair.
Attached hereto is letter addressed to you by Deputy Commissioner R. M. Estes, under date of December 5, 1923, with reference to the estate of Richard Croker, and also the correspondence referred to therein.
Deputy Commissioner Estes recommends that the Special Intelligence Unit investigate this matter, and the papers are forwarded in accordance with his request.

That is signed by C. M. Justice, assistant deputy commissioner. There is also an inclosure.

This letter was also in the usual file, on the regular letterhead of the Commissioner of Internal Revenue, dated December 5——

Senator JONES of New Mexico. What accompanied that request for the investigation?

Mr. HARTSON. He is just about to read it now, Senator.

Mr. FRAYSER. This letter was dated December 5, 1923, on the letterhead of the office of Commissioner of Internal Revenue, and is stamped as having been received on January 7, 1924, in the Intelligence Unit, special agent in charge.

Senator JONES of New Mexico. Just at that point, I understand that this so-called file cover was received in your office on December 11, 1923, and you say this letter is stamped as received on January 7, 1924. How do you account for that?

Mr. FRAYSER. This one here?

The CHAIRMAN. No; he asked you what papers accompanied your investigation, and you are reading a letter file of January, 1924, and the original file was received in December, 1923.

Mr. FRAYSER. Sometimes it takes a great deal of time to get through.

The CHAIRMAN. I know, but you first got instructions on December 11, 1923, as I recall it. Now, we want to know what accompanied your original instructions. Is not that it, Senator Jones?

Senator JONES of New Mexico. Yes.

The CHAIRMAN. We will deal with those, and then with the other communications afterwards, but what accompanied your original file?

Mr. FRAYSER. This paper here, dated December 6, 1923, memorandum for Commissioner Blair, signed by C. M. Justice, and then this letter dated December 5, 1923. That is not the date of its being sent to me, but the date that it was received in the Richmond office for investigation, which was January 7, 1924.

Senator JONES of New Mexico. Yes; but the original instructions that you got were received in December, 1923. That is what we want to know, and not what came along in January, 1924, but what did you get when you first got the instructions to proceed in December, 1923?

Mr. FRAYSER. I did not get the instructions in December.

Senator JONES of New Mexico. You say the file cover shows that it was received there in December, 1923.

Mr. FRAYSER. That is the date here in Washington, but it may not have been received in my own office for some time thereafter.

Mr. NASH. I think Captain Frayser has read the date when it was received in the office of the special intelligence agent in Washington, in December, 1923, but Mr. Frayser received it in Richmond for investigation in January, 1924.

The CHAIRMAN. That is not my understanding at all. What Senator Jones and I want to know particularly—Senator Ernst was not here—is what accompanied the instructions to investigate these two revenue agents.

Mr. NASH. It is just as he is presenting it. He has just confused the received stamps on top of the slips.

Senator JONES of New Mexico. That speaks of a memorandum for Commissioner Blair. Now, what is that memorandum? Evidently that was the start of the thing.

Mr. FRAYSER. Yes; it went to Commissioner Blair's office under date of December 6, 1923. This memorandum for Commissioner Blair was probably sent from the office of Mr. Justice at that time.

Senator JONES of New Mexico. Yes. Now, what is that memorandum?

Mr. FRAYSER. I have just read that (reading)—

> Attached hereto is letter addressed to you by Deputy Commissioner R. M. Estes under date of December 5, 1923, with reference to the estate of Richard Croker, and also the correspondence referred to therein.
>
> Deputy Commisioner Estes recommends that the Special Intelligence Unit investigate this matter, and the papers are forwarded in accordance with his request.

That is signed by C. M. Justice, assistant deputy commissioner.

Senator JONES of New Mexico. Now, that letter accompanied the one that you have just read, did it?

Mr. FRAYSER. Yes, sir; dated December 5, 1923.

Senator JONES of New Mexico. And the memorandum referred to in that letter which you have just read?

Mr. FRAYSER. Yes, sir.

Senator JONES of New Mexico. All right.

Mr. FRAYSER. This is headed "Memorandum for Hon. D. H. Blair, Commissioner of Internal Revenue, through Mr. C. M. Jus-

tice, assistant deputy commisisoner." The date here referred to, December 11, 1923, is the date which was put on in the office of the Special Intelligence Unit.

The CHAIRMAN. Where?

Mr. FRAYSER. In Washington.

The CHAIRMAN. You do not need to give us all of those dates. Just read the letter.

Mr. FRAYSER. Well, I thought you inquired as to the date. [Reading:]

DECEMBER 5, 1923.

Investigations were directed in this estate in both the New York and Atlanta divisions on September 12, 1923, and supplemental letters were sent to the agents in charge of the respective divisions on September 21, requesting that the investigation receive consideration at the earliest possible moment. It appears that shortly thereafter Revenue Agent G. B. Walker, under the direction of T. E. Stone, the agent in charge at Atlanta, proceeded to make the investigation in Florida.

On November 3, 1923, Mr. Andrew McLaren, an attorney associated with Edmund L. Mooney, the attorney for Mrs. Croker, called at this office and exhibited a telegram received by Mrs. Croker from Agent Walker stating in substance that unless she appeared in West Palm Beach, Fla., on Monday, November 5, she would be "forcibly" brought there. Mr. McLaren stated that Mr. Mooney had only recently been brought into the case and gave assurances that he would cooperate with the bureau in every possible way. He stated that Mrs. Croker was engaged in litigation in New York City and that it would be impossible for her to be in West Palm Beach on Monday, November 5.

He agreed, however, to have her there at some future date and that he would file a return on Form 706 disclosing all of the assets which he was able to discover in the estate of Richard Croker. The result of this interview was communicated to Mr. Stone by letter on November 5, 1923. On November 7 a telegram was sent to Mr. Stone, directing him to continue all phases of the investigation excepting only action on subpœna and referring to bureau letter of November 5.

On November 9, 1923, Mr. McLaren again called at the office and stated that he had been informed that an application had been made by the revenue agent to the county court for an order permitting him to open the safe-deposit box held in the name of Mrs. Croker, at West Palm Beach, Fla. The matter was that day taken up with Mr. C. R. Nash, then acting commissioner, and as a result of that interview a telegram and letter were sent to the agent in charge at Atlanta, suggesting that the opening of the safe-deposit box be delayed until the arrival of the representatives of the estate. About this time the office was in communication with Mr. Stone over long-distance telephone and was assured by him that no further action would be taken in connection with opening the box until instructions were received from the bureau. The box was forcibly entered by Revenue Agents Pratt and Walker on November 17. A representative of the estate had that day left New York for Jacksonville, Fla., with the return which the attorney had agreed to furnish, and was intending to proceed to West Palm Beach and open the box in the presence of the revenue agents. This office has had no reason to question the good faith of Messrs. Mooney and McLaren since they were called into the case.

Inasmuch as the notice of assessment pursuant to section 3186 of the Revised Statutes had been made prior to the forcible entry to the safe deposit box, it does not appear that it was necessary to take drastic action. In any event it appears that the box was opened with utter disregard by the agents of the law and regulations and contrary to instructions given by the bureau.

Correspondence passing between this office and the office of the agent in charge at Atlanta and certain other correspondence in connection with the investigation is attached hereto.

In view of the foregoing, it is the opinion of this office that the officers concerned in this investigation have shown a lamentable lack of sound judgment in pursuing their duties and that they are distressingly ignorant of the law governing the performance of certain of their work. Under the circumstances, it is recommended that appropriate action be taken.

That is signed by R. M. Estes, deputy commissioner.

Senator JONES of New Mexico. Now, have you anything in writing there on which Estes acted? Does he furnish any memorandum or any evidence presented to him?

Mr. FRAYSER. I do not see any here, though there might be.

Mr. HARTSON. There are certain exhibits attached to that letter, are there not, Captain Frayser?

Mr. FRAYSER. Most of this file seems to contain the exhibits and correspondence which Special Agent Lewis Williams conducted.

Mr. HARTSON. Well, in the letter that you have just read, signed by Deputy Commissioner Estes, in which a recommendation is made that the matter be investigated, there are references to certain copies of correspondence which accompany Mr. Estes's memorandum.

Mr. FRAYSER. Yes, sir.

Mr. HARTSON. Now, do not those appear here?

Mr. FRAYSER. Yes, sir; I have just run across some here.

Here is a letter dated November 5, 1923, or at least a copy of a letter, from Mr. R. M. Estes, addressed to the internal revenue agent in charge, care of collector of internal revenue, Jacksonville, Fla.

Senator JONES of New Mexico. Yes; but as to that memorandum which Mr. Estes had already sent to the commissioner, requesting that this matter be turned over to the intelligence unit, what accompanied that?

Mr. FRAYSER. I think that this copy of the letter which I started to read very likely accompanied that.

Senator JONES of New Mexico. Well, I do not know anything about it. Is there not anything there to indicate what did accompany that memorandum?

Mr. FRAYSER. I will see what is here [reading from Mr. Estes's letter of December 5, 1923]:

> Correspondence passing between this office and the office of the agent in charge at Atlanta, and certain other correspondence in connection with the investigation in question, is attached hereto.

That is the description given in the letter of Mr. Estes, and very likely, but I am not sure, that refers to this copy here of the letter from Mr. Estes to the agent in charge temporarily at Jacksonville.

Senator JONES of New Mexico. What I want to get at is what evidence was before Mr. Estes which caused him to recommend that the matter be referred to the Intelligence Unit.

Mr. FRAYSER. Mr. Estes could testify better to that than I could.

Senator JONES of New Mexico. Well, I think we had better get this thing in chronological order. If Mr. Estes is here, I would like to have him, or anybody who knows about it, tell us about it.

The CHAIRMAN. Can you tell us about that, Mr. Estes?

Mr. ESTES. We had in the file all of the correspondence from the internal revenue agent in charge, Mr. Stone, Atlanta, Ga., in connection with the case. We had copies of all of the telegrams that the office had received from the internal revenue agent in charge relative to the opening of the box and prior to the opening of the box. That is all in the files. That is all arranged here in this file. That was all in my office at the time this memorandum was sent to the commissioner.

The CHAIRMAN. And were all of those memoranda sent to the commissioner with this letter that Mr. Frayser has just read?

Mr. ESTES. We did not send the entire file to the commissioner with that memorandum. Of course, in that memorandum I only asked that the case be investigated and the blame placed on whomever was responsible for acting contrary to orders of the bureau, and this memorandum that went to the commissioner did not contain the entire file that was in my office. That file is here now, arranged chronologically.

Senator JONES of New Mexico. Well, did anything go to the commissioner? Did the commissioner himself take it up on its merits, or was that just a formal matter referred to the commissioner and asking the commissioner to refer this to the Intelligence Unit?

Mr. NASH. Senator Jones, I might answer that by saying that cases being referred to the Special Intelligence Unit are routed through the office of the commissioner. The Special Intelligence Unit operates directly under the commissioner. That is the regular routine.

Senator JONES of New Mexico. I rather assumed that that was the case and that the commissioner himself did not go into the merits of it.

Mr. NASH. The commissioner himself personally probably did not see it.

Senator JONES of New Mexico. Yes; all that probably did go into the commissioner's office was that memorandum, and all the rest of it remained in the files.

Mr. NASH. There would be the accompanying papers that would assist in the investigation; that is, the correspondence between Mr. Estes's office and the agent in charge, copies of telegrams, and all that sort of thing. There would not be the original papers, but copies. I think that what brought about the investigation was the serious criticism by bankers and by newspapers of the procedure that was followed in investigating this case by the investigating officer. Several complaints, I believe, were made to the Secretary.

Senator ERNST. That is, Mr. Mellon?

Mr. NASH. Yes, sir; Mr. Mellon. There was such a storm of protest that the investigation was started to determine who was responsible for it.

Mr. DAVIS. Were those written protests, Mr. Nash?

Mr. NASH. There were some written protests and there were some protests in newspapers.

Mr. DAVIS. And the attorneys for the Croker estate made some protests?

Mr. NASH. The attorneys for the Croker estate, as far as I know, did not register any protest.

Senator JONES of New Mexico. That is just what I want to get at. I want to know what was in the files on which Mr. Estes acted.

The CHAIRMAN. That is all there.

Mr. NASH. The whole procedure was wrong, Senator Jones. The case was badly handled all the way through, and we wanted to determine who was responsible. I think the special agent's report is very fair. It places the responsibility on the agent in charge at Atlanta, the chief estate-tax officer, and on Mr. Walker.

Senator JONES of New Mexico. I am not ready to reach the conclusion that you have expressed with a good deal of confidence, that the case was handled all wrong. I have not seen anything here yet that indicates that.

The CHAIRMAN. They have in chronological order there all the information that was in Mr. Estes's hands when he referred it to the commissioner, and I would like to ask the Senator if he will be satisfied to have that put into the record?

Senator JONES of New Mexico. Well, I would like to know in a general way what it is, to see how this thing came up, whether it was on mere rumor or protests on the part of the attorneys for Mrs. Croker, or what it was.

Mr. ESTES. It was not. I take it that you recall what happened yesterday and what was read into the record. Practically all of that transpired before this box was opened. The telegram from Mr. Walker that I read, to Mrs. Croker in New York, stating that unless she presented herself within 36 hours, she would be brought forcibly, is there, and we all understand that that would be an impossibility. An agent has no right to send a telegram of that character to a taxpayer, and if he does send it, the regulations provide that he must send it through his superior officer, the internal-revenue agent in charge. He did not do that. That was all ready into the record on yesterday, I think. All of those papers that were referred to yesterday were in my office at the time I sent my memorandum to the commissioner.

Mr. DAVIS. Mr. Estes's memorandum as read here states that these agents opened this box contrary to the instructions of the bureau. Is there anything anywhere to show that Walker or Pratt had any instructions from anybody not to proceed with the opening of the box?

Mr. ESTES. Yes, sir.

Mr. DAVIS. From whom?

Mr. ESTES. We have the internal-revenue manual, which contains full directions to every agent in the field. Each agent has access to that, and he states, when he takes the oath of office, that he will comply with the regulations set forth in the internal-revenue manual. He had one of those manuals, which pointed out to him the path that he should follow.

Mr DAVIS. He had this matter up with Mr. Stone, the agent in charge at Atlanta, had he not?

Mr. ESTES. The telegram and correspondence show that.

Mr. DAVIS. The agent in charge at Atlanta would have supervision and control over the agents acting under him, would he not?

Mr. ESTES. Yes, sir.

Mr. DAVIS. Then, if Mr. Walker told Mr. Stone the conditions, and Mr. Stone then sent Mr. Pratt, the chief estate tax officer for that division, down there to supervise this affair, and then if Mr. Pratt was fully advised as to the status of things there and wired Mr. Stone the conditions, and Stone wired Pratt to proceed if the occasion demanded it, is there any criticism on Mr. Walker or on Mr. Pratt?

Mr. ESTES. Yes, sir.

Mr. DAVIS. If so, what is the criticism?

Mr. ESTES. I do not know, as far as I have been able to ascertain anywhere in these proceedings, that the office had had anything particularly against Walker. It was not a matter of investigating Walker. It was a matter of finding out who did not follow the instructions from the bureau and placing the blame. Somebody erred very gravely and whether it was Mr. Walker or whether it was Mr. Pratt or whether it was Mr. Stone, I asked for that blame to be placed.

The CHAIRMAN. And where was it placed?

Mr. ESTES. How is that?

The CHAIRMAN. And where was the blame placed, in the minds of the bureau?

Mr. NASH. On all three of them.

Mr. ESTES. On the three of them.

The CHAIRMAN. They were equally guilty?

Mr. NASH. Yes, sir.

Mr. ESTES. You see, that side of it, Mr. Chairman, is not under my supervision. That investigation is wholly carried on under another office, and, of course, I had nothing to do with that side of it. Our office is simply an administrative office, and the investigation of Mr. Pratt, Mr. Stone, and Mr. Walker was carried on by another branch of the service.

The CHAIRMAN. I think Mr. Nash answered that by saying that equal responsibility was placed on the three officers.

Mr. NASH. Yes, sir.

Mr. ESTES. The report so shows it.

The CHAIRMAN. Just a minute. Is that correct?

Mr. NASH. That is correct; yes, sir.

The CHAIRMAN. How can you place equal responsibility upon three, when Agents Walker and Pratt were both under a superior officer named Stone?

Mr. NASH. I will correct that to this extent, Senator, that Internal Revenue Agent Stone was more responsible than the other two officers, because he was in charge and was responsible for directing and forwarding the instructions from the bureau to the agents that were down on the job. There is no discounting the fact that Agent Stone fell down miserably on his job.

The CHAIRMAN. Well, what would you have done had you been placed in the situation of Agents Walker and Pratt if you were under Mr. Stone?

Mr. NASH. Had I been on that investigation, I would have been in touch with the United States attorney's office from the start.

Mr. DAVIS. And would you have disregarded instructions from Mr. Stone?

Mr. NASH. I would have disregarded the instructions from Mr. Stone if it occurred to me that those instructions were involving me in something criminal—and it did get close to criminal action, to forcibly open that vault. The United States attorney——

Mr. DAVIS. Pardon me right there. Mr. Walker, it appears by the record, was very careful in taking this up with both Mr. Stone and with Mr. Pratt, was he not?

Mr. NASH. I am not charging the responsibility for what happened in Florida to Mr. Walker alone.

Mr. DAVIS. What I am trying to get at is, if he did follow instructions, communicating with his superior officers, and then acted accordingly, whether or not there is any criticism of Mr. Walker in this matter.

Mr. NASH. The only criticism that I place on Mr. Walker is that he showed his incompetency. He showed that he was not an efficient employee, and that is true of Mr. Pratt, and it is more true of Mr. Stone.

Mr. DAVIS. If the superior officer were present when this thing occurred, and he having communicated with Mr. Stone before that, and then, if this thing was carried out, what could Mr. Walker have done that he did not do?

Mr. NASH. Well, I think Mr. Walker, according to the records of this case, was the party that was apparently urging the opening of the box, and Mr. Pratt, who was his superior, acquiesced in that. Now, Mr. Pratt was equally responsible with Mr. Walker right there on the ground.

Mr. DAVIS. I would say, if he was in charge, he was responsible.

Mr. NASH. Yes, sir.

Mr. DAVIS. He was the captain of the ship, was he not?

Mr. NASH. He should have been. He was not.

Mr. MANSON. Let me ask you this, Mr. Nash: Can you explain why the bureau's letter to Mr. Stone suggests indirectly that if an emergency arises which is such that the Government's interests demand the opening of the box, it should be done?

Mr. NASH. The bureau letter probably might have been more explicit. I think the man that dictated the letter had in mind that, if it was necessary to open that box, it should be done through the United States court. He might have been more explicit in his letter and suggested it.

Senator ERNST. But did not a telephone message follow that, telling him expressly not to open it?

Mr. NASH. I understand it did, Senator.

Senator ERNST. That is what I want clear information about. I have heard that said twice, and no matter what was in that letter, if he was subsequently told not to do it, and then if he did it, he was just as much to blame as if the letter was not written.

Mr. ESTES. I can clear that up, if you want me to.

Senator ERNST. I would like to hear about that.

Mr. ESTES. The matter was going along for some time; it was rather complicated, and on November 9, I think, I came to the conclusion that it would be a rather serious thing for the office to go on record as going into a private box of a taxpayer and blowing it open, unless we did it according to due process of law. I took the papers in the matter and went over and had a conference with the assistant commissioner, and took my assistant along with me. I told the assistant commissioner that I had written Mr. Stone a letter that morning, and had sent it out already. The letter was read into the record on yesterday. He said, "You go back to your office and get in touch with Mr. Stone and tell him, under no consideration must he allow that box to be opened."

I went right back to my office, and Mr. Jones was sitting in my office, as was Mr. Veley, who was the man who handled the detail

of these various cases; and called Mr. Stone on the long-distance telephone and told him that I had already written him, and that the letter had been placed in the mail, but that I had had a conference, and asked him to see that the box was not opened under any consideration, without explicit permission from the bureau. He promised me over the phone that he would see that it was not done.

The CHAIRMAN. Did you confirm that in writing?

Mr. ESTES. I do not think any letter ever went out in writing confirming that telephone message.

The CHAIRMAN. Does not that put the officers at the other end of the line in a rather embarrassing position to have written instructions in one instance, and then along come oral instructions, whereby the agents at Washington may vacillate between one instruction and another?

Mr. ESTES. He came into my office a few days later, Senator, and acknowledged the receipt of that message over the telephone, in the presence of some other people, and he was asked the direct question, if he had been present would he have allowed the box to be opened, and Mr. Stone stated that if he had been on the ground the box would not have been opened, that he had been in the service too long to have done an act of that kind.

Mr. DAVIS. Mr. Estes, what was the date of that telephone conversation?

Mr. ESTES. November 9, as I remember. I am not sure of that.

Mr. DAVIS. Well, it was before the 16th?

Mr. ESTES. Yes, sir.

Mr. DAVIS. The box was opened on the 17th?

Mr. ESTES. Yes.

Mr. DAVIS. On the 16th, Mr. Stone, who is supposed to have gotten this telephone message, wired to Mr. Pratt, as follows:

Revenue Agent, A. G. PRATT, *Palms Hotel, West Palm Beach, Fla.:*

Replying to your wire of even date if Government's interest jeopardized proceed as requested.

That is signed "Stone." That would indicate, then, that even after that telephone message, your man Stone proceeded with instructions to open the box, and that he deemed that the Government interests were jeopardized?

Mr. ESTES. That is admitted. I think Mr. Stone erred gravely in the handling of the case.

Mr. DAVIS. I am trying to arrive at this conclusion, in my own mind, to see whether Mr. Walker has had blame placed on him, when instructions that went out from Washington never reached him.

Mr. MANSON. And directly contrary instructions were given to him by his superior.

The CHAIRMAN. I think we are getting off the track here. I do not know what the other Senators think, but I do not think that this committee is here to dtermine the responsibility of Mr. Walker or Mr. Stone or Mr. Pratt. We are here to look into the system, and I do not think Mr. Walker is on trial, or Mr. Pratt, or Mr. Stone. What we started this hearing for, as I understand it, was to determine the system followed by the Internal Revenue Bureau

in the collection of these estate taxes and what was back of what appeared to be a determined effort to prevent a proper disclosure of the Croker estate matters.

Senator JONES of New Mexico. Now, Mr. Estes, your letter nowhere indicated, and as I judge your conversation, that these people did not have a legal right to open that box if they thought that the interests of the Government required it?

Mr. ESTES. It did not.

Senator JONES of New Mexico. And you did not make an investigation of the circumstances surrounding the secrecy of this box, so as to determine for yourself whether or not the interests of the Government were in jeopardy, did you?

Mr. ESTES. It would be impossible for me to do that, Senator.

Mr. NASH. Just a moment.

Mr. ESTES. Personally, I mean.

Senator JONES of New Mexico. Yes.

Mr. NASH. Senator, letters and reports from Agent Walker and Agent Stone on the developments of this case were constantly coming in, and up to the date that this happened the bureau was being advised as to what was going on down there.

Senator ERNST. One other question, if you please: I understood from a statement just made by you a moment ago that you had that entire file before you before you gave your final instructions.

Mr. ESTES. Yes, sir.

Senator ERNST. And that you went over that fully? Now, by "an investigation," did you think that Senator Jones meant a personal investigation on the ground?

Mr. ESTES. That is what I thought the Senator meant when he asked me had I personally been on the ground.

Senator ERNST. Well, I do not think he meant that. I think he meant, did you seek to advise yourself as to the conditions before giving instructions?

Mr. ESTES. Absolutely.

Senator ERNST. And, as I understand it from you, you had that entire file before you?

Mr. ESTES. I so stated awhile ago.

Senator ERNST. I just wanted to make that matter clear.

Senator JONES of New Mexico. What was there in those files that led you to the conclusion that the interests of the Government were not in jeopardy? What was there in the files that warranted such a conclusion as that?

Mr. ESTES. We had a statement from the internal-revenue agent in charge stating that the lock box was in the hands of the probate court down there. That letter is in the files. We had these reputable attorneys from New York, who came to the office and said that some other attorneys had been connected with the case and had bungled it up, and that they would disclose every asset and would assist the office in every way they could, insisting that Mrs. Croker was in a suit in New York at that time, I think, with her step-son, Richard Croker, jr., that it would be settled in a few days, and it would be impossible for her to get down to Florida at that time, but in the course of a few days he would personally see that she got down there and opened the box.

Senator JONES of New Mexico. Now, you got that information about the 5th of November from these New York attorneys?

Mr. ESTES. Yes, sir; I think that was the date.

Senator JONES of New Mexico. You choose to act on that information from those attorneys?

Mr. ESTES. Not alone.

Senator JONES of New Mexico. On what else?

Mr. ESTES. On the files, the telegrams, and the latters from the internal-revenue agent in charge at Atlanta, Ga.

Senator ERNST. Can you not introduce that entire file, so that we may know what you had before you?

Mr. ESTES. It is arranged here in order, I think. We can file that entire record.

Senator JONES of New Mexico. I think we had better have that file.

Mr. DAVIS. Would this have cured the whole thing——

Senator JONES of New Mexico. Just a minute. I would like to follow this out a little further.

Mr. DAVIS. All right, Senator.

Senator JONES of New Mexico. You are familiar with those files, are you not?

Mr. ESTES. In a measure.

Senator JONES of New Mexico. Yes.

Mr. ESTES. Of course, I could not go into all of the cases.

Senator JONES of New Mexico. Well, you must have had something before you on which to act.

Mr. ESTES. Yes.

Senator JONES of New Mexico. What was there in the file which caused you to reach the conclusion that the interests of the Government would not be jeopardized if the box was not opened?

Mr. ESTES. I might read this paragraph from the letter of Agent Walker, under date of November 3, which will probably set the matter straight.

Senator ERNST. And let me add that there is no objection to your selecting any part of those files and explaining them.

Senator JONES of New Mexico. On the contrary, I would like to have him do so.

Senator ERNST. Yes.

Mr. ESTES. This letter was sent to the revenue agent in charge, Stone. You will understand, of course, that my dealings were with the agent in charge, Mr. Stone, in the matter.

Senator JONES of New Mexico. Yes.

Mr. ESTES. He had charge of that division:

I am attaching hereto for your information a few clippings from the Miami, Palm Beach, and New York papers regarding the above estate.

Mr. HARTSON. Let me interrupt. For the purpose of identification just read the date of the letter, to whom it is addressed, and whom the letter is from, so that the record will show just what you are reading.

Mr. ESTES. It is dated Atlanta, Ga., West Palm Beach, Fla., November 3, 1923. The subject is estate tax, estate of Richard Croker, nonresident, and it is addressed to Hon. Thomas E. Stone, internal-revenue agent in charge, Atlanta, Ga.

Senator JONES of New Mexico. That is a letter to Mr. Stone?

Mr. ESTES. Yes; from Mr. Walker.

Senator JONES of New Mexico. When did you get it?

Mr. ESTES. The letter of transmittal is here, and it was dated in Atlanta, Ga., and sent to the office on November 5, 1923. Probably you would rather have that read first.

Senator JONES of New Mexico. Yes.

Mr. ESTES. This is addressed to Hon. R. M. Estes, deputy commissioner, estate-tax division, Washington, D. C., and reads:

DEAR MR. ESTES: I have the honor to inclose herewith a copy of a letter from Internal Revenue Agent George B. Walker, dated November 3, 1923, a telegram, together with clippings from the West Palm Beach papers for your information and to give you some idea as to the difficulties under which the investigation of this estate is being made.

That is signed by Thomas E. Stone, revenue agent in charge.

Senator JONES of New Mexico. What telegram did that refer to?

Mr. ESTES. Here is the telegram:

WEST PALM BEACH, FLA., *November 4, 1923.*

STONE,

Revenue Agent in Charge, Atlanta, Ga.:

Telegram received. Instructions of commissioner will be complied with. I, however, think it detrimental to Government interests to suspend any part of investigaiton at this stage.

That is signed by "Walker, revenue agent."

Senator JONES of New Mexico. All right.

Mr. ESTES. That is the letter that accompanied that letter?

Senator JONES of New Mexico. Yes.

Mr. ESTES. Now, this is Revenue Agent Walker's letter to Revenue Agent in Charge Stone at Atlanta:

I am attaching hereto for your information a few clippings from the Miami, Palm Beach, and New York papers regarding the above estate.

You will note by one clipping that the lock box which I tied up at the First National Bank contained, according to Mrs. Croker, over $110,000 in municipal bonds. I have also discovered another item of realty, valued at $25,000, and a mortgage, the unpaid balance on which I have as yet been unable to ascertain. The lock box I have as yet been unable to get into. The local probate courts have it tied up also, and by an agreement with the probate judge we will open the box on the 8th, in the presence of the sheriff and the curator, who the court will appoint on that date to take charge of the assets pending the final disposal of the litigation between the various parties claiming the estate. I thought that in view of the splendid cooperation received by me from all sources here, and especially the probate court, that to agree to wait until they could be represented at the opening and in addition have the box opened by order of that court was preferable and gave us the same opportunity of checking the assets without our having to force the lock. Mrs. Croker has refused to open the box or permit her representative to open it.

I understand that Mrs. Croker started to Palm Beach last Sunday and upon the advice of her counsel in New York discontinued her journey, she having been advised to compel the Government to use force to bring her here or to make any return whatever for estate or any other tax. I understand that the United States court will be in session in Key West next week and that the district attorney will be there and I will go to Key West Tuesday for a conference with him as to how I may subpœna Mrs. Croker, unless I receive instructions to the contrary from you. Mr. Smith, the attorney for the Croker children, who has been in Ireland for a year fighting the will, is in West Palm Beach and has cabled for a copy of the inventory of the personal property filed in the Irish courts, which will give us a line on the property situated outside of the United States.

You will note from a reading of the clipping from the New York Times that there is considerable property in the city of New York and that possibly

Richard Croker, jr., can give us valuable information. There is nothing here that will aid us in reporting to the bureau for a collateral there. I, however, in the 706 which I prepared for Deputy Collector Owen, stated that such property located in New York could be pointed out by Richard Croker, jr.

This estate is in a mess and it will possibly take a couple of weeks more hard work before I can render a report as I am still locating property hidden out to defeat the tax. Mr. J. B. McDonald will give an affidavit that the Crokers, in the transfer of the property from him to his wife, made the transfers not only in contemplation of death but to defeat the Federal estate tax which will be in addition to the sworn testimony of Lewlyn Moses to this effect in the case of Croker *v.* Croker, Mrs. Moses being the one who drew the transfers.

Until further notice send all mail and telegrams to me care of Palms Hotel, West Palm Beach, Fla.

Respectfully,

GEO. B. WALKER,
Internal Revenue Agent.

That letter was in our hands before——

Senator JONES of New Mexico. What was there in that letter that caused you to feel that they were going beyond what should be done?

Mr. ESTES. Well, in the first place, the box was tied up by the probate court.

Senator JONES of New Mexico. Well, "tied up," but from that expression you were not acquainted with just the exact legal status of that procedure down there, were you?

Mr. ESTES. You mean the proceedings that he should have put in force to open the box?

Senator JONES of New Mexico. Yes.

Mr. ESTES. Yes; we were acquainted with them.

Senator JONES of New Mexico. From that letter?

Mr. ESTES. Not from this letter; no.

Senator JONES of New Mexico. Well, from what?

Mr. ESTES. From the regulations and from the law.

Senator JONES of New Mexico. Well, but you had previously trusted this matter to these people, had you not?

Mr. ESTES. It was assigned to Agent Walker by the internal revenue agent in charge at Atlanta.

Senator JONES of New Mexico. Yes.

Mr. ESTES. Yes, sir.

Senator JONES of New Mexico. And he was on the ground. Why did you not get into communication with him or somebody there before you undertook to decide the thing?

Mr. ESTES. Of course, as I said yesterday, it is the office procedure to always communicate with the internal revenue agent in charge, who, in turn, gives instructions to these men. You see, in our field force, Senator, we have 275 men, and it would be a physical impossibility——

Senator JONES of New Mexico. I am trying to get at the real moving cause of your telephone conversation with Stone, in which you specifically directed Stone not to open that box.

Mr. ESTES. One of the main reasons, Senator, was because I thought Agent Walker had bungled up the case.

Senator JONES of New Mexico. Where did you get that thought from? What was the basis of the thought?

Mr. ESTES. Well, to go back to his telegram of November 1 to Mrs. Croker in New York City, stating that unless she reported within

36 hours, she would be brought there forcibly, that of itself was enough to satisfy my mind that Agent Walker did not know how to conduct the proceedings.

Senator JONES of New Mexico. But what was there in connection with that telegram which indicated that precaution should not be taken regarding that safe deposit box? The question of his method of getting the witness present is one thing, and the question about this safe deposit box, it seems to me, is quite another. I would like to get at the thing that moved you to telephone down there to Mr. Stone that they should not open that box?

Mr. NASH. Senator Jones, I instructed Mr. Estes to get in touch with Mr. Stone, and I gave that instruction after information came to me that they were going to forcibly open that box, or had contemplated forcibly opening the box, which was a procedure which had never been undertaken in the entire history of the service. I have been in the service for 15 or 16 years, and never heard of an officer forcibly opening a safe deposit box in a national bank under the supervision of the United States Government. We can trust the national banks, and when those bank officials acknowldge that the box was sealed and in their custody, they would be responsible for it. That was sufficient.

Senator JONES of New Mexico. Now, what bank official did that?

Mr. NASH. As I understand the case, the bank officials guaranteed to Mr. Walker that the box would be held intact.

Senator JONES of New Mexico. I have not so understood. Where did you get your understanding about that?

Mr. NASH. I think I understood that from some of Mr. Walker's testimony the other day.

The CHAIRMAN. Mr. Walker stated in his testimony that he had an understanding with the cashier, as I understand it, and that he did not trust the cashier.

Senator ERNST. That is his statement?

The CHAIRMAN. Yes.

Mr. MANSON. He said that the cashier had lied to him about the existence of the box.

Senator JONES of New Mexico. You did not have that understanding from Mr. Walker, did you?

Mr. NASH. No, sir; I did not have that understanding from Mr. Walker.

Senator JONES of New Mexico. Where did you get that information?

Mr. NASH. I got that information over my desk from Mr. Estes and Mr. Page on the status of the case. Here was a safe deposit box in a first national bank, the box apparently being in the custody of or under the supervision of a probate court, and a man was on the way to Florida with the key with which to open that box, and there was nothing to be gained by forcibly opening the box.

Senator JONES of New Mexico. Where did you get the information that a man was on his way to open that box?

Mr. NASH. The attorneys for Mrs. Croker were in Washington that day, and had started a man.

Senator JONES of New Mexico. That was on the 5th of November?

Mr. NASH. No; that was not on the 5th of November. This was when Mr. Estes telephoned Mr. Stone, just a day or so before the box was opened. It was along about the 15th of November. Now, all of the circumstances surrounding it indicated that it was not necessary to force the opening of that box, and I instructed Mr. Estes to get in touch with Mr. Stone and instruct him not to forcibly open the box.

Senator JONES of New Mexico. We have not gotten back to something else. You were moved. Now, what moved you?

Mr. NASH. All of the circumstances.

Senator JONES of New Mexico. What circumstances were before you?

Mr. NASH. The circumstances before me were that we had men in Florida who were threatening to open a safe deposit box in a national bank, and it was a procedure that did seem unnecessary for us to follow. We had never followed such a procedure, and there was not anything in the case that indicated to me that we should forcibly open that box on that date. We had not only Mr. Walker there, but there was a representative of the collector of the internal revenue who was in Palm Beach on that date, and the collector of the internal revenue for the State of Florida was advising against this procedure.

Senator JONES of New Mexico. Now, that is something new. Where is that advice?

Mr. NASH. Mr. Walker testified as to that. He said that this collector had indicated that he did not think it should be opened.

Senator JONES of New Mexico. Mr. Walker testified to that?

Mr. NASH. It is right in the case.

Senator JONES of New Mexico. But Mr. Walker had not testified when you acted?

Mr. NASH. No, sir.

Senator JONES of New Mexico. I am trying to get at the thing that was before you, which moved you.

Mr. NASH. Well, I had a summary of the case as it was presented to me by the deputy commissioner who was handling it.

Senator JONES of New Mexico. Where is that summary?

Mr. NASH. It is this entire file.

Senator JONES of New Mexico. Did you go over it?

Mr. NASH. No, sir; I did not. I listened to what Mr. Estes and Mr. Page told me verbally, and then gave them instructions as to how I thought they should act.

Senator JONES of New Mexico. You simply acted, then, on general appearances, that they were threatening to open the box, I take it?

Mr. NASH. Yes, sir.

Senator JONES of New Mexico. And you thought that, without any conference or communication with the people in the field?

Mr. NASH. My contact with them was through the men who were handling the case in the bureau, and I had to rely on those men for facts in any case. Were that case to come before me again in the same manner, I would take the same action.

Senator JONES of New Mexico. Then, it seems to me that we have got near about all we want, and under no circumstances, in your opinion, should the safe-deposit have been opened?

Mr. NASH. With the surrounding circumstances, as they were in Florida on this date; no, sir.

Senator JONES of New Mexico. Well, but you did not know what the circumstances were.

Mr. NASH. I did know that the safe-deposit box was in a national bank.

Senator JONES of New Mexico. Yes.

Mr. NASH. I did know that the box was either in the custody of the probate court, or that they were exercising some supervision over it. I did know that there was an attorney on his way to Florida with the key to open that box. I did know——

Senator JONES of New Mexico. Now, as to the attorney being on his way to open the box, where did you get that?

Mr. NASH. He was in Jacksonville on his way to Palm Beach on the day it was forced.

Senator JONES of New Mexico. How do you know that?

Mr. NASH. That was the report. I knew he was on the way.

Senator JONES of New Mexico. What I am trying to get at is what you had before you when you gave your instructions?

Mr. NASH. I had before me the advice from the attorneys for Mrs. Croker that they had a man on the way to Florida.

Senator JONES of New Mexico. Yes.

Mr. NASH. And they were reputable attorneys, and I think I had a perfect right to accept their word.

Senator JONES of New Mexico. That, I am satisfied, is the whole thing here. What I have been trying to get at is that, as it seems to me, you simply accepted the statements of the attorneys for Mrs. Croker, rather than to rely upon your own agents in the field?

Mr. NASH. Oh, no; that is not correct.

Senator ERNST. Well, Senator, is that a fair statement? He has told you that he had a full statement of the case made to him verbally by Mr. Estes, and that he had the entire file before him and every fact in connection with it; that Mr. Estes had stated to him all he knew about it up to that time, and he stated it to him orally with the files there before him. Why do you say, therefore, that he did not have full information before him?

Senator JONES of New Mexico. Because, so far as the files thus far have disclosed, there is nothing there.

Senator ERNST. That is you judgment about it.

Senator JONES of New Mexico. I will ask you to state what there is in the files.

Senator ERNST. I am just saying that that is your judgment. This file that he has here, he had before him, with whatever is in it, before he acted.

Senator JONES of New Mexico. Well, I will ask you to state what is there?

Senator ERNST. No; I am not on the witness stand. I am giving my judgment, and you are giving yours, but I am not on the witness stand.

Senator JONES of New Mexico. I would like to ask now what is in the files which indicated that there was not danger of the Government being defrauded through the withholding of the securities in that box?

The CHAIRMAN. I would like to answer that, Senator, because I have been listening to the testimony.

Senator JONES of New Mexico. Yes.

The CHAIRMAN. The letter that Revenue Agent Walker himself wrote was reassuring in itself, that the Government was protected, because he said that he was receiving cooperation from the probate court and from everybody connected with the estate down there. This was on November 5th that he was receiving this cooperation, as stated in a letter which he himself signed. In spite of all this cooperation and assistance that he was getting from the probate court, he still insisted that he should open the box.

Mr. DAVIS. It does appear, Senator, that there was another little angle to that, though. That is the question of meeting Mrs. Croker's father and his offering him $10,000.

The CHAIRMAN. But that was before this.

Mr. MANSON. That was the date before he opened the box.

The CHAIRMAN. I beg your pardon.

Mr. MANSON. Two days before he opened the box.

The CHAIRMAN. Let us not all talk at once. I would like to know the date that this happened, when the father of Mrs. Croker did that.

Mr. DAVIS. What was that date, Mr. Walker?

Mr. WALKER. It was either the 12th or the 13th of November. I think I wired Mr. Stone on the 12th. I telephoned Mr. Stone immediately, and this letter referred to it.

The CHAIRMAN. I cannot comprehend how a mere oral statement made by the father of Mrs. Croker, that it was worth $10,000 to the estate, a man who had no interest in this case, to have that box opened before the revenue officers got there, would be justification for a revenue agent to forcibly open the lock box. I do not see anything in that. I do not find any fault with Mr. Walker in this matter, because I myself would be extremely exercised if somebody offered me $10,000, or even intimated that I might take $10,000 to defraud the Government. That is the reason why it goes back to the revenue agent in charge, and from there to the home office, to help relieve Agent Walker from the distress that he was in. Because an agent is personally offended or is exercised is no reason why the Government should allow him to either violate the law or to use bad judgment.

I have listened attentively to all the testimony, and I indorse the action of the acting commissioner, and yet I am in full sympathy with the attitude of Mr. Walker. But when Senator Jones raised the question as to what the officers had before them, I think the testimony shows that they had considerable before them, sufficient for them to take the action which they did take. I do not say that Senator Jones has to concur in that, but that is my view of it.

Senator JONES of New Mexico. I have nothing further to ask.

Mr. HARTSON. Would the Senator like to know about the result in taxes, because of the discoveries in the box?

The CHAIRMAN. I think that was testified to. Senator Jones did refer to it, or at least somebody spoke to me, and I think the Committee would like to know the status of the matter now as to what, if any, taxes had been assessed, what, if, any, had been collected,

and what kind of a lien you would have in Florida if, as testified, this property had already been transferred to one McDonald.

Mr. HARTSON. I would like to have Mr. Page give you very briefly, but in much detail as the committee wants, of course, the status of the tax case.

Mr. PAGE. Here is the summary which I have prepared leading up to all of the activities of Agent Walker.

The decedent died on April 29,1922, the cause of death being valvular heart trouble.

The CHAIRMAN. I do not think we are interested in having the whole history of that. What is the status of it now?

Mr. DAVIS. Has any tax been collected?

Mr. PAGE. No, sir. I can state that briefly.

As a result of Agent Walker's report he found a tax of $200,300.26 due. Upon the same day that we received that information we made an assessment in that amount. We have since discovered assets in the New York division. We had that matter investigated. We have a report from the New York office showing assets of more than $400,000.

Mr. MANSON. Assets or taxes?

Mr. PAGE. Taxes, I meant to say. That report was submitted under date of April 11, 1924, and received in the bureau on April 17, 1924.

The CHAIRMAN. I do not want my mind to confuse on this, and I would like to get it straight, so at this point I will ask you what is the total amount of tax assessed against the estate now?

Mr. PAGE. $200,300.26.

