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Western Judicial District of Arkansas. Letter from the Attorney-General, relative to claims arising from expenditures of the marshal's office of the western Judicial District of Arkansas.

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WESTERN JUDICIAL DISTRICT OF ARKANSAS.

LETTER
FROM
THE ATTORNEY-GENERAL,
RELATIVE TO
Claims arising from expenditures of the marshal’s office of the western judicial district of Arkansas.

FEBRUARY 23, 1875.—Referred to the Committee on Expenditures in the Department of Justice and ordered to be printed.

DEPARTMENT OF JUSTICE,
Washington, February 18, 1875.

SIR: On the 9th of June last the House, on motion of Mr. Sener, from the Committee on Expenditures in this Department, adopted the following resolution:

Resolved, That the Attorney-General be directed to institute a full and thorough judicial investigation into the character of the allowances that have been paid at the Treasury Department, as well as the claims still due, growing out of expenditures of the marshal’s office of the western judicial district of Arkansas, since the 1st day of July, 1870; and that no part of said claims shall be paid until the Department has been satisfied by investigation of their correctness, and the Department shall report its action to this House.

On the 24th day of June I appointed Mr. Benjamin T. Duval special assistant to the United States attorney for the western district of Arkansas, to make an investigation pursuant to this resolution; and I now have the honor to inclose a copy of his report. I also inclose a copy of a letter addressed by me on the 17th instant to the First Comptroller of the Treasury, requesting him to restate and settle the accounts of the marshals in accordance with the recommendations of Mr. Duval.

Very respectfully, your obedient servant,
GEO. H. WILLIAMS,
Attorney-General.

Hon. JAMES G. BLAINE,
Speaker of the House of Representatives.
Having been selected and employed by you to carry out the following resolution of the House of Representatives of the Congress of the United States, to wit:

Resolved, That the Attorney-General be directed to institute a full and thorough judicial investigation into the character of the allowances that have been paid at the Treasury Department, as well as the claims still due, growing out of expenditures of the marshal's office in the western judicial district of Arkansas, since the 1st day of July, 1870; and that no part of said claims shall be paid until the Department has been satisfied by investigation of their correctness, and the Department shall report its action to this House.

I beg leave to submit the following report:

I was appointed by you special assistant United States attorney for the western district of Arkansas, and qualified June 24, 1874, and immediately commenced the investigation.

The vouchers and papers relating to the expenditures of the marshal's office for said western district of Arkansas, referred to in the resolution aforesaid, then on file in the Office of the First Comptroller, were placed at my disposal.

There were among them a large amount of unpaid claims, arising under the administration of William A. Britton, late United States marshal, embracing every variety of expenditures. Some of these claims consisted of vouchers, or accounts made out in the form prescribed by law, and a large amount of them were what is known in the western district of Arkansas as “marshal's checks.” The latter class of claims are of an anomalous character, not only unknown to the laws of the United States, but were given out by the marshal upon taking receipts from creditors of the United States upon vouchers, in direct violation of the provisions of the 16th section of the act of Congress approved August 6, 1846, (9 Statutes at Large, 59.)

Whenever a person having a claim against the United States for services performed or fees due and to be paid by the marshal would surrender the voucher and receipt the same, the marshal delivered to the claimant a paper or due-bill in the following form:

$30.]

OFFICE UNITED STATES MARSHAL,
WESTERN DISTRICT OF ARKANSAS,
Fort Smith, Ark., October 3, 1872.

There is due C. S. Hunt, for services rendered as deputy marshal, the sum of thirty dollars.

No. 253.

W. A. BRITTON, Marshal,
By J. W. DONNELLY.

The account-roll or voucher, thus received, and upon which this illegal “check” was issued in lieu of money, was then forwarded to the accounting officers of the Treasury Department to be passed to the credit of the marshal. The unfortunate holder of the check, despairing of ever being paid the sum lawfully due him, was compelled to sell the same for whatever he could get for it. This practice of issuing checks first originated, I understand, under the administration of Logan H. Roots; at least, if it was resorted to before his time, it was to a very limited extent.

A large amount of the unpaid accounts and checks which had been presented to the accounting officers of the Treasury was for services rendered as jurors, witnesses, bailiffs, jail-guards, and for feeding prisoners confined in jail.
I recommend the payment of fees due to jurors and witnesses, in accordance with the amounts shown to be due them by the transcript from the records of the court, which had previously been transmitted to the Treasury Department. I also recommend the payment of the other accounts mentioned above, in all cases where the holders were not suspected of complicity in the frauds shown by the reports of the Judiciary Committee of the House of Representatives and the Committee on Expenditures in the Department of Justice to have been committed in that district, and which had caused the adoption of the resolution aforesaid.

A statement of the accounts and amounts which had been paid under this ruling, which was approved by you, is hereto appended, marked Exhibit A.

The frauds were mostly in the vouchers for compensation to the marshal and his deputies, and for disbursements to posse comitatus.

The unpaid claims which had been presented to the accounting officers of the Treasury were under the last term of W. A. Britton.

The outstanding indebtedness of the marshal's office, under Logan H. Roots, had been paid by him after he went out of office.

William A. Britton was appointed marshal for the western district of Arkansas, on the 22d day of May, A. D. 1869, and was suspended or removed in the early part of 1871, and was succeeded by Logan H. Roots, who was in turn suspended and Britton again appointed, who held the office from July 6, 1872, until the spring of 1873.

John N. Sarber succeeded Britton, and held the office from May, 1873, to July 1, 1874, when he resigned.

The marshals in office during the period covered by the resolution aforesaid, that is, from July 1, 1870, were, first, Britton; second, Roots; third, Britton, (second term;) and fourth, Sarber.

The western district of Arkansas was enlarged by act of Congress of March, 1871, by the addition of nineteen counties in the northeastern portion of the State of Arkansas, and an additional court (two terms a year) established at Helena, in said State, and the office of judge, for the western district of Arkansas, created. Soon after the act was passed William Story was appointed judge for said district, and resigned on the 17th day of July, 1874, under charges which had been referred to the judiciary committee of the house of representatives, for investigation. His resignation was to prevent being impeached.

Logan H. Roots was appointed marshal at the same time that Story was appointed judge. I have given this historical detail of the personnel of the officials for the western district of Arkansas, in order that the facts referred to in my report may be better understood, and to avoid the necessity of repetition.

The expenditures in the western district of Arkansas were, according to the statement of the First Comptroller, in 1869, $56,000; 1870, $108,000; 1871, $248,000; 1872, $370,000. Logan H. Roots, as marshal, drew from the Treasury of the United States, from May 5, 1871, to June 12, 1872, the sum of $319,726.59. This was while he was in office; and after he went out of office he drew the further sum of $83,539.80, making an expenditure in his office, for a period of fourteen months and twenty days, of $403,266.49.

W. A. Britton, as marshal, drew from the Treasury during his two terms of office, $234,360.10. To this sum is to be added his outstanding indebtedness at the close of his last term, of nearly $100,000.