The CHAIRMAN. What about this other tax that you found in New York? Has that been assessed?

Mr. PAGE. We have not audited that report yet, as the case is still under investigation.

The CHAIRMAN. Let me ask you, then, what collateral have you gotten in Palm Beach to secure the Government as to what property is there?

Mr. PAGE. The collector, by agreement with Mrs. Croker, took over, I think it was, $110,000 in bonds that were in that safe-deposit box. We have a lien on all of the real property.

The CHAIRMAN. Well, is there any real property? I understood from the testimony that it had been transferred.

Mr. PAGE. The title, of course, is questionable; but in case it is shown that the deceased did have title to that real property, we would have a valid lien on it.

The CHAIRMAN. As a matter of fact, have you not overstated it when you stated the Government is secured, and you say that the title is in question?

Mr. PAGE. The lien is on all of the assets.

The CHAIRMAN. Then, have you not overstated the case when you say that the Government is secured?

Mr. PAGE. If the property is not proven to have been a part of the decedent's gross estate, then we would not have any tax on it.

The CHAIRMAN. Why did you make the assessment then—as a matter of protection?

Mr. PAGE. That matter is under consideration as a matter of protection solely.

Mr. DAVIS. That tax is due within a year, is it not?

Mr. PAGE. One year after death.

Mr. DAVIS. And they can extend the time for cause shown?

Mr. PAGE. For three years further.

Mr. DAVIS. For three years further?

Mr. PAGE. Yes.

Mr. DAVIS. Have there been any steps taken in court to collect the taxes that you have mentioned?

Mr. PAGE. No, sir.

Mr. DAVIS. That was assessed at what date?

Mr. PAGE. That was assessed upon receipt of telegram. I will get the date right here. [After examination of papers.] On October 26, 1923.

Mr. DAVIS. And has there been an extension?

Mr. PAGE. No, sir; it is not necessary. To clear this matter up, I might say that the bureau has four years from the due date in which to make an assessment. We have five years in which to begin suit for the enofrcement of collection.

The CHAIRMAN. Will you tell us why the bureau has not audited and cleared up this case?

Mr. PAGE. It is such a complicated case, Senator, I do not believe we ever had such a one in the office. The heirs are in litigation with Mrs. Croker, and we thought it would be helpful to await the outcome of this litigation to determine where the ownership fell.

Mr. DAVIS. What is that property, Mr. Page—real estate or bonds, or what is it?

Mr. PAGE. Real estate principally. There is some trust property.

Mr. MANSON. Did you find any evidence of property having been taken out of the country?

Mr. PAGE. We have not any evidence; no, sir.

The CHAIRMAN. So far as I am concerned, I think we have heard enough on this matter, and I will ask the other Senators if they are through with it?

Senator JONES of New Mexico. Yes, sir; I am.

Senator ERNST. I am.

The CHAIRMAN. We will close the case, unless the bureau wants to say something more on it.

Mr. HARTSON. I just want to ask the Senator if he wishes any further enlightenment on what was done by way of reprimand or penalty against Mr. Walker, Mr. Stone, and those others who were concerned in it. Do you care to hear about that?

The CHAIRMAN. I think we have heard about that. You did tell us about that yesterday. I understand that Stone was transferred. Pratt was transferred, and Walker was dismissed. Is that right?

Mr. NASH. That is incorrect, Senator. Mr. Pratt and Mr. Stone were reprimanded. Mr. Walker was ordered to be transferred to the New Jersey district. Mr. Walker advised the bureau that it would be a severe hardship for him to be transferred to New Jersey, that his home and interests were in Florida, and asked for some additional time to consider the transfer. When our appropriation allotments were made for this fiscal year, it was necessary to drop several estate tax agents shortly after the 1st of July, and Mr. Walker was on that list as one of the agents whose services could be spared. I think there were three dropped from the Atlanta

division, and Mr. Walker was one of the three. His place in Atlanta has not been filled, and will not be filled. In fact, our estate tax work is approaching currency, and we are now working on a program to drop 15 more agents.

Mr. Walker, a few days after he received the order notifying him that he would be dropped on July 15, sent in his resignation to be effective on August 30, but inasmuch as the Secretary had already approved the order dropping him on July 15, that order was permitted to stand. Subsequent to that, Mr. Walker has made one or two attempts to be reinstated, but, as I have said, we are not making any additions to the force; in fact, we are decreasing it, and we have not been able to give his application any consideration.

Agent Stone did show incompetence, and when we were reorganizing our field forces in September, we put a supervising agent in Atlanta. Mr. Stone did not have the qualifications necessary for a supervising agent, and was to be transferred to Texas. I think Agent Walker testified the other day that it was at a reduction in salary, but there was not any reduction of salary involved in that transfer. Agent Stone indicated that he could not go to Texas, for personal reasons, that he had to stay in the East, and then he was transferred to the prohibition forces, and that did involve a slight reduction in salary. He is an old officer in the service, having been in the service 25 years or more, and was given a little extra consideration for that reason.

The CHAIRMAN. What political backing did he have, or did he have any?

Mr. NASH. If he had any, I do not know what it was, Senator.

Agent Pratt was severely reprimanded, and has acknowledged the reprimand, and is still on duty in Atlanta.

The CHAIRMAN. I think that is all. As far as the committee is concerned, we are through with the case.

Mr. NASH. You asked us to bring Mr. Jones up here. I have brought him for three days now. I do not know what you have in mind.

Mr. DAVIS. It was in connection with some estate tax matters. We will go into some of these other estate matters with you.

The CHAIRMAN. Are you ready to do that now?

Mr. NASH. If you will indicate what you want us to take up, we will bring our files, and we can proceed more rapidly in that way.

The CHAIRMAN. Have you anything to take up with Mr. Jones to-day?

Mr. DAVIS. If they are ready to take those matters up, I have; yes.

The CHAIRMAN. Is it in connection with specific cases or on questions of general practice?

Mr. DAVIS. They are specific cases, involving the practice.

The CHAIRMAN. Had you not better submit the cases to them?

Mr. DAVIS. I have a list of them which I can submit.

The CHAIRMAN. Then, you had better put that list in the record now.

Mr. MANSON. Before we go into that, I think there is a matter on the general system that ought to be brought out, if I can ask Mr. Estes a question about it.

Mr. Estes, do you have immediate jurisdiction over your field agents investigating estate taxes?

Mr. ESTES. What do you mean by "immediate jurisdiction"?

Mr. MANSON. Well, do you assign the field agent to investigate the estate tax in a particular case, and control their action? Are they under your orders?

Mr. ESTES. If we have a particularly good man and that we think should be put on an important case, we suggest to the internal revenue agent in charge that he assign that particular man to the case.

Mr. MANSON. Is the internal revenue agent in charge under the orders of the Estate Tax Division?

Mr. ESTES. No, sir.

Mr. MANSON. He is one of your subordinates, is he?

Mr. ESTES. No, sir.

Mr. MANSON. And the estate tax agents in the field are the subordinates of the revenue agent in charge, are they not?

Mr. ESTES. Yes. Well, if you mean that I have the entire jurisdiction over the general revenue agent in charge, I would say no, but he follows our instructions, so far as they relate to estate tax matters.

Mr. MANSON. But he is not a subordinate of yours?

Mr. ESTES. In so far as it relates to an estate tax, I would say he was.

Mr. MANSON. Well, can you shift an internal revenue agent in charge from one jurisdiction to another.

Mr. ESTES. No, sir.

Mr. MANSON. Have you anything to do with the naming of them?

Mr. ESTES. No, sir.

Mr. MANSON. Or the fixing of their salaries?

Mr. ESTES. No, sir.

Mr. MANSON. Or the promotion or reduction of them?

Mr. ESTES. No, sir.

Mr. NASH. That is all the function of the commissioner, Mr. Manson.

Mr. MANSON. Can you order a revenue agent in charge to sign a particular agent to the investigation of any particular case?

Mr. ESTES. I do not know that we have ever ordered him to do it. We have told him to do it, and he has done it. So far as the estate matters are concerned, we have jurisdiction over estate tax matters, and our estate tax field officers report directly to the general revenue agent in charge, who is, of course, controlled by the commissioner. They are controlled by the commissioner's office.

Mr. MANSON. You have in each district an internal revenue agent in charge?

Mr. ESTES. Yes, sir.

Mr. MANSON. And a chief estate tax officer.

Mr. ESTES. Yes, sir; in a district where we have a number of men whose work requires a chief.

Mr. MANSON. Yes.

Mr. ESTES. The bureau's decision is that we must have two men in a district to have a chief estate tax officer.

Mr. MANSON. Does he report directly to you?

Mr. ESTES. He reports to me through the internal revenue agent in charge.

Mr. MANSON. And, any orders that you give to the man in charge of the estate tax matters in a district must go through the internal revenue agent in charge; is not that true?

Mr. ESTES. Yes, sir.

Mr. MANSON. But he is not a direct subordinate of yours?

Mr. ESTES. Well, in so far as estate tax matters are concerned, I had better explain that the internal revenue agent in charge has charge of income tax matters, estate tax matters, and miscellaneous tax matters. He is the key man. There are quite a number of them, and they are stationed all over the country. They handle all classes of tax matters. The men are paid through the internal revenue agent or disbursing clerk. Our men could not be paid unless they were paid through some disbursing clerk in the field.

Mr. MANSON. Now, the point I wish to establish is this, without discussing the merits of it, or whether it is a good thing or a bad thing: In order to control the men engaged in the estate tax work in the field, it is necessary for you to operate through a link which is not under your control; is not that true?

Mr. ESTES. We have never had any trouble in the past. He has followed out our instructions, in so far as he was able to do so.

Mr. MANSON. In this instant case, the Croker case—I do not want to reopen that.

Mr. ESTES. No.

Mr. MANSON. But in that particular case, Walker and Pratt were estate tax agents?

Mr. ESTES. Yes, sir.

Mr. MANSON. Your instructions to them had to go through Mr. Stone?

Mr. ESTES. Yes, sir?

Mr. MANSON. Who was not your subordinate?

The CHAIRMAN. I think we understand that he was not his subordinate. Of course not. I think we have sense enough to understand that this man has not charge of all of the department, but he is just in charge of one unit of the bureau. I understand that sufficiently well, we do not need to spend any time developing that.

Mr. MANSON. Well, the only point was that Mr. Estes just said that they have always carried out his orders, and I wanted to call his attention to the fact that in one instance there, the one we have just been investigating, he did not carry out his orders.

The CHAIRMAN. We understand that, of course. The testimony developed that, and that is the reason the commissioner took action. They got into trouble because he did not do it.

Mr. MANSON. Yes.

The CHAIRMAN. I think you had better read that list into the record now, Mr. Davis.

Mr. DAVIS. All right. The first will be Sigmund Schwabacker; the second will be William H. Parlin; the third, Francis M. Smithers's estate; the fourth, Josephine Brooks's estate; the fifth, George F. Rand estate; and the sixth, the Sarah Vesta Hermine Berwind estate.

As we review some of those, I will give the rest of the list. That will be enough in advance, so that we can get to work on them.

Mr. NASH. Do you want all of the details in those cases?

Mr. DAVIS. I am going over particularly the question of transfer made in contemplation of death.

Mr. JONES. Do you want the files?

Mr. DAVIS. I would like to have a memorandum of your opinions on those, Mr. Jones, and I believe the opinions of the solicitor on those.

Mr. JONES. Do you want the files themselves, the entire record?

Mr. DAVIS. Whatever you think is necessary to bring along. I will leave that to you.

Mr. JONES. Well, you may ask some questions to substantiate our opinions, and that is all in those files.

Mr. DAVIS. Yes.

Mr. JONES. Some of them are very voluminous.

The CHAIRMAN. We will start on Monday with these particular cases, then?

Mr. DAVIS. Yes. Mr. Jones and Mr. Hartson, I presume, will be here.

Mr. HARTSON. Yes; I will be here.

Mr. DAVIS. And Mr. Nash.

Mr. NASH. We will probably have one of our estate attorneys here.

Mr. DAVIS. I might say that we have not indulged in any muck-raking or slanders. We have not paid attention to disgruntled employees generally, but this one particular matter came to our attention, and we took it up.

The CHAIRMAN. Which one matter?

Mr. DAVIS. The one that we have just finished on.

The CHAIRMAN. Oh, yes.

Mr. DAVIS. These things that we are going to take up, now, involve matters of system in the bureau, as to how the matters were handled, and we are going down the line on those things. That will be followed later by tax matters. We will give you a general idea of what our procedure will be as we go along, so as to keep you advised.

Mr. NASH. If you will let us know a day or so in advance, we can have the material ready for you.

Mr. DAVIS. Yes; I will have it ready so as to give it to you in advance.

The CHAIRMAN. Before we adjourn, I would like to place in the record this letter from Secretary Mellon:

TREASURY DEPARTMENT,
Washington, November 20, 1924.

Hon. JAMES COUZENS,
Chairman Senate Committee Investigating the Bureau of Internal Revenue, United States Senate.

MY DEAR SENATOR: I note from the press that your committee has resumed the inquiry into the affairs of the Bureau of Internal Revenue, and that investigation will be made of the Prohibition Unit and its enforcement of the prohibition law.

I should like to suggest that Mr. James J. Britt and Mr. Vincent Simonton, of the Prohibition Unit, be allowed to be present at the hearings to represent the Prohibition Unit, and that they be given the privilege of calling such witnesses as are necessary for the full presentation of the facts involved in

the inquiry, and that they be accorded the privilege of cross-examining witnesses and otherwise assisting in arriving at the full truth as to the conditions of prohibition enforcement. These gentlemen will produce any records or files and will cause to be present any officials or employees of the Prohibition Unit whom your committee may require, and will render all possible assistance to aid the committee's undertaking.

Sincerely yours,

A. W. MELLON,
Secretary of the Treasury.

The CHAIRMAN. After a conference of the members of the committee present it was agreed that the request of the Secretary be complied with. If there is nothing further for to-day, we will now adjourn until Monday morning at 11 o'clock.

(Whereupon, at 12.30 o'clock p. m., the committee adjourned until Monday, November 24, 1924, at 11 o'clock a. m.)

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INVESTIGATION OF THE BUREAU OF INTERNAL REVENUE

MONDAY, NOVEMBER 24, 1924

UNITED STATES SENATE,
SELECT COMMITTEE INVESTIGATING
INTERNAL REVENUE BUREAU,
Washington, D. C.

The committee met at 11 o'clock a. m., pursuant to adjournment on Saturday last.

Present: Senators Couzens (presiding), Ernst, and Jones of New Mexico.

Present also: Earl J. Davis, Esq., and L. C. Manson, Esq., of counsel for the committee.

Present on behalf of the Bureau of Internal Revenue: Mr. C. R. Nash, assistant to the Commissioner of Internal Revenue; Mr. Nelson T. Hartson, solicitor, Internal Revenue Bureau; Mr. Fred Page, assistant deputy commissioner, Miscellaneous Tax Unit; Mr. Charles W. Jones, chief review division, Miscellaneous Tax Unit.

The CHAIRMAN. You may proceed now, Mr. Davis.

Mr. DAVIS. I will call Mr. Jones as a witness now in relation to the Schwabacker case.

The CHAIRMAN. Then I will ask you to be sworn, Mr. Jones.

TESTIMONY OF MR. CHARLES W. JONES, HEAD OF REVIEW DIVISION, MISCELLANEOUS TAX UNIT, BUREAU OF INTERNAL REVENUE

(The witness was duly sworn by the chairman.)

Mr. DAVIS. I might add here that I do not believe it will be necessary for me to restate what this case is about, because it happens to be one of the cases that I referred to in my statement the other day, a case where the decedent formed a corporation and distributed the stock to the members of his family.

The CHAIRMAN. Was that put into the record?

Mr. DAVIS. I do not believe it was.

Senator ERNST. Just give the title of the case.

Mr. DAVIS. The case I refer to is that of Sigmund Schwebacker. The case comes from the California district, and it is one in which the decedent formed a corporation and later assigned the shares of stock in that corporation to members of his family, and the members of his family immediately retransferred the stock back to the decedent, who held the stock in question up until the time of his death. He received a salary of $2,000 a month, which took up

practically all of the earnings of the corporation, and he controlled the management of the corporation. It was recommended by the estate tax agent in the field that this stock be included in his gross estate as it was not a gift before death. That, I believe, was concurred in by the committee on review, and later, on reaching the solicitor's office it was excluded from the gross estate as not being taxable.

Senator ERNST. What do you want to bring out about that now? If that is a fact, and it is conceded, what evidence do you want to have about that?

Mr. DAVIS. All I want to do, Senator Ernst, is to have Mr. Jones, of the review committee, introduce their opinion on the statement of facts, also showing what the review committee found and how it got to the solicitor.

Now, Mr. Jones, I will ask you a few preliminary questions.

Mr. Jones, you are employed in the estate tax unit of the Bureau of Internal Revenue?

Mr. JONES. The estate tax division.

Mr. DAVIS. Yes. What position do you occupy there?

Mr. JONES. The position now is designated as head of the review section, formerly known as the chairman of the committe on review and appeals.

Mr. DAVIS. How long have you been a member of that committee?

Mr. JONES. About three years.

Senator ERNST. What is your full name?

Mr. JONES. Charles W. Jones.

Mr. DAVIS. How many members are there on that committee?

Mr. JONES. Five.

Mr. DAVIS. All lawyers?

Mr. JONES. Yes, sir.

Mr. DAVIS. What matters come before that committee, and how do they come before that committee?

Mr. JONES. All matters where oral conferences are requested on appeal from the audit section of the estate tax division. We handle only oral protests originating from the representatives of the taxpayers.

The CHAIRMAN. You mean protests from the taxpayer?

Mr. JONES. Yes, sir.

Senator ERNST. Why do you say "oral"?

Mr. JONES. Because certain claims come before what is known as the claims section, and are decided by the claims section on affidavits submitted, and not by argument.

Senator ERNST. When it comes before you orally, do you not have the arguments and the papers submitted?

Mr. JONES. We do always have oral conferences, and they are the only conferences that we take jurisdiction of.

Mr. DAVIS. You also have before you——

Mr. JONES. I might explain at this point that there are two methods of protesting the findings of the audit section.

Where small amounts are involved, and especially where the attorneys live at a distance and desire to avoid the necessity of incurring the expense of coming to Washington, they merely make written protests to the audit section, and do not ask for an oral con-

ference; in which case the claims section of the audit division decides the merits of this particular claim upon the written record, without any attorney appearing.

Senator ERNST. That is one.

Mr. JONES. Yes.

Senator ERNST. Now, the other case.

Mr. JONES. The other is where the claims section has acted adversely to the interests of the taxpayer, and they desire to submit oral argument to the bureau. The committee sits as a representative of the deputy commissioner and is under the direct jurisdiction of the deputy commissioner. When oral conferences are requested we write to the attorneys and tell them to submit their evidence in affidavit form and a brief on the law involved, or the facts involved, five days before the time for this oral conference. They come down, and one of the members of the committee presents the Government's side, and then we give an opportunity to the attorney to present his side of the controversy. They are the sort of cases that the committee takes jurisdiction of.

Mr. DAVIS. And you have before you on all such occasions the field agent's full report, have you not?

Mr. JONES. Yes, sir; and we read the gist of the field agent's report, showing the side of the Government, to the attorneys when they come down, or the taxpayers themselves, if they appear in person; that is, the representatives of the taxpayer.

Mr. DAVIS. You pass up on both questions of fact and law?

Mr. JONES. Yes, sir.

Mr. DAVIS. And you render an opinion accordingly, do you not?

Mr. JONES. We render written opinions in all cases.

I might say at this point that copies of our opinions in every case are rendered in quadruplicate. If you still permit me to, I will state here where these four copies go. The original opinion stays in the file after it is submitted to the claims section for action. The second copy goes to the head of the estate-tax division for transmittal to the auditor who handled the case originally, and the third copy is sent to the agent in charge, who has charge of the field men, so that he can have our opinion and then transmit it to the field men who worked on the case originally.

Mr. DAVIS. Getting down to the present case, then, Mr. Jones, I have here a memorandum submitted by Mr. Nash, assistant to the commissioner, in which he says as follows, under date of October 17, 1924:

DEAR MR. DAVIS: I am transmitting herewith the copies of committee memoranda and solicitor's opinion after reconsideration of the Sigmund Schwabacker case, which Mr. Manson requested by telephone on October 15. Mr. Manson also requested to be advised whether Frank Schwabacker resided with his father and mother. The record shows that in 1911 both Frank Schwabacker and Mina Schwabacker, his sister, resided with the decedent.

Yours very truly,

C. R. NASH.

That, I take it, is the opinion of the committee of which you are chairman?

Mr. JONES. Yes, sir.

Mr. DAVIS. Will you read that, please?

Mr. JONES. This is a formal opinion of the committee on review and appeals of the estate tax division, dated November 29, 1922.

The symbols are ET-237-RRR, district of first California. Estate of Sigmund Schwabacher. March 20, 1917:

Memorandum for Deputy Commissioner Moss; attention, head of estate tax division, claims section.

Mr. Cram, former Deputy Commissioner of Internal Revenue, and attorney for this estate, appeared in conference to-day. The bureau was represented by Messrs. Jones, Ramsell, and Johnston. The subject of the conference was the action to be taken——

Senator ERNST. That is, three of you?

Mr. JONES. Yes, sir.

Senator ERNST. How many do you have—five sometimes?

Mr. JONES. We have five, and on an important case we sometimes have the whole membership, if they are not engaged somewhere else.

Senator ERNST. That is all right. I just wanted to get that in my mind.

Mr. JONES (reading):

The subject of the conference was the action to be taken with reference to the taxability of the 1,000 shares of stock in the Sigmund Schwabacher Co., returned at $42,500 and determined at $1,110,609.28, in office letter of October 12, 1922.

It appears that this decedent died on March 20, 1917. In 1910, when the decedent was about 68 years of age, with and by the advice of his attorney, he, in order to avoid the expense of administering his estate under the California laws, incorporated all his holdings, or real and personal property, under the name of the Sigmund Schwabacher Co. The corporation was duly organized under the laws of California. The company was incorporated on August 13, 1910, and on December 3, 1910, the stock was issued. The company was capitalized for $100,000, represented by 1,000 shares of the par value of $100 each, all of which were issued. On December 3, 1910, certificates 1 to 5, inclusive, for 1 share each were issued to the decedent's wife, Rose, and to his children, Frank, Mina, and Max, for the purpose of qualifying directors. On the same date, to wit, December 3, 1910, the decedent issued by certificate No. 6, 995 shares of stock to himself. Thus the 1,000 shares authorized were all issued and outstanding. On December 6, 1910, three days later, the decedent transferred to his wife and children shares of stock of the corporation as follows:

Rose Schwabacher, his wife, 399 shares; Leo Schwabacher, his son, 75 shares; Frank Schwabacher, his son, 100 shares; Mina Schwabacher, daughter, 100 shares; Helen Haber, daughter, 100 shares; Stella Bornstein, daughter, 75 shares; Max Schwabacher son, 99 shares.

In this way, 948 shares were transferred to decedent's wife and six children. On December 6, 1910, certificate No. 14 for 47 shares was canceled by the reissue of certificate No. 15 on January 16, 1911, for 50 shares to Sigmund Schwabacher, this decedent. This last issue was made up of the 47 shares represented by certificate No. 14 and 3 shares from the shares originally issued in qualifying the directors. This certificate No. 15 for 50 shares was canceled by issue on January 28, 1911, of certificates 16 to 25, inclusive, for 5 shares each, or a total of 50 shares, to the decedent, and this number of shares of stock only were reported on Form 706. On March 20, 1917, the date of death, the wife and children held shares of stock in this corporation as follows:

	Shares
Rose Schwabacher, wife, as director, 1 share; Rose Schwabacher wife, certificate No. 7, 399 shares	400
Leo S. Schwabacher, adult son, certificate No. 8	75
Frank Schwabacher, adult son, certificate No. 9	100
Mina S. Schwabacher, adult daughter, certificate No. 10	100
Helen R. Haber, adult daughter, certificate No. 11	100
Stella R. S. Bornstein, adult daughter, certificate No. 12	75
Max Schwabacher, adult son, as director, 1 share; Max Schwabacher, certificate No. 13, 99 shares	100
Total	950

The estate contends that the decedent in causing these stock certificates to be issued to his wife and children vested them with the immediate legal and equitable title to the assets of the corporation represented by the stock certificates and that he, having completely divested himself of the legal and beneficial ownership of all stock in the company, except the 50 shares returned on Form 706, the remaining 950 shares of stock in this corporation should not be taxed as an asset of this estate.

The record shows that the State of California taxed all the stock certificates as having been transferred by the decedent in contemplation of death, and to take effect at or after death, and that the estate paid the California inheritance tax without protest. The investigation made by the Federal agents in the field was, of course, made before the decision in the case of Schwab *v.* Doyle. The chief question in this case is whether or not the doctrine of Schwab *v.* Doyle as interpreted by the solicitor in his memorandum addressed to Deputy Commissioner Moss, dated May 23, 1922, at paragraph 2 thereof, applies to this transfer. The question before this committee is whether or not the decedent in incorporating this property in 1910 and in giving the stock certificates to his children completely divested himself of legal or beneficial title or interest in the property such as would warrant us in exempting the property from taxation under the doctrine of Schwab *v.* Doyle, or whether he having, in effect, retained the income from the property, we should hold that there was not a complete passing of title to his wife and children, and that we should tax the transferred property.

It appears that while the decedent held but 50 shares of stock, he was able to compel the rest of the stockholders to elect him president of the company and make him general manager of it. He had the directors and stockholders vote him a salary of $2,000 a month, or $24,000 a year. Apparently this was a reservation of the income to himself from the assets of the corporation, since the record shows that from 1910 until the date of death, the company declared no other dividends. No dividends on the stock were distributed to the wife or children from 1910 until 1917, and during this period they paid no Federal income tax on said income.

The agent shows, however, that two or three years after the date of death dividends as high as 30 per cent per annum were paid by the company and that on these dividends the children paid Federal income taxes. In other words, all of the income from the property accruing from 1910 to 1917 was enjoyed by the decedent in the form of a salary paid to him in the amount of $24,000 a year. If the company earned any amount above this $24,000 per year, it accumulated as undistributed surplus of the corporation and was reflected in the earnings or dividends paid during two or three years after the date of death.

In making a gift of this kind it is important to notice and learn the motive in the mind of the decedent and his reasons for making the gift at the time and under the circumstances. The facts would seem to indicate that this decedent intended to pass title to the assets of the corporation to his children at his death that he intended to enjoy the income from said assets during his lifetime; and that he intended to avoid the expenses, confusion, and possible litigation which might grow out of an administration of his estate under the laws of California. This conclusion is warranted not only by the entire evidence in the record but by the important fact that these results are actually what occurred as the result of this apparent intention.

This committee is of the opinion that there was not such a disposition of the decedent's property which passed the equitable, beneficial interest or title in said property to his wife and children in 1910. This conclusion seems to be warranted by the facts just recited and by this further fact, to wit: If it be contended by the estate that the decedent vested or passed title to his wife and children in having stock certificates issued in their names, then the Government can answer this by saying that the children immediately revested title back in their father by indorsing the stock certificates in blank and handing them back to their father. For instance, would a court of equity say to a judgment creditor holding a judgment against this decedent in 1910 that this decedent could avoid the obligations to his creditors by making this sort of transfer to his children and then be able to say to the judgment creditor, "I have no property which is subject to execution"?

Mr. JONES of Mexico. Mr. Jones, right there, please, do I understand correctly that after issuing those shares of stock to his wife and children they indorsed them and handed them back?

Mr. JONES. As I recall it, that is the fact; that there was an indorsement in blank, and that it was put back in the safe-deposit box of this decedent. That is my recollection, however, and it may not be accurate.

Senator JONES of New Mexico. I thought something of that kind was stated in that opinion.

Mr. JONES. Apparently it must be, or that statement would not have been interjected into this opinion.

Mr. MANSON. Well, that was one of the findings of fact of the committee, was it not?

Mr. JONES. Yes, sir. [Reading:]

It seems to this committee that this so-called attempt to transfer this property is a plain legal fiction. The decedent by the terms of the articles of incorporation, the by-laws of the company, and his oral understanding with his wife and children retained such control over the corporation that while the majority of the stock stood in their names, the decedent actually enjoyed the same rights, privileges, and income from the property as if it had all stood in his name by warranty deed. It seems to this committee that if the bureau should say that legal fictions of this kind may be used to avoid the provisions of the revenue act, we will have set a dangerous precedent whereby Federal transfer tax may be avoided with ease and impunity. The committee, therefore, is of the opinion, and has frankly advised Mr. Cram, representing the estate, that we would have to include the value of these stocks on the date of death in the decedent's gross estate. Mr. Cram, however, was advised that nothing in this connection should be construed to prevent him from exercising his right to appeal from this office and to ask the solicitor of internal revenue to rule upon the transfer question involved.

Accordingly, when the abatement claim has been filed by the estate it should be passed upon in the light of these conclusions and Mr. Cram should be immediately notified so that he may appeal to the solicitor if he then desires to exercise that right.

R. R. RAMSELL,
Member Review Committee.

Approved:

CHARLES W. JONES,
Chairman of Committee.

Approved:

MCKENZIE MOSS,
Deputy Commissioner.

Then, there is a subnote under date of January 30, 1923, attached to the committee's memorandum.

The CHAIRMAN. Right at that point, will you state for the record the date of the opinion?

Mr. JONES. November 29, 1922.

Mr. DAVIS. And what is the date of this attached note that you are reading now?

Mr. JONES. January 30, 1923.

Additional evidence retransfers filed by estate 1/30/23 as well as law brief filed by estate has been carefully considered and committee is still of opinion that the transfers in question should be taxed.

R. R. RAMSELL,
CHARLES W. JONES, *Chairman.*

Mr. MANSON. Mr. Jones, as I recall the reading of that record, it appears somewhere that after the corporation was formed, the stock transferred to the children, and indorsed and redelivered by them to the decedent, the son Frank, who lived under the parental roof, had married, and that upon his marriage the decedent took a certificate which had been issued to Frank out of the safe-deposit box and reindorsed and redelivered it to Frank.

Mr. DAVIS. I will answer that by saying that that question is covered in the opinion of the solicitor, which we will submit.

The CHAIRMAN. I think the attorneys ought to get together and agree on the questions to the witness, so that we will not get our wires crossed.

Mr. DAVIS. Following that, Mr. Jones, I show you this document, which appears to be an opinion by the solicitor with reference to this same case. What is the date of that document?

Mr. JONES. July 17, 1923.

Mr. DAVIS. Will you read that, please?

Mr. JONES. This is the opinion of the solicitor dated July 17, 1923, signed by Nelson T. Hartson, Solicitor of Internal Revenue, transmitted to Deputy Commissioner Estes:

Reference is made to your memorandum of March 9, 1923 (ET-237-RRR), transmitting the file in the claim for abatement of estate tax filed on behalf of the estate of Sigmund Schwabacher, district of first California, for a hearing before this office on appeal from the action of your office in treating as a part of the assets of the estate certain shares of stock in the Sigmund Schwabacher Co. alleged to have been transferred by the decedent as a gift inter vivos.

The hearing was held May 23, 1923. The decedent died a resident of San Francisco, Calif., March 20, 1917, leaving surviving him a wife and six children. About 1910 he conceived the idea of distributing the bulk of his property among the members of his family, and after consulting with his attorney, Joseph Haber, it was thought this could best be accomplished through the formation of a corporation to which he would transfer the property in exchange for its capital stock and then effect a transfer of the stock to the intended beneficiaries. In pursuance of this plan a corporation known as the Sigmund Schwabacher Co. was duly organized under the laws of California. The articles of incorporation were filed August 13, 1910, signed by the decedent, his wife, and three of the children. The incorporators subscribed for one share each of the stock of the corporation, and they were named in the articles of incorporation as directors. The amount of the capital stock was fixed at $100,000, represented by 1,000 shares of the par value of $100 each. Officers were elected at a meeting of the directors December 3, 1910, the decedent being named as president. On the same date the stockholders accepted an offer of the decedent to transfer to the corporation property of the approximate value of $1,000,000 in exchange for the remaining 995 shares. The stock was thereupon issued, 1 share to each of the original subscribers and 995 shares to the decedent. On December 6, 1910, 948 of the decedent's shares in various amounts were transferred on the books of the company in the names of the different members of his family. This left 48 shares standing in the name of the decedent, and on January 16, 1911, 1 share each in the names of two of the children were transferred to him, thus increasing his holdings to 50 shares, which remained in his name to the time of his death and which it is claimed represented the extent of his interest in the company at that time.

It appears from the evidence that about the time these transfers were made the decedent called the members of his family together and presented each with a certificate representing the shares of stock so transferred. These certificates, apparently at the request of the decedent, were thereupon indorsed by the various transferees and handed back to the decedent. They were subsequently inclosed in separate envelopes which were appropriately marked to identify the contents as the property of the person named in the certificate and placed by the decedent in the safety deposit box of the company, where, with the exception of the certificate representing the shares in the name of the son Frank, they remained until removed after the decedent's death. The certificate representing the shares in Frank's name appears to have been returned to him by the decedent shortly after the son's marriage in 1915 and thereafter to have remained in his exclusive possession and control.

It is shown by the minute book of the company that from the time of its organization to the time of the decedent's death the various members of the family, at stockholders' meetings and otherwise, exercised all the rights of stockholders to the extent of the number of shares standing in their respective

names. The decedent, however, appears to have assumed the practical management and control of the company. Although holding only 50 of the 1,000 shares he was reelected president from year to year and, as such, received a salary of $2,000 a month while the others received nothing. No dividends were declared until after his death, and the earnings in excess of the salary he received were allowed to accumulate as surplus.

It further appears that in pursuance of the desire of the decedent to keep his property in the family an agreement was entered into April 20, 1911, by and between the stock holders of record, whereby any stockholder desiring to dispose of his stock should first offer the same to the others at the book value thereof, as annually fixed and determined by the directors under the by-laws, and since the book value was regularly fixed at a figure reflecting a value far below the actual value of the company's assets the practical effect of the agreement was to preclude transfers even as between the stockholders themselves. This instrument, which is signed by all of the stockholders of record, contains the acknowledgment that "each of the parties hereto is the owner of shares of the capital stock of Sigmund Schwabacher Co."

The sole question for determination is whether the transfers of the stock of the company by the decedent to the various members of his family in 1910 constituted completed gifts. If gifts, as the estate contends, then the property transferred forms no part of the decedent's estate and is, of course, not subject to tax on the transfer thereof; but if not gifts, as your office has held, then the opposite conclusion must obtain. The essential elements of a gift inter vivos, so far as the issue here involved is concerned, are (1) an intention on the part of the donor to make a present transfer of title to the property given and (2) a delivery of the property to the donee (sec. 3, Thornton on Gifts and Advancements). There must be a complete release by the donor of all dominion and control over the property the subject of the gift. A gift inter vivos to be valid must take effect at the time it is made and may not take effect at or after the death of the donor or at any other time in the future. And it must be irrevocable. It is the contention of the estate that all of these essential elements are present in the instant case. According to the testimony of the decedent's attorney, Mr. Haber, the decedent stated unequivocally in all of the discussions which resulted in the formation of the company that his purpose was to make an absolute gift of his property to his wife and children.

Mr. Haber further testifies that the decedent was fully advised of the legal requirements essential to the validity of a gift, including delivery, and that the decedent stated that he would fulfill these requirements. The transfers of the stock were made upon the books of the company and the decedent apparently to meet the requirement as to delivery, handed the certificates to the several transferees. But as a part of this procedure the certificates were endorsed by the transferees and redelivered to the decedent, which, under the law of California (sec. 324, Civil Code), in the absence of evidence to show a contrary intent are sufficient to effect a retransfer to the decedent of any title which may have been transferred and redelivery of the certificates by the transferees and the subsequent possession thereof by the decedent that formed the basis of the adverse action taken by your office and it is these matters which the estate has undertaken the burden of showing do not not warrant the conclusion reached.

In support of its contention that the facts referred to are without the significance ascribed to them, the estate has furnished evidence to show that the endorsement of the certificates and delivery to the decedent were in pursuance of a practice which had extended over a period of more than 20 years prior thereto. It appears that from about 1889 when the decedent made substantial gifts to the different members of his family, it was his custom to look after and manage their business affairs for them. He kept a personal account with each of them in which he entered as a debit all disbursements made for their benefit and as a credit all interest, dividends, and other income accruing in their favor. He made all their investments for them, bought and sold securities for them, kept the same in his possession and to facilitate his management of their property, often had them indorse their certificates of stock as soon as received by them.

It is the contention of the estate that the decedent, in procuring the endorsement of the certificates here in question and taking over their possession was acting merely as a custodian for the transferees and as their agent and that he had no intention of exercising any right of dominion in the property so held.

In the judgment of this office the circumstances attending the transfers here involved are capable of sustaining either of two inferences. One is that the decedent while intending that his wife and children should have his property and while perfectly willing that, so far as all outward indicia of title was concerned, they might be regared as the owners thereof, nevertheless intended by securing the redelivery of the certificates indorsed which he knew standing alone was sufficient under the law to invest him with the title thereto, to leave the matter in such state that title might pass either way, to himself if for any unforeseen reason he might choose to assert it, or to the transferees at his death if no such occasion should arise. This inference is supported by the fact, which it is believed is sufficiently shown, that one of the purposes of the decedent in adopting this means for the distribution of his property was to avoid administration proceedings together with the consequent liability under the local inheritance tax law. It is not easy to believe that the decedent intended to completely divest himself of the means of livelihood which his property afforded him and the fact that he so managed the same as practically to retain the beneficial use thereof during his lifetime adds plausibility to the inference that he intended to withhold his bounty until after his death.

The other inference is that the decedent's delivery of the certificates was in pursuance of his intention to make of them an absolute gift. If the delivery was so intended, and not with the understanding that it was for the mere purpose of securing the indorsement and return that it was for the return of the certificates, then the redelivery is of small moment for it is inconceivable that the transferees, having acquired absolute title through an unqualified delivery, would have immediately revested title in the decedent by a redelivery. There would be no motive for such retransfer. If the decedent's delivery was such as to pass title, clearly the return of the certificates after indorsement was not intended as a redelivery but rather, as the estate contends, as an appointment of the decedent as agent to hold the same, the title thereto remaining in the transferees.

As between these two conflicting inferences, this office, fully appreciating the existence of grounds for an honest difference of opinion, is inclined to the view that the latter is the more probable. It is of course impossible to fathom the actual workings of the decedent's mind. While it is possible that he may have attempted to accomplish through the form of a gift inter vivos that which the law declares may be done only by testamentary disposition, that is, a transfer to remain inoperative until after his death, it seems more probable that the transfer was intended to go into immediate effect. That was what the decedent declared to be his intention and according to the undisputed testimony of the transferees that was their understanding of his intention.

But whatever the inference to be drawn from the circumstances attending the alleged delivery, there remains the fact that by the agreement of April 20, 1911, signed by all of the stockholders, including the decedent, it was expressly acknowledged that each was the owner of the stock standing in his name on the books of the company. It might, of course, again be inferred that this acknowledgment was subject to a tacit understanding that the title of the transferees was defeasible and that any undertaking on their part to dispose of their holdings during the decedent's lifetime would be ineffectual to pass present title, but again it seems more probably that the facts are as the parties declared them to be. There is nothing but inference to suggest such an understanding and it is not believed that any court would permit a party to such formal agreement, or anyone claiming under him, to escape the declared effect thereof by showing that it was intended to distort the facts.

And another circumstance which tends to establish the ransfers as completed gifts is the fact that in 1915 the son Frank was put into exclusive possession and control of his certificate, which he exercised continuously thereafter. The only theory apparently upon which the physical change of possession of this certificate might fail to support the view that title vested in the transferee at the time of the transfer in 1910 is that such change of possession itself constituted a delivery by the decedent which at that moment passed title to the transferee, and this theory seems entirely untenable. Although Frank appears to have been one of the most active members of the company there is nothing to suggest that the decedent, so far as divesting himself of title is concerned, intended to prefer any member of his family over another.

Under these circumstances the decedent's surrender of the certificate to Frank in 1915 can not be regarded as a gift as of that date, and if it can not be so regarded it can only be construed as a recognition of the transfer in 1910

as a gift. And if the transfer to Frank constituted a completed gift it must follow, since all stood on the same footing, that the transfers to the other members of the family were of like character.

It has been pointed out by your office that under the law of California the transfers here in question were subjected to the State inheritance tax as having been made by the decedent in contemplation of death and to take effect at or after death, and that the estate paid this tax without protest. This, however, is believed to be without material bearing upon the issue here involved. Under the recent decisions of the Supreme Court in the case of Schwab *v.* Doyle (258 U. S. 529) and kindred cases such transfers are not taxable under the revenue act of 1916 where made prior to the enactment thereof. Since liability to the California inheritance tax was incurred whether the title to the stock remained in the decedent at the time of his death or passed to the transferees by virtue of the alleged transfers in 1910, it was unnecessary in imposing that tax to determine the question of the legal effect of the alleged transfers. The tax upon transfers made in contemplation of or intended to take effect in possession or enjoyment at or after death presupposes a valid transfer of title during the decedent's lifetime, as otherwise the property would continue to belong to him and would be taxed upon its transfer at his death, from which it seems clear that where a transfer in contemplation of or to take effect in possession or enjoyment at or after death is actually established the property involved therein, having already been transferred, forms no part of the decedent's estate at the time of his death and must of necessity be eliminated in computing the tax on the transfer of such estate.

The case of Williams *v.* Kidd (170 Cal. 631; 151 Pac. 1), cited by the investigating officer in support of his view that there was no sufficient delivery to effect a gift inter vivos is of little assistance here, as in fact are the numerous cases cited and relied on by the estate to establish the contrary. As aptly stated in In re Romney's estate. (207 Pac. (Utah) 139, 142), where the decedent adopted much the same method of distributing his property among the members of his family as the decedent in the instant case, "There is no dispute in the law as to what acts are requisite to constitute a completed gift. * * * The difficulty arises in applying such rules to the multitudinous and complicated transactions of men." In the Williams *v.* Kidd case the owner of real estate executed a deed and handed it to a third party with instructions to give it to the grantee after his death. In reaching the conclusion that title did not pass, the court stating that the test was whether the grantor's delivery to the third person was made with the intention that it should pass title, held merely that the evidence was sufficient to show that such was not the intention. The test there applied is perfectly applicable to the delivery in the instant case, but the conclusion as to the grantor's intention in that case is of little value in determining the question of intention here.

After carefully considering all the evidence, together with the reasonableness of the conflicting inferences to be drawn therefrom, this office is of the opinion that it is sufficiently shown that the decedent in making the transfers here involved intended to divest himself of title to the property transferred, and that the delivery was made with that intention; that the transfers constituted a valid gift inter vivos; and that the same should accordingly be excluded from the gross estate for estate-tax purposes.

That is signed by Nelson T. Hartson, Solicitor of Internal Revenue.

Mr. DAVIS. That disposed of this matter, then, did it, Mr. Jones? I mean that this opinion disposed of the matter?

Mr. JONES. It seems that Mr. John L. McMasters, who was then head of the estate tax division, disagreed in his own mind with the solicitor's opinion, and, as I recall it, and I think the record will show, he went to Mr. Hartson's office, or to the assistant solicitor, and asked that the case be reconsidered. Now, it may be that I have another case in mind.

Mr. HARTSON. No; that is correct.

Mr. JONES. In any event, I believe that Mr. Hartson or somebody under him reviewed the case and stood by the former opinion as read here.

Mr. DAVIS. Now, when the matter was before this committee, you had Schwab *v.* Doyle in mind, had you not, the case cited here?

Mr. JONES. It seems that Judge Ramsell, who wrote the opinion, had it in mind.

Mr. DAVIS. And that held that the act is not retroactive?

Mr. JONES. That the act of 1916 was not retroactive.

Mr. DAVIS. So that if this transfer was not complete in 1910, and if there was a reservation in the mind of the decedent until his death, that case would not apply; is that true?

Mr. JONES. That was our opinion. We felt that the payment of this large salary of $2,000 a month and a nondeclaration of dividends to any of the other transferees, constituted a reservation of income which would bring it within the statute, and that there was a question also as to the passing of the title. But, of course, I would like to say at this point that the members of the committee realize that these are close questions, and we have never had any disagreement with the solicitor's office, because the responsibility is on them as to their decisions, just like it is on us in our decisions.

The CHAIRMAN. I would like to ask you in that connection, Mr. Jones, this question: You say the responsibility is on the solicitor's office. Is it not a rather unusual procedure that in the case of a big estate such as this, one man should override the judgment of three? In other words, it is not an unusual procedure to override the judgment of one, but it is unusual for one man to change, as in this case, and override the opinion of three?

Mr. JONES. I might say at this point that it has been my experience that on these appeals to the solicitor's office they have sometimes as many as three men from the solicitor's office at the hearing, so that while Mr. Hartson would sign it as his opinion, he is never personally present, but one of the assistant solicitors, and often two, and sometimes three members of his force sit as an appeal body.

The CHAIRMAN. Have you any record as to the actual procedure in this particular case to indicate how far the solicitor's office did go in reviewing this after the findings of your committee?

Mr. JONES. There is not any in our records. Perhaps Mr. Hartson can enlighten you as to their procedure; but my experience is—and I am speaking now from my own personal experience—that these solicitors' opinions all come to us under the name of Mr. Hartson, without mentioning the name of the assistant solicitor or the name of the members of the solicitor's force who sat on the case. Those names never appear on the solicitor's memorandum, as far as I know. Now, as to who sat on this particular case, I do not know.

The CHAIRMAN. Mr. Hartson, have you any record as to who sits on them?

Mr. HARTSON. Yes, Senator. I would be glad to explain to the committee just the course that this case took.

Following the disposition of the case in the Estate Tax Unit, as announced by the opinion which Mr. Jones has read, a communication was directed to the solicitor of the internal revenue under date of March 9, 1923, and signed by Mr. Estes, the deputy commissioner. which reads as follows:

There is transmitted herewith a letter dated March 8, 1923, from Messrs. Vogelsang, Brown, Cram & Lange, Mills Building, Washington, D. C., by which

these attorneys, acting for the estate, have appealed from the action of the committee on review and appeals of the estate tax division in holding certain transfer made by this decedent taxable.

The entire file in the case is herewith transmitted to your office in connection with the appeal. Your attention is called to the memorandum of the review committee, approved by Deputy Commissioner McKenzie Moss, and dated November 29, 1922. The attorneys for the estate have advised this office that they desire to be orally heard before the matter is finally passed upon by the solicitor. The writer has advised them to make such arrangements direct with your office.

Your attention is respectfully directed to the fact that this decedent died March 20, 1917, and that since it is an old case, it should be expedited as much as possible.

I read that memorandum to show you the way it arrived in the solicitor's office. The case was sent to the solicitor's office, and that was the first notice that the solicitor had of it, when it came over with the files.

The CHAIRMAN. You mean the first formal notice?

Mr. HARTSON. Well, I might say it was the first actual notice.

The CHAIRMAN. I do not mean personally, but as a matter of record in the office?

Mr. HARTSON. The work in the solicitor's office is divided, so far as this character of work is concerned, into two separate divisions. They are known as Interpretative Division No. 1, which covers income and excess profit tax cases; and another division, known as Interpretative Division No. 2, which covers the miscellaneous tax cases, and the estate tax is one of the miscellaneous taxes.

Each of those divisions is in charge of an assistant solicitor, a lawyer of experience and capability, one of the men who by reason of his experience in the office has developed capacity to handle the management of one of these divisions.

At the time that this hearing was held, and at the time this case arrived from the unit, Mr. Hamel, who is now the chairman of the board of tax appeals, the organization recently created by the revenue act of 1924, was an assistant solicitor in charge of the division to which this case went.

Mr. Hamel sat in the hearing, together with Mr. Swazey, a lawyer who had the case assigned to him. I did not sit in the hearing, and up to the time to which I refer I had no knowledge of the case at all.

There was a hearing afforded the attorneys for the taxpayer, and the matter was extensively gone into.

At that hearing the representatives of the unit, Mr. Jones's committee, were present. I do not know who the individuals were, but the record shows their representation from the estate tax unit in that hearing. They sat in with members of our office.

Upon consideration following the hearing, as is the practice, the officers participating in the hearing discussed orally and finally agreed tentatively on a decision, which was reduced to writing. Mr. Swazey then proceeded to prepare an opinion which he and Mr. Hamel had agreed upon tentatively.

When the case was finally written up Mr. Hamel had been promoted in the office and had been taken from his assignment as assistant solicitor in charge of this division to be one of the assistants directly under my supervision. He was doing reviewing work for me before this case was sent out. Mr. McLaughlin, who is now assistant in charge of that division had succeeded Mr. Hamel in

charge of the division, and he considered the opinion that Mr. Swazey wrote very carefully before he approved it.

So that at the time the case came to my notice in the first instance Mr. Swazey, Mr. Hamel, and Mr. McLaughlin had all approved it; and, so far as the records are concerned, and so far as the fact is, no one in our office has ever disagreed with this result, although everyone recognizes it to be an extremely close case and a very difficult case.

The case came to my desk, and it just so happens that, although I am not able to study these cases in the detail that possibly the man who is responsible for the decision, as I am, ought to be able to study them, I did go into it, and went into it probably with greater care than I would have had the thing been so apparently reasonable to me. I looked at it with skepticism and discussed it quite frequently over a period of maybe two weeks that that case was on my desk and while I was studying it.

The CHAIRMAN. Do I understand that that was in 1923?

Mr. HARTSON. Yes; 1923. The case came into the office in March, 1923, and it was subsequent to March that this action I am now speaking of took place.

I was finally influenced, and I can not put forth the predominant thing that influenced me, to sign the opinion which had been prepared by Mr. Swazey, and which, as I say, came to me with the approval of everyone under me, in whom I had implicit confidence.

I might say, however, that the State of California has held these transfers to have been completed in 1910, when the gifts were made, and it was on the completion of that transfer, but by reason of the fact that it was made with death in mind and made to take effect in possession and enjoyment at or after death, that they were able to hold this property subject to the inheritance tax in the State of California.

This would be an easy case to decide against the taxpayer if the Supreme Court in Schwab *v.* Doyle had held our Federal estate tax to have been retroactive, because we then could have said "Well, the transfer took place in 1910, and it took place with death in contemplation, or with a string to it, that it was the intention of the decedent to pass that possession and enjoyment after his death.

In neither case could we do that. We had to say that no transfer took place, no passing of title occurred at all, which, of course, was directly contrary to what the State of California had done in enforcing its State inheritance tax. We had to say that the whole thing was a subterfuge, that it fell entirely, and had no legal effect, when it seemed that if this had been an isolated instance, we might have had considerable grounds to hold; but this, we were convinced, and I think there is no dispute about it anywhere, had been rather a practice that this taxpayer had followed over a period of years. He had had other securities indorsed to him. For what purpose? For the purpose of conserving the property of his children; for the purpose of managing their estate. Managing what belonged to them, in other words.

The CHAIRMAN. I would like to ask at this point if the Government is as gullible as all that, why not let all of us do it? Why have any inheritance or State taxes? I can do that with my children and

still manage to have the income. If the Government has got to accept that sort of fiction, I do not see why you collect any inheritance taxes at all, or that a man is ever called upon to pay any.

Mr. HARTSON. The answer to that is this: Had the estate tax been retroactive under the 1916 act, we could have held that this did have some sort of a string to tie it to his death and to be effective at some later time.

The CHAIRMAN. In the interest of the Government, I think you should have taken the position that the transfer did not take place until death, as a matter of fact.

Mr. HARTSON. That may have been.

The CHAIRMAN. Certainly.

Mr. HARTSON. We thought it could not be done in this case, because this was not a departure from the practice in instances embracing those same facts which had been followed in the past and which had no effect whatever on taxes, either State or Federal.

Furthermore, there was an acknowledgment on the part of these individuals, after the transfer had occurred in 1910, that ownership was in them respectively and that the State of California had held that this transfer had occurred in 1910, but that it had occurred to be effective at some later date, which, because of the case of Schwab *v.* Doyle, was a theory that we could not adopt.

The CHAIRMAN. In that connection, as I understand it, the department is against gift taxes. I do not mean to say the individuals, but I mean the heads of the department are against the gift taxes. If an estate can get away from an inheritance tax in any such plausible manner as that, should not a gift tax be justified so that the Government in some manner collects a revenue from the estate?

Mr. HARTSON. I think, Senator, that was the reason for adopting the gift tax, or one of the reasons for adopting the gift tax, the practical difficulty of determining what was in the decedent's mind; and if it could be determined, it would only be evidence in the possession of the decedent or his immediate associates, usually his family, and that testimony would all be adverse to the Government when it came to trial.

By way of further enlightenment on the attitude of the solicitor's office on this question, I should like to say this: That we have been in court in a good many cases. We have gone to judgment in six cases during this period of time where the issue of tax has been tried out to a jury, and out of those six cases we have only won one of them. We have had five adverse to us, and the reason was, first, because the Government had nothing on which to really base a defense except what might be termed a suspicious set of circumstances; but the decedent, the widow, perhaps, the decedent's lawyer, and the decedent's family appear, each of whom may be beneficiaries by reason of the transaction, and the Government has no evidence except by the cross-examination of the witnesses produced by the taxpayer.

Now, our experience has been unsatisfactory in the winning of cases; and let me point this out: That the cases we have gone to trial on are the cases that we in the solicitor's office were convinced the estate tax should attach to. They were not the hard cases, like this. They were cases that we thought to be certain and pretty definite,

and we only won one of them. I think everybody will recognize the practical difficulty of proving a fact such as is required to be proved to enforce a tax of this kind.

The CHAIRMAN. I would like to ask at this point if there was any effort on the part of the agent in the field to interview the associates and the friends of the decedent and to ascertain whether there was any such motive in his mind when this was done.

Mr. HARTSON. I think the estate-tax examiner ordinarily is very thorough in his examination, and I think there is every effort of the character that the Senator suggests made by the estate-tax examiner to develop all of these facts, interviews of the doctors and the people who were close to the decedent, both at the time the transfer was made and at the time of his death.

Senator JONES of New Mexico. Was that done in this case?

Mr. HARTSON. I think it was.

The CHAIRMAN. Have you the report of the agent in this case?

Mr. HARTSON. They are in the file; yes, sir.

Senator ERNST. Did the court give pretty fully its reasons for holding that there was delivery in 1910 of the transfer?

Mr. HARTSON. The court never had passed on this, Senator Ernst.

Senator ERNST. I mean——

Mr. HARTSON. You mean the State of California?

Senator ERNST. Yes; in the State of Califorina, in determining the question, whatever authority it was that did it.

Mr. HARTSON. I do not know personally. I never was in possession of the reasoning of the opinion of the State officials in holding this to have been a transfer made in contemplation of death and to take effect in possession and enjoyment at or after death; but that was the result of their holding. The estate paid it without protest, and it was settled. They paid the tax on it, and we very probably could have done the same thing and collected the Federal tax, as I say, had it not been for the fact that the Supreme Court would not permit a retroactive enforcement of the estate tax law, which was first enacted in 1916, and this transaction, of course, took place in 1910.

Mr. DAVIS. Is it not a fact that the revenue was reserved to the decedent in this case, as the committee holds?

Mr. HARTSON. Well, there is this fact, that the income to the corporation was not distributed at all, except that the president of the corporation received a salary.

Mr. DAVIS. He drew all of the income in salary?

Mr. HARTSON. No; I think that is an exaggeration, Mr. Davis.

Mr. DAVIS. I am basing it on the committee's report. That would seem to be their showing.

Mr. HARTSON. I think that is not borne out by the facts, if you have drawn such an inference. I think the estate was very profitable—I do not mean the estate; I mean the business of the corporation. It was a holding company, and it was very profitable. It made large earnings, but they only distributed this $24,000 which was the salary, and probably not an unreasonable salary, to the head of a business of that character.

Mr. DAVIS. During the decedent's lifetime, after the transfers, the heirs received no benefit?

Mr. HARTSON. They received no distributions; neither did the decedent, except in return for services he rendered the corporation.

The CHAIRMAN. Of course, a person holding only 50 shares would not receive very much.

Mr. HARTSON. No; that is correct. Of course, the children did receive a distribution as soon as the father died.

Mr. DAVIS. Is your position there simply in the nature of a review of the review committee?

Mr. HARTSON. I would like to explain, Mr. Davis, and I am very glad you asked me that question——

Mr. DAVIS. Pardon me. I ask it for this reason, to find out whether you take new and additional evidence before your office, or whether that all should be submitted before the review committee and let them pass on it before it comes up to you?

Mr. HARTSON. The present regulations specifically require that that be done, and that it all be considered in the Estate Tax Unit before any appeal is had.

Now, we are using this term "appeal" here rather loosely. There was no appeal in this case at all. No appeal as of right, no appeal afforded by law, no appeal under our regulations, in this case or any other cases, arising at that time.

These cases appear first in the unit on call an abatement claim. There had been an audit of the State tax-examiner's report, and an assessment had been made. The estate then filed an abatement claim. It then came down to the unit, and the unit heard the estate or its representatives on this abatement claim.

Again, following an adverse decision by the unit on the abatement claim, the taxpayer, as of right, had no appeal, so far as announced in any law or any regulation at all; but the commissioner has determined that on claims arising either under income taxes or under estate taxes, there shall be what is termed a review by some agency separate from the agency that first considered it. In income taxes, due to their large volume, the review of claims only occurs where the amount of tax is in excess of $50,000. There is such a large number of those cases that the review is overburdened on income taxes. In estate taxes and miscellaneous taxes, the review of these claims occurs when the tax is in excess of $500. It is much smaller.

Now, in this case, whether the taxpayer has an additional hearing or not, whether the Estate Tax Unit had decided in favor of the estate on their hearing, regardless of what decision was made in the unit, there would have been a review of this abatement claim in the solicitor's office.

Senator ERNST. You mean even if the estate had not asked for it?

Mr. HARTSON. There would have been a review in the solicitor's office of the abatement claim even though the estate did not ask for a hearing, or had not asked according to the terms of this letter of transmittal from Mr. Estes, an appeal.

As a matter of practice, that review has been called frequently, and I think miscalled, an appeal where the taxpayer really does not have it as a right, although on income taxes the law gives it to him, and did give it to him before the 1924 act. It was made effective when this board of tax appeals was created. There was that dif-

ference between an estate tax case and an income tax case; but I believe that, due to the fact that no reasonable distinction could be made between a taxpayer's right under an income tax and his right under an estate tax, the commissioner determined, as a matter of policy, that some general practice giving him this appeal should be adopted. Although it was not one of right, it should be followed in estate taxes just as it is followed as of right in income taxes.

That is what brought the case over to our office. It would have been there, anyway, on the abatement claim. The taxpayer wanted to be heard on it, because he had been informed that the decision was adverse to him in the Unit. He then wrote to the solicitor's office asking for a hearing, which was afforded him.

Senator JONES of New Mexico. Mr. Hartson, was that decision which was signed by you the final action of the bureau, or did the deputy commissioner sign a final decision in the case?

Mr. HARTSON. This opinion of the solicitor's office is merely a memorandum. It went back to the deputy commissioner, in charge of the Estate Tax Unit, and, as a matter of practice, he is guided by it. Should he desire not to follow it, he could well go to the commissioner and say, "Here, I have been advised by the solicitor in this way, but I think it is wrong, and I refuse to do it or to carry it into effect." The opinion of the solicitor is not the final action. It is a mere expression of opinion, which, ordinarily, is persuasive, and guides those in the unit in the administrative activities of the bureau.

Senator JONES of New Mexico. But the final decision in the case is signed by whom?

Mr. HARTSON. It is signed by either the deputy commissioner, or some one acting for the commissioner. It is the commissioner's action. He is the only one, really, who is authorized to act on these abatement claims. The decision there was on the abatement claim.

The CHAIRMAN. Who signed that in this case?

Mr. HARTSON. There is a rubber-stamp signature of Mr. Blair on the copy of the letter advising the estate of the decision. I rather assume that, by reason of the type of the rubber stamp that is used, Mr. Blair did not sign it personally, but his name was signed to it.

The CHAIRMAN. To whom was that letter addressed?

Mr. HARTSON. It is addressed to the estate.

The CHAIRMAN. Will you read it, and see what it says?

Mr. HARTSON. It is dated September 18, 1923, and is addressed to Frank Schwabacher et al., executors estate of Sigmund Schwabacher, care of collector, San Francisco, Calif., and reads:

SIRS: The bureau has examined the claim filed by you, as executors of the above-named estate, for abatement of $77,929.48, the additional Federal estate tax found due from the estate, as explained in the letter of notification dated October 12, 1922.

The claim is directed to the following item: 1,000 shares Sigmund Schwabacher Co. (returned as 50 shares), returned, $42,500; determined, $1,110,609.28; adjusted, $55,530.46.

Upon review of the return, it was determined that the 950 shares of the stock of the company which were not returned, and which stood on the books of the company in the names of members of the decedent's family, were the property of the decedent, the transfer of the stock by the decedent to members of his family not having constituted completed gifts.

The claim was presented by written and oral argument, supported by documentary evidence. A hearing was held before the legal unit of the bureau on May 23, 1923. After carefully considering all the evidence, together with the reasonableness of the conflicting inferences to be drawn therefrom, the conclusion is reached that it has been sufficiently shown that the decedent in making the transfer of the 950 shares intended to divest himself of the title to the property transferred, and that delivery was made with that intention. Accordingly, the 950 shares are excluded from the gross estate of the decedent for the purpose of the Federal estate tax.

That paragraph, as you will no doubt remember, is really copied from the last paragraph of the solicitor's opinion.

In the review of October 12, 1922, the gross estate was determined to be $1,297,326.65, the deductions $95,284.43, and the net estate $1,202,042.22. The reduction made in connection with the item protested and affecting the gross estate amounts to $1,055,078.82, making the corrected total thereof $242,247.83. The deductions are left unchanged. The resultant net estate is accordingly now determined to be $146,963.40, the tax of $1,754.82 was satisfied on the basis of the return, the estate is accordingly liable for an additional tax of $1,904.58. As the outstanding assessment against the estate amounts to $77,929.48 and is excessive in the sum of $76,024.90, your claim for abatement of $77,929.48 will be prepared for allowance in the sum of $76,024.90, and is rejected as to $1,904.58.

Such portion of the additional tax as remains unsatisfied should be paid to the collector at San Francisco, Calif., without further delay, together with interest at the rate of 10 per cent per annum from the expiration of 30 days from receipt by the estate of the letter of notification, dated October 12, 1922, including such time as is necessary for the remittance to reach the collector's office.

Respectfully,

D. H. BLAIR, *Commissioner.*

Senator JONES of New Mexico. As to that 10 per cent there, what is that; under what provision of the law is that imposed, or on what is it imposed?

Mr. HARTSON. Senator Jones, before I answer that, I would like to add to what I have already read, that that letter which I have just finished reading was initialed in due course. It bears the initials: "R. R. S.," "A. C.," "C. W. J.," "H. K. M.," "F. E. P.," "J. C. S.," "J. B. McL.," and "M."

Now, to read backward, the "M." is the initial of Mr. Maddox, who acts for the commissioner. "J. B. McL." is assistant solicitor McLaughlin. "J. C. S." is J. C. Swazey, the lawyer who wrote the opinion in the solicitor's office. "F. E. P." is Mr. Page, assistant deputy commissioner. "H. K. M." is Mr. Melcher, head of the Estate Tax Unit. "C. W. J." is Mr. Jones, and "A. C.", is Mr. Christie. "R. R. S."—do you know who that is, Mr. Jones?

Mr. JONES. Probably one of the claims section.

Mr. HARTSON. The claim itself which is allowed, as indicated in that letter, was signed by Mr. Page with his signature, acting deputy commissioner, and is also signed by Mr. McLaughlin, the assistant solicitor. I mention that to show that after the solicitor rendered the opinion, it went through the usual course, and everybody having any knowledge properly on such a case considered it, and undoubtedly were guided by the opinion of the solicitor; but had they any very serious protest to make over it, they could have carried it to the commissioner and have brought it to his personal notice, which I think doubtless was not done in this case.

Now, to answer Senator Jones's question, will you state it again, Senator, please?

The CHAIRMAN. He asked you why you asked 10 per cent of the amount of the tax after a certain time.

Mr. HARTSON. That is the penalty that the law carries. I do not know just what the Senator has reference to.

Senator JONES of New Mexico. Does the law carry it in all cases, whether there is any question of fraud involved or not?

Mr. HARTSON. The 10 per cent penalty has no reference to fraud, Senator. It attaches when the tax is not paid within 30 days. Did the Senator ask me whether there was any question of fraud raised in this case?

Senator JONES of New Mexico. No; I did not ask that, but I was just wondering about that 10 per cent penalty, as to why there is such a rate of interest provided in the statute, or whether that did apply to all cases where there is just simply an investigation to determine the amount. It seems to me that 10 per cent penalty where there is an honest endeavor to adjust the matter properly is pretty drastic.

Mr. HARTSON. Of course, the amount of the penalty is a thing that Congress has determined, and I do not know what was in the congressional mind at the time that it was passed; but it does not involve fraud, necessarily. The law merely provides for a 10 per cent penalty when the tax is not paid within 30 days. Ordinarily, I think those are compromised, are they not?

Mr. PAGE. No, sir. That is the statutory provision that when the tax is not paid within 30 days after receipt of the letter of notification——

Senator JONES of New Mexico. After what?

Mr. PAGE. After the receipt of the letter of notification.

Senator JONES of New Mexico. Here is a case where the notification was for seventy-odd thousand dollars, but it was finally determined that the amount due was only between one and two thousand dollars.

Mr. PAGE. Yes.

Senator JONES of New Mexico. Now, what do you consider the notification—the first notice?

Mr. PAGE. Well, ordinarily, where there is no——

Senator JONES of New Mexico. Or where there is an adjudication?

Mr. PAGE. I will explain that, Senator. We will send out a letter as the result of the audit. This is prior to any claims being filed. In that letter, we state that we have found, in the case of an additional tax, the amount, and if it is not paid to the collector within 30 days after the receipt of that letter, we state that interest will accrue on the additional tax shown at the rate of 10 per cent.

Senator JONES of New Mexico. Yes.

Mr. PAGE. Now, that is imposed by the statute. Prior to the 1924 act, on the estate tax, they also had the right to file a claim for abatement after receipt of the letter. That suspended payment, and the interest at 10 per cent only accrues on the balance of the tax determined after the adjustment of the claim for abatement.

Senator JONES of New Mexico. Here the recommendation was for a very large amount.

Mr. PAGE. Yes.

Senator JONES of New Mexico. The taxpayer, if he had any bona fide claim for abatement, would not feel like paying that whole amount, would he?

Mr. PAGE. He does not have to. The claim for abatement suspended payment, and we only charge interest on the amount ultimately found due from the estate. The abatement adjustment supercedes the letter of audit.

Senator JONES of New Mexico. In this case, the claim of 10 per cent dated back to the first notification.

Mr. PAGE. That is right. That 10 per cent is interest and not penalty. It is interest imposed by the statute.

Senator JONES of New Mexico. Is that 10 per cent still carried in the present law?

Mr. PAGE. No, sir; that has been reduced to 6 per cent.

Mr. DAVIS. When this matter came to you, Mr. Hartson, under what we call the appeal here, it would not only have the record as you found it, but do you sometimes hear additional evidence by affidavit, etc.?

Mr. HARTSON. I think so; yes.

Mr. DAVIS. Why is not that submitted to the review committee as a whole, and let the whole thing come to the review committee first?

Mr. HARTSON. It would be highly desirable if that practice could be followed. There would be none more anxious to see such a result come about than the men who work in the solicitor's office, but many different contingencies are constantly presented to us as being grounds why new evidence should be submitted. Frequently counsel change and frequently the pursuance of an investigation will not develop a fact until the case has been argued over some period of time through an office or two. I personally have felt that in some instances, possibly they were reluctant to submit information, and finally they produce it when actually confronted with the absolute necessity of doing so. We never know just how far they are carrying us on this production of evidence. The bureau has been overly liberal—and I say that is a fact beyond any question—in permitting taxpayers to have hearings, to continue hearings, to produce additional evidence, to produce briefs, to produce further argument, until the time has gone by, and delay has occurred in some of these cases largely because of the taxpayers' insistence, plus a liberal sympathetic attitude on the part of the bureau.

Senator JONES of New Mexico. In giving the opportunity to be heard, what would be the practice now, so far as the giving of this opportunity to appeal is concerned?

Mr. HARTSON. The practice now—and I will limit it to estate tax cases, as we are on that phase of the matter just now—and if the Senator wants anything about income-tax matters, that can come up later, but just now let us speak of estate-tax cases—is that the investigating officer, believing that he has found additional taxes that should be assessed against a decedent's estate, reports that in the usual way to the unit, and instead of making an assessment under the practice in effect when the Schwabacher case was under consideration, that report is audited, and there is a proposal in writing made to the representatives of the estate, or to the estate itself, that an additional assessment or the assessment of what is termed in the law a deficiency, shall be made, or will be made, or is proposed to be made. Then the taxpayer has his hearing in the Estate Tax Unit. What is the number of that Treasury decision to proceed on review in estate-tax cases?

Mr. PAGE. I can not give you the number.

Mr. HARTSON. There has been recently, within the last three months, a Treasury decision promulgated, which announces the procedure that shall be followed in the bureau on that proposal to assess a deficiency.

Senator JONES of New Mexico. I think it would be well enough for us to have that order of the department put in the record at this place.

Mr. HARTSON. I will see that you get it. I have not the number in mind just now.

The hearing that takes place in the Estate Tax Unit following this announcement or proposal to assess a deficiency against the estate, under the terms of this Treasury decision, is made final and conclusive as to all questions of fact and questions of valuation. You will find in the estate-tax cases the value of securities and the value of property is one of the most difficult things that has to be determined, but the unit is final on the decision of all of those questions. However, the Treasury decision permits a review or an appeal, because the appeal is only provided by the statute for the board of tax appeals in the solicitor's office on questions of law, purely questions of law.

Conceding, then, a case which involves both questions of law and of fact, a hearing may be had in the unit finally determining the question of fact, and an appeal on the question of law, which is unrelated to the fact, in the solicitor's office, and if both are adverse to the taxpayer then the taxpayer is given a 60-day registered letter, which announces the proposal that the bureau has made, and advises the taxpayer of his rights, within 60 days, to note an appeal with the board of tax appeals.

One of the cases that Mr. Davis has asked for on this list of six cases to-day is now before the board of tax appeals, but, relatively speaking, we have but few cases before that board which involve estate tax.

Senator JONES of New Mexico. Then, under the present procedure, the Tax Unit would pass upon questions of fact and law, and if a taxpayer wants to review the question of law, he can have that review in the solicitor's office, but not a review of the questions of fact?

Mr. HARTSON. That is correct.

Senator JONES of New Mexico. And then, if he is dissatisfied, he may take an appeal to the board of tax appeals.

Mr. HARTSON. That is correct.

Senator JONES of New Mexico. So that what occurred in the case just under consideration, or which we have been discussing this morning, would not occur under that procedure?

Mr. HARTSON. I think that is correct. I think this Schwabacher case was largely a question of fact—a question of fact to determine what the intention was, and, given the intention, the law is not difficult to determine.

Mr. DAVIS. And it might come up to you on a question of law as it stands?

Mr. HARTSON. It is difficult, though, to determine and get a distinction clearly divorcing the questions of fact from the questions of

law. Very frequently they are so interwoven that it is almost impossible to separate them.

Senator Jones, one further statement: The reason why there has been a distinction made in giving what might be termed a legal review, but not a fact review, in the bureau before going to the board of tax appeals is because of the experience that the bureau has had in defending these suits in court. I believe the commissioner has thought that on questions of law the men who are going to have to stand up in court and discuss them intelligently and sustain them, if possible, ought to be given an opportunity to look them over. I think that is one reason that he says the questions of law should be looked up by the solicitor, but questions of fact should be final with the unit.

Senator JONES of New Mexico. Well, the board of tax appeals passes upon those questions of law and fact, does it?

Mr. HARTSON. Yes, sir.

Senator JONES of New Mexico. The solicitor's office passes on the law and the Estate Tax Unit passes upon the facts, and if the taxpayer is dissatisfied he will take an appeal as to both to the board of tax appeals?

Mr. HARTSON. Yes, sir.

The CHAIRMAN. I observe from the press that the board of tax appeals is being used very little, at least apparently but very little, by the taxpayers.

Mr. HARTSON. I can give the Senator some figures which are substantially correct. They may vary a few cases one way or the other, but they will be enlightening on the condition of cases before the board.

There have been, roughly, 600 appeals of all kinds and character referred to the board. The board was first organized about the middle of July; so that between the middle of July and the 1st of December there were, roughly, 600 appeals taken to that board, which involved estate taxes and income taxes. But there are few estate-tax cases. Of the 600 that have been appealed there is quite a substantial number where there is no jurisdiction, or where there has been some defect which has caused the taxpayer to withdraw his appeal after he has recognized the defect. There have been a number of appeals, running less than a hundred, but quite a substantial number of the appeals of the 600, which have been withdrawn, but which have not come to issue, and which will not.

Senator ERNST. They have been withdrawn because they could not be successfully sustained?

Mr. HARTSON. No; I do not think that is the attitude. I think that in some cases it was shown that no proper ground for appeal existed. The taxpayer, when his attention was called to it, readily acquiesced in that view of it. That occurred quite a good deal at the beginning, when people did not know what their rights were, and they would just write in an informal appeal. In any event, for one reason or another, defects in the appeals which have been taken have reduced the 600. There are about 150 of the 600 that have been submitted to the board where there have been arguments, hearings held and evidence adduced, and of the 150—speaking in round numbers now—about 30 or 35, possibly, have been

decided. So that there is not a very large number of appeals that have been taken in view of the number of 60-day registered letters which form the proper basis for appeal, 600 is relatively small, I should say. I do not know how many 60-day letters have gone out since the board was created, but they are in the thousands.

The CHAIRMAN. How many are sitting on that board now?

Mr. HARTSON. There are 12.

The CHAIRMAN. Of the 28 that were appointed?

Mr. HARTSON. Of the 28 that were authorized, there are 12.

The CHAIRMAN. Are they all sitting in Washington?

Mr. HARTSON. They are all sitting in Washington, and they are divided into divisions. They do not all sit at the same time.

The CHAIRMAN. How much of a collateral expense is that to the bureau by way of payment of salaries to the men themselves?

Mr. NASH. We have set aside an allotment of $500,000 this first year, Senator Couzens.

The CHAIRMAN. That has to be prorated over the whole 28, or just the 12?

Mr. NASH. That was on the basis of 28 members to be appointed. If they do not appoint the 28 members, it seems that they will not use that up, although in the first year there are some additional expenses that will not be incurred in the subsequent years, in the way of purchasing furniture, file cases, equipment, stationery, and so forth.

Senator JONES of New Mexico. How many employees are there connected with that board?

Mr. NASH. In addition to the 12 members, they have about 35 employees, secretaries, stenographers, typists, and clerks, and one or two lawyers.

The CHAIRMAN. What do the members get?

Mr. NASH. $7,500 a year.

The CHAIRMAN. And the lawyers?

Mr. NASH. According to the classification grades. I do not recall just what they are, but they are subject to the classification act, the same as any other Federal employee.

The CHAIRMAN. Would you say that these entire 12 members and the staff are busy all the time with those few cases?

Mr. NASH. I have not any direct knowledge on that, Senator. I have not been in that building but once since they were organized, and that was in the early stage of the organization.

The CHAIRMAN. Who has direct supervision over that—the Secretary?

Mr. HARTSON. No, sir; the President. The law makes is a separate agency within the executive branch of the Government. I think it says an independent agency within the executive branch of the Government.

Mr. DAVIS. Mr. Solicitor, so far as the questions that have been submitted to you to pass on, the legal questions, are concerned, that ends the matter so far as the Government goes. They do not reach the appeals board after that, when you have passed on them, do they?

Mr. HARTSON. Providing it is satisfactory to the taxpayer and he acquiesces in it, there is no appeal to the board, because the law permits an appeal from a dissatisfied taxpayer. If the taxpayer is

satisfied, no appeal results. The law does no contemplate an appeal to this board by the Government.

The CHAIRMAN. As I recall the figures, roughly, the result of this decision was that there was a rebate of $75,000 and this rebate or abatement of $75,000 was obtained by a former employee of the Internal Revenue Bureau, as I recall it.

Mr. HARTSON. I do not know what the Senator means by "obtained." It was obtained by statute.

The CHAIRMAN. I mean obtained through his activities.

Mr. DAVIS. The party representing the taxpayer was Mr. Cram, a former deputy commissioner of internal revenue. Is that it, Mr. Jones?

Mr. JONES. He appeared before our committee. There may have been a California lawyer, too, but I do not know as to that.

The CHAIRMAN. What I am trying to get at is, that one of the reasons we take these cases up is to get at the routine that these things pass through in the Internal Revenue Bureau, and to see who takes this action, due to the fact that many statements have come to Senators individually that ex-employees of the bureau have influence with the bureau, that Washington is full c ex-employees, who are posing as tax experts, and who go into the bureau because of their familiarity with the system and their acquaintance with the employees and obtained decisions favorable to their clients, which the taxpayers who are not familiar with them would not be able to obtain.

In that connection, I would like to ask if you have any idea of what fee a lawyer would receive for obtaining a refund of some $75,000, or perhaps "an abatement," is a preferable term.

Mr. HARTSON. Senator, I would prefer not to try to answer that, because I have no knowledge in regard to it. Lawyers differ just like race horses differ. Some may come very high, and some come rather reasonable, and I do not know what these people, Messrs. Vogelsang, Brown, Cram, and Lange would have received in a case of this kind. I do not know, but I want to say this, in view of what the Senator has said, that I at no time personally discussed this case with any representative of the taxpayer. I never sat in a conference, and never saw them with regard to this case, and yet I feel absolutely confident that it was my decision rather than of my associates. I am perfectly satisfied in my own mind that it is the correct decision, even though some may think it a doubtful one, and it may be doubtful. Mr. Cram, I understand from the record here, was the attorney who was acting. He discussed it with the attorneys in my office, and the record here shows the attorneys whom he did discuss it with, and whom he interviewed, and they all recognized the difficulties that the case presented, and they brought it up to me. The attorneys did not sign it themselves, but I was responsible for it and I signed it myself, and I studied it myself, without talking, as I say, with the taxpayer's representative at all. Of course, I had the estate tax memorandum before me and the complete file.

The CHAIRMAN. When did Mr. Cram leave the department, do you know?

Mr. HARTSON. I do not know, Senator Couzens. I know Mr. Cram, having met him; I know his name, but I would not know him if I saw him in the room here, unless by reason of some other circumstance I would have reason to suspect that that was he. I do not know when he was in the department.

The CHAIRMAN. Does any member of the staff recall when he left the department?

Mr. NASH. Mr. Cram was deputy commissioner, I think, during a previous administration, either under Mr. Roper or Mr. Williams. Like Mr. Hartson, I just know there has been such a man, and I think I have been introduced to him once. I do not know that I could recognize him if I should see him.

Mr. JONES. I would say that he has probably been out of the service for at least four years. I think it has been four years or more since Mr. Cram was in the bureau.

Senator JONES of New Mexico. Somebody told me that this board of appeals was not considering any old cases. It does occur to me, in view of the discussion here, that that information was not correct, and that it does review cases which are coming before the board of review, although they may be old cases or recent cases; so that information, I take it, is incorrect.

Mr. HARTSON. That is incorrect, Senator. The board has jurisdiction to hear appeals from proposals to make assessments of deficiencies. You could not go back and open old cases, closed under prior acts, and which have been settled by the commissioner.

The CHAIRMAN. That would seem quite properly so.

Mr. HARTSON. But cases that are still in the mill, if they relate to cases in which the commissioner may make an assessment of the deficiency, the taxpayer may take his case to the board of tax appeals.

The CHAIRMAN. Have you the field agent's report in this Schwabacher case here?

Mr. JONES. Yes, sir; we have the entire reports.

The CHAIRMAN. I was just wondering if they are very lengthy.

Mr. JONES. The gist of the reports was embodied in the committee memorandum. Those reports are quite voluminous. There are probably 50 or 60 pages in each one of them.

The CHAIRMAN. What I would like to know is—and I think Senator Jones has brought it out, too, how far you went in the examination to find the intent of the decedent. Is that right, Senator?

Senator JONES of New Mexico. Yes.

Mr. JONES. My recollection is that you will find in the files that there was an oral hearing before the revenue agent in charge at San Francisco in this case.

Mr. DAVIS. And were these people all at that hearing, the people involved in these transfers?

Mr. JONES. I think some of the children were, and I believe the widow was, too, but I am not quite sure. I can find out.

The CHAIRMAN. Well, I think the attorneys on our staff ought to read up on the facts and tell us what they find.

Senator JONES of New Mexico. I think it would be a good idea for them to go over this report to see what evidence, outside of the members of the family, was obtained, if any, and what the family did testify to in regard to this transaction, because evidently the

field agent reached the same conclusion as the investigating unit as to the transaction.

The CHAIRMAN. I think this is an important matter, because if the bureau had to repose in one solicitor the responsibility of settling these enormous claims, the law is wrong and subjects the solicitor to unwarranted and unjustifiable inferences, and I might also say charges of dishonesty and graft, which responsibility should not be placed on any solicitor under the law. I think, if that is the situation now, it should be corrected.

I would like to ask Mr. Davis if he will look into those reports of the field agents in connection with this estate and see how far they went in the examination of others than those immediately interested.

Mr. DAVIS. In doing that, I wonder whether we should set up the testimony of those interviewed, or just pick out the testimony of certain ones. I was going to ask that a summary of the report be introduced in the record. Have you a summary there, Mr. Jones?

Mr. JONES. We have a summary of the agent's recommendation, but I find attached as an exhibit, marked "Exhibit K," the transcript of testimony taken before the internal revenue agents, Guernsey and Darrow, a deputy collector representing the Government, and W. Orrick, attorney at law, representing the estate. That was taken on December 16, 1919, at which various witnesses were present. So there was a hearing at San Francisco.

Senator JONES of New Mexico. I think that record in the appeals office should be summarized and briefed.

The CHAIRMAN. It should not be necessary for the committee to waste time in going over all of these matters there, but I think the attorneys should pick that out for us.

Senator ERNST. Yes.

Senator JONES of New Mexico. I should like also to have a statement in the record as to that California case to which reference has been made.

Senator ERNST. Schwab *v.* Doyle.

Senator JONES of New Mexico. Yes; Schwab *v.* Doyle, showing what is the real point at issue, and which was decided in the case, and also a statement as to the California statute bearing upon the subject, so that we may get the real force and effect of the California decision.

Mr. HARTSON. Senator Jones, I want to be clear about the California decision that you have reference to. I think it can not be Schwab against Doyle, because that is a case that went to the Supreme Court of the United States.

Mr. DAVIS. Holding that the act was not retroactive?

Mr. HARTSON. Holding that the act was not retroactive, that the 1916 Federal estate tax was not retroactive.

Senator JONES of New Mexico. That is all that that case holds?

Mr. HARTSON. Yes, sir; it did not have any specific reference to this case at all.

Senator JONES of New Mexico. I see.

Mr. HARTSON. Except as it laid down the principle.

Senator JONES of New Mexico. Then, so far as the decision is concerned, there is no controversy as to what that means?

Mr. HARTSON. That is right.

Senator JONES of New Mexico. Then, the California statute bearing upon this subject.

Mr. HARTSON. Of course, the California statute is substantially the same as the Federal estate tax, but that statute was in effect in 1910, when this transfer took place.

The CHAIRMAN. And ours was not?

Mr. HARTSON. And ours was not.

The CHAIRMAN. Yes.

Mr. HARTSON. And ours, when it did become effective, was not retroactive.

Mr. MANSON. There are two angles, are there not, Mr. Hartson, to these statutes? One refers to transfers in contemplation of death, and the other refers to transfers to take effect at or after death.

Mr. HARTSON. To take effect in enjoyment and possession at or after death.

Mr. MANSON. And if the California taxing authorities came to the conclusion that the transfers did not take effect in 1910, but took effect on or after death, then the fact that their statute was in existence, and the Federal statute was not, would make no difference in this case?

Mr. HARTSON. If that were true, but that is not the case.

Mr. MANSON. But what is the evidence as to their findings; what evidence have you as to their findings, as to what they did base their assessment on?

Mr. HARTSON. I want to correct an impression that may be erroneously in your mind, and that is that the California statute, like the Federal estate tax, has two elements, either of which being present may make the property subject to the estate tax. One is, as you have said, that the gift must be in contemplation of death, the other that the transfer was to take effect in possession or enjoyment at or after death. Now, do not forget "posession and enjoyment," for this reason, that to hold, as the California State taxing authorities did hold, that both of those elements were present required them to take the position that the transfer was effective in 1910, and title had passed in 1910, but so far as the possession and enjoyment of the estate which had been transferred were concerned, that was postponed until 1917, when the decedent died.

Now, as to the evidence that we have, I can only answer for myself, and I do not know what the revenue agents' report may show, as I am not clear on it now as to the evidence that was in the possession of the California authorities. All I now have in mind is the effect of what they did legally, and to hold as they, beyond any question, did, that both of those essential elements were present, required the position be taken that the transfer had been effected in 1910, and therefore, so far as the second element is concerned, the enjoyment and possession might be had until after death.

Mr. MANSON. Then, as I understand you, your statement that the California authorities held that the transfers should have become effective in 1910 is an inference that you draw from the California law.