The sums advanced to John N. Sarber, as marshal, amount to $90,875. These enormous amounts expended in a single judicial district were
well calculated to attract attention and excite suspicion. The systematized frauds perpetrated in the marshal's office were so thorough as to baffle the vigilance of your Department, and of the Treasury. The judge of the court, after the appointment of Story, was, to say the least, utterly incompetent to lend any assistance in the reformation of abuses. He either recklessly closed his eyes and approved all accounts presented to him, or refused to approve any at all. He conducted himself with so little firmness and dignity as to induce the suspicion of his complicity in the transactions of the marshal.

In accordance with your instructions, I gave notice in the newspapers at Fort Smith, Arkansas, that I would, on the 10th day of August, at that place, be ready to receive and investigate claims against the United States, and called upon all persons, having such claims growing out of the expenditures of the marshal's office, to present them to me. The accounts of the marshal in the Comptroller's Office, and the unpaid claims on file, were to be forwarded to me by express.

I reached Fort Smith about the first day of August, and found that a bitter hostility had been aroused against the proposed investigation and against me personally.

The old deputy marshals had been induced to believe that it was a blow aimed at them by which they would be subjected to indictment and punishment.

An effort was made to capture and destroy the papers after their arrival at Muscogee, in the Indian Territory, and, in consequence of which, the papers were by me ordered back to Saint Louis, and finally to Washington City. In consequence of this, the papers, and Mr. W. H. Nessle, of the First Comptroller's Office, who had been detailed to assist me, did not reach Fort Smith until the 9th day of September. I, however, commenced the investigation in August with such papers as had been transmitted to me by mail, and of the accounts presented to me under my notice.

A large number of the old deputies had not been paid for some time, and who could not get employment under the new marshal were congregated at Fort Smith. They were persuaded to believe that I was the cause of their being thrown out of employment, and their animosity was artfully directed against me personally. The object of the investigation was grossly perverted, and as a large portion of the population was in some way or other interested in the payment of the outstanding indebtedness of the marshal's office, whether fraudulent or not. I encountered on all sides opposition, and was almost entirely without the moral support of the community. The few who were willing to give evidence before me in regard to the matters to be investigated were fearful and timid, and as those most to be affected by the detection and exposure of frauds had ample means, they were able to throw obstacles in my way.

But I persevered, and obtained the testimony of witnesses hereto appended, which throw, a flood of light upon the subject, and will effectually prevent a repetition of similar practices, and protect the Treasury from similar frauds in the future.

My investigation, so far as "the allowances that have been paid" are concerned, was, of course, not judicial, but was intended as preliminary, and to ascertain whether it would be advisable to institute suits. No one who will take the pains to read the evidence can doubt that it is sufficient to justify the institution of suits for the recovery of the money wrongfully obtained from the Treasury, and particularly when it is considered that the witnesses examined by me appeared without com-
pulmonary process, and at a point where influences opposed to the investiga-
gion are the most formidable.
In civil suits where testimony can be obtained by deposition at points
where the efforts of the ring to intimidate would be feeble and unavail-
ing, facts would be revealed showing the details of a system by which
thousands and tens of thousands of dollars have been unlawfully drawn
from the Treasury of the United States by means of fraudulent and
fictitious vouchers. As the testimony was taken just as I could find a
witness, it has required no little labor to systematize it and reduce it to
order.
The practice of manufacturing false and fraudulent accounts to any
extent, seems to have commenced in 1870, during the latter part of Brit-
ton's first term of office. The testimony of the deputies, and others who
appeared before me, shows that excessive mileage was charged, and
that fictitious and fraudulent guard and posse vouchers were made out.
The arresting of parties without warrants, and the ante-dating of the
warrants so as to cover the time, by the United States commissioners,
also had its beginning there.
The allowance of two dollars per day for expenses while employed in
endeavoring to arrest, was not regarded as for expenses, but as a per
diem compensation, to which the marshal and his deputies were entitled
at all times, when he had a writ in his possession, whether actually en-
gaged in endeavoring to arrest or not.
When a deputy made an arrest without warrant, he brought his pris-
oner before the commissioner, made his complaint, stated when and
where he made the arrest, and the commissioner issued and ante-dated
the warrant to conform to the statements made by the deputy; and, in
these cases, if arrested without warrant, the number of days charged
for in endeavoring to arrest was limited only by the cupidity of the
party.
From 1870 until the practice was disapproved and abolished by Judge
Caldwell, within the last few months, warrants were issued upon the
complaints of deputy marshals, who had no personal knowledge of the
facts. The form generally used is as follows:

I do solemnly swear and believe, from reliable information in my possession, that
one John Martin did, in the Indian country, western district of Arkansas, on or about
the 15th day of April, A. D. 1872, feloniously steal, take, and carry away from the law-
ful possession of the owner, one cow, of the value of thirty dollars.

(Signed) A. B.
Sworn to, &c., &c.

In the case from which this form is taken the deputy marshal who
made the complaint had no knowledge whatever of the facts, and it
turned out that the party was entirely innocent.
The facility with which writs could be obtained enabled each of the
immense army of deputies to have at all times from fifty to one hundred
and fifty warrants in his possession.
The number of warrants in the hands of the deputies reached to thou-
sands; that is, if the testimony is to be believed. When Sarber resigned,
his deputies claimed to have in their hands fifteen hundred good writs,
which some of them offered for sale to the deputies of the new marshal
at ten dollars apiece.
These practices, so fruitful of fraud, commenced, as before stated, in
the latter part of Britton's first term of office. At the beginning they
were used with caution, and the amounts were not large. At that time
the number of deputy marshals was comparatively small. The frauds
consisted chiefly in overcharges of mileage, with occasionally a false
posse-account. The largest frauds were on writs returned by the depu-
ties *non est*, for which they were paid nothing; but, after being returned
into the office, it appears accounts were made out charging a large num-
ber of days "in endeavoring to arrest" and for posse. These items were
a clear gain to the office. It was not till Roots took charge of the office
that these practices attained their widest expansion.

The construction of the Missouri, Kansas and Texas Railroad through
the Indian Territory caused an influx of a floating population therein, a
large portion of which were engaged in traffic in whisky, producing, as
a natural result, an increase in the amount of crimes under the juris-
diction of the United States court. But a careful examination of the
testimony will show that these causes did not create the necessity for
the enormous expenditures of money as shown by the accounts of Root
and Britton.

On his accession to the office, Roots appointed a large number of de-
puties. They were selected with regard to their energy, enterprise, and
capacity to "work up business." These deputies, with their posse,
made a large army, and were sent out in the Indian Territory with in-
structions to hunt up all offenders and make arrests, no matter how
trivial the offense. Their pay was to be two-thirds of all they could
earn.