Mr. HARTSON. It is the same inference that would have been drawn from our law.

Mr. MANSON. Yes.

Mr. HARTSON. Mr. Manson, I would have gone just as far——

Mr. MANSON. What I want to clear up is this: I want to know whether you had in your possession any findings by the California taxing authorities, or by any California court, showing what was found with respect to these transfers.

Mr. HARTSON. I think there is not anything in the files, and I think the revenue agents did not develop anything of that kind, for this reason—and I would like to point out why that was—because they proposed to do it, proposed to assess an estate tax or an inheritance tax, on the theory that a transfer had been made in 1910 in contemplation of death, and which took effect in possession and enjoyment at or after death. The estate came in and paid it, and there was no controversy; it never got into court, and there was apparently no very great dispute about it.

Senator JONES of New Mexico. If either one of those——

Mr. HARTSON. Yes; if either one of those, but they held that both did.

Senator JONES of New Mexico. Oh, they did.

Mr. HARTSON. The way I read the decision, they held that both elements were present, but, as a matter of law, either one would have been sufficient.

Mr. MANSON. I would like to ask you what evidence you had as to what that was. You say they held both. I just want to see if you had any evidence in your possession as to what they did hold. You had no decision or finding or anything of that sort.

Mr. HARTSON. I have not been through the files recently, but it has come to my notice within the last few days that there is evidence in the file showing beyond any question as to what they held, the fact that this tax was paid, and the theory on which it was paid there in California; but I do not believe the files show the circumstances and the evidence on which the California authorities based their decision. But the result of what they held is certainly there.

Mr. MANSON. Let me ask you this: Assuming that the California authorities held that there was no transfer in 1910, that the reassigning of the stock back to the decedent was a reconveyance of the stock, and that no transfer took place, would not the California inheritance tax law have applied to this property?

Mr. HARTSON. Oh, yes; I think so.

Mr. MANSON. Yes.

Mr. HARTSON. Because it all would have been a part of the gross estate, and would have been taxable upon his death.

Mr. MANSON. I understand that your inferences here are all based upon the fact that the California law was held to apply to this property.

Mr. HARTSON. Well, the point that we are discussing is correct, that our inferences led to the conclusion that you refer to.

Mr. MANSON. What I am trying to get at is this: Would not the decision of the California taxing authorities have been consistent with the view that no transfer took place at all in 1910, but that the whole proceeding was a mere nullity?

Mr. HARTSON. They could have so held; yes, sir; but I understand they did not.

Mr. MANSON. But what I am driving at is what evidence is there as to what they did hold, and if it is in the evidence I understand Senator Jones wanted it produced. Is not that the idea?

Senator JONES of New Mexico. Yes.

Mr. HARTSON. I do not have in mind what the evidence is.

Mr. DAVIS. Mr. Jones, may I have that record to go through to find the field agent's report?

Mr. JONES. Everything is in there, every particle of evidence we have.

The CHAIRMAN. We will adjourn now until 11 o'clock to-morrow morning.

(Whereupon, at 1.05 o'clock p. m., the committee adjourned until to-morrow, Tuesday, November 25, 1924, at 11 o'clock a. m.)

INVESTIGATION OF THE BUREAU OF INTERNAL REVENUE

TUESDAY, NOVEMBER 25, 1924

UNITED STATES SENATE,
SELECT COMMITTEE INVESTIGATING
INTERNAL REVENUE BUREAU,
Washington, D. C.

The committee met at 11 o'clock a. m., pursuant to adjournment on yesterday.

Present: Senators Couzens (presiding), Watson, Ernst, and Jones of New Mexico.

Present also: Earl J. Davis, Esq., and L. C. Manson, Esq., of counsel for the committee.

Present on behalf of the Bureau of Internal Revenue: Mr. Nelson T. Hartson, Solicitor, Internal Revenue Bureau; Mr. Fred Page, assistant deputy commissioner, Miscellaneous Tax Unit; Mr. Charles W. Jones, Chief, Review Division, Miscellaneous Tax Unit.

The CHAIRMAN. All right; you may proceed, Mr. Davis.

Mr. DAVIS. Senator Jones asked yesterday about the report from the field agent in this Sigmund Schwabacher case, and I have before me a copy of the conclusions reached by the acting revenue agent in charge, H. J. Douglass. The conclusions reached by the agent in charge in the field in that case are as follows, after reviewing the testimony:

> In conclusion, we believe that a careful perusal of the exhibits hereto attached and consideration of the points hereinbefore raised will fully demonstrate that the organization of the corporation, the transfer of its stock, and all of the records set forth in the "minute book" were the steps taken in an effort made by the decedent and the members of his family to avoid the probate of his estate and escape the imposition of the State inheritance tax of the State of California and constituted in effect a testamentary disposition of a material part, all in fact of Sigmund Schwabacher estate, and that regardless of the showing contained in the record of the alienation and disposition of decedent's property the fact is that at all times decedent retained the actual possession, management, and control with the right to disposition and alienation of all of the property enumerated, and the voting of salary to the president of $2,000 per month, the tying up the alienation of the stock by the agreement hereinbefore referred to, were actually and in fact a part of such scheme—

Senator JONES of New Mexico. By the way, referring to that agreement there, was there a separate agreement, written agreement or oral agreement?

Mr. DAVIS. There was an agreement in writing, I believe, that if the members of the corporation should have any of its stock for sale, they should sell it to the other members of the corporation first.

That stock was fixed on the books at a certain value, away below the real value of the stock.

and in effect constituted reservations made by the decedent and acquiesced in by his family of the income of the property, together with the management, control, and disposition of the same, and the distribution was intended to take effect only on the death of said Sigmund Schwabacher, and that inasmuch as no consideration passed for the organization stock the whole estate without diminution for such interest is taxable.

I will not attempt to elaborate to any great extent on the testimony which is herewith submitted as Exhibit K, but will attempt to bring together the main points which, to my mind, indicate that the 950 shares of capital stock of the Sigmund Schwabacher Corporation transferred should be included in this decedent's estate as part of his estate, as well as the 50 shares returned.

Reasons for organization:

The testimony of Joseph Haber very clearly shows that the reasons for the organization of this company were for the purpose of distributing this decedent's estate to members of his family, and, further, so that the same could be distributed in kind.

Mr. Haber's testimony further shows that, at the very time of the organization of this company, it was part of the original scheme that a contract of agreement should be drawn up between the stockholders of the company, wherein, if it was desired by any one of the members to sell his or her stock, he or she first must submit such proposal to the other stockholders of the company; and, in this connection, it has been shown in the testimony that it was written in the minutes of the corporation in the meeting of January 16, 1911, at $600 per share, and in the minutes of the corporation of February 20, 1912, at $300 per share. A sacrifice entailed under a sale of the shareholder under this agreement, of itself, almost prohibits the disposal of the stock by such shareholder.

The testimony of Frank Schwabacher also shows that the reason for this stock agreement was to prevent any of the members from disposing of their stock to outsiders.

DISTRIBUTION OF CAPITAL STOCK

The testimony of Helen Haber shows that this decedent gave her a certificate in the latter part of 1910 for 100 shares and told her to indorse the same, which she did, and returned it to this decedent under his instructions, and the decedent then took the stock certificate and placed it in a safe deposit box with other securities belonging to Helen Haber. However, Helen did not have access to the box in which this certificate was kept.

The testimony of Max Schwabacher as to the indorsing of the certificate and return of same to decedent is practically the same.

The testimony of Frank Schwabacher as to the indorsing of the certificate and return of same to the decedent does not differ in effect from the other two above mentioned.

The testimony of Mina Schwabacher was very evasive, and when she was asked on this point, she was not quite certain as to what she did. In fact, every time a question was asked of her, she would look from one to the other to see if a proper answer would suggest itself.

In the testimony of Frank Schwabacher, it is shown that Stella Bornstein and Leo Schwabacher reside in the Northwest, but nothing definite could be gained either from him or other members of the family as to whether their certificates were indorsed in blank and returned to the decedent.

SAFE DEPOSIT BOX

There is not one of the members of the family, as shown by their testimony, who can ever remember having entered the safe deposit box of the Sigmund Schwabacher Corporation alone prior to Sigmund Schwabacher's death. In fact, three officials of the Mercantile Trust Co. in charge of the vaults are very emphatic that during Sigmund Schwaber's life he was the only one who ever entered that safe deposit box alone, and in that box was kept all of the papers and securities of the Sigmund Schwabacher Corporation as well as the papers and securities belonging to members of his family. Just one day after this decendent's death, Frank Schwabacher did open that box.

and he opened it many times immediately after decendent's death, but he does not remember one instance wherein he went to that box alone and opened the same during the lifetime of this decedent.

I will not answer the question asked in department letter of November 3:

1. That this decedent did reserve the income of the Sigmund Schwabacher Co. is best shown in Exhibit E inclosed herewith. This exhibit instead of showing a period of six months, shows each and every month commencing with January, 1914, and ending with March 20, 1917, the date of this decedent's death. Pages 1 to 5 of this exhibit give a detailed statement of each month. Pages 6 and 7 of this exhibit are a recapitulation of pages 1 to 5 inclusive, and show exactly what cash was received by the corporation and its disposition. That the surplus income was reserved by Sigmund Schwabacher there can be no question. That there was no dividend declared is best explained by the fact that on December 31, 1914, the cash balance was $1,730.53. During that same year it will be noticed that securities were purchased in the amount of $42,287.08, and that $16,423.75 was advanced to Sigmund Schwabacher. Of this amount he repaid $13,000. Another good reason why no dividend was declared in 1915 is because the cash balance at the end of that year, as shown by page 6 of this exhibit, was $2,407.95. During that year securities were purchased in the amount of $34,207.55, and the amount of $39,000 advanced to Sigmund Schwabacher, of which $5,000 was repaid. Another good reason why no dividend was declared in 1916 is shown on page 6 of this exhibit, wherein it is shown that the cash balance at the end of 1916 was $1,256.93. In that year $41,251.98 was used for the purchase of securities and $46,567.37 advanced to Sigmund Schwabacher, of which $1 000 was repaid.

No other member of the Sigmund Schwabacher family, outside of himself, ever drew a 5-cent piece from the corporation's funds, but Sigmund Schwabacher himself did draw at will, and without the consent of the board of directors. It will be noted that he often purchased securities without the board of directors ever having authorized him to do so; that the income from the entire 1,000 shares of stock, or so much thereof as was necessary to maintain him, was reserved by Sigmund Schwabacher is best shown by the testimony of Frank Schwabacher to the effect that this decedent had no other means of livelihood except from approximately $65,000 worth of notes and securities, and the stock so held in this corporation.

Frank Schwabacher says that he estimates it took between $20,000 and $30,000 to maintain this decedent dur'ng his latter years in his station in life. Surely no such sum as his could be realized from $65,000 worth of securities and notes. Frank Schwabacher also says that the maximum amount received by Sigmund Schwabacher for director's fees from the corporations of which he was a member of the board of directors or president, etc., was not to exceed $500 annually.

Therefore, this decedent must have expected his income to come from the Sigmund Schwabacher Corporation, and his acts were such as to insure himself all that was necessary to maintain himself in the station of life to which he belonged. As no dividends were declared during the lifetime of Sigmund Schwabacher, necessarily no income from the stock transferred was reserved by him. If there was any surplus at any time, Sigmund Schwabacher always took particular pains that the same was invested in securities, advanced to him as a loan or to do with as he saw fit.

The officers of the Sigmund Schwabacher Corporation evidently had no voice in the affairs of the concern, and that may explain why the income was allowed to accumulate to the day of death, and also why no dividends were declared.

The president's salary was fixed by a meeting of the board of directors on February 20, 1911, at $1,500 per month, and on March 20, 1911, at $2,000 per month. Not one of the decedent's family who has testified at the hearing could give any reason as to how this amount was proposed and by what method of computation it was arrived at. Their very manner seemed to indicate that any salary that might have been proposed would have been acceptable to them, because it would not have stood them well in hand to have disagreed with any of Sigmund Schwabacher's plans. It will be remembered that Sigmund Schwabacher had their certificates of stock indorsed in blank, and had I been in the same position I would have granted him any salary he may have asked.

It has been shown that Rose Schwabacher, the decedent's wife and who is now president of the corporation, performs no duties whatever except in a "general advisory capacity," and she receives a salary of $750 per month as

president. As a matter of fact, Mrs. Rose Schwabacher is about 70 years of age and infirm, and is not in any physical condition to give much thought or study to any of the affairs of this corporation.

During the lifetime of this decedent, Frank Schwabacher, as secretary and treasurer, did not receive any salary, but subsequent to this decedent's death he performed the same duties performed by Sigmund Schwabacher during his lifetime, and at the meeting of June 22, 1917, was voted a salary of $150 per month for the performance of such duties, which was increased at the meeting of July 7, 1919, to $350 per month.

In Frank Schwabacher's testimony he stated that as to quantity of the duties performed, Sigmund Schwabacher during his lifetime did not perform any more duties than he is now performing, but that Sigmund Schwabacher was much better qualified when it came to using his judgment on the subject of investments.

SURPLUS

I desire to explain why the surplus account as shown in Exhibit D was decreased in the years 1915 and 1916. This is due to the fact that depreciation was written off on certain securities and that on the receipt of some dividends they were credited directly to the capital account rather than to the dividend account, the effect being to depreciate the capital account. However, in making their income-tax return for these years no loss was taken for the depreciated value of the securities because the same had not been sold, and the dividends credited to the capital account were taken into account as income. Therefore, their income-tax statement did report the true amount of income.

It is shown that different members of the family had independent fortunes of their own. I do not believe that these fortunes, or gifts which they were, are taxable, but will explain how the same were first started. In about the year 1869, this decedent gave to his wife and each of his children $1,000 to start an independent fortune. Then as a birthday or Christmas would come around, he would give each one of the members of his family an additional income producing security. He kept books of account with each member of his family, and as dividends were received from securities owned by the children, he would credit their accounts with the same. In the case of stock which this decedent gave to his children, which now constitutes their individual fortune outside of any stock of the Sigmund Schwabacher Corporation, said stock was always issued in the name of the child to whom it was supposed to belong immediately after the gift by this decedent. I have not found where any of this stock was indorsed in blank and given to this decedent for safe-keeping, except in one or two instances. The decedent did act as the agent of his children and he collected all dividends for them and made investments for them and tried to build their fortunes up to such an extent that they would be well taken care of.

An examination of some of the corporations in which the children hold stock has been made, and it has been found that these different securities are in the names of the children to whom they belong, and an examination of the stock itself, as stated before, does not show a blank indorsement except in one or two instances, and therefore I can not find any fact upon which to base a recommendation that these different securities, which have been termed "individual fortunes," are taxable under the provisions of the act of September 8, 1916, as amended.

After one copy of the testimony had been delivered to Attorney Orrick, he presented to this office his argument in the matter, which is herein inclosed and marked "Exhibit L." I do not consider his contentions very seriously, but will comment on a few of them:

On page 4 of this exhibit the attorney is presuming that the delivery of the certificates was completed at the time the actual transfer was made. I doubt very much, if this feature of the case were tried out, that the court would decide in his favor. On the other hand, I think where it is clearly shown that the decedent gave his children certificates of stock asking them to indorse the same, and return to him, clearly indicates decedent's intention not to effect immediate and irrevocable delivery. And if that was his intention, no title passed until his death. Williams *v.* Kidd, 170 California Reports, 637.

At the bottom of page 10 and the top of page 11, the language might be considered somewhat ambiguous, because the securities which formed part of the children's individual fortunes were not indorsed in blank by the chil-

dren, execept in one or two instances, and it is my firm belief that this was done because the decendent was contemplating selling that particular security for the account of his children.

At the bottom of page 11 and top of page 12, the attorney states "that there was no provision or condition reserving the deceased any life estate or power or revocation, or any right of possession or control of the shares," etc. I contend very strongly that there was an arbitrary reservation and control by this decedent of all of the shares transferred by him.

I have to recommend that the 950 shares of stock of the Sigmund Schwabacher Corporation transferred by this decedent to the members of his family be included as a part of this decedent's estate.

Exhibits A to L, inclusive, inclosed.

That signature looks like H. J. Douglass. Is that right?

Mr. HARTSON. I do not know.

Mr. JONES. It probably is.

Mr. DAVIS. Acting revenue agent in charge.

There were before the investigating officers in the examination on which the conclusion in this report is based, the following witnesses: Joseph Haber, jr., attorney, and it appears that that attorney's brother married one of the Schwabacher girls; Mina Schwabacher, Helen Haber, Max Schwabacher, and Frank Schwabacher. That theory of the agent's report rather confirmed the review committee's idea of this situation. It shows the extent to which those in the field went before making the report, and the thoroughness of the investigation made by them.

The CHAIRMAN. Has the department anything to say in that connection?

Mr. HARTSON. What is the date of that report?

Mr. DAVIS. December 29, 1919.

Mr. HARTSON. I should like to point out to the committee that the report, as has been suggested here, bears date in 1919, which was two years, approximately, in advance of the decision of the Supreme Court in Schwab *v.* Doyle; and as I have previously expressed myself to the committee, I should have found little difficulty in deciding this case in favor of the Government in taxing these shares of stock as a part of the decedent's gross estate if the decision in the case of Schwab *v.* Doyle had not precluded us from making retroactive the provisions of the estate tax law. In other words, it does seem to me that this transfer, which I believe, in law, did occur in 1910, was intended to take effect in possession and enjoyment after the decedent's death.

The CHAIRMAN. You believe that?

Mr. HARTSON. Well, that is my best judgment on it, and I think, had we been permitted to give retroactive effect to the estate tax law, we could have held this, and that is the strongest theory on which the revenue agent's report is based. He has built up his case without knowing that the Supreme Court was going to say:

Here there is no retroactive effect to the provisions of the estate tax law.

I can not, however, accept his theory that the motions that were gone through in 1910 were naked things, evidencing an intention to retain title to those shares of stock. I think he wanted to maintain control and not pass possession or enjoyment until after his death, but he passed the title at that time to his children. That, of course, is supported by a written acknowledgment by each of the share-

holders, the children—an acknowledgment of ownership of these shares of stock on subsequent dates, and an acknowledgment in the same instrument by Sigmund Schwabacher himself of the ownership by the children of these respective shares.

Mr. DAVIS. In what way did he make acknowledgment of this ownership by the children?

Mr. HARTSON. In this written instrument which has been referred to, I think, by the revenue agent as the agreement by which each shareholder would stipulate that he would submit to the other shareholders the opportunity to purchase stock before he put it on the market.

Mr. DAVIS. I understand that your agent finds by reviewing the circumstances which then existed that the agreement was a part of this scheme, and that the stock, while it was worth $800, was fixed on the books at $300, and nobody, the heirs themselves, would think of selling it at that figure.

Mr. HARTSON. It is quite possible that they would not sell at that figure. On the other hand, this document was signed at some period after the organization of this corporation. It was not a part of the original scheme to organize this corporation.

Mr. DAVIS. Mr. Solicitor, if that was not transferred in 1910, and there was the act of transferring the stock back to the father when he had complete control of it, then Schwab *v.* Doyle does not apply, does it?

Mr. HARTSON. If this was not transferred, if title did not pass, then the father never had parted with these shares of stock, and they remained as a part of his gross estate, to be taxed at his death.

Mr. DAVIS. And then the case of Schwab *v.* Doyle would not apply.

Mr. HARTSON. That is correct. The case of Schwab *v.* Doyle would not apply.

The CHAIRMAN. If that decision would not apply, I do not see how you would reach this conclusion, Mr. Solicitor.

Mr. HARTSON. In view of the decision not applying?

The CHAIRMAN. Yes; because it appears on the face of it that there was not a real transfer, and if it was not a real transfer, of course that decision does not apply.

Mr. HARTSON. Of course, that is just the opposite view from the one I reached. I reached the conclusion that there was a real transfer.

The CHAIRMAN. I think that is where the attorneys for the committee disagree with you.

Mr. HARTSON. Yes; and I have just this to say about that, Senator, that attorneys frequently disagree, honestly disagree. There would not be any lawsuits if attorneys had no differences of opinion. It just so happens that in my office there was no disagreement on this proposition—no disagreement—and the men who considered it were men of the highest ability in my office. It was not one man, but there were four men, all of them the best type of men that we have.

Mr. DAVIS. Were not the men on the review committee—five lawyers—pretty well up on this law?

Mr. HARTSON. I have no doubt of that at all.

Mr. DAVIS. Would they compare favorably with the lawyers who were working with you?

Mr. HARTSON. I think they would compare favorably. I think we have a higher rating, and we endeavor to have a higher type of service, but I prefer not to say as to that.

Mr. DAVIS. Now, Mr. Solicitor, with that situation, these five lawyers on the review committee, with the ideas they entertained and from the way that they look at this transaction, would not that have been a very nice question to put up to the courts, and let the courts pass on it, instead of your taking up the question and deciding it?

Mr. HARTSON. That is one reason why the commissioner thinks he was authorized to have my office pass on it. We have to defend these cases in court. The lawyers in the Income Tax Unit are not charged with that responsibility. They are not under obligations to go out and try the cases, and we are.

I can not impress upon you and the members of the committee too strongly that we have not had success in these cases. We have had the greatest difficulty in convincing courts and juries, and we have brought these cases both to courts and juries, of what the intention was in the minds of the decedents, and the only way we can show it is by their immediate associates. Now, there are suspicious circumstances, and we argue those, and yet, as opposed to a suspicious circumstance, there is a direct statement to the jury by one of those close to the decedent, and in the end we have been unsuccessful.

I can say, practically and truthfully, that we have had no success. That has been so much so the Senators will recollect that at the time the 1924 act was before the Congress, it was stated on the floor—and I have brought the Record to point it out to the committee, if they are interested in listening to it—it was stated by Chairman Greene, of the Ways and Means Committee of the House, and by certain other Members of the House, were interested in this gift tax amendment to the 1924 bill which was then pending—they stated over and over again that the enforcement of these contemplation of death provisions of the estate tax law were so difficult of being put into effect, because it all rested in the intention and what was in the mind of somebody who has since gone. So they proposed, in order to collect a tax on transactions of this general character, to make it easy of enforcement by making the tax on all such transfers, without attempting to establish limits which experience had shown were almost impossible to determine. Now, that is the situation which the solicitor's office has had in mind, Senators, when we have passed on these cases.

We have not swallowed the revenue agent's report in this case. We have considered what the agent has reported, but we have borne in mind that he is an investigator; that his functions are not judicial in any sense, and when these cases do come up to us, we are charged with the duty of considering the elements presented by the taxpayer and the issues raised by the revenue agent, and sit in judgment, remembering what our responsibilities and duties will be if we go to court with them; remembering also that we do not want to require a taxpayer to sue to get the money back after he has paid it, if, in law and equity, he should not have paid it in the first instance. It is an imposition on the taxpayer, as well as

on the department to have to go to court on these cases, if we are wrong to start with.

Now, I am one of those who have been criticized for taking the position, "Well, this is doubtful; let us get a court to decide it," and in every instance you do that the taxpayer is being imposed upon; he is being required to pay a large amount of money to the Government and then to sue through procedure in court, which is long drawn out. Frequently the Government is not satisfied with the outcome of a case in the district court and takes it to the circuit court of appeals and ultimately up to the Supreme Court of the United States, and years go by and still the taxpayer may have a case which ought to have been decided in his favor in the first instance by the Government.

Now, we represent taxpayers as much as we represent the Government, as the Government is but a group of taxpayers.

The CHAIRMAN. Just at that point I would like to point out that I think there is a considerable difference there. The Government has no opportunity to appeal against a decision in these matters while the taxpayer has. I think it is all one-sided; and that ought to be borne in mind when you decide a case in accordance with the views of the taxpayer, that the Government has no appeal against your decision.

Mr. HARTSON. That is right.

The CHAIRMAN. Yet you are representing both, you say.

Mr. HARTSON. We are in an impossible situation. Our duties are quasi judicial. If we were an out-and-out advocate for the Government, as is the United States attorney, for instance, we would not last five minutes there. Why? Because we would be charged with being arbitrary; because we would be acting in the interests of our client and not in the interests of the Government as a whole.

The CHAIRMAN. I appreciate your position very clearly, and I sympathize with it.

Senator ERNST. Yes; I think it is absolutely right. There are too many cases where they do not use that judgment.

The CHAIRMAN As I have pointed out, the taxpayer always has the best of it in having a chance to appeal, and the thing that disturbs me is the fact that the Government has never any opportunity to appeal against a decision of the solicitor, the decision of just one officer. The whole people of the United States are interested in your decision, because they are the Government, as you say; but the whole people have no chance to appeal against your decision, while the individual taxpayer has all of the opportunities to appeal.

Mr. HARTSON. That is correct.

Senator ERNST. I realize that, but my experience with the department has been at different times that the departments resolve every doubt in favor of the Government and put a burden of litigation, an unnecessary one, upon the taxpayer. Now, I am giving you my experience, and I think, therefore, that these men ought to exercise a wise judgment and determine these things as they believe they ought fairly to be. Some of these questions involve millions and millions of dollars, and in some of these cases there is a very close question to be determined. In those cases the matters should go to the courts, but I think the department should, oftener than they do,

exercise a wise judgment and discretion as to their decisions rather than to force a taxpayer to the courts. That has been my experience in the service. That has been my personal experience.

The CHAIRMAN. I do not disagree with that, Senator, at all. The question is who is to determine the wisdom of the decision. I agree with you that the Government should exercise a wise discretion, but none of us are so supreme that we are all wise, and certainly if he decides in favor of the taxpayer he is all wise from the taxpayer's standpoint. From the standpoint of all the people, who are interested parties finally, the question of whether he is all wise arises, and therefore it is up to the judicial branch of the Government to decide whether it was an all-wise decision, in the interest of all the people, or not.

Senator ERNST. The whole issue here narrows itself down to one that lawyers differ about. They have honest differences in the Government about it. Now, it may be a question of whether or not the department which did determine it finally gave an opportunity to the courts to determine it. That is what it narrows down to.

The CHAIRMAN. The point in my mind is whether any Government official should have that entire power to do those things. I believe it is an unjustifiable temptation or responsibility placed upon an individual in the Government, and that no individual in his own interests should desire it, and certainly the whole people of the country should not place such a responsibility upon any individual. Now, I want to say right here that there is quite a good deal of difference in deciding those questions where large sums are involved and where some individual is going to receive large benefits from it. In those matters the decision is different from the deciding by the President of the United States of a great problem where, for instance, no money is involved, as applied to an individual. In this situation the temptation is too great, and I believe it is unwarranted in the interests of all the people and in the interests of the officers charged with the responsibility. That is what I have in mind. I would like to see some new law or some plan whereby no such power or responsibility must be placed in one man's hands.

Mr. HARTSON. Senator Couzens, on that one point, before Mr. Manson interrogates me, I want to say this, that, as I pointed out yesterday, the Commissioner of Internal Revenue is the individual who has charge of making all of these decisions under the law.

The CHAIRMAN. I had that matter up with our attorneys this morning.

Mr. HARTSON. Yes.

The CHAIRMAN. And we went over that very decision, and you are the agent of the commissioner.

Mr. HARTSON. Yes, sir; I am a legal officer of the Department of Justice assigned to the Bureau of Internal Revenue to advise the commissioner on questions of law, and you will find from the files in the Schwabacher case, as well as from the files in all of these cases, that after my advice has been called for and solicited I gave it, and it is not my decision, except as they choose to follow my advice.

Now, there are frequent—not isolated—but frequent differences of opinion between lawyers in the administrative branches of the Government, and there are more in the estate tax than in the income tax,

and the lawyers in the solicitor's office. They differ, and they are both conscientious in their judgment. They want to see the right thing done; so it is not the decision of either group. It is the decision of the commissioner, and they frequently take those differences to the commissioner.

The CHAIRMAN. That is what I have endeavored to point out, that the commissioner has this sole responsibility.

Mr. HARTSON. That is his responsibility.

The CHAIRMAN. And that is what I am objecting to.

Mr. HARTSON. Yes.

The CHAIRMAN. I do not think any individual should have such a power reposed in him to turn this cash from the Government to individuals without a chance of appeal, and it is a taking of cash from the Government and giving it to the individual without the Government having an opportunity of appeal, which opportunity the individual has, when the decision is not in his favor. I do not know what the remedy is, but I am trying to see what might be done in this situation.

Mr. HARTSON. Of course, the collection of tax is an administrative duty, and somebody has to be charged with the responsibility. It must be either an individual or a board.

The CHAIRMAN. Certainly, we appreciate that.

Mr. HARTSON. Yes.

The CHAIRMAN. And we hope to get Congress to devise some means whereby it will be settled, perhaps, by a board instead of by an individual. In other words, the Government ought to have some right to appeal from the decision of the commissioner.

Mr. HARTSON. Well, of course, Mr. Chairman, on that point, I can say that that has frequently been discussed in our bureau. We are all working with those problems and realize the same defects which have been suggested here, and knowing that the system is not perfect we have been trying to find improvements all the time.

The answer to the criticism the Senator just made, that there should be a board for the Government to appeal to from the commissioner's decision, is that the commissioner is the Government for the purpose of collecting a tax and no appeal would properly, under the law, lie from his own decision. I mean if he is satisfied while representing the Government, with a certain determination, he should not appeal from his own approved action, an action which he is thoroughly satisfied with.

Senator JONES of New Mexico. Mr. Hartson, you stated yesterday that while this responsibility was put on the commissioner, as a matter of fact he seldom, if ever, went into the examination of the case himself as an individual.

Mr. HARTSON. That is absolutely correct.

Senator JONES of New Mexico. Yes. Now, should there not be some responsible board or something in the department which would assume both duties of examination and the responsibility? For one person or one committee or body to make the examination, without having the responsibility of the result, seems to me to be a rather anomalous situation. I know that that prevails in the Interior Department because I have signed decisions there time and again. They used to come in for signatures at the rate of 300 to

500 a month. That is the system which prevailed there, and I could see from what has developed that practically the same condition prevails in the Treasury Department in reference to these matters.

Senator ERNST. And you can see the reason, Senator. It is very hard to imagine any other way out of it.

Mr. DAVIS. Except, Senator, if the review committee's findings on questions of fact and law, after hearing it all, and after having a conference on it, should be the final say, as far as the bureau goes.

Senator ERNST. Well, leaving it with one bureau rather than another.

Senator JONES of New Mexico. No.

Senator ERNST. That is all your suggestion means, because it has already been before a board of review. Now, you have heard it pointed out that it was brought before Mr. Hartson. You have to have final authority somewhere. The court of appeals is overruled by the supreme court. The case that we have just been discussing was very thoroughly gone over by Mr. Hartson and those associated with him, and while it is not called a review board, that is what it really is, in effect. It was also gone over by those who had had the experience in trying these same cases—an experience which the review board had not had.

Now, all of you gentlemen who have been in active practice realize that what seems to be a very good case often falls down in court. These gentlemen who are working with Mr. Hartson here have to consider what they can do with that case when it gets to court and what witnesses they will have, and I think the probability is that they are far more apt to be right than a court of review which is looking at it from its own standpoint.

The CHAIRMAN. I would like to suggest to the Senator at that point that there is a whole lot of difference between deciding this matter in private by a board of review or by employees of a department and deciding it openly in court, with the judicial officer not responsible to anyone, except the people, under the law. I think there is a vast difference in deciding a case in Mr. Hartson's office or Mr. Jones's office and deciding it in an open court, where rules of evidence prevail, and everybody gets a chance to be heard, where the case is heard in the open and decided in the open. I do not want to take up the time of the committee, but it seems to me that when a decision of this kind is rendered by Mr. Hartson, it is assumed to be done by the commissioner in fixing the rules and employing the men to aid him, but where there is a case involving hundreds of millions of dollars and one individual decides it in secret, and I do not say that with reference to any dishonesty at all, but it does seem to me, as a matter of fact that needs no argument, that some agency somewhere should be had to which there would be some right of appeal of this decision—if you please, to this new board of appeals which has just been formed, in the same manner that the taxpayer has the right to do it, because, otherwise, there is always the opportunity of any Commissioner of Internal Revenue being charged with favoritism or undue intimacy with the taxpayer, with suspicions of graft and dishonesty and things of that sort. These officials ought to invite that opportunity just

the same as it has been done in many cases where a court assigns to the citizen who can not afford it an attorney to defend him.

Somebody ought to be assigned to defend the Government against what might appear to be an unwise decision on the part of one of its commissioners. Even a judge does not assume the responsibility of deciding the case when he appoints an attorney to defend a citizen who comes before him. He does not want to assume that responsibility, and so he appoints an attorney to defend the man, in order that he will not have to decide it, without proper evidence. No committee should have the responsibility of deciding these cases involving millions of dollars without having some judicial review.

Senator JONES of New Mexico. What have you to say of this situation, Mr. Hartson, that where there is a difference of opinion between the field agent and the solicitor's office, in cases involving considerable amounts, they should then be submitted to this board of appeals before final action by the commissioner?

Mr. HARTSON. If no action were taken by the bureau prior to submission to this board, there would be no legal objection that I could see to it at all. If, however, the commissioner has to make a determination, which he now does under the present procedure——

Senator JONES of New Mexico. Well, but we are thinking out loud here——

Mr. HARTSON. Yes.

Senator JONES of New Mexico. And are trying to devise some remedy to meet the situation which Senator Couzens points out, and as he points it out, it appears very unsatisfactory. To relieve the commissioner of the responsibility of such cases, the commissioner shall accept the findings of fact, by this board of appeals, where there is a difference of opinion between the reviewing board or the examining board, or whatever it is called, and the solicitor's office as to the facts, and then the case shall be submitted to this board of appeals, which holds its sessions in public, and then let that board enter judgment, instead of the commissioner having to do so; let the board itself enter a final judgment in the case.

Mr. HARTSON. Of course, I have not——

Senator JONES of New Mexico. To bring about in effect, the creation of a new court to pass final judgment, so far as the Government is concerned, which, of course, gives the right to either party to appeal to the Federal court, outside of the department. It strikes me that where there is so much involved, as there is in the settlement of all of these tax questions—and you say we collect hundreds of millions of dollars—the Government is very vitally interested in these questions, and we ought to have, as Senator Couzens points out, some tribunal which shall be responsible, after hearing, and not pass it up to an individual to do it.

Mr. HARTSON. Now, Senator, there should be laid before you the practical difficulties in the way of having a board pass on these cases.

Senator JONES of New Mexico. That is what we want to hear.

Mr. HARTSON. The administration of the tax laws starts out as a complicated thing. It is a difficult thing. It is a thing that people disagree about. You can take one of these cases and argue it for a week; this committee can sit on the Schwab-Bacher case and hear conflicting arguments, different contentions, and listen to the briefs

read. spending a week on it, and the Schwabacher case, gentlemen, is just one of thousands in the Bureau of Internal Revenue. I do not exaggerate at all. You can not give a judicial hearing, as would a court or a board sitting in a quasi judicial way, if you are to determine these things that come up like that, day in and day out, and which have to be decided. Somebody has to decide them.

The CHAIRMAN. Do you mind my asking you here what percentage of your cases are as close as this one is?

Mr. HARTSON. As to the percentage of cases that are as close as this, I should say that there are in the bureau—and I am not confining myself now to estate tax cases, but we are speaking now of a bureau problem rather than of a particular section of the bureau—there are thousands of cases which are just as close as this.

The CHAIRMAN. Just as close as this?

Mr. HARTSON. I have an expression in mind that I heard Doctor Adams first use, and that is this, that there are many, many cases that arise in the bureau of Internal Revenue that have no correct answer. There is no correct answer.

Senator JONES of New Mexico. Now, Mr. Hartson, just think of the number of people who have been engaged on this case, if we may take it as an example. Somebody had time to consider this case.

Mr. HARTSON. Oh, yes.

Senator JONES of New Mexico. Why not have a board of appeals do that?

Mr. HARTSON. Because the ones who considered this case were not considering all the income taxes and were not considering all of the other taxes, and was not engaged in other functions that the bureau is performing.

Senator JONES of New Mexico. You certainly do not contend that we should not have machinery of some sort whereby somebody shall investigate these cases thoroughly and pass upon them? Here we have had an examining board do it, and from what appears here there must have been a half a dozen people in the Solicitor's office engaged on this case if we are properly advised, and instead of having all of that, why not have a responsible board pass on it. If one board can not do the business, have two, and if two can not, have as many as are necessary. Somebody is doing it now, and why not have it done in a formal and regular way and put the responsibility on the people who are passing on these things, instead of on the head of some poor commissioner who has all of this responsibility?

Mr. HARTSON. Senator, I am not contending for a moment for the perfection of the present system, but I am trying to point out some of the difficulties which have to be considered and solved before you can substantially change the present system. While it is true that under the present system, as you say, somebody, a group of people in the bureau, considered this particular case that we are now discussing, that was a group in my office who were handling estate tax cases, and there are relatively few of those in the office of the Solicitor of Internal Revenue. The committee that is referred to here as the Committee on Review and Appeals is a group passing on estate tax cases and nothing else, a very small group of cases,

relatively speaking. The great number, the thousands of cases, are income tax cases, as we all know.

If you are to have a board such as is proposed here—and we already have one—which considers these proposals of the commissioner to assess deficiencies, the jurisdiction of that board might be enlarged, and you would have to double the membership, and you would have to increase the personnel in the Solicitor's office to argue cases before that board, which we have to do now. But there is no one group, under present conditions, that has the final say on all of these questions. There are different groups making decisions from time to time, all in the commissioner's name, and subject to the commissioner's approval.

Senator JONES of New Mexico. Do these boards specialize, just the same as you are having these groups now specialize?

Mr. HARTSON. You might make the board now in the Estate Tax Unit final. Make that final in the Estate Tax Unit. You could probably have three boards, because it would at least take that many in the Income Tax Unit, to sit on the income-tax cases as the review and appeal committee, and an estate tax committee sitting on estate-tax cases; but as soon as you do that, then you have complaints that come to you. From whom? From taxpayers, and the complaint is very strong; but if that board is to sit on and finally pass on and settle these questions, a part of the same organization that made the preliminary investigation and the prelminary determination, then your appeal, if you call it an appeal, or review, if you call it a review, is under the same head and substantially by the same people.

Senator JONES of New Mexico. But here is what is troubling me very much; we have this board, such as you speak of, connected with the examining branch of the Government. I am inclined to think it would not do to make that final, whereas now they take substantially an appeal from that unit to the solocitor's office, and why not have that appeal taken to a board which is acting in the open, in a judicial capacity, instead of going to your office, pick out your men, and make a board of review to hold court in public, instead of holding it in private chambers.

Mr. HARTSON. That could be done. There could be these separate boards, and I must impress upon the Senators that, due to the number of cases, one board could not handle them all. You would probably have to have one estate tax board, and maybe two or three income-tax boards, and then you would have to change the law to permit the publicity of hearings on these cases before these boards. I should have no criticism of that at all. There are many things about the situation which, if adopted lawfully, would be a great improvement over the present situation—a great improvement.

Senator JONES of New Mexico. That is just the purpose of this committee, Mr. Hartson, to sit here in counsel with you people, find out what the troubles are, and see if we can not devise some way to meet this trouble. I think you must all be impressed with the unsatisfactory way the thing is being done now. I am not saying that in criticism, because I can realize how it has grown up in the department, and I do not think anyone ought to be, so far as I can see at this time, criticized for this system which prevails. But it is an unsatisfactory system, it seems to me. I used to meet it in the In-

terior Department and I appreciate the situation there. It grew up when the business was small and it could be handled in that way, where the amounts involved were not very large, and so on; but here in this case that we have under consideration there is about $75,000 involved. That is a large sum of money, and it is a question whether that $75,000 should belong to the Government or should belong to these heirs, and that matter is disposed of without a formal hearing and without anything bearing the semblance of a judicial trial. $75,000! Clearly it appears to me that where such amounts as that are involved the Government can afford, in some way, to create the machinery for a judicial determination or something in the nature of a judicial determination.

By the way, you referred a while ago to the question of these gift taxes being devised as a means of reaching some such cases as we have had under consideration. Do you advocate the continuance of this gift tax?

Mr. HARTSON. It is difficult, Senator, to answer that question, because we have had no experience yet with the administration of the gift tax. There are two very serious fundamental legal defects in attempting to levy a gift tax. So far, however, as the gift tax is an aid in collecting a tax upon transfers, such as we are here considering, it is an extremely good thing because it is easy of enforcement. Everybody knows and can figure just exactly what his tax is going to be and acts in accordance with that knowledge. I do not know whether the gift tax is going to work or not. There are some extremely difficult things in connection with its enforcement.

The CHAIRMAN. You pointed out that this case, which is under review here, would be easily determined, and a gift tax in that case would have been ideal or excellent.

Mr. HARTSON. Yes, sir; if it had been in effect at that time.

The CHAIRMAN. Just at this point, in order to make the record clear, what kind of a case would it not be good in?

Mr. HARTSON. That a gift tax would not be good in?

The CHAIRMAN. Yes.

Mr. HARTSON. I know of one——

The CHAIRMAN. I thought you said there are so many difficulties in the way, but that in this case it would be easy. Now, tell us where it would be difficult.

Mr. HARTSON. The gift tax, Senator—and I do not wish to be misunderstood—is a tax which, except for certain legal difficulties that arise by conflict with the income tax, is a very easy tax for enforcement and a very satisfactory tax, if you concede the policy of levying a tax on transfers at all, because those who are to be taxed may very readily determine what their tax is. That is a very important thing about taxes, and there is not a great deal of uncertainty about it.

If the committee is interested in hearing suggestions about some of the difficulties that we have encountered in framing regulations under the gift tax, I will be glad to discuss it with them. I do not want to criticize the gift tax, and I have not any criticism to make of it, except we are having great difficulty in dovetailing it with the income tax and I think we may get from the courts some expressions of opinion which may be rather fatal to the gift tax, by reason of these defects which I say, I think, exist.

The CHAIRMAN. When will you first collect any gift tax?

Mr. HARTSON. In 1925. The returns will be filed at the time the income taxes are filed for all gifts made during the calendar year 1924.

The CHAIRMAN. I think until we have had that experience, Senators, it is hardly worth while to take up the discussion of it. Do you, Senator Jones?

Senator JONES. Well, unless we can——

The CHAIRMAN. In other words, I think we ought to have the experience of the department on it first.

Mr. HARTSON. I think it is generally conceded by everybody—and if it is not, I would like to hear the objections—that the gift tax was designed to tax transfers which experience had shown were difficult, if not impossible, to tax under the present estate tax law. That, I think, is a fair statement. I think the discussions upon the floor of Congress very clearly bring that out.

Senator JONES of New Mexico. The department, however, opposed the gift tax, did it not?

Mr. HARTSON. I am not prepared to answer that question in the affirmative, Senator Jones. I do not know. I know this: That the department did not recommend the enactment of a gift tax, but whether active opposition or even passive opposition was advanced by the Treasury to the enactment of the gift tax I am unable to say. I do not know.

Senator JONES of New Mexico. I would like to state my views about it all. I think that gifts and financial interests derived from estates should be taxed against the beneficiaries as income. That is my personal view about it, that we should have no estate tax applied but there should be an inheritance tax, and that it should be considered in the same way as a gift tax and should be treated as special income to the beneficiary and paid by the beneficiary.

The CHAIRMAN. Have you concluded with this case, Mr. Davis?

Senator ERNST. I would like to ask Mr. Hartson a question. Have you any case to which you would like to call our attention in which an appeal was taken to the courts and which was tried out in the courts, which looked to the solicitor's office to be a perfectly good case and which the courts upon trial threw out or reversed it? Have you got a case of that sort to which you want to refer?

Mr. HARTSON. I am very glad the Senator asked for that. I have no such report here, but I have that information and would be very glad to submit it at the next session of the committee.

Senator ERNST. I would like very much to have it, because I think that would throw light upon what is being done here.

The CHAIRMAN. I think that is highly desirable. Will you bring a case of that kind to the committee?

Mr. HARTSON. Yes, sir.

The CHAIRMAN. Have you anything more that you desire to take up in this case, Mr. Davis?

Mr. MANSON. I do not know whether this committee desires to go into the Schwabacher case any further or not.

The CHAIRMAN. Have you any specific question that you want to raise?

Senator JONES of New Mexico. I would like to have a statement of what that case is. I have never read it.

Mr. MANSON. The case that I have before me is Williams *v.* Kidd, 170 California 631. I might state to the committee——

Senator ERNST. Give me enough to tell me what is the object of this now.

Mr. MANSON. It is my opinion that this decision of the California court settles all doubt as to whether the transfer effected in the year 1910 in the Schwabacher case conveyed title.

Senator ERNST. How would that help us in solving our problems? If anybody wants to hear it, I do not object to it, but I am just asking for information.

The CHAIRMAN. I think it will, to this extent: It would help us to determine whether we thought Mr. Hartson was wrong in not referring it to the courts. In my opinion, he was, and this may sustain my opinion, or it may reverse it.

Senator ERNST. I have no objection to it.

Mr. MANSON. I just wish to read a very short notation from the decision in this case, that is, in the case of Williams *v.* Kidd.

Senator JONES of New Mexico. Give the volume and the page number.

Mr. MANSON. One hundred and seventy California, beginning at page 631.

Senator JONES of New Mexico. And you are reading from what page?

Mr. MANSON. I read from page 637. In this case, a deed was delivered to a depositary to be delivered to the transferee upon the death of the maker of the instrument, and in the decision the court said:

> If the deed is handed to the depositary without any intention of presently transferring title, but, on the contrary, the grantor intended to reserve the right of dominion over the deed and revoke or recall it, there is no effective delivery of the deed as a transfer of title.

That is my position, that the question of intention in the Schwabacher case is entirely eliminated by reason of the fact that the grantor, the decedent, did reserve dominion over the stock.

The CHAIRMAN. But there is no evidence that he reserved the right of revocation, is there?

Mr. MANSON. He did reserve the right to revoke it, because he had it in his possession, indorsed to him, which would require no act on the part of anyone. All he had to do was to transfer that stock on the books of the company.

Senator ERNST. That does not revoke it. I have stock in my possession indorsed in blank. If it does not belong to me, the fact that I may take that blank indorsement and transfer the stock to myself does not change the character of the transaction in which it was originally handed to me.

The CHAIRMAN. I think the Senator is right about that.

Senator ERNST. Let me add just this statement, that I do not know that we are taking sufficiently into account that here we have selected from the multitude of cases in the department one case which the attorney who is representing this committee has found, in which he differs with the solicitor as to the conclusion which was finally reached. Now, you cannot take the decisions of any court,

whether it be a circuit court of appeals, the Supreme Court of the United States, or any district court, where you will not find some about which the most eminent lawyers in the country will honestly differ. The fact that some one case may be determined in a way we do not think it ought to be determined in, is not any evidence of what the department had been doing in the multitude of cases before it to-day, about which there is possibly no question. This case may serve to illustrate that in a close case of this kind, involving a large amount, there may possibly be some other remedy to protect the Government, but as a method of carrying on the business of the Government, this case does not illustrate at all to me that it has not been done properly, and that it has not, in the great multitude of cases, been well done.

Of course, we are seeking to adopt some method here by which any error of this bureau may be corrected. You will go from one board to another board, or from the solicitor's office to some board of review to make a correction, and I am not at all sure that when you go there you will have any more reason to believe that that decision will be correct than the one rendered by the solicitor is not correct. You have to take into consideration the multitude of these cases, the fact that they have to be promptly disposed of, and then see what is best to be done under all the circumstances. I am just as eager as any of you to adopt some plan or method by which we can improve upon this present system, but after it has passed the solicitor, you can go into court——

Senator JONES of New Mexico. But the Government has no right of appeal.

Senator ERNST. Of course, the Government has no right of appeal. That ends the case, so far as the Government is concerned.

Senator JONES of New Mexico. Yes.

Senator ERNST. I do not know what your experience may be, but when the Government concedes a case, in nine hundred and ninety-nine times out of a thousand they are conceding a case which is very clear and which is very conclusive against the Government. The cases which the Government is willing, without litigation, to have determined against it, have been from my experience in the departments for years, very, very few. I think the great trouble has been that too many men have been forced into litigation, entailing expense of lawyers and delays, together with the embarrassment of raising money, and there is absolutely no foundation for placing them in that position. That has been my experience.

Now, do not let one hard case make a shipwreck of this law.

The CHAIRMAN. Pardon me, but I want to stop the Senator here for a moment, if I may.

Senator ERNST. I will stop right now.

The CHAIRMAN. I want to say that, as chairman of this committee, I have been working with the attorneys in this matter for months, and this is not an isolated case and I do not want the impression in the record that this investigation is founded on an individual case like this, as to which we may disagree with the solicitor. This case is presented as one of others that we have to point out to the committee to show the system which is being followed, and as to which the attorneys and myself disagree. That system is being pointed

out to the committee for their judgment on the matter, and I do not want the record to show that the statement made by Senator Ernst is correct, because the Senator probably does not know how much time has been spent in developing these cases and in investigating them. Therefore, he has probably thought that this is an isolated cases when, in fact, it is not.

Senator ERNST. No, no; quite on the contrary.

The CHAIRMAN. Well, that is what you said at the beginning.

Senator ERNST. The chairman is in error. What I desire to say and to emphasize is this, that the cases which have been selected by Mr. Davis are those cases in which, in his judgment, the solicitor's office, or the commissioner, has blundered in arriving at a decision. That is Mr. Davis's opinion.

The CHAIRMAN. Oh, no; that is not correct.

Senator ERNST. Wait a minute. I want to make my statement.

The CHAIRMAN. But that is not correct.

Senator ERNST. Mr. Davis has selected these cases. He has brought them here for our consideration. He has begun with one, and I hope he will have others, because I am just as anxious to hear them as you; but the fact that Mr. Davis differs with the solicitor in his opinion is no evidence of whether Mr. Davis is right or whether Mr. Hartson is right. The decision in this case may have been rightly made by the department, and I am not prepared to say that it was not. Therefore, what I want to point out is this, that in these close cases which are being brought here by Mr. Davis, it does not prove anything except that in these cases which he has picked out, he thinks there should have been an appeal granted to the Government, whereas, very possibly, just as competent and just as able lawyers do not think so. I am just calling attention to that fact, because we will have to bear that in mind when we are presenting this matter.

The CHAIRMAN. Well, you are all wrong in your premises, Senator. It is not because Mr. Davis or the committee disagrees with the decision of the solicitor that these things are brought here. You have an entirely wrong impression as to why these cases are brought here. It is not because Mr. Davis or Mr. Manson or anyone else disagrees with the decision of the department. It is because they want to point out to the committee the responsibility placed upon these men to decide these close questions, and we show you a sample of what they complain of. We do not say at any time that we disagree with the solicitor's conclusion in this matter. Mr. Davis has not said that he disagrees with the solicitor's opinion.

Senator ERNST. He has not been required to do it, but we know that he does. You have said a half a dozen times that you disagree with the conclusion that has been reached.

The CHAIRMAN. But that is not the reason for bringing it up here. The reason for bringing it here was that it was a close question, and the reason for bringing it here was to show the committee the system which was followed, with which I am sure that Senator Jones or at least some of us disagree. We do not believe it is a proper system; and we brought it here to show you why we do not believe it is a proper system. We believe that that system may be remedied. Even the solicitor himself says that it is not perfect, and may be

improved. That is what we are here for—not to decide whether the conclusions are right, or whether Mr. Davis is right, as to the decision rendered in this case. So that the premises on which the Senator based his statement are all wrong.

Senator ERNST. Now, that is your conclusion. The Senator is still of the same opinion.

In nearly all of these cases which you have selected, Mr. Davis, are there not some questions which you think should not have been determined as they have been?

Mr. DAVIS. In answer to that, Senator, I would say this, that in looking over the cases we found cases similar to this, in which the Government agents had gone out in the field and got the facts and presented them.

Senator ERNST. Well, we understand all about that.

Mr. DAVIS. And then reported to the review committee, and they passed on it. Then, as Senator Couzens says, one man or two men or three men in the solicitors office on those close questions ended the Government's chance of having the matter tested in court.

Senator ERNST. Well, we understand that perfectly. We have been all over that; but you do not have to take a case like this, where you are attempting to show that the Government is wrong about it or that the solicitor's office is wrong about it. If you merely want to show the system, you can do that without taking any case. We all know what the system is; but here is a case which you take as an illustration, because you think it is wrong. Now, is it not a fact that these cases which you have prepared to bring up are cases which you think are so close that the Government is probably wrong about them?

Mr. DAVIS. Well, that is practically true, to this extent——

Senator ERNST. Yes.

Mr. DAVIS. That the Government's interest probably should have been decided in the court, and a close question like that involved in this case, without regard to how any lawyer looks at it, should be decided by a court. If what the Government's witnesses and the Government's agent say in this case is true, the Government's side of the case is pretty well established, and somebody has to stand up and look after the Government's interests here. I am not saying that that was not done all the way through, but I am saying that on close questions like this the court should pass on them.

Senator ERNST. Your statement shows exactly what I thought was happening, and I am not finding any fault, either, except that I am warning the committee that an object can not be made of an isolated case to demonstrate anything. It may be that there have been thousands of cases which the Government has decided correctly, and I want to emphasize another statement which I made just a moment ago, that in nine hundred and ninety-nine cases out of a thousand the Government resolves all doubts in its own favor. I think in too great a number of cases the Government loses sight of the fact that it does represent the taxpayer, and it ought oftener to prevent the taxpayer from being forced to bring suit.

Mr. DAVIS. Well, Senator, here you have five lawyers in the unit itself calling this transaction a legal fiction, men who have gone over every bit of the evidence in the case.

Senator ERNST. I understand fully just the point you are making.

Mr. DAVIS. I am not imputing wrongdoing to anyone by a long ways.

Senator ERNST. Oh, we all understand that. There are no charges of wrongdoing anywhere.

Mr. DAVIS. No.

Senator ERNST. You are simply trying to find some better way of doing it.

The CHAIRMAN. The Senator referred a while ago to the fact that in nine hundred and ninty-nine cases out of a thousand he thought the Government resolved a decision in favor of the Government.

Senator ERNST. Absolutely.

The CHAIRMAN. And in many cases unjustly so, and yet Mr. Hartson, in his testimony yesterday said:

> The bureau has been overly liberal—and I say that is a fact beyond any question—in permitting taxpayers to have hearings, to continue hearings, to produce additional evidence, to produce briefs, and to produce further arguments.

Senator ERNST. That is all right; that will not be the final decision.

The CHAIRMAN. But it shows that all of the evidence was considered.

Senator ERNST. But he is speaking about the processes and the methods followed in his own bureau for giving them a fair opportunity to be heard. Then, when hearing is had and the final decision is to be made, I say that this Government is honeycombed with departments that do not give the taxpayer the benefit of any doubt, but he is forced to the courts to protect his rights. That has been my experience as a lawyer, and it has been my observation for a long time. That means that every opportunity is given a man to have a hearing before the commissioner. That is all you had reference to, Mr. Hartson, as I understand it, and you have indulged them by giving them time for the filing of briefs and everything else, in order that the case might be properly presented. I think that is the fact. That has been my own experience.

Senator JONES of New Mexico. Mr. Hartson, let me ask you this: When this Schwabacher case came before the solicitor's office, was there any new testimony taken?

Mr. HARTSON. I am unable to answer that, Senator Jones. I think not. There may have been a brief or two filed with the solicitor by the attorneys for the estate. That is ordinarily done; it is customarily done. Howere, as to the discussion of the facts, they were already in issue, rather than the submission of any additional evidence.

The system was loose in this respect. Our regulations are now very specific that all the evidence shall be transmitted to the tribunal of original jurisdiction, if you can so term it, before any reveiwing agency sits in judgment on the original consideration of the case; but, in the past, the bureau, as I say, has been very liberal, and while I do not know definitely about this case, I would not be surprised if additional affidavits and additional evidence were argued to the solicitors' office. That is not an unusual situation, or, I should say, it was not an unusual situation.

The CHAIRMAN. The committee would like to adjourn now until to-morrow morning at 10.30 o'clock. I understand that that is agreeable to the other members of the committee.

Mr. HARTSON. Senator, before we adjourn, I would like to put into the record two Treasury decisions which were mentioned yesterday, which outline the present procedure for hearings in the administrative branch of the bureau, and for review by the solicitor's office.

Senator JONES. Can you put those in tomorrow?

The CHAIRMAN. Yes; I would like to have you read them to us.

Mr. HARTSON. Very well.

(Whereupon, at 12.30 o'clock p. m., a recess was taken until to-morrow, Wednesday, November 26, 1924, at 10.30 o'clock a. m.)

INVESTIGATION OF BUREAU OF INTERNAL REVENUE

WEDNESDAY, NOVEMBER 26, 1924

UNITED STATES SENATE,
SELECT COMMITTEE INVESTIGATING
INTERNAL REVENUE BUREAU,
Washington, D. C.

The committee met at 10.30 o'clock a. m., pursuant to adjournment on yesterday.

Present: Senators Couzens (presiding), Watson, Ernst, and Jones of New Mexico.

Present also: Earl J. Davis, Esq., and L. C. Manson, Esq., of counsel for the committee.

Present on behalf of the Bureau of Internal Revenue: Mr. C. R. Nash, assistant to the Commissioner of Internal Revenue; Mr. Nelson T. Hartson, Solicitor, Internal Revenue Bureau; Mr. Fred Page, assistant deputy commissioner, Miscellaneous Tax Unit; Mr. Charles W. Jones, chief, review division, Miscellaneous Tax Unit.

The CHAIRMAN. Proceed, Mr. Davis.

Mr. DAVIS. The next matter is the estate of William H. Parlin, of Canton, Ill.

The circumstances, briefly, are that William H. Parlin died on the 5th day of March, 1920, at the age of 72 years.

On September 23, 1918, about a year and a half before his death, and within the two-year period under the statute, he transferred over $2,000,000 worth of stock to two of his nephews and a niece. This is a claim for abatement, under the Federal estate tax law, as to those transfers in the sum of $858,929.06.

I have here the report of the agent in the field, and shall ask to submit just that portion of it with reference to the transfers. Then I will submit the holdings of the review committee, of which Mr. Jones is chairman, and then the opinion of the solicitor with reference to the transaction.

Senator ERNST. What did you say his age was?

Mr. DAVIS. Seventy-two, Senator.

The transfer having been made within the two-year period, the law deems such transfer to be made in contemplation of death, and it is that feature of this matter that we want to go into, and I shall ask to start by reading the field agent's report in the matter. [Reading:]

Now, as to the question as to whether or not the transfers of stock in the Parlin & Orendorff and Canton Gas & Electric Cos. were made in contemplation of death.

This is the most important question arising in connection with the present estate and a great deal of time has been devoted to securing as much information as possible on this part of the case. I am satisfied from the information

secured that the transfers were made in contemplation of death and have recommended accordingly.

The claim is made on behalf of the estate that the transfers were not made in contemplation of death, but were made in fulfillment of a promise made several years prior to the date of said transfers.

It is also claimed that the promise so made was part of a contract founded upon a good consideration and therefore not taxable.

In support of these claims the executor has filed with his return a large number of affidavits, three of which I will show to be untrue in many particulars and containing statements that the affiants never intended to make and did not know that they did make.

The transfers in question are still said to have been made on the 23d day of September, 1918, while the decedent was in New York City. The executor, William P. Ingersoll, states that Mr. Parlin signed the certificate at the Marie Antoinette Hotel, where he was then living, in New York, and delivered them to him for himself and his brother Charles D. Ingersoll, who was then in the naval service of the United States at the naval air station, San Diego, Calif., and for his sister Winnifred I. MacKay.

The certificates, signed by decedent in the proper place on assignment form on the back thereof, were inspected in the stock books of the Parlin & Orendorff Co. and of the Canton Gas & Electric Co. All of the signatures were witnessed by John Gleason, who is, or was at the time, a room clerk in the Marie Antoinette Hotel, New York (said Gleason was one of the attesting witnesses to the last will of decedent executed less than two months prior to this transfer), and date of assignment written on said certificates was September 23, 1918.

The new certificates of stock were issued November 12, 1918, as shown by receipts on stubs of P. & O. Co stock book, and October 1, 1918, as shown by stubs of the Canton Gas & Electric Co. The assignments on the Gas & Electric Co. certificates were in blank and the names of the transferees had not been filled in at time I inspected same, but new certificates were issued for 968 shares to each of the three transferees mentioned in the return.

The names of the transferees were filled in on the assignment form on the back of the Parlin & Orendorff certificates, in the handwriting of William P. Ingersoll.

New certificates were issued for P. & O. stock to each of the three transferees as follows: Preferred 2,332 shares; common, 1,555 shares.

These certificates all bear date of September 23, 1918 but Mr. Gillet, the assistant treasurer who made them out, stated that they were not made out till November 12, 1918, when Mr. Parlin returned from New York, but they were antedated to conform to date of transfer.

Mr. Gillet said that he was in New York a short time after the transfer, but that he did not know of it until after Mr. Parlin's return in November; that he had no opportunity to talk with decedent in private at that time so he did no make known to him that he had made the transfer.

In connection with an affidavit of Mr. Louis H. Gillet, filed by the estate, I asked him if decedent had ever stated to him that he was going to make any of the gifts referred to in said affidavit, in his lifetime, and he answered that he could not say that decedent had ever made that statement to him.

The affidavits of the three beneficiaries filed with the return state that decedent promised to give his stock in th P. & O. and Canton Gas & Electric Cos. to said beneficiaries, in equal shares, in effect, whenever the two boys had, in the opinion of decedent, acquired sufficient business experience in connection with the business of said two companies.

There are also affidavits by Alice C. Ingersoll, mother of the three beneficiaries; Clara Parlin, sister of decedent; Susan Gale Parlin, widow of decedent; Alice Scott, daughter of said widow; and others to practically the same effect.

The time of said promise is stated by the two brothers to have been about the time each reached the age to 21, which would be about 1906 in the case of William P. and about 1908 in the case of Charles D.

Winnifred I. MacKay speaks of it as dating back for more than 10 years.

Whatever the intention of decedent in regard to the gift of this property to his niece and nephews, he did not make the actual transfer until a time when his physical (and probably mental condition also) was much impaired, as will appear from affidavits secured from persons familiar with his condition at and near the time of said transfer, and which affidavits are forwarded herewith.

But clearly the principal depositions or affidavits are by persons vitally interested in having the transfers held not to be taxable, and when the intention ascribed to the decedent is inconsistent with written documents of decedent, in which h'- intention is indicated, it is believed that great weight should be given to such documents.

The estate claims that the decedent intended for years to give the stock to the Ingersoll boys and their sister during his lifetime, without reference to the condition of his health or his expectation of life.

The documents referred to indicate that the intention was to make a testamentary disposition of said property.

The documents in question are three:

1. The antenuptial agreement between decedent and Susan Gale Cooke, afterwards Susan Gale Parlin, and now his widow.

2. A will of decedent dated and executed on the 26th day of January, 1915, a copy of which I forward herewith.

3. Decedent's last will, dated July 23, 1919, certified copy of which was filed with return.

All of said documents reveal an intention on the part of decedent to make a testamentary disposition of his property, which remained unchanged up to date of last will.

The said antenuptial agreement, which is dated June 26, 1901, in the third paragraph thereof contains the following language:

"Whereas the said party of the first part (William H. Parlin) is the owner of property to the value of five hundred thousand dollars, and said parties are desirous that said property of said party of the first part may descend at the death of said party of the first part, intestate, to those who are of the blood of the party of the first part, and by reason of consanguinity entitled by law to succeed, free from any claim of said party of the second part as wife, either by way of dower or homestead, or to any distributive share in the estate of said party of the first part; and

"Whereas," etc.

The will of January 26, 1915, provides as follows:

"Tenth. I give and bequeath all the stock in the Parlin & Orendorff Co. which I own and my entire interest in all stock in said company in which I may have an interest, and all surplus and undivided profits belonging to said stock or interest, to my two nephews, William P. Ingersoll and Charles D. Ingersoll, in equal shares, or should either of them predecease me to the survivor of them. This bequest of my stock and of my interest in stock is upon the express condition that there shall be paid to my wife out of the income or dividends of the above stock Fifteen Thousand Dollars ($15,000) annually so long as she may live. This fifteen thousand dollars ($15,000) is to be paid one-half from the dividends due to William P. Ingersoll and one-half from the dividends due to Charles D. Ingersoll—that is, I desire that each pay annually one-half of said fifteen thousand dollars ($15,000) to my said wife.

"Since it is my desire to keep in its entirety the stock of the Parlin & Orendorff Co. as a family estate, I earnestly request my nephews that neither of them sell, hypothecate, or obligate his stock without the consent of the other, and that before either of them disposes of his stock to outsiders he give his brother an opportunity to purchase said stock at a price that may be agreed upon between them, and that should either of my two nephews die without issue he leave to his surviving brother the stock and surplus owned by him in the above company.

"Eleventh. I give and bequeath all of the capital stock that I own in the Canton Gas & Electric Co., of Canton, Ill., to my two nephews, William P. Ingersoll and Charles D. Ingersoll, in equal parts, share and share alike, or if either of them shall predecease me this bequest shall go to the survivor of them.

"Twelfth. I hereby give, devise and bequeath all the rest, residue and remainder of my estate, real, personal, or mixed, wheresoever situated, or to which I may be in any manner entitled or in which I am interested at the time of my death, to my niece, Winnifred Ingersoll MacKay."

I got this will from the executor the first time I interviewed him. The first thing I asked for was all wills ever made by decedent, and he went to a desk and produced this one, and I took same and made a copy.

Without having said anything to the executor's attorneys about this will, C. E. Chiperfield several days after I got it volunteered an explanation in

regard to same. I feel that is doubtful that I would have had an opportunity to see this will had I not take the executor by surprise in the matter. As to whether or not there was any connection between the "cerebral hemorrhage" that Dr. F. L. Clemens states in his affidavit was suffered by decedent in 1915, I was unable to determine, but as Doctor Clemens states that he thinks the "stroke" was suffered while decedent was at the home of his wife in Pelham Manor, N. Y., it is recommended that the widow be interviewed for the purpose of determining the date of said stroke or cerebral hemorrhage, and of learning what physician attended him at the time.

It is to be noted that this will clearly negatives any theory that decedent intended to carry out any promise that he may have made to include Winnifred Ingersoll MacKay in the distribution of his stock in the P. & O. and gas companies, and no doubt would justly an inference that he never had made any such promise.

Senator ERNST. Had that will ever been probated, or was that simply some will that he made, but which had never gone to probate?

Mr. DAVIS. That is a will that the agent discovered. I do not know whether it ever went to probate or not. [Reading:]

The explanation given by Mr. C. E. Chiperfield, who saw that some explanation was called for, was as follows:

He said that Winnifred I. MacKay had married George MacKay, an Episcopal clergyman, and that MacKay would not work and was shiftless and that for that reason all of the Parlin family disliked him; that decedent did not want it to be possible, in the event of his wife coming into possession of the stock, and then dying, that MacKay get control of any of the stock in the two companies (the P. & O. and Gas & Electric) and so made the will of January 26, 1915, but that William P. Ingersoll was consulted and was present when same was made and had a private understanding with decedent that in the event of him and his brother coming into possession of the stock under the provisions of the said will that they would hold one-third of the stock in each company for the benefit of their sister.

Apart from the legal obstacles in the way of cutting down the absolute title to said stock that would vest in the two nephews under the provisions of said will, if decedent died, by proving the alleged agreement, there is the further inconsistency, that if Winnifred were given one-third of the stock, in pursuance of said agreement, inasmuch as she was residuary legatee under said will, it is most probable that she would get a much larger share of her uncle's property than either of her brothers.

Mr. John F. Sheehan, foreman of the experimental department of the P. & O. for many years, and Mr. William S. Graham, superintendent of said department, both stated that Mr. Parlin always seemed to think a great deal of Mr. MacKay; that he had been educated by the Parlins, having been sent to Oxford University; that said MacKay lectured at Chautauqua meetings in the vicinity of Canton, and that Mr. Parlin would attend his said lectures; that on January 26, 1917, a bust of the father of Mr. Parlin was unveiled in the hall of fame at the University of Illinois at Urbana, and that George MacKay was selected by the family to deliver the oration at the exercises, which were attended by Mr. Parlin and other members of the family. Mr. Sheehan and Mr. Graham both attended the said exercises and both stated that at that time Mr. Parlin was in failing health.

Mrs. McKay secured a divorce this year upon the ground of desertion. The action was not contested, and I was told by George Hamilton, an old employee of the P. & O., who was well acquainted with MacKay, that the latter claims that he was sent to California by his wife and that in his absence and without his knowledge the divorce was secured.

Without any questioning by me in regard to Mrs. MacKay and in the course of conversation on other matters concerning this examination, the following statements were volunteered:

By Dr. H. C. Putman: "Mrs. MacKay has absolutely no consideration for the rights or feelings of others." He stated that she led her husband a miserable existence.

Senator ERNST. What testimony is this—just voluntary statements of persons who were interviewed?

Mr. DAVIS. These are statements that the agent got.
Senator ERNST. All right.
Mr. DAVIS (reading):

Dr. George S. Hamilton, previously referred to (and who made an affidavit in regard to Mr. Parlin's health, forwarded herewith) said that Mrs. MacKay was "Cold-blooded and without a heart."

Dr. William E. Shallenberger, of Canton, said that she was devoid of feeling or conscience.

I have gone into this matter somewhat at length because the force of the will of 1915 will be attacked before the department upon the basis of the explanation given by C. E. Chiperfield, as set out above. Mr. Chiperfield made no claim that he had any personal knowledge of the circumstance surrounding the making of the will, but gave me the explanation as that made by W. P. Ingersoll, said W. P. Ingersoll being present and hearing Mr. Chiperfield tell me the story.

I interviewed C. H. Wason, one of the witnesses to the will, who is now in the real estate business in Canton, but who at the time the will was executed was employed in the P. & O. office. Mr. Wason could not remember what the physical condition of decedent was at the time of making this will, but he said that he left the employ of the P. & O. in the fall of 1917 and that at that time decedent's health was bad and that he was in failing condition and had practically relinquished his duties at the factory.

Mr. Wason informed me that the will was drawn by F. R. Baird, another of the witnesses to the will, who was a lawyer employed in the office of the P. & O. Co. and who attended to the legal matters of the company, and who is now in the employ of the International Harvester Co. in London, England.

We now come to the last will of decedent dated July 23, 1918.

Paragraph 9 is as follows:

"9. I hereby give, devise, and bequeath all the rest, residue, and remainder of my estate, real, personal, or mixed, or to which I may be in any manner entitled or in which I am interested at the time of my decease to my nephews, William P. Ingersoll and Charles D. Ingersoll, and to my niece, Winnifred Ingersoll MacKay, share and share alike, and in the event that either of the said persons named in this paragraph of my last will and testament shall depart this life prior to my decease, then it is my will and I do hereby direct that the survivors or survivor of said named persons take my residuary estate in equal parts, share and share alike, provided, however, that the foregoing bequest is made upon the express condition that there shall be paid to my wife, Susan Gale Parlin, out of the income or dividends from my Parlin & Orendorff Co. stock in the event that she shall survive me the sum of $15,000 per annum so long as she may live. The said $15,000 to be paid to my said wife pro rata by the owners of said stock."

The tenth paragraph of said will is as follows:

"10. Since it is my desire to keep in its entirety the stock of the Parlin & Orendorff Co. as a family estate, I earnestly request that neither of the devisees or legatees in this section of my last will and testament named shall sell, hypothecate, or in any manner incur any obligation affecting the ownership of said stock without the written consent of the other legatees and devisees, and that before selling, hypothecating, or incurring any obligation with reference to said stock even with the consent aforesaid that the privilege of purchasing said stock be given to the other legatee or legatees and devisee or devisees, as the case may be, and I do hereby expressly request and earnestly ask that the said legatees and devisees shall each execute a last will and testament providing that upon their dying without issue that their interest in the said capital stock of said company shall pass to the survivors in order that the ownership of the same may be continued indefinitely in the members of the Parlin family."

This last language would indicate that the intention that his property should pass at his death as evidenced in the ante-nuptial agreement and in the will of 1915 still was in the mind of decedent on July 23, 1918.

Everything in the will shows that he had no intention of making a transfer inter vivos, but that at the time he made the last will he fully expected that his property would pass thereunder, and he was still firm in his desire to keep the P. & O. stock in the Parlin family, making still stronger recom-

mendations and requests in that particular than in the 1915 will, for instance requesting that legatees make wills bequeathing their interest to the survivors in case of death without issue.

The principal change from the 1915 will is to give Winnifred I. MacKay an equal share in the stock and to make her brothers equal participants with her in the residue. George MacKay was still the husband of Winnifred in 1918 when this last will was executed and so far as appears, if there was any reason why Winnifred should not participate in the gift of stock on account of her marriage to him, it applied forcibly then.

Why then was this will made? If decedent was intending to transfer his stock to his niece and nephews in a short time, as they in their affidavits state he was, why, unless he realized that his death was likely to occur at any time, did he not allow the will of 1915 to remain in force pending the contemplated transfer, his niece, Winnifred being amply protected according to the "explanation" by the agreement referred to?

It will be noted that both wills provide for the payment of $15,000 annually to the wife of decedent so long as she may live, said payment to be made from the income of the Parlin & Orendorff stock and said stock being bequeathed upon the express condition that such payments be made. The bequest of this stock having been deemed by the transfer prior to death of decedent, the condition of course would be discharged. I therefore inquired if the payment of the said amount was being made to the widow and was informed by the executor, at the conference held at the office of his attorneys on November 9, that it was and upon further inquiry the executor stated that when the transfer was made it was agreed that the transferees would carry out this provision of the will. He also stated that it was thoroughly understood at the time of said transfer that the directions concerning alienation of the stock would be observed. (The sale to the International Harvester Co. was not thought of then.)

Among other reasons given for the transfer of the stock, is that decedent was desirous of being relieved of the burdens incident to the ownership of said stock. He had relinquished practically all participation in the direction and management of the affairs of the P. & O. Co. certainly as far back as the fall of 1917, as is shown by affidavits of various persons that I have procured and forward herewith, and by statements of other persons interviewed. The ownership of the shares therefore were no burden to him, and as a matter of fact, on September 24, 1917, he was willing, apparently, to assume still heavier burdens in this respect when the shares in which his mother held a life interest were transferred to her children he taking one-third of same being 667 shares of common and 1,000 shares of preferred stock of the P. & O. Co. Furthermore he retained the stocks and bonds that would cause him much more inconvenience in handling and managing. He had received the dividend on the preferred stock in July and another would not be due for a year. There had been no dividends on the common stock the earnings over requirements for preferred dividends being retained in the business, so there was no burden or duties incident to the mere ownership of the stock at the time of transfer that would be apt to cause him any great discomfort. He did not travel any more than he had before making the transfer, but shortly after returned to Canton where he remained with the exception of a trip to Michigan and a few visits to near-by places until the time of his death.

The Ingersoll boys never held any position of responsibility in the P. & O. plant. All employees of the P. & O. that I asked in regard to the matter said that they never showed any capacity for acquiring a knowledge of the business and that they would be away from their work a great part of the time and that this caused Mr. Orendorff to dislike them and to insist that if they did not attend to their duties the same as other employees that they be not employed, the final result of which was that they were taken from the P. & O. and placed in the Gas & Electric Co. office.

In regard to the health of Mr. Parlin at about the time of the transfer it was learned that he had given up participation in the active management of the Parlin & Orendorff Company as early as the fall of 1917, if not before.

That it is probable that sometime in 1915 or thereabouts he suffered a partial stroke of apoplexy, or a cerebral hemorrhage.

That he had been suffering with nephritis (Brights disease) for a number of years prior to his death.

That on or about November 1, 1917, a trained nurse, Miss Lilian Daily, was employed to care for decedent and that she continued as his nurse from that time until his death, accompanying him everywhere and sleeping in his room every night during the whole period of her employment.

That there was a common understanding in Canton for several years prior to date of death that decedent was in very bad physical condition, and also that his mental condition was impaired.

Mr. John F. Sheehan, Canton, Ill., foreman of the experimental department at the P. & O. factory, for over 30 years in the employ of said company stated that he had noted a marked failing in decedent's mental and physical condition for several years before date of his death. That he had noticed this some time before Mr. Parlin went to New York in the spring of 1918; that on one occasion before this trip to New York, Mr. Parlin came into the office of Mr. Sheehan at the factory and appeared to be very feeble and that as Mr. Parlin was very sensitive in regard to his infirmities, he used some slight pretext as an excuse to get him seated quickly and took him by the arm when he left the office.

Also as previously stated (p. 33) Mr. Sheehan said that on the occasion of exercises attended by Mr. Parlin on January 26, 1917, Mr. Parlin was in failing health. He was able to fix the date accurately by means of a program of the exercises referred to, which he retained as a souvenir of the occasion.

Mr. U. G. Orendorff, owner of one-half interest in P. & O. Co. told me that he noticed a very decided mental and physical change in Mr. Parlin about July, 1917. That he was failing very rapidly thereafter, and was not competent to attend to the affairs of the company, and that he did not attend to such affairs thereafter.

Mr. Orendorff also said that Mr. Parlin did not have anything to do with the financial affairs of the company, that he as treasurer attended to that. (Charles D. Ingersoll in his affidavit states that decedent went to New York in the summer of 1918 to be in touch with eastern financial institutions. Attention is called to deposition of the nurse, Miss Daily, filed herewith, in which she can only tell of one visit to a bank while decedent was in New York in 1918, page 11 of said deposition.)

Mr. Orendorff further states that the Ingersoll boys never had any job in that P. & O Co., where they had any supervision over any part of the work and that they were not given experience that in any way would fit them for administrative or managerial positions therein.

It was generally understood in Canton that there was considerable friction for some reason between Mr. Orendorff and the Parlins. Some ascribed it to Mr. Orendorff's dislike for the Ingersoll boys. It is believed that the attorneys for the executor will lay great stress on this friction between the Parlin family and Mr. Orendorff, as they imagine that the principal source of information upon which this report will be based is Mr. Orendorff, although I stated to them that that was not the case. Mr. Orendorff was not very communicative and I found that it would not be possible to get an affidavit from him, or even a very detailed statement. Incidentally, it may be of advantage to know that Mr. B. M. Chiperfield, of counsel for executor, is married to a sister of Mr. Orendorff and that he and Mr. Orendorff each equally is unfriendly to the other.

Gilbert W. Smith, cashier of the First National Bank of Canton, stated that while he had not seen Mr. Parlin to converse with him for several years prior to his death, that it was generally understood in Canton for a number of years prior to said date of death that decedent was in failing health, both physically and mentally; and that for about a year or so prior to death his condition was very bad, and that his realtives kept him out of sight as much as possible as they did not want his condition known. Mr. Smith is friendly to the Parlins, W. P. Ingersoll being a director in his bank, but was willing to give whatever information he was able to, for the purpose of assisting in the examination, and some of his suggestions were found to be of great value, as it was he who suggested that I see Dr. T. C. Hays, who in turn gave me the address of Dr. F. L. Clemens of San Diego, Calif. from whom a very valuable affidavit was obtained (forwarded herewith).

Dr. T. C. Hays is one of the oldest and most prominent physicians in Canton, Doctor Hays stated that he had never rendered any professional services to decedent, but that on many occasions during the two or three years next preceding date of death has seen him in various places in Canton and had observed that his physical condition was very bad, and was of opinion that his

mental condition was far from normal. Doctor Hays stated that these facts were a matter of somewhat general knowledge around Canton, and that the condition of Mr. Parlin was a frequent topic for discussion among the physicians of Canton. The doctor also stated that he had understood that decedent had suffered a partial stroke of apoplexy a few years prior to date of death, but that he could not say what year. He thought Doctor Clemens could. It will be noted that in his affidavit Doctor Clemens fixes the time as being in the year 1915.

Dr. William E. Shallenberger, another prominent Canton physician, stated that he had seen Mr. Parlin many times during the three years prior to the date of his death, and that he had noticed a continual failing in his physical condition, and that he believed that there was also a considerable mental failing. Doctor Shallenberger also said that the bad health of Mr. Parlin was often discussed by the doctors of Canton when they would meet.

Doctor Shallenberger, stating that the information was to be held in strict confidence and not used by the Government without first obtaining his consent, told me that a few days after I started the examination in Canton—and before I had called on the executor of his attorneys—he was seated in his automobile in the Main Street about to start for home, when Claude E. Chiperfield, of counsel for the estate, came to his car and asked him if any Government man had been to interview him in reference to the Parlin estate, the Doctor replied that no one had called upon him for that purpose, whereupon Mr. Chiperfield then said, "There may be some one call on you, and if there is, we would like you to be noncommittal, or if you do say anything, do us a favor." The doctor said that knowing the Chiperfields as he does, that he knew this to mean that if he were to say anything detrimental to the interest of the Chiperfields' clients it would not be well for him; in other words, a veiled threat of injury to his business, or other reprisals.

To show the methods that the Chiperfields adopt in the practice of their profession I am forwarding herewith the complete transcript of the case of Parlin & Orendorff Co. *v.* Bert Scott (137 Ill. Appellate 454), in which the court severely reprimanded B. M. Chiperfield, who will conduct this case before the department. Said case is inserted in this report following this sheet.

I will not read that report.

Mrs. Gibson, whom Miss Lillian Daily, decedent's nurse, in her deposition (taken by me and forwarded herewith) states was employed as nurse for decedent's aged mother (see pp. 2 and 3 of said deposition) lives at 154 North Second Avenue, Canton, Ill., and upon being interviewed, stated that she is a practical nurse and was employed in the family of decedent to take care of his aged mother, Caroline Parlin, that she had been so employed for a period of three and one-half years, ending shortly after Mr. Parlin's return from New York in the fall of 1918.

Senator WATSON. Let me ask you this question: Do I understand this to be something in the nature of a contest of a will, so as to determine certain exemptions?

Mr. DAVIS. Yes; it is a question, Senator, of whether or not a conveyance that he made within two years prior to his death was made in contemplation of death, and that it came under the two-year period provision.

Senator WATSON. Yes.

Mr. DAVIS. I probably should have explained that when you first came in.

Senator WATSON. That is all right.

Mr. DAVIS (reading):

Mrs. Gibson said that she remembered the time that Miss Lillian M. Daily, trained nurse, came to the Parlin home as nurse for Wm. H. Parlin, and that Mr. Parlin had been failing for some time prior thereto—Miss Daily fixes date of her employment as October 31, 1917; see page 1 of her deposition—and that he was in failing condition all through the years 1917 and 1918, and that during all of the time she was employed in the household, whenever Mr.

Parlin went from one part of the house to another some one went with him, and that he used a cane wherever he moved around.

His mental faculties seemed impaired to the extent that he was somewhat childish and would get fretful and impatient over trivial matters. He would also cry very easily, often at things read to him from the papers, although the items that caused this effect when read were such as persons generally would not be affected by.

Sometimes in discussing events expected to happen in the near future, some one would say to him, "you will live to see that" and he would say that he probably would not, that he had already lived longer than his time; that the doctors told his mother that she never would raise him; that he had always been delicate and that he did not expect that he would live a great while longer.

Now, as Mrs. Gibson left the employ of the Parlin family in the fall of 1918 the facts and statements disclosed all relate to a time near enough to date of will and transfers to indicate decedent's physical and mental condition at time of making said will and said transfers.

Mrs. Gibson further stated that she never heard him discuss business matters; that Miss Clara Parlin was very careful that nothing of the kind be discussed in the presence of the old mother as she would want to go into all of the details. That all of the Parlins were very secretive in family matters and did not want outsiders to know anything about the health or other matters concerning the members thereof.

The statement by Mrs. Gibson that Mr. Parlin said he did not expect to live very long, as set out above, is the only direct statement of his to that effect that I have learned of with the exception of a similar statement testified to by George S. Hamilton in his affidavit (forwarded herewith).

The statement in Mr. Hamilton's affidavit is as follows;

"That in the fall of 1918 affiant accompanied Mr. Parlin on an automobile ride in Canton, said automobile being an inclosed limousine, riding in the back part of same with decedent, the nurse, Miss Daily, riding with the chauffeur in the front part, divided by a partition from the back part, and had a conversation with Mr. Parlin during which affiant told Mr. Parlin that the employees with whom he had been in the habit of consulting on various matters connected with the business missed his counsel and wished he were back in the office, to which Mr. Parlin replied, "George, I do not expected to live long."

The following information indicated that decedent had suffered a stroke of apoplexy prior to 1918:

Dr. Harrison C. Putnam stated that he understood that decedent had a partial stroke of apoplexy a few years prior to date of death while at home of his wife or her daughter (Mrs. Scott) in the East. This agrees with the statement in the affidavit of Dr. F. L. Clemens to the effect that decedent had suffered a cerebral hemorrhage, Doctor Clemens stating that same occurred in 1915 and in his statement to the revenue agent who took the affidavit believed the place where the stroke was suffered was Pelham, N. Y.

Miss Lillian Daily in conversation with me prior to taking her deposition stated that she formed an opinion that decedent had suffered a stroke at some time before she entered his employ, but in her deposition she would not make such statement, evading the question. (See pp. 7 and 8 of said deposition.) I will state at this time that Miss Daily did not volunteer any information and that it was only by persistent questioning that anything could be gotten out of her, as will appear from reading said deposition.

Then there is the statement of Dr. T. C. Hayes above referred to that he understood that decedent had a partial stroke a few years prior to death.

Mrs. Gibson, the practical nurse also stated that from her reading she had formed the opinion that decedent had had a stroke at some time prior to her employment. All of the physicians consulted by me stated that any person who had had a cerebral hemorrhage would be apt to have an apprehension that death was likely to occur at any time.