As they were not required, under the ruling of the judge then presid-
ing, to have writs before making arrests, there was absolutely no limi-
tation upon their power. Thus the unhappy denizens of that Territory
were recklessly arrested and brought, without "process of law," to Fort
Smith, to be tried on charges preferred after arrest and imprisonnent,
and that, too, by parties ignorant of the facts, and whose pay depended
upon the number of cases they could get up. The prisoners thus ar-
rested in defiance of law were subjected, necessarily, to heavy expense,
loss of time, and sometimes to irreparable injury to their business. The
cases thus hunted up were of a trivial character, yet they swelled the
emoluments of the marshal at the expense of the Treasury of the United
States.

There were indicted at the May and November terms of the court for
1871, and May term, 1872, (the terms held while Roots was in office,)i
four hundred and ninety-six persons. Of these one hundred and twenty-
five only were convicted, and eighty-two were *nolle-prossed*. This ap-
pears from the records of the court. There was a vast number arrested
and brought before the commissioners and discharged, which are not
included in the above estimate.

The natural consequence of these doings was to create in the hearts
of the Indians a hatred to the court, and to bring it and its officers into
disrepute.

Judge Story held that it was an offense to retail liquor in the Indian
 Territory without paying the special tax required by the provisions of
the revenue law. The intercourse law, as it is generally termed, absolu-
tely prohibits the introduction of liquors into the Indian country, ex-
cepting only such supplies for the use of the Army as the Secretary of
War might direct.

Under this ruling two cases were made whenever it appeared that the
defendant had been selling or disposing of liquor in the Indian country:
one under the intercourse and the other under the revenue law. This,
of course, increased the expenditures of the court, as large numbers of
persons were arrested, tried, convicted and sentenced, under this ruling,
for violating the revenue law. Judge Caldwell has reversed this ruling,
holding that, as liquor is contraband in the Indian Territory, and officers
and citizens are authorized to seize and destroy it whenever found there, without it is there under direction of the Secretary of War,) the laws relating to internal revenue are not in force there so far as it relates to the manufacture and sale of liquor.

During the administration of Roots, the system of making out accounts for services as deputy marshal in the names of persons having no existence, and for posse in the names of fictitious parties, was perfected and carried to an enormous extent. The testimony shows that a roster of these myths was kept in the marshal's office; that deputies were encouraged to make out and certify false posse-accounts on the condition that they were to divide with the office, or "whack up to the office," in the language imputed to Roots by one of the witnesses. In addition to this, nearly all of the deputies who were examined by me swear that they were in the habit of signing the certificates to blank posse-accounts which were afterward filled up with the names of parties as posse of whom they had no knowledge, and many of them pronounce their signatures to such accounts to be forgeries. I give, hereafter, a few cases of this sort, in order that you may fully comprehend how these frauds were perpetrated and the recklessness with which they were practiced.

The proof in the cases referred to is no stronger than could be made in a very large number of these accounts; but I had no power to compel the attendance of witnesses; and many who would testify under process and in court are afraid to do so as volunteers. I am satisfied that their fears are not groundless. Indeed, I have good reason to know and feel the power of the "ring" who have profited by these practices.

Logan H. Roots is an energetic business man, and personally attended to and directed the operations of his office, and all of these accounts were carried into his abstracts and accounts-current, and verified by his affidavit as to their correctness, and payment by him, and all of them were allowed and paid to him out of the Treasury.

The issuance of checks or due-bills by the United States marshals, in payment of accounts and vouchers, is not only criminal under the law, but has been, in this district, a fruitful source of disorder and demoralization.

In the early part of the year 1872 the National Bank of Western Arkansas was organized at Fort Smith, with a capital of $55,000, of which Logan H. Roots, then United States marshal, was the owner of nearly $30,000. It commenced business on the 1st day of May, 1872, and at that time Marshal Roots suspended payment of cash in the expenditures of his office, and issued checks or due-bills. From May 21 to June 12, 1872, he drew from the United States Treasury the sum of $95,000. When he went out of office, about the 1st day of July, 1872, he left an outstanding indebtedness, in checks or due-bills issued upon receipted vouchers, of about $60,000. About $50,000 of the checks were purchased by the bank at a discount of from 17 to 20 per cent. I examined B. Baer, the president of the bank, at considerable length. Attention is called to his testimony. It is due to him to say that he testified with frankness and candor, and produced without reluctance the books of the bank, at my request, for inspection.

He is the friend of Roots, and does not disguise his interest for him, and his testimony shows a bearing that way, yet I found him willing to answer all my questions fully and freely.

The coincidence of the suspension of cash payment by the marshal, at the time the bank commenced business, is suggestive.

It appears from the accounts rendered by Logan H. Roots, as United States marshal for the western district of Arkansas, that he claimed
and was allowed credit, for compensation of marshal and deputies, the aggregate—

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sum of two-thirds paid to deputies</td>
<td>$136,625.86</td>
</tr>
<tr>
<td>Deduct two-thirds paid to deputies</td>
<td>91,083.90</td>
</tr>
<tr>
<td>Amount retained by Roots</td>
<td>45,541.96</td>
</tr>
<tr>
<td>Add 10 per cent. on $91,083.90 retained by Roots to protect him against dis-</td>
<td>9,108.39</td>
</tr>
<tr>
<td>allowances</td>
<td></td>
</tr>
<tr>
<td>Total amount retained by Roots</td>
<td>54,650.35</td>
</tr>
</tbody>
</table>

By contract with the deputies, Roots retained one-third of the compensation earned and allowed to them for their services; that is, one-third of the total amount of their accounts, including the *per diem* allowance for expenses while endeavoring to arrest and for subsistence to prisoners; and he also retained ten percent of the remaining two-thirds, to protect him in case any portion of the accounts should be disallowed by the accounting-officers of the Treasury.

The item of "compensation to marshal" includes his *per diem* for attendance on the court and commissions on disbursements, in which the deputies had no interest.

In making the above calculation I have treated the whole amount as compensation earned by deputies only, out of which the marshal was allowed only one-third, and it appears he actually received for his services as marshal, for the brief space of fourteen months and twenty days, the enormous sum of $54,650.35, out of which he was entitled to retain by law as his maximum compensation the sum of six thousand dollars, and a reasonable allowance for clerk-hire and office-expenses. It appears, however, that Roots has paid to some of his deputies the ten per cent. retained from them, but others testify that he has refused to pay them. The sum of 10 per cent. was also retained from the deputies under Britton and Sarber.

In the last account rendered by Logan H. Roots, adjusted at the Treasury, per report No. 40,021, and sworn to January 23, 1873, vouchers are presented that have been allowed and paid for services purporting to have been rendered by one Charles Western, a deputy marshal, amounting to $498.75, and for posse on the writs in the several cases, the sum of $495.

Among the writs purporting to have been executed by this Charles Western is one against S. D. Turner for larceny. The voucher or account is as follows:

**United States vs. S. D. Turner**

**Larceny.**

Writ issued by E. J. Brooks, esq., United States commissioner, March 12, 1872, served November 11, 1872, in Cheyenne and Arapahoe Nation.

Service of writ. .................................................................................. $2 00
Mileage, 400 miles to serve writ, at 6c .............................................. 24 00
Expenses 16 days feeding prisoner, from November 11 to 26, 1872. .......... 36 00
Mileage, returning prisoner, 400 miles, at 10c .................................. 40 00

Total ........................................................................................................ 102 00

Name of posse, R. H. Downey, voucher 16.

The posse account amounts to $99.

S. D. Turner, the person alleged to have been arrested, fed, and transported as above, appeared before me and testified under oath that he had never been in the Cheyenne and Arapahoe Nation in his life, to his knowledge; that he resided, in the fall of 1872, at Webber's Falls, on the
Arkansas River, in the Cherokee Nation, about forty-five miles from Fort Smith; that he was a man of family, and well known in the community; that he had at one time taken up two mules in his neighborhood, believing them to be strays, at the request of a man who had lost a pair of mules, of which these answered the description given him. The mules were afterward claimed and taken by another party who owned them.

In the latter part of the year 1872 he heard there had been a warrant issued for his arrest and placed in the hands of the marshal, and he went to the house of his son-in-law, Josiah Foster, who was at that time a deputy marshal, and surrendered; that he and Foster came together to Fort Smith and went before United States Commissioner Brooks for examination, but was informed that an indictment had been presented against him, Turner. He then went before the clerk of the court and gave bail for his appearance at court, and was afterward tried and acquitted. The indictment and bond are now on file in the office of the clerk of the court, and the records show his trial and acquittal. Mr. Turner swears that he was never arrested on any other charge; was not in actual custody at all, and that the entire account is fraudulent and fabricated.

He is fully corroborated in his statements by Josiah Foster, his son-in-law, and W. H. Johnson, a deputy marshal, who swears that he returned the writ, and that the only charge he made was $2 for the service of the writ, on the ground that Turner surrendered to him at Fort Smith at the time he came there with Foster.

In the same batch of accounts, in the name of Charles Western, there is an account amounting to $68.25, for the arrest of Frank Emmons, charged with contempt. The original return on the writ, now on file in the office of the clerk of the court, is signed by W. H. Johnson as deputy marshal. The service purports to have been made by him in the Cheyenne and Arapahoe Nation, four hundred miles from Fort Smith, on the 11th day of November, 1872, and it is admitted by Johnson in his testimony before me that he was on that day at Fort Smith, in attendance upon the court, as crier or bailiff.

These accounts were sworn to before J. C. Pritchard, deputy clerk United States district court, whose certificate bears date November 16, 1872, notwithstanding the date of the last item in the accounts is November 29, 1872.

There was no such person as Charles Western, who ever held the position of deputy marshal. The account is wholly and entirely false, fictitious, and fraudulent. It was taken up in the abstracts and accounts current which were sworn to by Logan H. Roots, United States marshal, and the sum of $973.75 allowed him thereon in the settlement of his accounts. This case was laid before the grand jury.

In the account adjusted at the Treasury, per report No. 39388, sworn to by Logan H. Roots, November 27, 1872, another similar account is presented in the name of Joseph H. Monroe, deputy marshal, amounting to $135.25, for the arrest of Tandy Walker, charged with an assault with intent to kill, in the Indian country. The items are as follows:

- Served July 4, 1872, in Cherokee Nation .................................................. $3 00
- Thirteen days endeavoring to arrest, from June 20 to July 3 ..................... $26 00
- Mileage to serve writ, 300 miles, at 6c .................................................. $18 00
- Thirteen days feeding prisoner, from July 4 to 16 .................................. $29 25
- Mileage returning prisoner and deputy, 300 miles each, at 10c .................... $60 00

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<tbody>
<tr>
<td></td>
<td>Total</td>
</tr>
<tr>
<td></td>
<td>$391 25</td>
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Pese, J. S. Wilson, and guard, Monck, $78 each .................................. $156 00
I took the testimony of Tandy Walker, himself, on the first day of December, 1874, from which it appears that no such man as Joseph H. Monroe ever arrested him; that he came alone to Fort Smith; that there were no guards or posse with him; that he lives not exceeding one hundred and twenty-five miles from Fort Smith, and that the whole account is false, fictitious, and fraudulent. The testimony of W. H. Johnston shows by whom this fraudulent account was made. It is taken up in the abstracts and accounts-current of Logan H. Roots, who swears that the "services were rendered and the amount charged actually paid by him."

Joseph H. Monroe is also credited with having arrested Jack Harvey, charged with a violation of the internal-revenue law in the Indian Territory, for which, including fraudulent posse accounts, the United States is charged the sum of $545.25, and this amount was allowed and paid to Roots. This account is shown to be fraudulent by the testimony of Tandy Walker and William H. Johnson, taken by me. According to Johnson's evidence these accounts were manufactured in Root's office. In the same report, abstract 4, voucher 25, is the following:

**UNITED STATES VS. JOHN WELLS AND Charles Rich.**

Larceny. Writ issued by E. J. Brooks, dated January 5, 1872.

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Served by R. T. Graham, September 19, in Cheyenne and Arapahoe Nation</td>
<td>$2 00</td>
</tr>
<tr>
<td>18 days endeavoring to arrest, from September 2 to 19</td>
<td>36 00</td>
</tr>
<tr>
<td>Mileage, 485 miles to serve writ, at 6 cents</td>
<td>29 10</td>
</tr>
<tr>
<td>18 days' feeding prisoner, from September 19 to October 7</td>
<td>40 50</td>
</tr>
<tr>
<td>Mileage returning prisoner and deputy, 485 miles each</td>
<td>97 00</td>
</tr>
<tr>
<td>Attendance before commissioner one day</td>
<td>2 00</td>
</tr>
<tr>
<td>Posse, James Smith and John Davis, 36 days, each, $108</td>
<td>216 00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>422 60</strong></td>
</tr>
</tbody>
</table>

The return on the original writ shows that the signature of W. H. Johnson has been erased and "R. T. Graham," written over it. An indorsement on the writ, in the handwriting of Brooks, the commissioner, shows that Wells was in jail under the name of John Johnson, charged with horse-stealing.

James M. Scovil swears that he and J. C. Wilkinson arrested the man and brought him into Fort Smith, on the 25th of September, 1872. W. H. Johnson also testifies that he handed in the writ to be returned non est, having signed his name on the back of it; that afterward James W. Donnelly got him to sign the name "R. T. Graham," for which he, Donnelly, paid him $50, and he also, at Donnelly's request, signed the name "R. T. Graham" to the certificates to several blank posse-accounts which were filled up in regular form, as if genuine and R. T. Graham a real person, and the sum of $422 allowed to Logan H. Roots in the settlement of his accounts.