I am forwarding herewith and as a part of this report the following affidavits and depositions:

Affidavit of Dr. F. L. Clemens, of San Diego, Calif.
Affidavit of George S. Hamilton, of Canton, Ill.
Deposition of William S. Graham, of Canton, Ill.
Deposition of Lillian M. Daily, trained nurse, Canton, Ill.
Deposition of William L. Taylor, Canton, Ill.
Deposition of Dr. H. C. Putman, Canton, Ill.

I will make no further comment on the three first mentioned above than to say that they all show that decedent's physical and mental condition was bad at or near the date of the will in 1918 and of the transfer in the same year and strongly corroborate the presumption that the said transfers were made in contemplation of death. Also that it is probable that the date that Doctor Clemens accompanied decedent and his family to Urbana, Ill., was January 26, 1917, said being the date of the exercises held at Urbana in connection with the unveiling of the bust of Mr. Parlin's father in the Hall of Fame of the University of Illinois, as shown by the program of that event, now in possession of Mr. John F. Sheehan, which I saw Doctor Clemens states the date to be 1915 or 1916, the date of the exercises would be closely after the end of 1916.

The last three depositions above listed are by persons from whom affidavits were secured by attorneys for the executor which affidavits were filed with the return. The depositions of said persons taken by me show that there are very many material misstatements of fact in all of said affidavits, and it is believed that it is impossible to reconcile said misstatements with an assumption of good faith on the part of those acting for the estate.

Taking up the said three depositions in their order, first, that of Miss Lillian M. Daily, Mr. Parlin's nurse.

By referring to Miss Daily's affidavit filed with return it will be found that said affidavit is so drawn that it appears that Miss Daily was employed in the Parlin household as nurse for the aged mother of decedent, and I will state in passing that when I read this statement to her she was much surprised that it was in her said affidavit.

The following language is used in the affidavit:

"I was well and intimately acquainted for a number of years with William H. Parlin, of Canton, Ill., and also of New York City, N. Y., in his lifetime, having upon different occasions and for a considerable length of time engaged as a nurse in the family of William H. Parlin giving care and attention to his aged mother, who is still living and is now about the age of 95 years."

I also quote the three paragraphs following the above:

"I do further state that during the summer of 1918 I had frequent opportunity to see and observe Mr. William H. Parlin. During that time he had a slight impediment in his speech, also his vision was defective to some extent, and there was apparent in his walk a slight lameness.

"During the summer of 1918 the said William H. Parlin left an apartment which he maintained at the Marie Antoinette Hotel, New York, for the summer.

"During that period of time I was in the home of Mr. Parlin and was brought frequently in contact with him. During such time, owing to the defect of vision mentioned above, I did frequently read to him matters of current news and correspondence, and did on some occasions do secretarial work for him, and gave such general assistance in connection with his affairs and personally as he might desire by reason of the condition which I have mentioned above."

There is nothing in the above to indicate that Miss Daily was employed as a nurse for Mr. Parlin; on the contrary, the whole object appears to be the concealment of that fact, and to make it appear that she was the nurse of the aged mother of Mr. Parlin. Attention is called to the parts that I have underlined in the first and last paragraphs above quoted, viz, "I had frequent opportunity to see and observe Mr. William H. Parlin," and "I was in the home of Mr. Parlin and brought frequently in contact with him," and "and did on some occasions do secretarial work for him," etc.

Having in mind that Miss Daily was stated to be the nurse of the aged mother of Mr. Parlin the natural inference is that when she went to New York the said aged mother also went and that Miss Daily was there as her nurse, and that her services to decedent were merely incidental to her principal duties as nurse to his aged mother. But the mother did not go to New York, as she was too old to make such a journey.

There is no doubt that Miss Daily had "freqquent opportunity to observe him," and "was brought frequently in contact with him," as she accompanied him everywhere he went, on auto rides, short walks during which he always used a cane, and frequently was partially supported by her arm. Even on the occasions that he went from his room to the office of the hotel Marie Antoinette she was with him, and as she states in her deposition (p. 9) she always slept in his room at night during her entire period of employment.

It will also be noted by reading Miss Daily's deposition in connection with her affidavit filed by the executor, that her statements in said deposition with reference to decedent's desire to establish his nephews and niece in business during his lifetime had no basis in fact, and that her statements as to his expectation of life were equally without foundation. And it is highly probable that all discussions in regard to decedent's health were "taboo" in his presence, and that he was discouraged in dwelling on such topics. Attention in this connection is called to Miss Daily's little "slip" on page 16 of her deposition near the bottom of the page, as follows:

"Q. Did you ever have any discussion with Mr. Parlin as to the probability of his living a long or short time?—A. No; we never discussed that very much, as a matter of fact, I never let him dwell on his illness."

It will be noted that she recovered herself on the next question.

It will appear from the foregoing that there was a deliberate intent to falsify and mislead in the preparation of the affidavit of Miss Daily, as all of the facts in connection with her status in Mr. Parlin's family were known to the executor and to his attorneys.

Next is the deposition of Mr. William L. Taylor.

There is no need to make any extended comment on this deposition and the affidavit of Mr. Taylor filed by the executor with the return, which affidavit is shown by the deposition to be incorrect in practically every material particular, as is fully shown by said deposition, the particular parts of the affidavit denied by Mr. Taylor being specifically covered in the deposition.

Mr. Taylor, although he is over 77 years of age is in excellent physical condition being the "picture of health." He has cataracts growing on both eyes so that the only way he can see, and then but indistinctly, is by using a large reading glass of high magnifying power. (He used this glass in signing the deposition, first with a large pencil and then with pen.) His mind is very keen and active and his memory good. Mr. Taylor was very much surprised and indignant to find what his affidavit stated. He said that W. P. Ingersoll, in whom he had great confidence, brought the affidavit to him for his signature after it had been drafted, and that same was not read to him, but no doubt would have been if he had asked that it be, he said it's all right, isn't it Will to the executor who replied that it was, whereupon he signed it, but that he never would have so signed if he had known its contents.

He said that the way C. E. Chiperfield trapped him into making a statement that would put him in the position of saying that decedent had told that he was going to make transfers in his lifetime of the stock of the Gas Co. was that the question was, did Mr. Parlin in his lifetime say that he would make the gift, or words to that effect, the lifetime of Mr. Parkin being understood by him as referring to the time the statement was made and not as to the time the gift was to be made?

It will be noted particularly that Mr. Parlin never had any conversation with Mr. Taylor in regard to the transfer of stock in the Parlin & Orendorff Co. and never made any statement at any time that he was going to make any gift of any kind at any time to his niece, Winnifred I. Mackay.

The third deposition is that of Dr. H. C. Putman, who attended decedent at time of his death and who signed the death certificate—copy of which is forwarded herewith—giving cause of death as appoplexy and secondary cause nephritis.

The executor has filed an affidavit of Doctor Putman with the return. It will be seen upon comparing the statements in regard to decedent's health and expectation of life contained in said affidavit with his deposition, that the said statements in the affidavit were not warranted by the facts. Doctor Putman after making the deposition stated that he understood that the stroke referred to took place while decedent was at the home of his wife or her daughter.

There is mention made of this stroke in the deposition of William S. Graham, the source of his information being one Carl Pickett, who was formerly a chauffeur in the Parlin family but is now employed in the same capacity by Wm. P. Ingersoll, for which reason I did not deem it advisable to interview him. Pickett is a colored man.

The facts in regard to the above-mentioned affidavits are believed to warrant the opinion that other affidavits filed by the executor should be regarded with some suspicion that they may not be thoroughly reliable statements of fact.

As a matter of fact all of the affidavits look as if it were first determined what it was necessary to show and then drawn accordingly.

"It is strongly recommended that a revenue officer interview affiants in New York City, having copies of the affidavits for reference, and ascertaining what facts expressions of opinions therein expressed are based upon I believe it is particularly desirable that the widow be interviewed, and also Dr. Wm. Fletcher Stone, and his records in Mr. Parlin's case examined. In examining Mr. Parlin's account at the P. & O. Co. I found that two checks had been issued against said account payable to Doctor Stone as follows:

Mar. 12, 1918	$428
Jan. 29, 1919	902
Total	1,330

The estate will contend that 1,000 shares of the preferred and 667 shares of the common stock of the Parlin & Orendorff Co., included in the transfer by the decedent are not taxable in any event, alleging as a reason therefor, that same were the property of Caroline Parlin, mother of decedent and that she had transferred them to him for the specific purpose of making a gift from her to her three grandchildren, Wm. P. Ingersoll, Charles D. Ingersoll, and Winnifred I. MacKay.

This transfer was made on September 24, 1917, one year before Mr. Parlin transferred his stock, including the 1,667 shares referred to, to the above-named persons.

The record facts in the matter are as follows:

The father of decedent, William Parlin, died in 1891, testate, leaving him surviving his widow, Caroline Parlin; his son, William H. Parlin, the decedent; and two daughters, Clara Parlin and Alice C. Ingersoll (mother of the Ingersoll boys and of Mrs. Mackay).

The following provisions in regard to stock in the Parlin & Orendorff Co. now in question were made in his will and codicil to same, a copy of which is forwarded herewith as part of this report.

The will was dated March 9, 1885.

The CHAIRMAN. What is the object of going back into that part of it?

Mr. DAVIS. The agent put that in there to show that it might be said that the grandmother had given this to Parlin, so that he could give it to the children. That question does not enter into it, and I think I can omit reading that part of the will.

The CHAIRMAN. Yes.

Mr. DAVIS. Now, following that, I have just another page or so that I want to read:

The most recent case decided by the Supreme Court of Illinois in which the question of transfers in contemplation of death is involved is People *v.* Danks (289 Ill. 542) in which the opinion was filed October 27, 1919. (Reported also 124 N. E. 625; 7 A. L. R. 1023, 1026–1027.)

There are several features in regard to the state of health of decedent in that case that are somewhat similar to these in the present case.

The donor was over 88 years of age and was affected with heart trouble and arterio sclerosis of two or three years' standing and was continually under treatment and care of a physician. He consulted a specialist and was fully advised as to the nature of his troubles and was taking medicine daily for his heart.

During the last two or three years of his life he was constantly attended by a maid. (Mr. Parlin was constantly attended by a trained nurse for two and a half years preceeding his death.)

He was not confined to bed but was up and around the house and nearly every day went to his store, a short distance from the home. (Mr. Parlin was unable to go to his factory a great part of the time and men employed therein whom he wanted to see had to go to his home.

At the time the deeds were made (in the Danks case his condition of health was fairly good considering his age and the nature of the disease with which he was afflicted, and it is not claimed that his condition was then any different

from what it had been for some months before. No serious attacks of heart trouble are shown to have developed until a few days before his death.

The court says:

"What prompts the making of such a conveyance rests upon the facts and circumstances surrounding each particular case. No general rule can be formulated which will fit all cases, but each case must be examined and determined on its own facts and circumstances in the light of the experience which the courts have gained in dealing with such matters. For this purpose the donors age, physical condition, and any action contemplated to be taken by him with respect to his health, as well as the length of time he survives the making of the transfers, are all proper matters to be considered in determining whether or not the act was done in contemplation of death. If, upon consideration of all the surrounding facts and circumstances, it is apparent the donor's condition was such that he might reasonably have expected death at any time, and the disposition made of his property is such as he had contemplated making in that event, or such as he might reasonably be supposed to have desired to be made at his death, and no other moving cause is apparent for making the transfer at the time it was made, the gift will be deemed to have been made in contemplation of death, even though the transfer is absolute in form, and such as would invest the donee with the absolute right to the property during the lifetime of the donor."

There is not the slightest doubt that Mr. Parlin disposed of his property by the transfer in exactly the same way that he had contemplated doing in the event of his death, as he had provided in his will made only two months before said transfer for identically the same disposition as he made by transfer, so far as the greater part of his property, the stock in the P. & O. and gas companies were concerned, and when he made the transfer it was understood that the provisions of the will in regard to payment of the $15,000 per year to decedent's wife for life, and in regard to the encumbering or alienation of the Parlin & Orendorff stock, should be carried out. It is believed that the facts disclosed by this examination show that at the time of the transfer decedent was suffering from bodily and mental ailments such as might reasonably cause him to believe that he might die at any time and that because of this belief on his part he made the said will and two months later the transfer. There appears to have been no other moving cause for said transfer. If, as claimed, he had been intending to make the transfer for sometime there is no reason why he could not have made it at the time he made the will as both of his nephews, William P. Ingersoll and Charles D. Ingersoll were in New York at the time said will was made.

There is another reference to that will of the mother, which I will not read here. This report is signed by William J. Caroll, internal revenue agent in charge.

Now, Mr. Jones, I will ask you to read the opinion, based upon this transaction, that was before your committee. There was one of September, 1923, I think, Mr. Jones.

Mr. JONES. I think we have two here.

Mr. DAVIS. And one of May 29, 1923.

Mr. JONES. Yes.

Mr. DAVIS. I have them here, if you care to take them.

Mr. JONES. I have copies of them here. The auditing section taxed this, and a claim was filed in due course. A request for a hearing before the committee on review and appeals was asked.

Mr. DAVIS. What was the amount of tax assessed?

Mr. JONES. The tax they requested to be abated was $358,000. However, it is possible there were certain minor questions also involved in the computation.

Senator ERNST. You mean that the amount of the controversy here is $358,000?

Mr. JONES. That is the amount they asked to be abated.

This is the memorandum of the committee on review and appeals of the estate tax division in the case of the estate of William H.

Parlin. The symbols at the head of the memorandum are "ET-1381-LCM, district of 8th Illinois, estate of William H. Parlin, dated May 29, 1923:"

Memorandum for Deputy Commissioner R. M. Estes:
(Attention head of Estate Tax Division, F. E. Kunkle.)

Conferences were held in connection with the above-named estate on March 20, 1923, and May 16, 1923. The estate was represented by Mr. B. M. Chipperfield, who was accompanied by R. C. Schroeder, secretary for Hon. Edward J. King, of the Fifteenth Illinois district. The bureau was represented in the first hearing by Messrs. Greaney and Mitchell, and in the second hearing by Messrs. Jones, Copes, Ramsell, Johnson, and Mitchell.

The attorney mentioned some comparatively minor matters as set out in the memorandum for the files of May 17, 1923. No determinations were made of these matters, and they should be acted upon in accordance with the record.

The conferences were chiefly devoted to the consideration of the transfers made on, or about, September 23, 1918. The attorney's argument did not extend to the later transfer of cash and apparently it is conceded to have been made in contemplation of death. In any event this later transfer will be governed by the decision hereinafter made as to the transfer of September 23, 1918. At this time the decedent gave to his niece and nephews approximately $2,850,000 in securities which constituted about 82 per cent of his entire estate. He was then nearly 71 years of age.

The estate relies upon two main propositions in rebuttal of the statutory presumption, namely that the decedent's health was excellent in September, 1918, and that the gifts were made in execution of a plan and promise of many years standing. The evidence upon these points is sharply conflicting.

It is conceded that the decedent was afflicted with lameness and had a difficulty of speech and defective eyesight. The numerous affidavits submitted by the estate set out that these infirmities were comparatively trifling and that the decedent was entirely free from any organic disease, and generally speaking was in splendid health.

On the other hand, there is evidence that the decedent suffered a cerebral hemorrhage in 1915 which left him crippled for life. His infirmities of speech, vision, and locomotion have been described as severe. The preponderance of the medical testimony indicates that he was afflicted with Brights disease during the last two or three years of his life. It is uncontradicted that during the last two years of his life his physical condition required the constant attendance of a nurse.

The witness, Stanley Green, who in his original affidavit furnished to the estate described decedent's health at the time of the transfer as "good," in a later affidavit stated "that said Parlin looked as if he were suffering from the result of a serious illness." The witness, John Green, has modified his original affidavit in which he stated that decedent appeared to be in an ordinary state of health at the time of the transfer, by stating "The decedent at this time was far from a well man, and seemed to be on the verge of sickness. In fact, he was a sick man." These revised statements are amply supported by decedent's infirmities and particularly by the fact that his physicians had directed the constant attendance, day and night, of a nurse.

The physical infirmities were well calculated to make the decedent more than normally apprehensive of death. His statement to friends, shortly after making the transfer, "I do not expect to live very long," establishes his recognition of very apparent facts.

The attorney insisted at the conference that the decedent had promised his nephews and his niece many years prior to the transfer that if the nephews would enter his business enterprise he would give them his stock therein as soon as they had demonstrated their ability and good faith. Numerous affidavits have been submitted setting out statements by decedent to this effect.

The original affidavit of William L. Taylor, who was described by the attorney as being a gentleman of the highest character, supports this contention. However, in the later deposition of Mr. Taylor, it appears that his eyesight has failed and that he would not have signed the original affidavit if he had known the contents thereof. His revised statement is that decedent had expressed the intention of having the property descend to the nephews and niece upon his death, but not during his life.

The alleged agreement was made many years prior to the transfer, at a time when the decedent was in the prime of life and enjoyed excellent health. By its terms he obligated himself to give away absolutely the properties which constituted the bulk of his estate, and which he had spent a lifetime in building up. The antenuptial agreement in 1901 and the wills of 1915 and 1918 are contradictory to any such agreement and evidence decedent's intention that the property should pass at his death, and not prior thereto. In the contract of 1901 it is clearly set out that "Said parties are desirous that said property of said party of the first part may descend at the death of said party of the first part" (referring to decedent and to the property under consideration).

The committee is of the opinion that the estate has failed to rebut the statutory presumption that the transfers were made in contemplation of death. The evidence satisfactorily establishes that the decedent was in a deplorable condition of health, and was well aware that his death was near. As far as the record shows he had never made any prior gifts. The alleged plan of many years to make these gifts has not been established by the evidence. After considering all of the evidence, the committee finds that the transfers should be included in the gross estate as having been made in contemplation of death.

L. C. MITCHELL,
Member Review Committee.

Approved:

CHARLES W. JONES,
Chairman of Committee.
R. M. ESTES,
Deputy Commissioner.

Mr. DAVIS. That means that Mr. Estes reviewed this, as well as the committee, before attaching his approval?

Mr. JONES. The deputy commissioner seldom reviews these memoranda in person, but they are usually reviewed by the deputy commissioner.

Under date of August 22, 1923, there is another memorandum, with the same symbols at the head as are contained on the memorandum of May 29, 1923. It is a memorandum for the files, and reads:

A conference was held in connection with this estate August 20, 1923, between Mr. B. M. Chiperfield, attorney, who was accompanied by Mr. Charles Ingersoll and Miss Winifred Ingersoll, beneficiaries, and Messrs. Jones, Copes, Greaney, and Mitchell on behalf of the bureau.

The estate is to submit further evidence in connection with the transfers, consisting of a showing of the time when negotiations for the sale of the Parlin & Orendorff business to the National Harvester Co. were begun and evidence bearing upon the testimony of Doctor Clemens as to the stroke of apoplexy about 1915. The final decision was deferred, pending receipt of this evidence.

L. C. MITCHELL,
Member Review Committee.

Noted:

CHARLES M. JONES,
Chairman of Committee.
R. M. ESTES,
Deputy Commissioner.

The final memorandum of the committee is dated September 24, 1923, with the same symbols as the other two memoranda:

Memorandum for Deputy Commissioner Estes.
(Attention head of Estate Tax Division, claims section.)

A conference was held in connection with this estate on August 20, 1923, between B. M. Chiperfield, attorney, who was accompanied by Charles Ingersoll and Miss Winifred Ingersoll, beneficiaries, and Messrs. Jones, Copes, Greaney, and Mitchell on behalf of the bureau.

This conference was devoted to the consideration of the transfer made on or about September 23, 1918. The same matter was considered in two prior hearings before the final audit and review of this estate and the result of those hearings has been fully set out in the memorandum of May 29, 1923, showing the conclusions of the committee.

The two beneficiaries were questioned by Mr. Chiperfield and members of the committee concerning the circumstances of the transfer. Their testimony indicated considerable uncertainty as to whether the alleged agreement by the decedent was to make a gift during his lifetime or after his death. During the questioning, both winesses stated that the agreement was to give property during decedent's lifetime and also to make the two nephews and the niece his heirs as to the property under consideration.

Subsequent to the conference, certain additional evidence was introduced showing that the negotiations for the sale of the assets of Parlin & Orendorff were not begun until after the transfer was made. This evidence has little, if any, bearing upon decedent's motive for making the transfer.

The committee is of the opinion that the transfer should be included in the decedent's gross estate as having been made in contemplation of death. In the committee memorandum of May 29, 1923, the circumstances of the transfer have been set out at length. The consideration given to this case after that time has not changed the record as therein set out.

L. C. MITCHELL,
Member Review Committee.

Approved:

CHARLES M. JONES,
Chairman of Committee.
R. M. ESTES,
Deputy Commissioner.

Mr. DAVIS. That matter finally reached the solicitor's office, Mr. Jones?

Mr. JONES. Yes, sir.

Mr. DAVIS. I hand you what purports to be the opinion of the solicitor in regard to this matter.

Mr. HARTSON. Mr. Davis, may I interrupt there?

Mr. DAVIS. Yes.

Mr. HARTSON. To have the continuity clear here, why not now read into the record the memorandum submitting the case to the solicitor's office?

Mr. DAVIS. What I called for in the case was the two opinions of the committee on review and appeals, and then your opinion following that.

Senator ERNST. What is the objection to keeping it in chronological order?

Mr. DAVIS. I have not any.

Senator ERNST. I would read it in, then, at this point.

Mr. HARTSON. This is just a memorandum of trasmittal.

The CHAIRMAN. Read it into the record.

Mr. HARTSON. It bears date of November 24, 1923, and is signed R. M. Estes, deputy commissioner, and is addressed to the Solicitor of Internal Revenue:

Reference is made to the Federal estate tax liability of the above-named estate.

The representatives of the estate appeared at a conference in connection with the claim for abatement on August 20, 1923. After considering all the evidence that has been filed and the arguments presented at this conference, the committee on review and appeals has held that the transfer which constitutes the principal matter under consideration should be included in the gross estate.

During the conference the attorney for the estate indicated that they desired an appeal to the Solicitor of Internal Revenue in case an adverse de-

cision was made. In view of this situation, the entire file is transmitted for your consideration in connection with the request for an appeal.

The CHAIRMAN. All right; proceed now, Mr. Jones.

Mr. JONES. Do you desire me to read this?

Mr. DAVIS. Yes; proceed and read the solicitor's opinion.

Mr. JONES. This is the opinion of the Solicitor of Internal Revenue, dated February 9, 1924, signed by Nelson T. Hartson, solicitor. It bears the symbols "SOL:I:II:15-2-1-4-12," and is addressed to Deputy Commissioner Estes:

DEPUTY COMMISSIONER ESTES:

Reference is made to your memorandum of November 24, 1923 (ET-1381-LCM), transmitting the file in the claim for abatement of estate tax amounting to $358,929.06, filed on behalf of the estate of William H. Parlin, District of Eighth Illionois, for a hearing before this office on appeal from the adverse action of your office in the matter of the taxability of certain transfers as having been made in contemplation of death. The hearing was held on January 23, 1924, at which both the estate and your office were represented. No protest having been made by the estate at the hearing against the taxability of the transfers to William P. Ingersoll on July 7, 10, and 11, 1919, of cash amounting to $118,501.70, it is assumed that these transfers are admitted to be taxable.

Senator WATSON. Well, was that right?

Mr. JONES. I beg your pardon.

Senator WATSON. Was that assumption right?

Mr. JONES. So far as I know:

Section 402 of the revenue act of 1918 provides: "That the value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated.

* * * * * * *

"(c) To the extent of any interest therein of which the decedent has at any time made a transfer, or with respect to which he has at any time created a trust, in contemplation of or intended to take effect in possession or enjoyment at or after his death (whether such transfer or trust is made or created before or after the passage of this act), except in case of a bona fide sale for a fair consideration in money or money's worth. Any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death without such a consideration, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this title."

The decedent, a resident of Canton, Ill., died March 5, 1920, leaving surviving him a second wife, Susan Gale Parlin, and no issue. He was 72 years of age at the time of his death and the cause of death as given in the death certificate was apoplexy, nephritis being given as a contributory cause. The transfers in question, which involved 11,661 shares of the Parlin and Orendorff Co. of the determined value of $2,565,600 and 2,904 shares of the Canton Gas & Electric Co. of the determined value of $290,400, or a total value as determined of $2,856,000, were made September 23, 1918, within two years prior to the decedent's death. The transferees were the decedent's two nephews, William P. and Charles D. Ingersoll, and his niece, Winnifred I. MacKay, now Ingersoll, the children of his sister, Alice C. Ingresoll.

The contention of the estate is that the transfers were made by the decedent not in contemplation of death but in fulfilment of his promise to the transferees made prior to his marriage to his last wife in 1901, and oft repeated both to them and to others at various times thereafter, that if they would devote themselves to learning the business of the two corporations in which he was interested, he would, when they should acquire sufficient business experience to justify him in so doing, transfer to them his entire interests therein. And it is further contended that at the time the transfers were made the decedent's mental and physical condition was not such as to have caused him any abnormal apprehension of death.

There is a serious conflict in the evidence on both of these points. As to the decedent's expressed intention of turning over to his nephews and niece his interests in the two concerns there can be little question; the uncertainty is whether, under the alleged agreement, the property was to be transferred to the children during the lifetime of the decedent or left to them upon his death. It appears from review committee memorandum of September 24, 1923, that two of the transferees, Charles D. and Winnifred Ingersoll, were present at a confernece before the committee on August 20, 1923, and that their statements in response to questions put to them indicated considerable uncertainty on this point, both witnesses stating that the agreement was that the gift was to be made during the decedent's lifetime, and also that the stock was to be left to them as his heirs. According to the testimony of numerous witnesses furnished by the estate, the decedent's promise was to make the transfers during his lifetime, but at least one of these witnesses, William L. Taylor, was made to say something he did not intend, as is shown in his affidavit subsequently obtained by the investigating officer in which he repudiated his previous statement upon this point.

From this it would seem not improbable that some of the statement of other witnesses prepared by the attorneys may have been somewhat overdrawn. And that the decedent's intention was to make a testamentary disposition of the property rather than a gift inter vivos is further indicated by certain documentary evidence consisting of an antenuptial agreement between him and his last wife, dated June 26, 1901, and two wills, one executed January 26, 1915, and the other and last one executed July 23, 1918. In the third paragraph of the antenuptial agreement, in which the decedent is described as the party of the first part and his intended wife as the party of the second part, appears the following recital:

"Whereas the said party of the first part is the owner of property to the value of $5,000, and said parties are desirous that said property of said party of the first part may descend at the death of said party of the first part, intestate, to those who are of the blood of the party of the first part, and by reason of consanguinity entitled by law to succeed, free from any claim of said party of the second part as wife, either by way of dower or homestead, or to any distributive share in the estate of said party of the first part."

The will of January 26, 1915, contains the following provisions:

"Tenth. I give and bequeath all of the stock in the Parlin & Orendorff Co. which I own and my entire interest in all stock in said company in which I may have an interest, and all surplus and undivided profits belonging to the said stock or interest, to my two nephews, William P. Ingersoll and Charles D. Ingersoll, in equal shares, or should either of them predecease me to the survivor of them. This bequest of my stock and my interest in stock is upon the express condition that there shall be paid to my wife out of the income or dividends of the above stock $15,000 annually so long as she may live. This $15,000 is to be paid one-half from the dividends due to William P. Ingersoll and one-half from the dividends due to Charles D. Ingersoll; that is, I desire that each pay annually one-half of said $15,000 to my said wife.

"Since it is my desire to keep in its entirety the stock of the Parlin & Orendorff Co. as a family estate, I earnestly request my nephews that neither of them sell, hypothecate, or obligate his stock without the consent of the other, and that before either of them disposes of his stock to outsiders he give his brother an opportunity to purchase said stock at a price that may be agreed upon between them, and that should either of my two nephews die without issue he leave to his surviving brother the stock and surplus owned by him in the above company.

"Eleventh. I give and bequeath all the capital stock that I own in the Canton Gas & Electric Co., of Canton, Ill., to my two nephews, William P. Ingersoll and Charles D. Ingersoll, in equal parts, share and share alike, or if either of them shall predecease me this bequest shall go to the survivor of them.

"Twelfth. I hereby give, devise, and bequeath all the rest, residue, and remainder of my estate, real, personal or mixed, wheresoever situated, or to which I may be in any manner entitled or in which I am interested at the time of my death, to my niece, Winnifred Ingersoll MacKay."

Senator WATSON. Let me ask you there whether that will was contested in court.

Mr. JONES. I think not.
Senator WATSON. There was no contest?
Mr. JONES. No, sir; I have not heard of any.
Mr. DAVIS. I think not, Senator.
Mr. JONES (reading):

"This exclusion of the niece in the disposition of the stock of the two corporations tends to negative the theory of the estate that the decedent intended to carry out his alleged promise to include her equally with her brothers, but the estate's explanation of this matter is that because of the decedent's desire to avoid the possibility of the stock falling into the hands of the niece's husband in the event of her death and thus pass out of the family, the stock was bequeathed to the nephews and the residue of the estate to the niece, there being, however, a private understanding between all parties concerned that in the event of the death of the decedent and the distribution of the estate under the will, the nephews would hold one-third of the stock for their sister and would share equally with her in the residue. The last will of the decedent provides"—

Apparently that was the first will that was read, Senator.
Senator ERNST. Yes, sir; but that was never contested.
Mr. JONES. No, sir. There is another will, and this is a quotation from the ninth clause.
Senator WATSON. Let me ask you, before you begin to read, whether there was a second will, a subsequent will?
Mr. JONES. I so understand.
Senator WATSON. Was the last will contested?
Mr. JONES. I have never heard of any will contest in this case.

"Ninth. I hereby give, devise and bequeath all the rest, residue and remainder of my estate, real, personal, or mixed or to which I may be in any manner entitled or in which I am interested at the time of my decease to my nephews William P. Ingersoll and Charles D. Ingersoll and to my niece Winnifred Ingersoll MacKay share and share alike and in the event that either of the said persons named in this paragraph of my last will and testament shall depart this life prior to my decease, then it is my will and I do hereby direct that the survivors or survivor of said named persons take my residuary estate in equal parts share and share alike: *Provided, however,* That the foregoing bequest is made upon the express condition that there shall be paid to my wife Susan Gale Parlin, out of the income or dividends from my Parlin and Orendorff Co. stock in the event that she shall survive me, the sum of $15,000 per annum so long as she may live. The said $15,000 to be paid to my said wife pro rata by the owners of said stock.

"Tenth. Since it is my desire to keep in its entirety the stock of the Parlin and Orendorff Co. as a family estate, I earnestly request that neither of the devisees or legatees in this section of my last will and testament named shall sell, hypothecate, or in any manner incur any obligation affecting the ownership of said stock without the written consent of the other legatees and devisees, and that before selling, hypothecating, or incurring any obligation with reference to said stock even with the consent aforesaid that the privilege of purchahing said stock be given to the other legatee or legatees and devisee or devisees, as the case may be, and I do expressly request and earnestly ask that the said legatees and devisees shall each execute a last will and testament providing that upon their dying without issue that their interest in the said capital stock of the said company shall pass to the survivors in order that the ownership of the same may be continued indefinitely in the members of the Parlin family."

Under these provisions the children were all to share equally in the stock, but the inference that the decedent intended and expected the property to pass to the children by request rather than by gift inter vivos is even stronger than in the case of the other documents referred to. However, this inference is materially weakened by the fact that the transfers inter vivos were actually consummated just two months after the execution of this will, thus indicating a very sudden, if not unaccountable, change in his intention if the will is to be taken as showing his then intention of withholding his bounty until after his death.

With respect to the question of the decedent's physical condition at the time the transfers were made, it appears that he had already ceased participation in the active management of the two corporations. It is also in evidence that about 1915 he suffered what was supposed to be a partial stroke of apoplexy and that for several years prior to his death he was troubled more or less with nephritis (Bright's disease). From October 31, 1917, until his death, a trained nurse, Lillian M. Daily, was kept in constant attendance upon him, accompanying him wherever he went and sleeping in the same room with him. Apparently from the affidavits of Dr. F. L. Clemens, George S. Hamilton, William S. Graham, William L. Taylor, and Dr. Harrison C. Putman, obtained by the investigating officer, and from unsworn statements made to him by numerous persons residing in Canton, including John P. Sheahan, U. G. Orendorff, Gilbert W. Smith, Dr. T. C. Hays, Dr. William E. Shallenberger, and a Mrs. Gibson, a nurse in the Parlin home, it was the common understanding in the community that for several years prior to his death, and especially from about July, 1917, the decedent was failing both physically and mentally. Mrs. Gibson states that the decedent had made statements at different times prior to her leaving the Parlin home in the fall of 1918 to the effect that he did not expect to live a great while longer. And George S. Hamilton testifies that about this same time the decedent made a similar statement to him. It appears from the statements of several persons interviewed, including Doctors Hays and Putman, that it was generally understood that the decedent had suffered a partial stroke of apoplexy a few years prior to his death.

Doctor Clemens, who was the family physician for the decedent's mother for many years prior to his removal to California in 1915, and who often treated the decedent during that period, fixes the supposed attack as having probably occurred while the decedent was in New York shortly prior to affiant's leaving Canton, and testifies that it was of such character as to cripple the decedent for life. The estate denies that the decedent ever suffered a stroke of apoplexy prior to the one which caused his death. The testimony of numerous witnesses has been furnished in support of this denial and thus far no one has been discovered who claims to have any actual knowledge of the existence of such attack. Dr. William Fletcher Stone of New York, the decedent's physician at the time the transfers were made, testifies that the only disabilities with which the decedent was then afflicted were a slight lameness, the result of myelitis (inflammation of the spinal cord), defective vision, an impediment of speech, and an occasional infection of the kidneys, none of which was sufficient to cause either affiant or decedent any serious apprehension as to the latter's condition. Practically the same testimony was given by Doctor Putman who was the decedent's attending physician at the time of his death. Statements were taken from both of these witnesses by the investigating officer without materially weakening their original statements.

This office, after carefully considering the conflicting evidence submitted, is of the opinion that it is insufficient to show that the transfers were made in contemplation of death. That the decedent expressed the intention of giving to his sister's children his interests in the two corporations, seems unquestionable, and the positive evidence to the effect that the transfers were to be made when the decedent was satisfied with the children's progress in fitting themselves for carrying on the business, seems more convincing than the inference to be drawn from certain of the evidence that the transfers were to be withheld until the decedent's death.

It might be argued that it is unreasonable to believe that the decedent, while in his fifties and in perfect health, would have agreed to divest himself of the bulk of his fortune during his lifetime. This may be true, but it should be remembered that any such agreement was conditioned upon the children meeting his expectations in the matter of their fitness to receive the property, so that after all the assumption of such obligation by the decedent does not appear to have left him at the mercy of the obligees. Most benefactors like to see the result of their benefactions, and it seems not at all unnatural that the decedent, who knew that the children could not fulfill the conditions he imposed until they had reached a mature middle age, and he himself had passed his three score and ten, desired to turn over to them his interests while he was yet alive and capable of participating in their undertakings and sharing in the pleasure of whatever success they might obtain.

But little significance can attach to the provisions of the antenuptial agreement and the wills relative to the disposition of the stock in question. About

all that can be deduced from those instruments as reflecting the decedent's intention in the matter is that it was his purpose to perpetuate the businesses as a family affair, the provisions being those ordinarily used in such instruments to denote ownership and to indicate the disposition to be made of the property in the event the owner should make no other disposition thereof prior to his death. If, as is urged in the report of the investigating officer, these instruments be construed as negativing any intention of the decedent to make the transfers during his lifetime, it would be difficult, in the absence of evidence of a serious change in his condition during the two months intervening between the execution of the last will and the actual making of the transfers, to account for the sudden reversal of his intention.

Moreover, the evidence as a whole affords scant warrant for the conclusion that at the time the transfers were made the decendent's mental or physical afflictions were such as to cause him to be more than normally apprehensive of death. The evidence as to the supposed stroke of apoplexy about 1915 is too vague for serious consideration. It is shown that he was suffering from myelitis, which presumably caused the defects in his vision, speech, and locomotion, but there is little in the evidence to indicate that either he or anyone else regarded this condition with serious alarm. His only other known disability was nephritis, which at most was of only occasional recurrence, and here again the evidence fails to show that the examinations revealing traces of albumen in the urine had any other effect upon him than to cause him to avoid those things which might aggravate such condition. While it is true that he kept a nurse in constant attendance during the last two years of his life, and that by many of his associates he was thought to be failing in mind and body, the evidence as a whole indicates little change in his condition prior to the time the transfers were made, and it is particularly weak in showing that his supposed decline had the effect of causing him to realize that his end was near. Two of the witnesses relate statements by the decedent to the effect that he did not expect to live much longer, but in view of the almost uniform testimony that the decedent was of a type that looks only upon the bright side of life, it seems not improbable that the alleged statements were those often incidentally made by persons along in years and without reference to any existing ailment other than age itself. Moreover it does not appear that these statements were made until subsequent to the time the transfers were made, so that assuming that they reflect an existing state of mind, it is questionable whether they may be accepted as reflecting his mental state at the time the transfers were made.

While the matter can have little, if any, bearing upon the determination of the issue here presented, it seems worthy of note that, notwithstanding the large amount of inheritance tax due the State of Illinois in the event the transfer here involved were to be considered as having been made in contemplation of death, the taxing authorities of that State have accepted the estate's evidence as sufficient to show that such transfers were not so made.

The question presented is largely one of fact to be determined under all the facts and circumstances as disclosed by the evidence adduced, and while, as already indicated, the matter is by no means free from doubt, this office, after careful consideration of the evidence on file, is of the opinion that it is insufficient to establish that the transfers in question, although made by the decedent within two years prior to his death, were made by him in contemplation of that event, and that in consequence the value of the stock transferred should be excluded from the gross estate.

In view of the conclusion reached it is unnecessary to consider the further contention of the estate that in any event the agreement between the decedent and the transferees, the latter having performed their part of such agreement, constituted an enforceable claim against the estate allowable as a deduction in determining the value of the net estate.

The file in the case is returned herewith.

NELSON T. HARTSON,
Solicitor of Internal Revenue.

Mr. DAVIS. In the case of Schwab *v.* Doyle, which we have frequently heard about here, 269 Fed., 321, and 258 United States, page 529, the court says as follows——

Senator ERNST. Is that in reference to the present case, or are you going back?

Mr. DAVIS. Yes; this is a little note with reference to that Schwab *v.* Doyle decision.

Senator ERNST. I mean, has that any reference to the case now before us?

Mr. DAVIS. Yes. [Reading:]

> * * * "in contemplation of death" does not refer to the general expectation of death which every mortal entertains nor on the other hand is it limited to an expectancy of immediate death or a dying condition.

A transfer, therefore, is made in contemplation of death wherever the person who makes it is influenced to do so by such an expectation of death, arising from physical or mental conditions as prompt persons to dispose of their property to those whom they deem proper objects of their bounty, and falls within the provision of the Federal law, which says:

> Any transfer of a material part of his property in nature of a final disposition or distribution thereof, made by decedent within two years prior to his death without such a consideration, shall unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this title.

This is coupled with the fact that the estate and those acting for the estate submitted statements which appear to be, in part, false, and the further fact that there was some evidence that there was a prior agreement to transfer this stock to the nephews, which agreement, it seems, is not established, and the facts in the case show that the nephews never came to such a point of efficiency or familiarity with the business so that they could handle the same; in fact, that seems to be negatived by the statements submitted by the Government agent. Further, owing to the fact that the solicitor says in his opinion that there is a serious conflict of evidence, it seems that the case should have been submitted to the courts for a decision; that that is the least that should have been done with it.

The CHAIRMAN. Mr. Hartson, do you want to make a statement?

Mr. HARTSON. I think, in view of the last observation of Mr. Davis, that this would be a good point to show the committee what has been done by the courts in cases that at least were no less strong from the Government's standpoint than this case. I have here——

Senator JONES of New Mexico. Mr. Hartson, just before you go into that, let me say that I was rather struck with one statement in the opinion which you signed, that there was great doubt about the matter.

Mr. HARTSON. The statement in the opinion was that the case is not free from doubt.

Senator JONES of New Mexico. Yes; not free from doubt. Now, what force and effect do you give to that provision of the statute which says that where the transfer is made within two years without valuable consideration, it shall be deemed to have been made in contemplation of death?

Mr. HARTSON. I give the force, Senator, to that language in the act of creating a presumption in favor of the transfer being taxable. That, so we have been told in several decisions is, in effect, creating a burden of proof, and having this presumption raised, it may, of course, be overcome by evidence, and having sustained the burden, the presumption then falls.

Senator JONES of New Mexico. The opinion, I rather inferred, did not quite give that thought to it, that the presumption existed, unless that were overcome by a clear and satisfactory proof, and inasmuch as the opinion seems to still indicate that that clear proof has not been adduced, the presumption raised by the statute did not give it sufficient force.

Mr. HARTSON. It is quite possible that the opinion, at the place where the final conclusion is stated, did not again refer to the presumption in so many words that the evidence, in the judgment of the office, was sufficient to overcome the presumption the law raised. Nevertheless, that must be read into the opinion if it does not say so in so many words.

Senator JONES of New Mexico. I am inclined to think that that is true, that to give the full legal reasoning of the opinion, you would have to read into it that there was a presumption.

Mr. HARTSON. That is correct.

Senator JONES of New Mexico. But what kind of proof do you think is necessary to overcome that presumption raised by the statute?

Mr. HARTSON. It is the kind of proof, Senator, that would convince reasonable minds; it would be proof of such probative force that a court or a jury in passing on the fact would, under all the circumstances, be satisfied of the fact.

Senator WATSON. I would like to ask a question to clear the matter up in my own mind. When the gift was made, was it made exactly as the previous will had provided?

Mr. HARTSON. It was not.

Senator WATSON. It was not?

Mr. HARTSON. Not exactly. It is substantially the same.

Mr. DAVIS. Yes; substantially the same.

Senator WATSON. So there was then no property to which the provisions of the will could act; that had all been disposed of.

Mr. DAVIS. I think that included about 82 per cent.

Senator WATSON. That is to say, the gift?

Mr. DAVIS. This transfer; yes.

Mr. HARTSON. The will then operated on the balance.

Senator WATSON. Was there an antenuptial contract?

Mr. HARTSON. Yes, sir; it has been referred to in the opinion, too.

Senator WATSON. That is all I want to ask, Senator, at this point.

Senator JONES of New Mexico. Was that $15,000 paid to the widow?

Mr. HARTSON. Was it actually paid to the widow?

Senator JONES of New Mexico. Yes.

Mr. HARTSON. I can not answer that, Senator. I do not know.

The CHAIRMAN. The testimony so stated. Some of the papers stated that it had been paid.

Mr. DAVIS. They stated that, but I have forgotten from what period, whether it was from the period just after death, or just when. I remember the statement being made.