Connected with this case, I will state that on the same trip in which prisoner Wells alias Johnson was arrested by J. M. Scovil and J. C. Wilkinson, there were several other prisoners taken. Scovil testifies that they had with them a posse of three men, Charles Lawson, William Spence, and Silas Putnam. In making out their returns, some of the writs were returned by one R. D. Hargrove, and three false posse-vouchers
made out for one Van Horn, Newton E. Martin, and Henry Harrison, and afterward, without the knowledge or connivance of Scovel or Wilkinson, three more fraudulent posse-accounts were made out in the names of Frank Thomas, Jonas Schaub, and R. P. Wilson, each amounting to $108. In all these cases returned by Scovil, Wilkinson, Hargrove, and "R. T. Graham," there were returned and charged against the United States eleven persons as posse, eight of whom were false and fictitious, amounting to the snug little sum of $872 as the product of the fraudulent practices of the marshal's office in that batch of cases. I wish it to be noted that the account of R. T. Graham and the three posse-accounts in this case were returned by Roots as late marshal, and the other fraudulent accounts by Brittoh, the marshal then in office.

These are given as an illustration of how the profits and emoluments of the office could be augmented.

In the two last accounts rendered by Roots, and adjusted at the Treasury, per reports No. 39388 and No. 40021, there are large accounts made out in the names of persons who had no existence, among others the names of Joseph H. Monroe, James Monds, A. Crowley, O. S. Worth, J. O. Moore, J. P. Willett, A. Holt, Ben. Haskins, Charles Mayres, J. T. Howard, Thomas Marshall, Charles Western, and R. T. Graham. The most diligent inquiry failed to elicit any information as to the existence of such persons as real beings. Yet they were favored as to the extent and amount of business to be transacted, and amount of fees allowed them. The testimony sheds some light upon who used these names in the manufacture of vouchers. (See testimony of W. H. Johnson.)

William M. Griffith a keeper of a livery-stable in Fort Smith, and J. H. Lamar, his hostler, and who never did any riding at all, were used as what was known as "returning deputies," and large accounts were made out in their names.

I have no idea that Lamar ever received more than a mere pittance on the accounts on which his name was used. He was, as the evidence shows, constantly employed as hostler and carriage-driver in the stable of which R. C. Kerns, Roots's chief deputy, was the proprietor and W. M. Griffith the manager.

Under the law, a marshal who is suspended or removed from office is authorized to serve any process that may have been in his possession at the time of such suspension or removal. These two accounts of Roots's purport to be for services after he went out of office, and the larger portion of the charges for compensation to the marshal, deputies, and posse, are false, fictitious, and fraudulent.

In the spring of 1872, a cold-blooded assassination and robbery of an old man was perpetrated at Perryville, in the Choctaw Nation, by a man named Spencer Finney. The population arose en masse and hung Finney. Charges were preferred against quite a number of the best citizens of the village, and they were arrested by Jacob Baer and J. H. Willard, deputy marshals under Roots. Baer returned the writs and made out his accounts, charging mileage, 230 miles, to serve writ, and the same distance, returning, for self and prisoners, with a full complement of posse on each writ, and nine days feeding prisoners, at $2.25 per day. Among others arrested by Baer was William Chunn, a respectable merchant at Perryville, whose testimony I took. He swears that he was never in actual custody, came to Fort Smith at his own expense, and that the whole account rendered in the name of Jacob Baer is fraudulent, not only so far as he is concerned, but as to the others who were arrested at the same time and place. The testimony of James M. Harrub, now deputy clerk of the United States court at Fort Smith,
and then a posse on the trip referred to, corroborates Chunn, and shows a wholesale fraud in the marshal's and posse accounts in these cases. Particular attention is called to the testimony of Chunn and Harrub. They are both gentlemen of unquestionable integrity. Instances of similar frauds could be multiplied under Roots's administration, as will be seen by reference to the testimony taken by me, but it would require too much space.

In these cases I was fortunate enough to procure the testimony of the parties defendant, all of whom are worthy of credit, and cannot be successfully impeached.

The same practices of the manufacturing and using false and fraudulent vouchers for compensation to marshal and for disbursements to posse comitatus as prevailed under Roots, were continued under William A. Britton, and to a modified extent under John N. Sarber. In all their accounts there is an overcharge of mileage, and, consequently, of time in the subsistence of prisoners in transporting them from place of arrest to court, and the per diem charge of two dollars while employed in endeavoring to arrest.

The testimony taken by me is full upon the subject of distances from Fort Smith to known points in the district, particularly in the Indian country. At Helena, I prepared a table of distances, founded upon the testimony of persons well acquainted with the section of country embraced in that end of the district, which is hereto annexed. At that place, it was the practice to charge river mileage under a table of distances revised by Judge Story, which table is incorrect.

It will be necessary to restate all the accounts, in order to correct these errors and overcharges, and, by so doing, thousands of dollars will be saved to the Government.

The business of the office in Britton's last term seems to have been in utter confusion. The outstanding indebtedness, consisting of vouchers for posse comitatus, deputy marshals, guards at jail, jailers, bailiffs, and checks, amounted to near $100,000 when he was removed. These are mostly held by third parties, who claim to be purchasers for value, or who received them in payment of debts.

I have patiently examined all the witnesses that have been presented to me by the holders of this "paper," and have indorsed my findings on it, and also in a book, where the same is recorded. This I will turn over to the Comptroller for his guidance in adjusting these accounts. The "checks" or due-bills issued for deputy marshals' services, and for the services of posse comitatus, I could make no disposition of. In the restatement and adjustment of the whole accounts, they can be provided for, if it should be ascertained that they were issued upon just accounts, for which W. A. Britton has received credit. The amount can be disallowed to Britton as a credit, and thus restore the party to whom they were issued to the same status he occupied before receiving the voucher. In cases where the original account is fraudulent, they are utterly worthless.

The investigation discloses the utmost confusion in the management of the marshal's office under Britton. This is particularly the case in regard to the disbursements of the money advanced to him from the Treasury. The sums received by him ought to have been ample to defray all the legitimate expenses of the court, and I believe were sufficient. Nearly all of his deputies swear that he still owes them large amounts for their services. Most of them surrendered their vouchers and received therefor "checks" or due-bills, and traded them off at a heavy dis-
count. Some of them still retain in their own possession or have sold to other parties the vouchers for their services.

The confusion, doubtless, is attributable in a great measure to the manufacture of fraudulent accounts to cover balances for money improperly used. From the beginning of his last term of office to its close, he was in debt to all classes of persons employed in the office or to whom fees were due for services rendered as witnesses, jurors, &c. The pernicious practice of issuing checks or due-bills prevailed to an alarming extent. He appears to have borrowed money to pay "current expenses of courts in session," and deposited vouchers as collateral. How this could be done consistently with the proper and lawful management of his office is incomprehensible. If the vouchers had been paid by him with funds advanced for the purpose, they were worthless as collateral, and if unpaid, they belonged to the parties who had rendered the service.

Britton's vouchers and "checks" in the fall of 1872 glutted the market, and became almost worthless, not finding purchasers even at thirty cents on the dollar. He received, however, during the November term of that year, $73,500, $53,000 of which went into the hands of Thomas Lanigan, and $20,000 to Thomas G. Scott, both of Fort Smith.

The larger portion of these amounts was absorbed in payment of vouchers and checks bought up by them.