The CHAIRMAN. The statement was that it was being paid, but it does not say when it began.

Mr. DAVIS. Yes.

Senator JONES. That would seem to me to have an important bearing on the situation.

The CHAIRMAN. Will you look that up, Mr. Davis, and let us know when that did begin?

Mr. MANSON. It is very clear that they took the stock with that condition attached to it.

The CHAIRMAN. You can do that later, Mr. Davis. You need not stop to do it now.

Mr. DAVIS. The statement is here, but the date is not specific.

Mr. WATSON. I would like to ask a question or two before you start. As I understand it, the object of the consideration of the matter under discussion here is to change the method of procedure; that is to say that if the committee on review and appeals shall come to a conclusion after having fully considered the case, that then the solicitor, by himself, in a one man decision, ought not to be permitted to overturn the report of that committee thus found, and a better method of procedure should be adopted. Am I right in that?

The CHAIRMAN. That is what we are aiming at, Senator Watson, yes.

Senator WATSON. That is what I understand. Now, I would like to ask Mr. Jones a question or two to get at the method of procedure. I understand that there were two different dates on which you considered this case, in May and August?

Mr. JONES. As to the number of men who heard this case?

Senator WATSON. Yes; I would like to know, first, the number of men who heard it, and then I would like to know whether you had any witnesses before you, or whether it was just the testimony that was read by Mr. Davis here, that you read and considered. I would like to know just how fully you went into it, in order to determine how well grounded your decision was.

Mr. JONES. As I recall it, we had three formal conferences on this case, although the attorney for this estate was down several times on informal conferences. Apparently, every time he came to Washington, he would drop down to our office. I can not recall the number of times that he was down there, but it was very often. I think the record will show that at the first formal hearing before the committee on review and appeals, there were three members of the committe present. Our committee consists of five.

Senator WATSON. Yes.

Mr. JONES. On the next occasion, as I recall ——

Senator WATSON. Wait a minute before you leave that, Mr. Jones. You had that conference. What did you do at that conference?

Mr. JONES. The usual procedure—and I assume it was followed in this case—was to have one of the members of the committee take the agent's report and give the gist of the case as made out by the investigating agent, the man in the field.

Senator WATSON. Do you ever have any witnesses come in and testify?

Mr. JONES. Oh, yes; and we had them in this case later.

Senator WATSON. That is, witnesses came in and testified about it?

Mr. JONES. Yes, sir. Quite often we have taken testimony.

Senator WATSON. Yes.

Mr. JONES. In this case, at the first conference, I assume that the usual procedure was followed. The gist of the field man's report

was given to the attorney. All of these attorneys know what the issue is, and they come down with a large number of affidavits. Sometimes they come down with 25 or 30. For example, last Saturday, we had one case in which the attorney came down with 70 affidavits on a question of contemplation of death. I merely mention that to show you that they come down with plenty of evidence.

Senator WATSON. Do you remember that they did in this particular case?

Mr. JONES. Yes; they had a large number of them, and they are in the files here. They are very voluminous.

Mr. DAVIS. Pardon me. Were there witnesses present and sworn testimony taken?

Mr. JONES. Not at the first conference. On the second conference, as stated in the memorandum, some of these beneficiaries were present—I think two of them—and they were interrogated at length as to any agreement that they might have had with their uncle that he would turn over this stock to them during his lifetime, and, as the committee's memorandum indicates, they seem to have been a little hazy about whether or not there was an agreement to turn this stock over during his lifetime; in any event, as to the time when it was to be turned over. But we went into the case very thoroughly, and it was fought very hard by the attorney, Mr. Chiperfield, who represented the beneficiaries.

Senator WATSON. Now, did some one of you, or did all of you together go over all of these affidavits?

Mr. JONES. We always go through the whole record.

Senator WATSON. You go through the whole record?

Mr. JONES. Yes, sir.

Senator WATSON. That is to say, do all of you, or do you select some one person?

Mr. JONES. We assign one man for the purpose of caucus, and he will go through the whole record, and he presents every scrap of evidence that he thinks will benefit the Government at all, from the Government's side. On these important cases we discuss it thoroughly among ourselves, and take a vote on it. Does that answer your question?

Senator WATSON. Yes; that answers it.

Mr. DAVIS. Was there a third conference, then, do you say, Mr. Jones?

Mr. JONES. I believe the record does show there was a third conference. As I stated, this attorney came down very often. He apparently had a good deal of business in Washington, and pretty nearly every time that he would come to Washington he would come down to our place, apparently. We do not make a note of these various informal conferences, because it was that same old issue that was always before us, and we reserved decision until the date of that last memorandum.

Senator WATSON. Was this a unanimous decision, Mr. Janes?

Mr. JONES. I beg your pardon?

Senator WATSON. Was this a unanimous decision by your committee?

Mr. JONES. Yes, sir.

Senator WATSON. A unanimous decision in this case.

Mr. JONES. Yes, sir; on the part of four men.

Senator WATSON. Yes.

Mr. JONES. It may have been that the fifth man was away that day. In any event, there were four of them that felt that it was a case that we should hold.

Mr. DAVIS. Was the field agent who made the report before your committee in any of the conferences?

Mr. JONES. No.

Mr. DAVIS. Is it your practice to call in the agents in the field before the committee?

Mr. JONES. Very seldom; but in this case we had a collateral investigation. There was a collateral investigation in New York.

Mr. DAVIS. What I was wondering was whether the committee had presented to it new matter and additional statements as to facts or alleged facts with reference to these transactions. Now, your agent in the field does not get those things, does he, the man who originally made the report, so that he can work on them again to find out whether or not they are true.

Mr. JONES. Sometimes he does. Of course, there was no need of it in this case, so far as our section was concerned, because we had taxed it.

Mr. HARTSON. May I ask Mr. Jones a question or two?

The CHAIRMAN. Certainly.

Mr. HARTSON. Was there no disagreement at all in the unit as to the correctness of the unit's decision in this case?

Mr. JONES. So far as I know, no.

Senator WATSON. Now, Mr. Hartson, I would like to ask you a question, if you please.

Mr. HARTSON. Yes.

Senator WATSON. When you went into a consideration of this case, you, of course, had no witness brought before you?

Mr. HARTSON. No, sir.

Senator WATSON. You merely went into the paper record, I judge.

Mr. HARTSON. That is correct. I did not have any witnesses present.

Senator WATSON. That is all I want to ask.

Mr. HARTSON. A further question or two from Mr. Jones.

So, when the solicitor rendered his opinion in this case, the estate tax unit disagreed with it?

Mr. JONES. We never disagree with the solicitor's office. They overrule us, and we realize that on these close questions—and they are close—you are rendering honest judgments, and you are just as well able to form an honest opinion as we are. We never question an opinion. The committee never has but in one case, the Schwabacher case, that was questioned by the head of the unit; but we realize as to these transfer questions it is a question of fact, and we, as administrative officers down there, fixing the tax, have not, perhaps, as much latitude, or should not have as much latitude as the solicitor's office, the representatives of which have to go into court and try these cases. We realize thoroughly what you are up against on that.

Mr. HARTSON. Well, Mr. Jones, this advice from the solicitor was only an opinion of the solicitor, was it not?

Mr. JONES. Yes, sir.

Mr. HARTSON. And if there had been any serious disagreement to the point that the deputy commissioner in charge of the estate tax thought the result unconscionable, it could have been taken up with the commissioner and called to his attention?

Mr. JONES. Oh, absolutely; but we know that your opinions up there are honest opinions and they are entitled to just as much weight as ours. We never question the solicitor's office.

Senator WATSON. After your decision was made, was it then taken up to the commissioner, Mr. Hartson?

Mr. HARTSON. It was not, so far as I know. I think the opinion rendered by our office went to the Estate Tax Unit and there was carried into effect by an allowance of the abatement claim to the amount that would be reflected by the exclusion of these particular transfers from the gross estate.

Senator WATSON. Has it ever gotten into the courts?

Mr. HARTSON. This case never has gotten into court because, as Senator Couzens pointed out, when the decision is favorable to the taxpayer the Government has no recourse to court.

Senator WATSON. Yes; that is right. Now, do you ever appear in person before this board of review and appeals, the board that decided this case?

Mr. HARTSON. Do I personally ever appear before that board?

Senator WATSON. Yes; do you ever go down there and talk with them about any case that is before them, or appear for the purpose of arguing any case before them at all?

Mr. HARTSON. I do not do that personally at all. I never do. However, at the conference that was held in this case in my office, and the taxpayer's hearing in my office, Mr. Mitchell, a member of the committee on review on appeals, was present and participated in the conference.

Senator WATSON. On this particular case?

Mr. HARTSON. Yes; this particular case: so that the Estate Tax Unit was represented when my office had this case under consideration.

Senator WATSON. That is what I am trying to get at, the way you finally reach a decision on a matter of this kind, whether or not, after the opinion has been rendered, or the decision made by this board, you consult with them as a whole or with each individual, and discuss it with them, or with any one of them, or whether you simply take up the papers, like a United States circuit judge would, and sit down and go over the whole case as a paper case, and render your decision accordingly.

Mr. HARTSON. I can explain to the Senator just what the practice is.

Senator WATSON. That is what I would like to get at.

Mr. HARTSON. The practice is this: As soon as a case is referred to the solicitor's office by the Unit, it is assigned to an attorney who is handling that type of case. That attorney corresponds with the taxpayer, in my name, if there is a request for a hearing in the file. A hearing is arranged, and the date is set by correspondence, and the unit is notified that the hearing is to be held on a given date, and the opportunity for a representative of the unit to be present is given.

There are never less than two of our experienced lawyers who conduct a hearing, the assistant solicitor in this case, as you will find in all of these cases, and the superior of the lawyer to whom the case is assigned, and whose duty it is to exhaustively examine all of the evidence and read all the files on the case. Those two are always present, and frequently there are others present. In this case, the hearing was attended by Mr. Mitchell, of the estate tax division, and by Mr. McLaughlin, the assistant solicitor, and Mr. Swazey of my office.

After Mr. Swazey prepared an opinion in this case, and before it was roughly drawn, he and Mr. McLaughlin reached an agreement on it; they had an understanding as to the form it should take and the result generally that should be reached. Of course, that opinion was prepared by Mr. Swazey, approved by Mr. McLaughlin, and then it was reviewed by Captain Rogers, my first assistant, who acts for me. Neither Captain Rogers nor I talked with the taxpayer, or the taxpayer's representatives, nor had any conferences on this case, other than conferences with our own men.

Senator WATSON. Who are Swazey and McLaughlin?

Mr. HARTSON. They are lawyers in my office.

Senator WATSON. In your office?

Mr. HARTSON. Yes. Mr. Swazey is one of the lawyers who is handling estate tax matters, and Mr. McLaughlin is his chief, and is the assistant solicitor in charge of the group of lawyers who serve in that division.

Senator JONES of New Mexico. Your office is considered superior to that of the unit of which the witness Jones is chairman, it it not?

Mr. HARTSON. I think that is a rough statement, Senator, of the fact; yes.

Mr. DAVIS. In other words, your opinions would be binding upon the committee on review and appeals in estate tax matter?

Mr. HARTSON. That is not correct, Mr. Davis.

Mr. DAVIS. Well, they control in the bureau?

Mr. HARTSON. As a practical matter, my opinion does control. Of course, it is only advice to the deputy commissioner, who, being an executive and administrative officer, does not have to follow it. He can disregard it if he pleases.

The CHAIRMAN. Is there any evidence showing that he has disregarded it?

Mr. HARTSON. Well, Senator, I have been reversed by the commissioner and deputies in the commissioner's name a great many times. There are no cases that occur to me with regard to the estate tax, but there are conflicts, cases where we do not agree. It is ordinarily taken to the commissioner, in whose name we are all acting, for ultimate and final decision, and I am reversed by the commissioner quite a number of times. I have been reversed on some very important cases, where I had my own idea of the law, and the commissioner said it was wrong and refused to follow it.

But we all recognized in the mill, in going through the motions there day after day that the usual practice is to accept what the solicitor has done when it is referred properly to him for advice. Even though they disagree with it, they do not, as a usual thing, complain or take it to any higher authority, for ultimate decision.

They just accept it and put it through, and the solicitor then is responsible for the decision.

I do not want the committee to get an impression that the revenue agents report the facts so strongly in favor of the Government that the solicitor's office is proceeding here without very substantial grounds for finding as they do in these cases, and my particular reference now is to these court cases, where the facts are much the same, and where juries and courts have nevertheless determined that it could not be held that the transfers were made in contemplation of death.

Now, before starting to call the attention of the committee to these cases, I want to point out this fact, that these cases have been decided in the last——

Senator JONES of New Mexico. Mr. Chairman, it is now about 20 minutes of 1 o'clock, and I do not suppose Mr. Hartson can conclude with this in a few minutes.

Mr. HARTSON. I would prefer to have it go over, because I would like to take up these cases in some detail. I have not the records here. I merely have a statement of what the facts are and what the decision was, so that it could not take very long. I do not have any idea of going into them in the way that these other cases have been gone into.

Mr. DAVIS. Mr. Hartson, have you any court decision affecting a case like this?

Mr. HARTSON. Oh, decidedly.

Mr. DAVIS. Why was it not set out in the opinion that you have rendered here; why are not the cases quoted?

Mr. HARTSON. Well, my answer to that is, that it is possible that the court's decisions—and I have one or two of them here, but I want to verify this by a reference to the dates—which are almost parallel to the Parlin case, may not have been rendered at the time we passed on the Parlin case. I do not know about that, and I will be glad to verify it.

Senator ERNST. Without regard to whether it is a precedent or not, we simply want to get at the facts.

Mr. MANSON. Mr. Hartson, what progress is being made in the compilation of decisions affecting estate and income taxes, which was requested?

Mr. HARTSON. Very excellent progress, Mr. Manson. We are about through with it. We have three people working on it exclusively now, and during this month that has gone by since the original request. We had our records in card index form, and we are transcribing them to be delivered to you in much better form than they otherwise would be.

The CHAIRMAN. Before we adjourn, I would like to ask Mr. Hartson a question about a situation that I am not clear on, and that is whether the office of which you are the head decides matters of fact, or matters of law, or both?

Mr. HARTSON. The practice, Senator, that was in effect when these cases were under consideration, was not as definite nor as clear as it is to-day under the present prescribed practice. The solicitor's office in such cases as these passes only on legal questions.

The CHAIRMAN. Now?

Mr. HARTSON. Now.

The CHAIRMAN. And then they passed on questions of fact?

Mr. HARTSON. And then they passed on questions of fact, and as I pointed out a day or two ago, without the regulations or law specifically authorizing the so-called appeal, it was considered an appeal, and the solicitor had submitted to him all the issues of law and fact.

The CHAIRMAN. Do you think it requires a lawyer to decide a question of fact, such questions as are raised in this case?

Mr. HARTSON. I think it does not require a lawyer necessarily to pass on a question of fact. I think, however, Senator, lawyers are ordinarily better qualified to pass on questions of fact than laymen. I say that because our courts, of course, are formed and created for the very purpose of passing on both questions of fact and law. However, ordinarily, a jury in a case, where a jury might be called upon to consider the facts, is final as to any facts in the case: but furthermore it should be pointed out that the committee of which Mr. Jones is chairman is composed also of lawyers, and of course they are passing on questions of fact; so that it can not be said that it is inappropriate at all for lawyers to pass on questions of fact.

The CHAIRMAN. But I raise the question that after the Board of Review and Appeals has decided on a question of fact, and one person disagrees with that decision on that question of fact, or two or three persons—and it does not make any difference—and one contention is, perhaps, as correct as the other when it comes to a decision on that question of fact, then it seems to me to be a waste of time to keep on passing those things around for a determination of fact. Therefore, I thought the organization that was set up in your office was for the purpose of determining questions of law, and was not to deal with questions of fact. Now, I understand that it has been changed and that your office is primarily to deal with questions of law.

Mr. HARTSON. That is correct, in so far as the estate tax review is concerned.

The CHAIRMAN. Do you not think that that is an improvement?

Mr. HARTSON. I think, Senator Couzens, that anything is an improvement which brings a speedy determination of these cases not inconsistent with the rights of the taxpayer to be heard as fully as may be. I expressed myself a day or two ago about the delay that has occurred in the settlement of cases, in which a large part of it occurred because of hearings by one person and another. Passing it on from one individual to another or from one office to another before some final settlement took place. I think to-day, under the present procedure, to have the estate tax final as to certain elements of a case is desirable and important. I thoroughly believe in the present regulations, limiting a consideration of these cases in the solicitor's office to pure questions of law. I thoroughly approve of that.

The CHAIRMAN. While this case is fresh in your mind I would like to ask if you decided it on the side of the taxpayer primarily because of the alleged agreement to distribute this stock when these boys became competent? Was that the primary basis for your settlement of the case?

Mr. HARTSON. This case, Senator, was decided, having in mind the various things that were stated in the written opinion which were submitted here, but I think there were two general grounds which were the substantial ones on which the opinion was based. One of them is the point that the Senator mentioned, namely, that there was this agreement entered into a number of years before, of which this transfer was merely a confirmation.

The other is the conflicting evidence as to the state of the man's health at the time of his death, that it was not of such a character as to convince the office that he had good cause to reasonably be apprehensive of death at that time, although there was testimony both ways. If we had gone to court about it, we would have had witnesses on both sides on this question. I think one of the other important elements that were considered was the fact that the State of Illinois, on the same issue, had said that, if it were to be decided on the basis of the transfer having been made in contemplation of death, they would not so hold. The taxing officials in the State would not apparently have determined that issue against the estate.

The CHAIRMAN. I will ask you, then, in the Schwabacher case and in this case, if the issues raised by the taxpayer were generally known, it would not be an incentive or suggestion to every other estate to raise such a question when it came time for settlement? In other words, that is the thought that might suggest itself to me. If I were to pass on next year, I could transfer my holdings and say to my children, "Remember, children, 20 years ago, you and I had an understanding that I was going to give you this when you became fully competent and developed a certain chest measurement and a certain height, etc., that you were to get this stock. You remember that that has always been understood, and we will make that claim to the Government when they come to collect the estate tax." It seems to me that if these imaginary agreements are to be taken by the Government, the whole estate tax is a farce. Anybody can manufacture these things when it becomes known how easy it is to be done.

Mr. HARTSON. I think that is very true. I think, however, that the courts will not presume at all that these agreements are imaginary. If you go into a law suit, and the relatives and friends appear on the stand and swear to this agreement, although you may have in the back of your mind a suspicion that it was entirely irregular, the court will listen to them and unless you can convince the court by proper evidence that they were collusive and were mere fictions, they will have the effect of forming a basis on which the court will decide that the transfers were not made in contemplation of death.

The CHAIRMAN. With all of that I agree. Then, is it not up to the Congress to change the condition so that thing can not continue?

Mr. HARTSON. I think Congress has already made a move in that direction.

The CHAIRMAN. That is, in the gift tax?

Mr. HARTSON. That is, in the gift tax.

The CHAIRMAN. We will adjourn here until Friday morning at 11 o'clock.

(Whereupon, at 12.45 o'clock p. m., the committee adjourned until Friday, November 28, 1924, at 11 o'clock a. m.)

INVESTIGATION OF BUREAU OF INTERNAL REVENUE

FRIDAY, NOVEMBER 28, 1924

UNITED STATES SENATE,
SELECT COMMITTEE INVESTIGATING
INTERNAL REVENUE BUREAU,
Washington, D. C.

The committee met at 2 o'clock a. m., pursuant to adjournment on Wednesday last.

Present: Senator Couzens (presiding), Watson, and Ernst.

Present also: Earl J. Davis, Esq., and L. C. Manson, Esq., of counsel for the committee.

Present on behalf of the Bureau of Internal Revenue: Mr. C. R. Nash, assistant to the Commissioner of Internal Revenue; Mr. Nelson T. Hartson, Solicitor, Internal Revenue Bureau; Mr. Fred Page, assistant deputy commissioner, Miscellaneous Tax Unit; Mr. Charles W. Jones, chief, review division, Miscellaneous Tax Unit; Mr. Thomas H. Lewis, attorney, solicitor's office.

The CHAIRMAN. You may proceed, Mr. Davis.

Mr. DAVIS. I believe the Senator asked a question with reference to the Parlin estate, as to whether or not that $15,000 had been paid to the widow by the beneficiaries of those transfers, and with reference to that, I read from the report of the field agent, on page 36:

> I therefore inquired if the payment of said amount was being made to the widow, and was informed by the executor at the conference held at the office of his attorneys on November 9 that it was, and upon further inquiry the executor stated that when the transfer was made it was agreed that the transferees would carry out this provision of the will. He also stated that it was thoroughly understood at the time of said transfer that the directions concerning alienations of the stock would be observed.

The CHAIRMAN. But the particular point that we raised was in reference to the payment to the widow.

Mr. DAVIS. Yes. I would take it from that that it began, if it was according to the terms of the will, at the death of Parlin.

Senator ERNST. You have not anything other than that to infer that from?

Mr. DAVIS. That is all I found, right there.

Senator ERNST. Yes.

The CHAIRMAN. It seems to me that that is somewhat a guiding factor in it, whether the transfer was actually made at the time that the stock was issued, or whether it was made at the time of the death of the decedent.

Mr. DAVIS. Well, that is all I have been able to find in the record, Senator—that particular reference to it there. If it was made according to the provisions of the will, it was made after his death.

The CHAIRMAN. Before we proceed, I think, perhaps, Mr. Hartson wants to take up another point that we raised.

Mr. HARTSON. Yes.

The CHAIRMAN. In regard to cases that he said had been decided against the Government in like instances.

Mr. HARTSON. Before going into those cases, Senator, at the conclusion of the last hearing, Mr. Davis asked me why, if we had had poor success in defending these suits for recovery of estate taxes paid on property transferred in contemplation of death, those cases were not cited as authority in the opinions which our office was rendering in these matters that were referred to us for an opinion by the estate tax unit. In answer to Mr. Davis's question I should say that these decisions which are given in these cases are not rendered in the form of opinions by a court which are of much help to us in deciding these cases. These questions are purely questions of fact. Whether or not the transfer was made in contemplation of death or intended to take effect at or after death is a question of fact. The rule is laid down, and the necessity then is imposed on the bureau or on a court or jury to fit the facts to that rule, and the facts, of course, in two cases are never the same; they are different; so that while these cases have been determined and we have had adverse decisions to the Government in these cases, it is with difficulty that a specific case may be referred to, so that reference may be had to an opinion which would decide and support the conclusion that the office reached.

I referred the other day to six cases—I think I did not call them by name—which had been tried, and five of which had resulted adversely to the Government.

Mr. Lewis, a special attorney of the Bureau of Internal Revenue, who is assigned to duty in my office, I have asked to come here today to present to the committee a statement of his experience in the trial of these cases. Mr. Lewis is the attorney in my office who, probably above all others, has had more experience in court on the very questions that this committee is now concerning itself about, and I think he can, probably better than anyone else in the bureau, tell the committee just what has occurred, and thereby throw some light on some of these questions which are of interest to the committee. Some of these cases on this list have actually been tried by Mr. Lewis, but he has personal knowledge of all of them. Since he has been in the office, he has been handling estate tax cases, not exclusively, but to a very large extent, and I would like to ask Mr. Lewis to take the stand and go over these cases.

The first case that I believe the committee should be informed in regard to is the Wadsworth case, and I will ask Mr. Lewis to recite briefly the facts and what has occurred in reference to that case and those other cases.

The CHAIRMAN. Mr. Lewis, will you take the stand, over here, please?

TESTIMONY OF MR. THOMAS H. LEWIS, SPECIAL ATTORNEY, SOLICITOR'S OFFICE, BUREAU OF INTERNAL REVENUE

(The witness was duly sworn by the chairman.)

Mr. LEWIS. I did not try the Wadsworth case. That was a case in which Major Wadsworth, a resident of New York State, had suffered

from diabetes for a period of some 20 years prior to the time that this particular gift was made. He was then about 71 years of age. About two weeks before he made the gift, he was taken with bronchial pneumonia. At the time he made the gift, he was recovering from the pneumonia, but he was not recovering from his diabetes, because that was gradually growing worse. He gave away property which was worth approximately $300,000. He gave that to his wife. The court, sitting as a jury, found that the gift was not made in contemplation of death.

Mr. HARTSON. Mr. Lewis, was the transfer made within the 2-year period?

Mr. LEWIS. Yes; the transfer was made on April 23.

The CHAIRMAN. What year?

Mr. LEWIS. 1918—and he died on May 2, 1918.

At the time the gift was made, Major Wadsworth was under the care of a specialist in diabetes, was attended by a trained nurse, and was under the care also of other physicians. In other words, there were the specialist in diabetes and other physicians attending him. It is not shown by the record whether or not Major Wadsworth thought he was going to die in the sense of his having said that he thought he was going to die. It is shown, however, that at the time he knew he was in a very precarious state of health, and the plain inference, at least, is that he had been told that pneumonia in the case of diabetes usually ended in death. The court wrote an opinion in that case, which really is a finding of fact, because there was nothing but a fact involved. In the opinion, the court rests his conclusion upon the ground that the evident purpose of Major Wadsworth was to split his income tax liability by dividing his fortune, and that there was no intent shown on his part to evade the Federal estate tax.

Senator ERNST. What did you say his age was?

Mr. LEWIS. Seventy-one at the time the gift was made. He had had diabetes for 20 years prior to his death.

The next case——

Mr. HARTSON. Mr. Lewis, before you leave that case——

Mr. MANSON. What court was that case tried in?

Mr. LEWIS. The western district of New York.

Mr. MANSON. What is the reference to that case?

Mr. LEWIS. 287 Fed. 742.

Mr. HARTSON. Was there any showing of a statement made by the decedent at the time the transfer was made, throwing any light on the intent or purpose that he had in mind when the transfer was made?

Mr. LEWIS. He referred to the fact that it was his understanding that there was some law which would validate this gift if he should die within two years after it was made. I think that conversation was with the executor. He asked his executor if there was such a law, and the executor said he did not know of any, but he would look it up.

Mr. HARTSON. That was shown at the time of the trial?

Mr. LEWIS. Yes; that appeared in the record, and that conversation was about the time that this gift was made. It was approximately contemporaneous.

The CHAIRMAN. Does the Government ever appeal any of these cases?

Mr. LEWIS. It is very difficult to establish a ground for appeal, for this reason, that the law which defines the phrase "in contemplation of death" is well settled, and the courts never depart from that established definition.

The CHAIRMAN. Can you state that definition for the record here?

Mr. LEWIS. The definition usually accepted of that phrase "in contemplation of death" does not refer to that general expectation of death which all men have, but refers to that expectation which is in the mind of a person when he makes a gift, thinking that he might or may die in the reasonably near future.

Mr. MANSON. What case is that that that definition was laid down in?

Mr. LEWIS. The rule is laid down in the case of Schwab *v.* Doyle, which was a Federal case, and cited, I think, in 107 Fed. 321. It is also laid down in any number of State cases, where this same phrase is considered and defined.

Mr. MANSON. Is there any other Federal case, other than the case of Schwab *v.* Doyle, that you can think of?

Mr. LEWIS. That defines that phrase?

Mr. MANSON. Yes.

Mr. LEWIS. In all of these cases, the phrase has been defined in the instructions. So far as I know, there is no reported decision.

Mr. MANSON. Do you recall the rule laid down in Schwab *v.* Doyle?

Mr. LEWIS. Yes, sir.

Mr. MANSON. There is nothing in that decision, in Schwab *v.* Doyle, using the language "in the reasonably near future," is there?

Mr. LEWIS. I think it says "in the reasonably distant future"; yes. I think it says "reasonably distant future." The circuit court of appeals, on the appeal, criticizes that part of the instruction, and says that "reasonably near" is the same as "reasonably distant," or something to that effect.

Mr. MANSON. Does not Schwab *v.* Doyle say "in contemplation of death" is not limited to expectancy of immediate death?

Mr. LEWIS. Yes.

Mr. MANSON. Or of a dying condition?

Mr. LEWIS. Yes. I might say, however, that the court is not there speaking of this situation which then existed, and does not now, at the time that Schwab *v.* Doyle and Henson and other Federal cases were decided. The court of New York has decided that the phrase "in contemplation of death" has meant only in case of gifts made causa mortis; that is to say, in immediate peril, and the court, in Schwab *v.* Doyle, when it says that phrase is not limited to that expectancy, is referring to that rule of law, and refuses to follow it.

Mr. MANSON. That is, the Supreme Court negatived that application to this statute?

Mr. LEWIS. The Supreme Court did not pass on it. The circuit court of appeals did.

Mr. MANSON. The circuit court of appeals did.

Mr. LEWIS. Yes. The Supreme Court, in Schwab *v.* Doyle, passed only on the question of whether or not the 1916 act was retroactive.

Mr. MANSON. Then, the circuit court of appeals is used to following the rule adopted by some State courts as to contemplation of death being substantially the same as gifts in causa mortis?

Mr. LEWIS. As far as I know, the only State which ever adopted that rule was the State of New York, and they did refuse to follow that rule.

Mr. DAVIS. Mr. Lewis, you stated that the decedent was recovering from pneumonia at the time that this transfer was made.

Mr. LEWIS. Yes.

Mr. DAVIS. And the doctor's statement was to that effect?

Mr. LEWIS. You mean the doctor's statement to the decedent?

Mr. DAVIS. Yes.

Mr. LEWIS. I do not know. I presume it was. He was convalescing.

Mr. DAVIS. Have you the field agent's report in this case?

Mr. LEWIS. Not with me.

Mr. HARTSON. They are all available there.

Mr. DAVIS. I would like to have a chance to examine the field agent's report in this case and reserve questioning Mr. Lewis until I have examined it.

Senator ERNST. I do not object to that, but what we are trying to get at now is the state of facts on which the court did act. We are more interested to see now what the courts have been doing on the state of facts, rather than what the field agent was doing.

Mr. DAVIS. Of course, if this was a well man, that would be so, but this man had been sick, and was getting better. There was no immediate contemplation of death, or contemplation of death as laid down by the courts, and therefore it might be very easily distinguishable.

Mr. LEWIS. This man had diabetes for 20 years. He was recovering from pneumonia, but at the time he made this gift, he understood that pneumonia, in a case of diabetes, usually resulted in death. He was not recovering from diabetes. No one does.

Mr. DAVIS. I know, but you stated that he was recovering from pneumonia.

Mr. LEWIS. Yes; that is correct. He was convalescing from pneumonia.

Mr. HARTSON. What proportion of his entire assets was transferred by this gift?

Mr. LEWIS. $300,000 was the approximate value of the gift. He was a very wealthy man. I have forgotten the amount of the estate, but it was over $1,000,000.

Mr. DAVIS. Was a request to charge submitted to the court?

Mr. LEWIS. It was tried to the court.

Mr. DAVIS. Was there an appeal taken?

Mr. LEWIS. No.

Mr. HARTSON. Senator Couzens has asked you, Mr. Lewis, and I think you were probably interrupted before you finished your answer to the question—why the Government did not take appeals in these cases.

Mr. LEWIS. As a general rule, there is nothing to appeal from, because, when you apply that rule of law, when you lay down that rule of law for guidance of the bureau, when the court lays it down

for its own guidance, then it applies the facts to that rule of law, and if it decides that it is in contemplation of death, or not in contemplation of death, there is nothing but a fact to appeal from, and, of course, that does not afford a ground for an appeal.

The CHAIRMAN. Then, that part of the statute is really not workable to your clause?

Mr. LEWIS. So far as my experience goes, the courts have told the juries generally, and instructed themselves sitting as juries, that the 2-year presumption raised by the statute is a fact to be considered by them, just the same as any other fact, and that they must consider it in arriving at their verdict.

The CHAIRMAN. What I am driving at is this, that the experience, both in the unit and in the courts, indicates that only in rare cases is that enforceable, because of the collateral facts attached to each case.

Mr. LEWIS. It does not mean anything. There is no case—this will answer your question—in which there is not sufficient evidence on the other side to overcome any prima facie proof that the presumption raises.

The CHAIRMAN. Have you any other case that you want to present to the committee now, Mr. Hartson?

Mr. HARTSON. Yes, sir.

Mr. MANSON. Just a minute. Have you any standard form of instruction that you ask defining "contemplation of death" in these cases?

Mr. LEWIS. Well, we use the language in Schwab *v.* Doyle as the standard form. That, of course, is always modified to meet the facts in each case. In other words, we do not present a theoretical request for instructions. We request instructions for the finding of facts in the then pending case.

Senator ERNST. Now, let us have the next case.

Mr. LEWIS. The next case is the case of Robert W. Hamill, executor of the estate of Emily C. Lyon *v.* Cannon, collector, tried in the United States District Court for the Northern District of Illinois, and not reported.

Mr. HARTSON. Did you try this case, Mr. Lewis?

Mr. LEWIS. I tried this case. This was a case in which Mrs. Lyon, the decedent, had inherited from her husband all of his property. Prior to the husband's death, the husband and wife had entered into a written agreement, whereby it was agreed that the survivor of the two should take all of the property of the other, and would dispose of it at his or her death amongst the children. That is the substance of it. As a matter of fact, it was an agreement to make wills in form. Mr. Lyon died first and, as I say, his wife came into possession of his property. Some years afterwards, she formed a corporation to which she turned over all of the property which she inherited from her husband. She retained all the stock in that corporation for several years. She then gave to each of her four children 100 shares out of the thousand for which the company was incorporated.

That gift was not involved in the litigation. Several years later, and within a very short period, about five months before her death, she gave to each of her children another hundred shares of stock of

this company. The two gifts aggregated the large majority of the stock; so that Mrs. Lyon no longer had control of the corporation. She was then 84 years of age, approximately. She had for some time prior to her death been suffering from a cancer of the uterus. She was operated on for what was thought to be cancer in 1902. At that time, the growth was not removed and the decedent was told that to remove it would likely cause her death. Therefore, she continued to have the supposed cancer until 1917.

In the latter part of May, her disease became so painful that she called upon a Doctor Byford, who was a physician specializing in cancer. He examined her and told her that she had to come back to his office once a week for treatment. He did not tell her that she had cancer. She came back once or twice for treatment, and on June 20, when she called for treatment, the doctor told her her treatment was not progressing as much as he had hoped it would progress, and that thereafter it would be necessary for her to come to his office twice a week. On June 23 she went to the same physician, and Doctor Byford then discussed her disease with her, but he could not remember just what he did tell her.

However, on June 23 she went home and gave her children these second hundred shares of stock apiece.

This case was rather remarkable for the fact that it is the only case in which the plaintiffs offered no reason whatever for the gift. Usually, there is some explanation of why the gift was made, such as in the Wadsworth case. They hoped to avoid income taxes or something of that nature. In this case, there was nothing of that kind. The jury disagreed, standing, I am told, ten to two against the Government.

Mr. HARTSON. This gift was made within the two-year period, too, was it?

Mr. LEWIS. Oh, yes. This gift was made within five months of death.

Senator ERNST. Within five months of her death. I think that is the way you stated it.

Mr. MANSON. Has the case been retried?

Mr. LEWIS. A secondary question in this case was the value of the stock. When there was a disagreement as to ownership, the value had been reinvestigated, and adjusted to the satisfaction of everybody concerned, so that there was no retrial.

Mr. MANSON. Then, the tax was paid.

Mr. LEWIS. A portion of it. The tax was reduced according to the changed valuations, and was paid.

Mr. HARSTON. Have you any other case there, Mr. Lewis?

Mr. LEWIS. The case of George Scofield et al, executors of the estate of Fred N. Brown, deceased, *v.* Williams, collector. This case was tried in the United States district court for the western district of Washington. It was tried by a jury. I was not present at the trial. That case is the case of a gift by a man who was confined in the hospital at the time of the gift. He was in the hospital, and he called his physician from Seattle to Olympia to make a change in his will; that is, to make a change in the decedent's will.

Mr. HARTSON. You say he called his physician. Do you mean that he called his attorney?

Mr. LEWIS. He called his attorney from Seattle to Olympia to make a change in his will.

Through some misunderstanding, the attorney did not take the will with him, and because the decedent did not know exactly what his will contained, it was found to be impractical to make the change in the will. Instead of that, they made a deed conveying this ranch, which was known as the Cedar River Ranch, to a nephew. That transfer having been made, the attorney went back, and the decedent sent word to him that he had neglected to include in that deed certain personal property which he intended to go to this nephew.

They thereupon executed an additional bill of sale to cover the personalty. The bill of sale was made the day the man died; that is, the man died at night, and the bill of sale was executed in the daytime. The real estate was conveyed about 10 days prior to the death. I think I said that the decedent at this time was in the hospital and under the care of a physician. His age at that time was 67, and it was proved in the trial that he had said to one of his acquaintances that he expected not to live to be more than 70 years old.

The jury returned a verdict for the plaintiff in that case.

Senator ERNST. What was his trouble?

Mr. LEWIS. The decedent had for a long number of years prior to the time of his confinement in this hospital a carbuncle. At one time he had been treated in San Francisco for this carbuncle, and it was determined that it could not be cured by operation, and that it must be allowed to take its course. He was in the hospital at the time of this gift, because he had blood poisoning resulting from that carbuncle.

Senator WATSON. What was the issue presented to the jury?

Mr. LEWIS. Whether or not the transfer of the real estate and the transfer of the personal property was made in contemplation of death.

Senator WATSON. Precisely, and on that the jury found against the Government?

Mr. LEWIS. Yes, sir; they found it was not made in contemplation of death.

Senator WATSON. Yes.

Mr. LEWIS. That was within the two-year period.

Senator WATSON. Although the transfer of the personal property was actually made after he died?

Mr. LEWIS. Well, practically so. I do not know what the law of Washington is as to recording, but I imagine it requires the recording before the transfer is complete, and in this case it was not complete until after the man died.

Senator WATSON. Of course, if it was not complete until after he died, it could not have been done in contemplation of death.

Mr. LEWIS. The court has said that when a man makes a will, he makes a gift in contemplation of death.

The CHAIRMAN. Of course, in that case, there was no controversy about the estate there?

Mr. LEWIS. There was no controversy; no. The same thing would seem to apply in this case; if the gift did not take effect until after death it would clearly be taxable.

Mr. HARTSON. Go ahead, Mr. Lewis, if you have another case there.

Mr. LEWIS. The next case I tried was in the district court of Indiana. It is a case of Catherine E. Apperson, executrix of Elmer Apperson, deceased, *v.* Thurman, collector, which resulted in a verdict for the plaintiff.

Mr. Apperson had, for a great many years, suffered from syphilis. He was under constant medical treatment for several years prior to this gift, but very shortly before this gift was made—within six months—he had some sort of a stroke. At any rate, his wife came downstairs and found him lying in the hall. He was then taken to a summer resort to recuperate, and while there he suffered another light but similar stroke, whatever it was. They would not admit that it was apoplexy, and the doctors would not tell us; but he had this second stroke, and after this second stroke he began to get better, and had made plans to continue his convalescence in Florida. He, at that time, during his convalescence, made a gift to his wife and to a stranger—I have forgotten her name, but it was a person who was no relative of his, consisting of liberty bonds and stock in the Apperson Company.

Senator WATSON. Was that the Apperson Automobile Co. at Kokomo?

Mr. LEWIS. Yes, sir; that is the one.

The plaintiff in this case said the reason he made the gift was to avoid income taxes, and they say it in all the cases, of course. That is the necessary result of such a gift. If the man strips his property, of course he had not as much income; so that in pretty nearly all of these cases they make that defense, the gift was intended to escape income taxes.

The CHAIRMAN. Not to escape the estate tax?

Mr. LEWIS. Not to escape the estate tax.

The CHAIRMAN. Yes.

Mr. LEWIS. The jury found for the plaintiff in the Apperson case. That was within the two years.

Mr. HARTSON. I was going to ask you if that was also within the 2-year presumptive period?

Mr. LEWIS. Yes.

Mr. MANSON. Have you the cause of death in that case, the death certificate?

Mr. LEWIS. I have not the death certificate here, but he died from an apoplectic stroke. I do not know what they call it, but it was the same condition from which he had been suffering during this period. It was brought on by syphilis.

Senator WATSON. How long before his death was that transfer made? Was it within the two-year period?

Mr. LEWIS. Yes; it was within the two-year period—a very short time; I think five or six months, but I have forgotten exactly.

The next is the case of George W. Stieff, executor, *v.* Tait, collector. It was tried to a jury in the United States district court for the district of Maryland.

Mr. HARTSON. Did you try that case, Mr. Lewis?

Mr. LEWIS. No; I did not try it. I was out of town. Mr. Diebert tried that case. However, I prepared the case for trial, and would have tried it, except that I was otherwise engaged.

Mr. Stieff, at the time the gift was made, was 73 years old. He died one year and five months after he made the gift. He had been suffering from paralysis for a number of years prior to the time he made the gift, and at the time he made the gift he had been ordered to Atlantic City by his physician to recuperate. We were not able to find out what happened while he was in Atlantic City.

Mr. HARTSON. Why were you not able to find out, Mr. Lewis? Just point out the difficulties that you encountered.

Mr. LEWIS. The difficulties were these: Mrs. Stieff was the only one who knew, and she would not tell, and she has since died. We sent an agent down there to investigate, and an investigation was made at the hotel where he stayed. Of course, they did not remember anything about it. I think the agent spent 10 days down there trying to find out from the physicians and from the hotels something about Mr. Stieff's condition while he was there, but no one seemed to remember anything about it. We could not get the address of the physician who treated him, if there was any. At any rate, while he was there, he telephoned to Baltimore, his home, to have his attorney come to Atlantic City, in order to make a transfer of some of his stock in the Stieff Co. The attorney went there, and the transfer was made; the significance, of course, being that the man was evidently in a hurry to get the transfer made, because he endeavored to come home within two or three weeks, anyway, and if there had not been something peculiar, he would have waited until he got back to his place of business to make the transfer.

Mr. Stieff had all of his life been very much interested in the business of the Stieff Co., which he had inherited from his father, and although his business associates, for a great many years, had advised him to give his sons an interest in the business, in order that they might become proficient in its management so as to take it over when he himself died, he had refused to do it. He seemed to be very jealous of his ownership of that business, and had constantly refused to part with any share in its control or any interest in it until these gifts were made.

The jury rendered a verdict for the plaintiff against the Government.

I might say that that gift was made within the 2-year period. It was made one pear and 5 months prior to death.

Mr. MANSON. What proportion of his holdings were transferred?

Mr. LEWIS. Well, the estate tax in that case was $142,000; I mean on this gift. As I remember it, practically all of his property was in the Stieff Co., and he gave it practically all away.

Mr. HARTSON. During the period, Mr. Lewis, covered between the first case that you called the committee's attention to and the last one that you called the committee's attention to, are those all of the cases that were tried, so far as your knowledge goes?