The jurors and witnesses at that term were not paid. His outstanding indebtedness at the close of his term must have been largely in excess of $100,000, a considerable portion of which has been paid direct from the Treasury since my employment as assistant United States attorney, and before, and there is still a large amount unpaid.

It is unwise policy, however, to pay direct from the Treasury claims growing out of the expenditures of the marshal's office, and should be discontinued. It should be made an inflexible rule for the marshal to pay all just and legal accounts and claims arising out of the expenditures of his office, and in no case should the accounting-officers of the Treasury recognize such claims when presented by any other person than the marshal himself, as vouchers in the settlement of his accounts.

There is no reason why the marshal should be without funds to pay current expenditures for any length of time, if his office is conducted lawfully and honestly. The speculation in marshal's vouchers in an incentive to fraud. It opens up a wide field for corrupt combinations, and should be crushed by the determined resolution on the part of the officers of the Government not to countenance it in any form, or under any circumstances.

In order to unravel the confusion in the accounts of Britton and to protect the Treasury, it is absolutely necessary to re-examine in the light of the testimony his accounts from July, 1870, down to the time he ceased to be marshal and reject the fraudulent vouchers, the excess of mileage and other improper charges, and upon the whole account, eliminated as above, to ascertain the balance. In my opinion, when that is done, there will be found to be due the United States a large sum. Then in a suit upon his bond the validity of the vouchers rejected and disallowed can be judicially inquired into.

The unpaid claims in the hands of third parties in support of which no evidence has been offered, or where the testimony has satisfied my mind that they are fraudulent, (an abstract of which is hereto Annexed, marked Exhibit B,) I will return to the First Comptroller with the recommendation that they be not paid. Should the present holders desire it,
however, they might be permitted to produce to the Comptroller, at their own expense, additional testimony to establish their justness.

The per diem allowed to posse comitatus is almost universally excessive, and the loose construction put upon the law has created confusion and sometimes worked hardship upon those who performed the service.

The law was construed by the marshals of the western district of Arkansas to authorize the employment of a posse of three persons to assist in the execution of each writ. The practice of making arrests without writs, and the fact that each deputy had on hand at all times many writs, enabled him on each trip to arrest more than one person. He would parcel his posse out on different cases, and it would sometimes happen that a person would be returned as posse in a case where the prisoner was arrested a short distance from the place of holding the court, and only a few days before being returned, or in a case where there was no writ, when in point of fact the person had made the whole trip with the deputy, of fifteen or twenty days. The true construction of the law is that one posse of three persons was intended by law to assist in the execution of process in the Indian country, no matter how many writs the marshal or deputy marshal may have in his hands to be executed. Hence the posse belongs to the trip and not to the case. The form of the voucher used in the district is an absurdity, and shows an entire misapprehension of the true intent and meaning of the act of Congress. The law authorizing the employment of posse comitatus by the 3d section of the act of Congress approved June 14, 1858, (11 Statutes at Large, page 363,) reads as follows:

SECTION 3. That in executing process in the Indian country the marshal be authorized to employ a posse comitatus not exceeding three persons in any of the States, respectively, to assist in executing process by arresting and bringing in prisoners from the Indian country, and to allow them three dollars per diem in lieu of all expenses.

My construction of this law is given above, and it is plain to see from its tenor that only one posse comitatus of three persons for a trip was intended.

The operations of the marshals in this district are anomalous. The business was not transacted in the ordinary lawful manner. Instead of discharging his duty by executing all writs and precepts to him directed, he employed a vast number of deputies, and sent them out as detectives, "to work up business." As before stated, upon the merest suspicion, based upon rumor or to gratify the ill-will of some one, the deputy easily obtained from the commissioners writs for the arrest of parties, and also did arrest without writs, upon similar trivial grounds, others, so that on every trip to the nation he went loaded down with warrants. He would establish himself at some convenient point, and send out his swarm of posse to "beat up the game." When he had gathered together a sufficient number of persons, he would bring them in. It is no wonder, under the circumstances, that disorder and confusion prevailed in making out accounts, to say nothing of the universal practice of increasing the expense to the Treasury by the manufacture of fraudulent and fictitious accounts. The transactions of the marshal's office from 1870 to 1874 have been a continued series of fraud and plunder, as shown by this investigation.

From the report of the First Comptroller it appears that W. A. Britton received advances as follows:

<table>
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<tr>
<th>Date</th>
<th>Amount</th>
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<tbody>
<tr>
<td>November 8, 1872</td>
<td>$13,500</td>
</tr>
<tr>
<td>November 9, 1872</td>
<td>$20,000</td>
</tr>
<tr>
<td>December 5, 1872</td>
<td>$20,000</td>
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</tbody>
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The drafts which were transmitted to him, for the above sums, were delivered by him to Thomas Lanigan, a merchant of Fort Smith, to be cashed, and the proceeds turned over to Britton. Britton states under oath, before me, that the drafts were indorsed by him, and deposited with Thomas Lanigan, under the following arrangement, viz:

Lanigan was to collect the face of the drafts and to furnish me, as United States marshal, with currency to pay the expenses of the November term of the court, which was then in session. I drew upon Lanigan from time to time, and at one time I sent for money and was refused. Mr. Lanigan sending me word that with the money already drawn, and the vouchers or paper of mine that he held, the amounts of the drafts were exhausted. I immediately called upon Mr. Lanigan in relation to the matter, and found that he held a lot of my paper. This paper, with the sums of money advanced to me by him, he claimed exhausted the United States funds in his hands, and I could do nothing but take up the vouchers or paper held by Lanigan, and allow him to retain their face-value out of the United States funds, which he did. The paper referred to is due-bills, checks, &c., issued by me as United States marshal, as well as a large amount of posses accounts purchased by him, Lanigan.

Another draft issued December 30, 1872, came into the hands of T. G. Scott, then postmaster, as Britton testifies, while he, Britton, was at Little Rock. Scott brought the draft to Little Rock, where it was cashed, and Britton gave Scott $17,000 of the money to take back to Fort Smith, to be delivered to J. W. Donnelly, then chief clerk in the marshal’s office; that he wrote to Donnelly to use the funds to pay the floating indebtedness of the marshal’s office, such as witnesses’ and jurors’ checks, and not to pay any of the vouchers or witness checks that were held by either Lanigan or Scott until it was seen how far the money went toward paying the other claims.

Britton further testifies that—

Scott and Lanigan put what marshal’s paper they held together, and out of the United States funds then in his hands, which he had brought from Little Rock, Scott paid himself for the vouchers he held, and turned the balance, about $2,000, over to J. W. Donnelly.

The testimony taken by me shows that both Lanigan and Scott at this time were dealing in the vouchers and checks issued by Britton as marshal, and bought them at a heavy discount.

The testimony of J. M. Scovil, a deputy marshal, tends to show complicity between the marshal’s office and Lanigan. He says that when he offered to sell his vouchers to Lanigan the latter at first refused to purchase, and then told him to wait half an hour; that he saw Lanigan go to the marshal’s office, and when he came back he bought his, Scovil’s, vouchers, paying partly in goods and the balance in money. The conduct of Britton in the transaction was unlawful, and Lanigan had no right to retain the money of the United States and pay the paper he had bought in speculation. The amount might be recovered from him; and as the investigation shows that fraudulent vouchers and accounts were then manufactured by wholesale in the marshal’s office, it is reasonable to assume that a portion of those bought by Lanigan were of that character.