Mr. LEWIS. Well, I am not sure when the Wadsworth was tried in relation to the other cases. The only other cases that I know of that have been tried, and which involved this question, were the cases of Schwab *v.* Doyle, and the Henson case. I do not know the caption of it. Those two cases were tried on the theory that the phrase "in contemplation of death" only referred to gifts causa mortis. We won them on the law. In other words, the plaintiffs

in those cases did not contest the meaning of the phrase "in contemplation of death" as a question of fact. They were contesting it as a matter of law, and we won those two cases.

Senator WATSON. They did not go to a jury?

Mr. LEWIS. They went to the jury.

Senator WATSON. Did they?

Mr. LEWIS. Yes, sir; both went under instructions; but the plaintiffs in those cases did not introduce any evidence tending to show that this was not in contemplation of death. What they were trying to do was to show that it was not a gift causa mortis, and the court ruled it made no difference whether it was a gift causa mortis or not; so we had no facts against us, practically speaking.

There are two other cases. One of them is Polk *v.* Miles, which was tried in the United States District Court for the District of Maryland, and which is reported in 268 Fed. 175.

In that case, Mr. Polk was the owner of a brewery, or the controlling part of a brewery. He was 77 years old. The court stated that he was a vigorous man for his age. I have forgotten what disease he had, but he had some disease, and he gave his son all of his brewery stock.

Senator WATSON. When was this case tried?

Mr. LEWIS. It was tried in 1921, under the 1916 act.

He gave his son all of his brewery stock and some indebtedness that the brewery owed him, amounting in all to $105,000. The gift was made within four years of his death, and the court says in its opinion that it was not made in contemplation of death. The case was not tried by the Government on that theory, but tried on the theory that it was intended to take effect in possession and enjoyment at or after death, because of the reserving of the annuity. However, the court does say that it was not in contemplation of death on the facts.

The other case is Gaither *v.* Miles, also tried in the United States district court for the district of Maryland, before the court, and reported in 268 Fed. 793.

In that case, the decedent was 83 years old, and he made a gift; he assigned his life insurance policies, which were payable to his estate to his children, and he made a deed of the remaining interest in his real estate to his children, reserving in his real estate a life interest. The insurance policies were term policies, endowment policies, which would have matured within a few months of the gift, and if they had matured, of course, in his life time, the proceeds would have been payable to the decedent. He was 83 years of age at the time he made the assignment. He had paralysis. The court said in its opinion the gift was not in contemplation of death. That case went off on the question of consideration. It was tried by the court on the question of consideration. The "in contemplation of death" was not in issue, but the court passed on it, anyway.

The CHAIRMAN. Mr. Lewis, I wonder if you or Mr. Hartson have any case which the court decided was in contemplation of death?

Mr. LEWIS. We have one; yes, sir.

Mr. HARTSON. We have one; yes. Mr. Lewis is coming to that.

The CHAIRMAN. That is all right.

Mr. HARTSON. That is the one case I referred to the other day, the one in which we were successful. That is the Pohlman case.

Mr. LEWIS. That was tried in the United States court for the District of Nebraska.

In that case, Mr. Pohlman was 68 years old. He had had for a number of years sinking spells. He had fainted along the roadside going up to his home. His doctor had told him that he had hardening of the arteries, and that any worry or exercise would surely cause his death. He bought some stock in a creamery company. It was a speculative venture, and it was later developed to be a fraud. At any rate, Mr. Pohlman's friends began to tell him that his investment was no good. He was a man who had worked hard on a farm for his money. He never spent any money, but saved all that he ever made, and the thought that he was going to lose this money which he had invested in this stock preyed on his mind.

He went to the sellers of the stock and tried to get them to take it back, and his children went and tried to get the sellers to take the stock back, and told the sellers that the deal was so preying on their father's mind that it would certainly kill him if they did not give him back his money and release his note for the unpaid portion of this stock.

During that time, while these negotiations were going on, Mr. Pohlman called his children in and made a deed. In the deed, he recites that "I am giving my children" such and such bonds, naming the various bonds.

He died within a year after that gift. The gift was within the 2-year period.

The plaintiffs in that case contended that there had been a long agreement that if the children would stay at home and work the farm for their father, he would, when they reached the age of 35, or some other period, give them each a farm, and that consequently the transfers were not taxable, because they were not gifts, but sales, and the statute did not tax the sales, because it expressly excludes bona fide sales made for a consideration of money or money's worth.

They offered some evidence that there was no contemplation of death, but their evidence on that was very weak. We had the physician who attended this man and told him he was going to die. We had a very strong case. It was brought to the court, sitting as a jury, and the court found that there was a gift in contemplation of death.

The CHAIRMAN. Let me ask in that connection, why it is if you could win one out of six cases, it is not worth trying them all; I mean in volume of money?

Mr. LEWIS. We won one out of eight cases.

Mr. HARTSON. And, furthermore, Senator, it should be pointed out that all of these cases were cases where the bureau took the position that taxable transactions were involved. They were what were thought to be strong cases. Our experience has been one of constantly going to inevitable defeat, and with that behind us we have approached these new cases that come up to us from day to day, and we have to consider a decision in a case that is now presented to us for solution in the light of what has been done in

court in cases of a like character. The facts are never the same, as the Senator knows; but we have found— and I think Mr. Lewis will bear me out in this—that the two-year presumptive period is of little assistance to us. The courts have said that it is a presumption of fact. Therefore, it is an element of fact to be considered by the jury or the court, along with other facts.

Mr. Lewis called my attention this morning to the fact that at least once, and probably more than once, the Department has asked Congress to make that presumption a conclusive presumption. It has been done in the State of Wisconsin, has it not, Mr. Lewis?

Mr. LEWIS. Yes; six years.

Mr. HARRISON. A six-year conclusive presumption; in other words, not a rebuttable presumption that may be overcome, such as our estate tax law now calls for. But Congress has felt that we should go ahead as we now do under this contemplation of death provision with a two-year presumptive period.

Mr. LEWIS. I might say in further reply to the Senator's question that each one of these cases that we lose in court creates a feeling in the district among the taxpayers that we are not treating them honestly, and give rise to a great many more law suits, even when we are sure of our ground.

That was called to my attention by the revenue agent in charge at Omaha, who said that until the Shukert case was tried there, they had never had a tax case in that territory. We tried the Shukert case, and it was tried on the theory that it was in contemplation of death. The court took it from the jury on the theory that it was intended to take effect in possession or enjoyment, and the feeling spread around there that we had lost the "in contemplation of death" feature, and immediately this Pohlman case was filed. We won the Pohlman case, and there has not been any more filed in that court.

Senator WATSON. In that respect you are like the railroads in regard to damage suits. The railroads lose nine out of every ten damage suits that are brought against them, but they still go on bringing damage suits; and they still continue to fight them all the while.

Mr. LEWIS. Oh, yes, and they still continue to create causes of action, but they do not do it wittingly.

Senator WATSON. No.

Mr. LEWIS. We are creating causes of action against ourselves, with malice aforethought.

Senator WATSON. Well, do you mean by that that you have actually traced out cases that had been brought because of the knowledge of the fact that you had been defeated in other cases?

Mr. LEWIS. I think the Pohlman case was clearly brought for that reason.

Senator WATSON. Well, that is one instance.

Mr. LEWIS. That is one instance; yes, sir.

Senator WATSON. Do you know of others?

Mr. LEWIS. I do not. I say that is information I got in the estate tax officer's office in Nebraska. That is not my theory at all. It is his.

The CHAIRMAN. I can see that point very plainly, and it is almost analagous to a statement made here recently, that if it is found out

that the Government decides these cases along the line that Mr. Hartson has decided them on, we will get no estate tax at all. I think I made that statement during your absence, Senator Watson.

Mr. HARTSON. I think, Senator, Mr. Hartson has been considerably persuaded by what Mr. Hartson's experience has been in court in these cases. I want that very definitely brought home. We have not, or at least it is our conscientious effort not to decide these cases at variance with what we can reasonably expect upon the submission of the issue to a jury or to a court.

The CHAIRMAN. I am not inclined to dispute that statement or question your sincerity, but what I am trying to point out is that this whole thing is inoperative because of the decisions both in the courts and in the solicitor's office, because the feeling is that any estate, with any kind of counsel or advise, can evade an estate tax on that particular basis, no matter whether the transfer was made in contemplation of death or otherwise. The Government apparently can not collect, and it is a farce to be going through with it. I think the law ought to be remedied, if we can not make any better showing, either in the courts or in the solicitor's office, than has already been made.

Senator WATSON. Of course, you would finally have to go to a jury, in any event.

The CHAIRMAN. Oh yes ; the question I am making is whether the law as now enacted is a sound, practical proposition. I am not taking it up as a legal proposition, in the courts, at all.

Senator WATSON. Yes.

Mr. HARTSON. Mr. Lewis is going to comment on what the practice has been in the States in the enforcement of this same provision of the law, and I think that might be interesting to the committee just by way of further light on this subject.

The CHAIRMAN. I do not know how the other members of the committee feel about it, but, as far as I am concerned, I feel that we have had enough of both sides of the estate tax question, to enable us to reach a conclusion as to what ought to be done.

Senator ERNST. What is the question you asked, Mr. Hartson?

Mr. HARTSON. I asked Mr. Lewis if he would not tell the committee what had been experienced by the several States in the enforcement of similar provisions of the State inheritance or estate tax laws.

Senator ERNST. Yes; do that.

Mr. HARTSON. Of course, if, as Senator Couzens suggests, the committee has heard enough of both sides of this question, there is no use of going into it any further.

Senator ERNST. I would like to hear that question answered, Mr. Lewis.

Mr. LEWIS. The original State inheritance tax laws, of course, had no provision for the taxation of gifts in contemplation of death, but intended to take effect in possession and enjoyment, and immediately all the people began to make such gifts. Consequently, the inheritance tax law was practically nullified.

Pennsylvania and New York adopted the provision that gifts made in contemplation of death should be taxed, as well as gifts made by will. That worked fairly well until they discovered a second means of evading it, namely, that of retaining for life use

and enjoyment; so the States then adopted the provision for taxing gifts made intended to take effect in possession or enjoyment at or after death. In enforcing the first provision, of course, it is the close case that gets to court. The clear case, of course, never goes in. The reports, I think, all will show—I have not checked them up—but I think the reports will show that "in contemplation of death" cases two-thirds of them are decided in favor of the taxpayer.

Mr. HARTSON. Would you say that the experience of the Federal Government in attempting to enforce this "in contemplation of death" provision of the estate tax law was substantially similar to the experience of the several States in attempting to enforce similar language in the State tax laws?

Mr. LEWIS. I think the Federal Government's position is better, for this reason: All State taxes are collected through the courts; so if there is any doubt about it at all, it is just another step in the pending litigation. In the Federal taxation system, of course, we get the tax, and the other fellow has to sue to get it back. The fact that we have only had 10 or 12 litigated cases tends to indicate, to my mind, that we have been taxing fairly. If that were not so, if we had been taxing questionable gifts, we would have a thousand cases, because I venture to say that in more than half of the estates that are settled, the unit has this feature of "in contemplation of death" before it. Is not that approximately correct?

Mr. JONES. Approximately; yes.

Mr. LEWIS. So if you eliminated that feature you would eliminate a large portion of your tax.

The CHAIRMAN. That raises another question in my mind, which I think, perhaps, the bureau can answer—not to-day, but at some subsequent meeting, and that is what revenue has the Government collected on these estates where transfer of property was made in contemplation of death, and where there was no contest. Can the bureau furnish that information?

Mr. PAGE. It would be almost an impossible task, Senator. Our filing system is such that we would have to go through each and every individual file to get that data.

The CHAIRMAN. How long have you had experience, Mr. Page, in collecting this estate tax.

Mr. PAGE. About five years and a half.

The CHAIRMAN. Well, could you tell the committee approximately what percentage of the tax has been collected on these transfers in contemplation of death, and what percentage has been lost because of the decision that they were not made in contemplation of death?

Mr. PAGE. Well, I will say this: In the larger cases, these transfers do involve a considerable portion of the tax, very often the majority of the tax. It would be such a wild guess, if I were to attempt to give any figures, that it would not be worth while. I would be very glad, Senator, to dig in and get some of those larger cases and give you the proportion of the amount of the taxes involved in the transfers and the amount that we ultimately collect.

The CHAIRMAN. Under the gift tax, then, the necessity of this would not be apparent, would it?

Mr. HARTSON. No, sir; it would not, and, furthermore, Senator, this might be of interest in answer to your question: As has been

brought out here at this hearing, the cases come to the solicitor's office ordinarily upon some protest by the taxpayer, or against adverse action in the Estate Tax Unit. Now, during the same period that these cases which have been called to the committee's attention, and which have been decided favorably to the taxpayer or the estate in the solicitor's office, were considered, there were approximately twice as many cases that were, upon that same protest, sustained in the solicitor's office adversely to the taxpayer: that is, sustainng the unit. In other words, roughly speaking, there is a 30 per cent reversal, or there has been, in these cases. It is rather interesting to note that that 30 per cent reversal is substantially the same percentage that develops in reviewing work generally in the bureau—not on estate taxes alone but on other cases.

I remember in my early practice in my home State, in the trial of cases, it was commonly known by the members of the bar that the percentage of reversals by our supreme court reversing our superior court, the court of original jurisdiction, was approximately 30 per cent. That means nothing, but it is interesting. So that we have it for some of these "in contemplation of death" cases, which have never gone to court. They had paid the tax, but just what amount of money would result from that, I do not know. I think it would be very difficult for Mr. Page to find out, because he might pick a few cases and get an average that might be misleading.

The CHAIRMAN. Have you any idea how many cases, if there have been any cases, which have been appealed against your decision, where you decided that the gift was made in contemplation of death?

Mr. HARTSON. Well, all of these five cases.

The CHAIRMAN. Those are cases where the Government appealed, but I mean where the taxpayer appealed.

Mr. HARTSON. No; the taxpayer appealed in all of these six cases, and we lost five of them. We did not go into court. The taxpayer took us to court because we determined it adversely to him.

Senator ERNST. Yes; that is the point.

The CHAIRMAN. Oh, yes; I see. In view of the developments, Mr. Davis, do you think we are justified in following through any more of these cases?

Mr. DAVIS. In answer to that, Mr. Chairman, I will say that the cases that we have to submit run along the same line as those we have already submitted.

For instance, the next case that I have in mind is the case of Josephine Brooks, which was a transfer made seven months before the death of the decedent.

The facts in that case are that she was taken from her home to her summer home in an ambulance, and was sick during that period, and for a year or two before that period. The agent making the report, after going into the situation fully, stated that the transfer was made in contemplation of death, and that her doctor says he knew death would come along in the near future. That case went to the Board of Review and Appeals, the same as the other cases here did, and the findings made there were that this transfer should be included in the gross estate and taxable. The solicitor's opinion reversed that. Now, that involves a tax of something like——

The CHAIRMAN. Some $300,000, I believe.

Mr. DAVIS. $800,000, or over that.

These cases that I have here go right along these lines, and if that is the case, I can say to the committee in advance that that is the trend of these other matters that we have here. It runs up into large figures, showing that they are getting around the estate tax in some way, and the Government is losing the revenue.

Now, I am not prepared to state just what the remedy is or what change should be made in legislation, but it might be, say, a transfer made two years before death; instead of deeming that to be made in contemplation of death, the act might read that it shall be conclusive that it is in contemplation of death, or shall be taxable if made within that period.

That would, to a great extent, cure the situation, would it not, Mr. Lewis?

Mr. LEWIS. I do not think we have had any cases where the gift has been made more than two years. They are very infrequent, at least.

Mr. MANSON. I will ask Mr. Jones's judgment about that.

Mr. JONES. I think, instead of a presumption of a certain period of years it should be conclusively taxable, the same as in Wisconsin, and, until that time, they are going to avoid estate taxes.

Mr. MANSON. Well, for what period before death?

Mr. JONES. In Wisconsin, as I recall it, it is a 6-year period.

Senator ERNST. How long?

Mr. JONES. Six years. That would be a hardship in the case of a young man, of course, but I do not think the courts give weight enough to age, because some of the courts have exempted these gifts when made by people in their eighties. You will recall that Thompson case in Wisconsin. I think Mr. Thompson was about 87, and it is a remarkable coincidence that while these gifts may not be made in contemplation of death, death is right around the corner, because they die within two or three years. I think if you would fix an age limit, and say transfers made by people over 70 years of age, and, in any event, made within, say, three years, or two years, of death, it is then to be conclusively taxable, the revenue would be protected. Until that is done, you are going to have this same trouble, because every one of these big estates have good lawyers, and they come down with a mass of evidence that can not be ignored.

The CHAIRMAN. Mr. Hartson, are you familiar with the gift tax?

Mr. HARTSON. Yes, sir.

The CHAIRMAN. Would it, in your opinion, absorb the loss, or, rather, take care of the loss to the Government, which is now sustained by the reversal of the gifts made in contemplation of death?

Mr. HARTSON. Senator, I do not know what the result is going to be in taxes by the enactment of a gift tax. I do not know just what the effect is going to be in money of the rates of gift tax, and until that is known it would be difficult to say whether the gift tax is a complete subsitute for what would be collected by an enforceable estate tax on transfers made in contemplation of death. This conclusive presumption that has been mentioned here, such as is in effect in the State of Wisconsin, is of doubtful constitutionality. The State court has held their act to be constitutional.

Mr. JONES. Yes; recently, within the last month.

Mr. HARTSON. To say that conclusively as matter of law, an action is taken in contemplation of death, when there is a possibility of making such a transfer within that period without having death in mind at all, is to possibly take property without due process of law, and, for other reasons, may be unconstitutional. It is a very serious question. It may be reached by a straight tax on the transfer.

The CHAIRMAN. That is what I mean. You do not need to put that into the law, that it is in contemplation of death.

Mr. HARTSON. You do not need to put that possible defect in the law.

The CHAIRMAN. Mr. Davis, is the opinion of Mr. Hartson in that Josephine Brooks case a long one?

Mr. HARTSON. I have it here, Senator.

Mr. DAVIS. I have the opinion of the Committee on Review and Appeals, and I also have Mr. Hartson's opinion.

The CHAIRMAN. I think you have generally stated that the cases are similar, and that the situation, so far as the Committee on Review and Appeals is concerned and so far as the issue in the field is concerned, is similar.

I am wondering whether Mr. Hartson can give us his logic or reasoning in reversing that particular case.

Mr. DAVIS. It is not very long.

Senator ERNST. I think it should be read.

The CHAIRMAN. Now that the case has been brought up, I wish you would read it.

Mr. HARTSON. This is the estate of Josephine Brooks, deceased, and is dated May 19, 1924. It is directed to Deputy Commissioner Estes, attention, estate tax division:

"Your memorandum of March 28, last (MT-ET-315-JFG), transmitted to this office the file in the above-entitled estate to the end that counsel representing the estate might be heard, as they were on May 5, in opposition to the taxation of three transfers in trust made by the decedent December 12, 1919; her death occurring August 17, 1920.

Decedent, a resident of Newport, R. I., was 69 years of age at death, and was survived by her husband, a son, and two daughters. Her death occurred at her summer home at Southampton, Long Island. The death certificate indicates the "chief cause" of death to have been cerebral hemorrhage, and other causes," myocarditis.

Mr. DAVIS. That is inflammation of the muscles of the heart, is it not?

Mr. JONES. Yes.

Mr. HARTSON (reading): The examining officer reports that decedent was at various times attended by two physicians, Doctor Wheelwright and Doctor Flint. The last named was not interviewed, as at the time of the investigation he was ill wih influenza. Doctor Wheelwright informed the examining officer that he treated the decedent during the years 1918, 1919, and 1920, and "might be called her 'summer' doctor, because in the winter time she was attended by Dr. Austin Flint."; that decedent was afflicted with hardening of the arteries, and "had been sickly for over five years prior to her death and * * * was such a 'cantankerous' individual that it was with great difficulty nurses would remain with her;" that "she was a woman who was always complaining* * * was sick and knew she was in good health;" that the day before her death "she had a 'scrap' with the nurse," who thereupon left.

Doctor Wheelwright thought that this brought on the hemorrhage which resulted in her death. The doctor also stated that, in going from her apartment in New York City to her summer home at Southampton for the season of 1920, decedent made the trip in an ambulance; that "her final shock was not the first shock she had; * * * that, in medical terms, her previous shocks

would not be termed shocks, yet they were near shocks. The doctor termed them 'arterial spasms'"; that decedent "would be unconscious for hours and even a day at times." Also, that Doctor Wheelwright stated he never told her that she was near death, because, as he said, one can not tell how long a patient like the decedent would live. He stated that he never suggested to her to "put her house in order" because, knowing her as he did, and knowing her ways, that he felt certain that (she) took due care to always have her affairs in order. The decedent * * * was one who held the purse strings very tightly. She was the "boss" of the family and even to the end bossed her husband. No evidence of generosity was exhibited by her in degree to the size of her estate. * * * Doctor Wheelwright acknowledge she was in a sickly condition for five years prior to her death and knew that death was near at hand.

The examining officer interviewed Frank L. Polk, former Assistant Secretary of State, who had known decedent all his life, was one of the executors of her will, and was her attorney until his appointment in 1918 [should be 1915] to the office named.

That discrepancy in the date, I assume, is a mistake in the affidavit itself, and it is corrected informally in this opinion. [Reading:]

Thereafter Marshal Stearns, of the firm of Duer, Strong & Whitehead, New York City, was her attorney. Mr. Polk informed the examining officer that decedent "had three children, a son Reginald Brooks, who never had to work and who was never allowed to work by his mother, a daughter, Gladys B. Thayer, who is the wife of the president of the Chase National Bank, of New York City, and Josephine W. Livermore, a widow. Although all the decedent's children were married, and all of age, yet the decedent kept giving them support and divided her income with them at all times. Mr. Polk said that when the Federal income tax became so high, * * * cut so deeply into her income, she was disturbed and he advised her, if she wanted to continue her practice of giving to her children, that she must create trusts to give them the income and let the children pay the taxes. This suggestion was made before he went to Washington, and while he was away she did it. He stated that there is no question but what the whole intent of the plan was to defeat the high income tax. He further stated that a few years before the trusts were created the decedent was very ill, * * * and her life was despaired of by her physician;" that, but "for the seriousness of the sickness then she would have created the trusts, but he thought it better to wait until she recovered, because if the transfer were made at that time there would be no question but they were made in contemplation of death and would be taxable."

Marshal Sterns, who drew decedent's will and the three trust instruments which effected the transfers here in question, stated that the only reason for the transfers was to lessen the decedent's Federal income taxes, and that "they were made while she was in good health. Furthermore, three years prior to this time Mrs. Brooks was very ill and her life was dispaired of by her physician, and attention is called to the fact that, with full knowledge of her condition, she then made no disposition of her property in contemplation of death." The examining officer here remarks as follows: "The above statement (was) made prior to interview with Mr. Polk. Hence, it will be seen the main reason why it was not done, as Mr. Stearns stated, when she was first ill, was because, as Mr. Polk stated, they (the transfers) would (have been) taxable."

When created, the corpus of each of the three trusts was of a value of approximately $1,000,000, and at the date of decedent's death the total value of the three trusts, as determined by the estate tax division, was $3,504,744.03, or a trifle more than the value of the estate of which the decedent died seized and possessed.

To certain affidavits filed, and testimony adduced, by the estate, reference will now be made.

In an affidavit of Doctor Wheelwright he states that he attended the decedent at various times during the five years prior to her death. Referring to the statements ascribed to him by the examining officer; that is, that decedent had other shocks than the one which resulted fatally; that she had been unconscious for hours or days at a time; that she must have been conscious of her serious condition for five years before her death; and must have known that death was at hand, the deponent avers:

"I can and do unqualifiedly state and depose that these statements so attributed to me were never made as reported, and are most misleading and untrue. I recall very well the visit * * * (of the examining officer) and his efforts to get me to say many things which would tend to show that Mrs. Brooks must have contemplated death. * * * I emphatically told * * * (him) that in my opinion Mrs. Brooks did not contemplate death in any way at the time she made these transfers and that while she had never discussed these transfers in any way with me, there was no reason from the standpoint of her physical condition that she should have had any reason to apprehend or expect death at the time these transfers were made, further than the natural contemplation of ultimate death that any person of her age might have. * * * I was not treating Mrs. Brooks at the time, * * * so can only speak from my general knowledge of her case, but from such knowledge as I possess I have no reason to believe that her condition in November and December, 1919 was any different radically than it had been the five years that I knew her. * * * I never saw decedent unconscious until the day of her death. * * * There was (during such five years) no alarming progression of the condition of arterial sclerosis, that he never discussed death or the probability of death with her, nor that he has any reason to believe that she expected or contemplated it in any way. Deponent further says that while the deceased had arterial sclerosis and some of its attendant symptoms, the disease was no more in evidence than might have been expected in a person from 64 to 69 years old."

It will be noted that the examining officer secured an affidavit from this doctor, he being ill at the time. [Reading:]

Dr. Austin Flint, decedent's regular physician, deposes that, during the last 20 years of her life, he was constantly in attendance on the decedent and her family; that it had been her custom for many years to remain in bed in the mornings up to about noon; that she had no chronic disease, "other than marked constipation, indigestion, and during the last five or six years of her life the usual symptoms of arterial degeneration that occurs in elderly people. * * * During the last 10 years of her life I was accustomed to see her even more frequently than formerly and her physical condition was just about the same as it had been prior to that time, with the possible exception that I noticed a tendency toward the development of arterial sclerosis as before stated, though not in an unusual degree or in any way inconsistent with her age, at that time. I recall that in October and November of 1919 I had occasion on many of my calls to discuss with Mrs. Brooks (at her invitation, a matter which was apparently bothering her a great deal and having an unfavorable effect upon her general nervous condition." The deponent then refers to the matters decedent discussed with him, which were Mrs. Livermore's importunities for money, and decedent's income taxes, and adds: "During all these conferences Mrs. Brooks never expressed to me or in any way gave me the impression that she was making these trusts in any way in anticipation of death or that she ever had in mind the thought of death. There was nothing in her physical condition at this time different from what it had been for several years past, * * * (and) I am sure that she only had in mind a plan which would relieve her from the burden of the income tax and also from the annoyance which she had as to the constant importunities of Mrs. Livermore for funds. * * * After the transfers were made, and up to the time of her departure for Southampton in the early summer of 1920, I saw her constantly as theretofore and she discussed with me her projected trip to Southampton which had been her annual custom and appeared to be as vigorous mentally and as well physically as I had been accustomed to see her for the past ten years."

Henry Mortimer Brooks, the surviving husband, referring to the statements attributed to Doctor Wheelwright, deposes that "they are absolutely untrue. As I have heretofore stated, I saw Mrs. Brooks and spoke to her at least once every day from the year 1910 to the day of her death. If she had had shocks or had been unconscious, I would have known it. * * * As to the statement made that Mrs. Brooks was in a sickly condition for five years prior to her death and knew that death was near at hand, I can unqualifiedly state from my knowledge and observation of her * * * that such statement is false and misleading. While it was my wife's habit and custom to stay in bed during the mornings, this was a habit of many years standing and I can state that I did not notice * * * that she was in any more serious or different

physical condition during the years 1918 and 1919 than she had been for 10 years previous thereto. Mrs. Brooks was never in vigorous health. For 15 years prior to her death she spent most of the time indoors. She was not fond of or accustomed to take exercise, but there were no alarming symptoms or indication of serious disorders in her physical condition, nor was there any indicated progression of any disease. What I have just stated applies to the last 10 or 15 years of her life, and I noticed no perceptible difference in her state of health from 1910 to the date of her death. * * * I knew all about the dispositions which were being made for our children in 1919 and discussed them with her. These transfers were induced entirely on account of the importunities of Mrs. Livermore, and the situation with respect to the exorbitant income tax of $185,000, which Mrs. Brooks had to pay for the year 1918, and never once in all our discussion did Mrs. Brooks in any way, directly or indirectly, imply that they were being made in contemplation of death, but on the contrary, for the reasons stated, that she might live in peace and comfort, and for those reasons alone."

Frank L. Polk deposes that from 1905 to 1915, when he went to Washington in the Government service, he saw the decedent three or four times a month: that after going to Washington he had frequent correspondence and telephone conferences with her, and saw her every time he was in New York, which was on an average of once or twice a month; that Mrs. Brooks consulted with him respecting the demands for money made upon her by her eldest daughter, Mrs. Livermore; that "Mrs. Brooks was accustomed to give to her three children large sums of money for their maintenance and support and it was her desire, as she always told me, to equalize as much as possible the amount of the gifts to each, but Mrs. Livermore was accustomed to expend considerable amounts, not only on her living expenses but also on furniture, jewelry, and articles of luxury, and when she had committed herself to pay the same, she would come to Mrs. Brooks and beg and demand that the bills should be met. Mrs. Brooks was constantly being worried and naturally objected to this course first, because she never knew how much she was going to be called upon to pay, and secondly, the application by Mrs. Livermore for such moneys almost always resulted in a scene between Mrs. Brooks and her daughter. These demands for money had been going on for several years prior to 1918 but in the fall of that year the situation became rather acute as Mrs. Livermore had made commitments in all for that year which called for an expenditure by Mrs. Brooks for her account of something over $75,000. * * * This matter of Mrs. Livermore's financial difficulites was also coupled at or about this time with the serious situation concerning Mrs. Brooks income tax, which, for the years 1917 and 1918, amounted to about one-half of her entire income. As Mrs. Brooks had been accustomed to spend nearly the full amount of her entire income, having need of the same for her living and for her children, two of whom were practically dependent upon her, she had been obliged to make certain inroads upon her capital in order to meet the tax.

"Accordingly, in the summer of 1918 I suggested to Mrs. Brooks that she should create three trusts, one for the benefit of each of her three children, which would produce about the amounts she had been accustomed to give them, and that by so doing the income from these trusts would be taxable against her children, rather than against her and would result in a large saving of income tax. I explained to her how, by this method, she would also be able to provide for Mrs. Livermore in such a manner as would make it certain to Mrs. Livermore just how much she was going to receive by way of income each year, and then compel her to live accordingly." The deponent says his suggestion was not adopted; that, "she postponed action for one reason or another, and it is my opinion that she avoided taking this step because of her desire to retain control of her property and thus keep more closely in touch with her children. Thereafter in July, 1919, I went to France and I did not discuss these matters any further with Mrs. Brooks until after Mr. Stearns had prepared the transfers and arranged all the details. * * * Upon my return from the work on the Peace Commission I saw Mrs. Brooks in January of 1920. She told me in a general way what had been done, stating that wonderful things had been accomplished while I was away and that now she paid practically no income taxes and was not bothered by her daughter at all. * * * The impression I received on this visit * * * and other visits in the spring of 1920 was that both physically and mentally she seemed to be much better and happier than she had been in 1918 * * *. There certainly was no indication of impending death or even serious illness to me

at these times and if there was any change in her condition from when I had last seen her, it was certainly for the better. * * * In all the years that I knew Mrs. Brooks and saw her frequently I did not notice any serious illness, except in the years 1917 and 1918 when at certain times she seemed to be very poorly. * * * At no time in my discussion with Mrs. Brooks about the preparation of the transfers was there any allusion to any inheritance tax law or provisions thereof affecting her estate. No such subject was ever mentioned. The contemplated transfers were at that time solely induced by two reasons—the income tax situation, and the desire to avoid the irritation caused by Mrs. Livermore's constant demands for money."

Marshal Stearns, the attorney who drew the trust instruments, deposes that decedent consulted him in October, 1919, and then told him "she was greatly disturbed over two matters—first, the financial affairs of her daughter, Mrs. Livermore, whose increasing demands upon her for money were becoming unbearable, and secondly, the matter of the personal income tax, which she was then paying for the year 1918, the amount of which she told me had compelled her to sell some of her securities in order to pay the same. * * * She then went on to say that she had been giving her daughter * * * about $75,000 per year for several years and about $100,000 during the year just past, and that she certainly could not afford to do this in the face of the * * * income tax"; that decedent informed him that she had been accustomed to give her son, who was married and had two children, and no business, about $50,000 a year; to her daughter Mrs. Thayer, whose husband was wealthy, about $35,000 a year; to Mrs. Livermore, between $50,000 and $100,000; and that her own income was between $375,000 and $400,000 a year, of which she expended upon herself and household between $75,000 and $100,000 per annum. (It is shown that, of Federal income taxes, the decedent paid for the year 1916, $13,812.52; for 1917, $109,076.31; for 1918, $183,660.52; and for 1919, $5,605.30.)

Mr. Stearns advised the decedent, as stated in his affidavit—

"(1) To create three irrevocable trusts out of her stocks, one for the benefit of each child.

"(2) To sell all her bonds, availing herself of such losses as the present condition of the market would show over the value of the same on March 1, 1913, and to invest the proceeds * * * in tax exempt securities.

"(3) To create a provision in the trust for the benefit of Mrs. Livermore which would enable the income to be cut in half in case Mrs. Livermore persisted in her importunities for money, and through the trustee to pay the half of which she was so deprived in equal shares to the other sister and brother."

This plan was carried out. Mr. Stearns also states that there was no discussion of any inheritance or estate tax, and that shortly afterwards the decedent was anxious for him to secure for her an extension of the lease on the apartment she occupied, notwithstanding her lease thereon did not expire until 1923, and that he told her it was a very bad time to negotiate an extension, but that she said to him in effect: "That may be so, but I am so comfortable, I like it better than any place I have ever lived, and I know I will never be able to find a more comfortable situation. I believe in being forehanded in such matters * * *."

Depositions of Mr. Polk, Mr. Stearns, and Doctor Flint were taken in the Estate Tax Division, Mr. Stearns then testifying that a will was drawn by him for the decedent, and executed by her November 7, 1919, which was a month before the trust instruments were executed. He says, "I asked her what testamentary dispositions were made," and she immediately said, "I will get my will for you; I am glad you spoke of it, because I want to change the legacy to my husband and I want also to look out for Gladys Livermore (a grandchild) whom I am afraid her mother will not look out for * * *." I said, "If you change this Mrs. Brooks—referring to the provisions for her husband—I think it would be best to draw an entirely new will." She said, "Well, all right, I will do that, but I will outlive him anyway." Her husband received a very severe gunshot wound a number of years ago, and was not in good health. A codicil was added to the will December 3, 1919.

Doctor Flint was asked whether decedent was in any serious physical condition prior to 1920, and answer, "No, never"; that he went with her to Southampton in the summer of that year; that her condition was then "about the same"; that she went in an automobile ambulance, "just because she thought it was the easiest way to get there. I went once with her on the

train and she thought it was fatiguing"; that she also made the trip to Southampton in 1917, 1918, and 1919 by ambulance and was usually accompanied by a nurse; that "she would walk and climb in the ambulance all dressed up in her bonnet and street clothes * * * (and ride) in a reclining position," and that it was not at all necessary that she should travel by ambulance. Speaking of decedent's disinclination to having her blood pressure taken, the witness said:

"She kept me there for days without allowing me to take it. When I did she would get nervous, and I took her blood pressure not over two times. It was a little high. My recollection is that it was 160 to 170. She said she could not stand it. This was a nervous condition rather than a physical condition is the impression I wanted to give you as to why she required all these things, such as the ambulance * * * ." The witness also stated that decedent's life was not despaired of in 1917, unless "it happened in the summer. I think I would have heard of it and I think she would have told me about it."

Mr. Stearns stated that he did not know decedent in 1917, and that "as far as making any statement like her life being despaired of * * * , I do not know what they are talking about."

Stephen O. Lockwood, who was the attorney for Mrs. Livermore at the time the trusts were created, also testified before the committee of the Estate Tax Division, and told of having a conversation with the decedent in October, 1919, who "was much exercised about her daughter's want of reasonableness in connection with her expenditures. I remember one thing she mentioned, that Jack, the boy (Mrs. Livermore's son) * * * had come to have some fur on his face, and while up at Newton that summer, the barber's bill had exceeded some $400. * * * Mrs. Brooks said that her daughter preferred to have the barber come out at New Canaan, they lived some little distance, perhaps a mile and a half (from) the village, to shave Jack, * * * and that when the barber came out, why it involved a taxi and holding the taxi there until he returned, * * * . She never wanted the son to go to the barber shop nor to the school" (she had tutors for him). As to decedent's health, Mr. Lockwood stated:

"I had not seen Mrs. Brooks for quite a long while, and I had known that she was not in normal health. When I visited her there I did not get the impression that she was a robust woman by any manner of means, but she was active in her mind; she went through the long interview that we had—* * * practically an afternoon's work—without apparent fatigue more than I had myself. Her mind was clear and active, and it would not strike me, it did not strike me, that she was contemplating death, because for one thing she was contemplating taking her grandson through preparatory school and college, and it would take six years to do that, and she was contemplating looking after that herself."

It appears from the testimony of this witness that during this conference the decedent was sitting up in bed. Asked whether there was anything to lead the witness to believe that decedent was "putting her house in order," Mr. Lockwood answered, "Not a thing except she was putting her income in order in a very vigorous way."

While it may be that the condition of Mrs. Brooks' health was such as might well have caused her to be more than normally apprehensive of death, nevertheless the testimony bearing upon the harassing and extravagant demands of her elder daughter, and the situation respecting her income taxes, demonstrate that motives, other than contemplation of death, were the inducing causes, with the result that the transfers are not subject to tax.

NELSON T. HARTSON,
Solicitor of Internal Revenue.

Mr. DAVIS. Mr. Hartson, the tax in this case was paid by the estate, was it not, after the committee on review and appeals disposed of the matter?

Mr. HARTSON. If it was, I do not know of it.

Mr. DAVIS. And this is a claim for a refund of the taxes. Do you recall that, Mr. Jones?

Mr. JONES. I think that is correct, but that is often the case. Before the appeal to the solicitor, they will go ahead and pay the

taxes, because, in the event they get them back, they get interest on the taxes.

Mr. DAVIS. But it was after the decision of the committee on review and appeals and the letter sent out on that that that tax was paid?

Mr. JONES. That would have to be. We send out the formal notice of the amount of the tax, and very often the people come up and pay it, for the reason, as I said, they would get interest in the event that they get it back.

Mr. DAVIS. In the appeal to the solicitor, they, of course, claim the refund of the tax paid?

Mr. JONES. Yes; but probably they had a hearing on the claim for refund down at our place. That is always the usual procedure, and then, if we turn them down again, as I think they did in this case, they go up to the solicitor.

Mr. HARTSON. I am not clear in my own mind about the payment of the tax in this case, Mr. Jones. It is quite possible that the tax was paid as soon as assessed, and it probably was assessed before it came before your committee on review and appeals, was it not?

Mr. JONES. I think so, but I can find out definitely.

Mr. HARTSON. That is usual on a claim for refund before your committee on review and appeals.

Mr. JONES. It may have been a claim for abatement, too, which is not unusual. You see, they have to pay this tax, anyway, before they can get into court.

Mr. HARTSON. Oh, I recognize that.

Mr. JONES. And that is one reason why they very often pay it—because, if you turn it down in the solicitor's office, they are all ready to go to court on it; so that is the usual form, to go ahead and pay it, and then appeal to the solicitor.

Mr. HARTSON. There is this to be said about the Brooks case, as the committee will remember the testimony, and the evidence is all in their hands: It is true that you can argue that a person in the hands of two doctors, and traveling back and forth over three years to her summer place, in an ambulance, ought to have had in mind the probability of imminence of death; but you have the direct testimony of all of these other people to the contrary and it is a case that, in my judgment, you could not win in court. That has been the view of the office on similar cases, and when we do have that view, it has been our policy, and which I believe is a wise one, to not force the taxpayer into litigation in an effort to get back the tax, when we thoroughly believe that they will get it back if they do take us into court.

Mr. JONES. I know that the testimony was all against the Government. They had one of the most prominent physicians of New York down there. He was there in person, Dr. Austin Flint, a very well-known physician, and he repudiated all of the statements that were supposed to have been made by him to the agent in the field. We find that is usually the practice. The doctors never stay put on their testimony.

Senator WATSON. They must be experts.

Mr. JONES. I beg your pardon.

Senator WATSON. I say, they are experts.

Mr. JONES. Well, I can see only one reason for it, and that is that if they alienate these rich patients of theirs, their rich practice is going to cease.

The CHAIRMAN. For my part I think Mr. Hartson is more correct in this decision than in the others. I think that the preponderance of the evidence shows that the transfer was made to avoid the income tax, much more so than any other cause; but in the other cases, the evasion of the income tax payment was not a factor, as it was in this case.

Senator WATSON. Is it your view, Senator, that we ought to go to court in all of these cases?

The CHAIRMAN. I would not say in all of them, but my view is that we should have taken some of them to court. I think Mr. Hartson was more justified in deciding this case in this way—and in that I disagree with the attorneys for the committee—then he was in the other case, where there was no special income tax, as there was in this case.

Mr. HARTSON. There is a saving of income tax in every one of these cases, where the amounts are large at all.

The CHAIRMAN. Well, not in the Schwabacher case. That is a case where the income tax did not vary.

Mr. HARTSON. Well, of course, that is a different situation. That occurred quite a long time before this act became effective, too. The presumptive period was not in it. This case is comparable with the Parlin case rather than the Schwabacher case.

The CHAIRMAN. But the saving of income tax in the Parlin case was not introduced before the committee, was it?

Mr. HARTSON. No; it was not mentioned. It may have been a motive, but it was not reported on by the investigating officer as a motive. So far as the record is concerned, there is nothing to show that there was an element in the case at all.

The CHAIRMAN. From the development of these cases, I can see very plainly that the decedents divided up their estates to save income tax, but not to save the estate tax. I do not think it is conclusive that these decedents did divide up their estates to escape the payment of the estate tax. It is very presumptive that they did divide up their estate to escape the income tax, and if that is the case, then you can not prove that the transfers were made in contemplation of death. Is not that correct, Mr. Hartson?

Mr. HARTSON. That is correct. It may be proven, but it is increasingly difficult to prove that element in it.

The CHAIRMAN. In other words, there is a definite motive for the transfer in the saving of income tax, while there may not be a definite motive in the other case, where there was an intangible promise or an unrecorded promise made years before.

Mr. HARTSON. Of course, the Government, in the absence of any motive at all, can not make out a case to collect a tax on such a transfer. The Government has to show that it was in contemplation of death.

The CHAIRMAN. That that was the purpose of the transfer?

Mr. HARTSON. Yes.

Mr. MANSON. How about the presumption in the statute, if there is no motive?

Mr. HARTSON. Well, if there is no evidence at all it would be my view that the presumption would operate; but just as soon as there is evidence, then the presumption, as the courts have said, is just another bit of evidence to be considered by either the jury or the court.

Mr. MANSON. Has any appellate court ever said that—any appellate Federal court?

Mr. LEWIS. Schwab *v.* Doyle.

Mr. MANSON. That it was?

Mr. LEWIS. Well, they do not use that language. Presumption and the effect of it is discussed.

The CHAIRMAN. If agreeable to the members of the committee, we will adjourn now until 2 o'clock Monday afternoon.

(Whereupon, at 4 o'clock p. m., the committee adjourned until Monday, December 1, 1924, at 2 o'clock p. m.)