Britton claims that there was a combination between his chief clerk, Donnelly, and Lanigan. Donnelly, in a letter written by him to L. B. Whitney, esq., dated January 17, 1873, states that a large portion of these drafts was used to “refund money borrowed by Britton to defray current expenses.” He shows, however, that out of the last draft Scott was paid on vouchers over $11,000.

Scott voluntarily came before me and made a statement under oath, which is referred to for his explanation of the transaction.

I had no power to compel the attendance of witnesses, but I extended a general invitation to all persons who had had transactions with the
marshal's office to come, and I would receive their sworn testimony. Mr. Lanigan did not offer to appear before me, and I have no means of knowing what his side of the story may be.

As before stated, there was advanced to J. N. Sarber, while he was marshal, out of the Treasury, to defray the expenses of the courts in his district, the sum of $90,785. He has rendered no account of his disbursements or services since the 27th of March, 1874, and on the 27th of August, 1874, allowing him credit for the full amount of the vouchers presented by him, he was indebted to the United States in the sum of $6,716.57. His deputies, who testified before me, swear that he is still indebted to them in large amounts on the vouchers returned and claimed by him as credits in his accounts; and parties who served as posse, and who signed and surrendered their vouchers, swear also that they have not been paid. Sarber issued receipts and due-bills in the forms set out in the testimony, and also gave orders on certain stores in the payment of the expenditures of his office. Claims against the United States arising under his administration of the marshal's office have been presented to me for examination. A statement of the same is herewith appended, marked Exhibit C.

Sarber, like Britton, appears never to have made final settlement of accounts with any of the persons employed in his office, and, under one pretext or another, retained a portion of the amounts claimed to be due. The testimony of his deputies shows that the same confusion and disorder prevailed in this as under Britton's administration. The funds placed in Sarber's hands to defray expenses of courts were paid out very sparingly to those who had rendered services. Payments were generally made in goods by certain merchants in Fort Smith. On the accounts was indorsed by the marshal "O. K.," and the same were discounted at the bank for 70 to 75 cents on the dollar.

In open violation of the act of 1846, heretofore referred to, vouchers were receipted, surrendered, and forwarded to the Department and credited to the marshal when not one cent was paid by the marshals at the time of taking the receipt, or in fact at all. I call attention to the testimony of Thomas Harney, a posse, and who has been endeavoring in vain to obtain payment of his account from Marshal Sarber, although the amount has been allowed to him as a credit by the accounting officers of the Treasury eighteen months ago. I laid this case with all the proofs before the grand jury. I presented a transcript, certified according to law by the Secretary of the Treasury, of the voucher, with the abstract and account-current of John N. Sarber, in which the amount of the Thomas Harney posse-voucher was charged against the United States and allowed as a credit to Sarber on his affidavit that "all disbursements charged had been paid in good faith," and had also the testimony of Harney. The grand jury ignored the bill.

I call your attention to the testimony of Charles E. Berry, who was the jailer and also furnished food for the prisoners under the late Marshal Sarber. It appears also that he had a contract to furnish the prisoners with clothing. He has an account or accounts against the United States for feeding prisoners, amounting to $4,459. They are made out separately for each month. Some of them have been deposited by him in the National Bank of Western Arkansas as collateral and money obtained on them from the bank.

Under contract made with Sarber, Berry charges sixty cents per day for each prisoner. He appeared before me as a witness to establish the correctness of the accounts. I examined him closely in regard to his transactions as jailer, and the state of his accounts with the marshal.
It seems that in his, as in the cases of his deputies, Sarber has made no
final settlement. Berry states:

Sarber did not pay my bill in full for feeding the prisoners. He retained from a fourth
to a third of each account, stating that if at any time he could pay more he would do so. In
our arrangement I agreed to give him what deputy marshals were giving him, about ten
per cent. He did not know whether he could pay me all or not. In my settlement with
Sarber for these accounts, he has retained the ten per cent. I won't state this positively,
however. I still claim that he is indebted to me on divers accounts.

From the above it appears that the marshal was to receive ten per
cent. of the amount of the bills for feeding the prisoners as a bonus,
and that he actually retained from a fourth to a third of the gross
amount. This statement is sustained by the testimony of W. D. Allnutt,
a clerk in the marshal's office, and who succeeded Berry as jailer. It
is plain from the testimony that the allowance of sixty cents per day
for feeding the prisoners confined in the United States jail is too large.
In my opinion fifty cents per day for each prisoner is amply sufficient.

There was also a speculation in the clothing furnished prisoners, as
admitted by Berry. He says:

I charged to Sarber for the bill of clothing purchased from Wolf and Loeb more than I
paid for the same. I made out my bill at what I thought I ought to have for commissions.

Wolf and Loeb made out the bill for clothing at $800, which they
received in full for $605.45. Out of this clothing there was a portion
issued to the prisoners, at enormously high rates, footing up $782.60,
and was charged against the United States. This made a profit to the
jailer of $177.15, and still left on hand a part of the clothing. Berry
claims credit as against this $38, paid for another lot of clothing, for
which he received no pay, and $39, part of the bill of $782, which had
not been purchased of Wolf and Loeb.

Taking this claim to be just, Berry would, according to his own ad-
mission, be still indebted $100, without taking into account the surplus
clothing not issued. There were several accounts for fuel and water, in
which it appears there are gross frauds, and which ought not to be
allowed in full. Berry's explanation of the fuel-accounts is very
obscure—indeed, it is unmeaning. In adjusting these accounts the ac-
counting officers should consider the testimony of Berry and Allnutt
together. In this, as in all the operations of the marshal's office during
the period embraced in the resolution, the primary object had in view
was to make the most that was possible out of the Treasury.

As Sarber has not settled with the United States, nor his deputies
and his employes, the investigation of his transactions is incomplete.
Some steps should be taken to require him to settle his accounts. Jus-
tice to those who have claims against the United States arising under
his administration demands this should be done at once.

I have filed in the First Comptroller's Office all the vouchers, checks,
and other evidence of indebtedness presented to me for examination,
except a small amount which were left with the parties to obtain a cer-
tificate from Sarber that they had not been paid by him. As soon as
they are received by me I will deposit them in the Comptroller's Office
with the others.

The outstanding indebtedness of the marshal's office, under Sarber,
which has been presented to me amounts to $23,371.41.

There have been some accounts presented to me for compensation to
deputies and posse comitatus for the apprehension, subsistence, and
transportation of prisoners who had escaped from jail. No evidence
was offered to show that the escape was not on account of negligence

H. Ex. 175—2
of the marshal or jailer, and I disallowed those. In this ruling, which was referred to you for approval, I was sustained. I held that the marshal of this district, having the jail under his control, was responsible for the safe-keeping of the prisoners, and if they escaped under ordinary circumstances he should pay the expenses of recapturing them.

I gave notice in the newspapers at Helena that I would be there on the 22d day of October, 1874, to receive and investigate all unpaid claims against the United States arising out of the expenditures of the United States marshal for the western district of Arkansas at that place. On that day, with the assistance of Mr. W. H. Nessle, I proceeded to collect all such claims and examine the witnesses in regard to them, and other matters connected with the transactions of the marshal's office at that place. I remained there three days, and there were presented and filed with me accounts and vouchers amounting to $2,889.34, arising under Britton's administration. The large portion of these was for compensation to deputy marshals. Some were for fees to jurors, and others for contingent expenses. A portion of the indebtedness was in the shape of checks or due-bills given out by the marshal on receipted vouchers. In some instances Marshal Britton had received credit from the United States for the amount of the voucher, and hence the liability of the Government to pay the party to whom it was given has been extinguished.

Among other claims or vouchers for compensation to deputy marshals, there is one in favor of Alvin Tisdale for $77.64 for the service of process as deputy under W. A. Britton, late marshal. The testimony discloses the remarkable fact that Alvin Tisdale is William A. E. Tisdale, who held and exercised at the same time the functions of clerk of the United States court, United States commissioner, and deputy United States marshal, and that this was known to Judge Story while he was acting as judge for the district.

It seems that he signed the warrants issued by himself as clerk of the court or commissioner, as W. A. E. Tisdale, and under the name of Alvin Tisdale executed them as deputy marshal. Mr. Tisdale was appointed clerk and commissioner by Judge Story on the organization of the court in 1871, and, being of an energetic and enterprising nature, it appears that he traveled through the district with the deputy marshal and ferreted out crimes. He would open court as commissioner, issue a warrant, and have the party arrested and held to bail on the spot. Most of the cases thus gathered up, on the circuit, the present clerk swears were of a trivial character, but they helped to swell the fee-bill and to make money for himself and the marshal.

The testimony is not so full in regard to the transactions of the marshals at this place as at Fort Smith, but it is apparent that similar disorders and frauds existed and were practiced here as there. They were not so large, because there was not so much business, and the law in regard to *posse comitatus*, so fruitful in frauds, forgery, and perjury at the Fort Smith end of the district, had no application here. Roots had a force of forty-nine deputies scouring the country to "work up business," and so urgent were his demands upon them to perform that dirty work, that one of them at least, whose letter is on file in the marshal's office in Helena, indignantly resigned his position. The following is a literal copy of the letter referred to, the original of which was written by Mr. J. K. Whitson, at one time a representative in the State legislature from Monroe County.
HON. LOGAN H. ROOTS,
United States Marshal, Western District of Arkansas:

Yours of the 21st instant, asking about the inclosed writs, and urging me to get up business for next court, is at hand, and in reply I have to say that I have made diligent search for the parties named, and cannot find them, but am informed that Dimond moved with his father-in-law (Major Strawky) to the vicinity of Fort Smith, near a year ago, and the other man I can learn nothing about.

As to working up business, I told you before I was appointed that I would not do that kind of service, but would only exert myself to execute such writs as were sent me for service, and would do that only on condition that you send enough of them to me to make my fees amount to at least $150 per month, as I could not afford to work for less. Well, you appointed me, and you know how many writs you have sent me. Now, I have to say this much in all candor, that I believe it to be the business of the United States grand juries or grand jury to do this hunting-up business, instead of the marshal or his deputies. Let them present such of the offenders as deserve punishment, and the court issue the writ, subpoena, &c., and the marshal serve or execute them without fear, favor, or affection. Therefore, you will please accept my resignation as deputy United States marshal, hoping that you will understand my reasons for so doing, and that you will not be disappointed in the least, for I know you can find plenty of chaps, nowadays, that will jump at the chance to make fees by smelling into better folks' business, and especially here in Arkansas, where there is scarcely a man engaged in business but what might be indicted according to the strict letter of the internal-revenue laws.

Respectfully,

J. K. WHITSON.

The fees and mileage charged by Roots on all writs executed in this end of the western district were computed by the river-routes—that is, down the Mississippi and thence up White River to points on that river, in every instance trebling or quadrupling the number of miles actually necessary to travel. To all the points in this part of the district, except a few at certain seasons of the year, there are good roads usually traveled by the citizens of the country. The excess of fees charged and allowed to Roots for mileage amounts to a very large sum, and can be easily ascertained by reference to the table of distances hereto annexed, verified by Mr. E. M. Mooney, an old citizen of the country, and who had charge of the office at Helena under the present marshal. As an illustration, I will mention that the mileage charged by Roots from Helena to Clarendon, on White River, is two hundred and forty miles, while the distance by what has always been a good traveled wagon-road is only fifty miles. From Helena to Madison, in Saint Francis County, the distance is fifty miles by land, and the mileage is charged by Roots at one hundred and fifty miles. After the completion of the Arkansas Central Railroad from Helena to Clarendon, the table of distances was revised by Judge Story, but is still too large, as will appear by comparison with the table prepared by me upon the testimony of Mr. Mooney.

That the same reckless conduct characterized the transactions of the marshal's office at Helena as at Fort Smith, I cite the following:

Voucher No. 2, Abstract No. 5, in the accounts of Logan H. Roots, adjusted at the Treasury, per report No. 38,404, is as follows:

The United States, for the use of the courts of the United States, held at Helena, in the western district of Arkansas, to J. Mundt, debtor.

For clothing furnished United States prisoners in Phillips County jail:

<table>
<thead>
<tr>
<th>Description</th>
<th>Cost</th>
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<tbody>
<tr>
<td>Thomas Smith, coat, $5.25; shoes, $2.40; shirt, $2.75; socks, 50 cents</td>
<td>$10.90</td>
</tr>
<tr>
<td>H. H. Hess, shirt, $2.75; pants, $4.25; two pairs socks, $1.00; coat, $5.25</td>
<td>$13.25</td>
</tr>
<tr>
<td>Witham, shoes, $2.40; coat, $5.25; shirt, $2.75</td>
<td>$10.40</td>
</tr>
<tr>
<td>Buck Hammon, shoes, $2.40; pants, $4.25; shirt, $2.75; drawers, $2.25</td>
<td>$11.65</td>
</tr>
<tr>
<td>Mitchell Reed, coat, $5.25; shoes, $2.40; two pairs socks, $1.00</td>
<td>$8.65</td>
</tr>
</tbody>
</table>

Total: $54.85

By my order, and paid for by me.

LOGAN H. ROOTS,
United States Marshal for Western District Arkansas.
Received payment of Logan H. Roots, esq., United States marshal for said district, in the sum of fifty-four dollars and eighty-five cents in full.

J. MUNDT.

(Endorsed:) Voucher, No. 2, to Abstract 5.

My attention was attracted to the high prices charged for clothing furnished to prisoners, and learning that Mr. J. Mundt was a reputable merchant in Helena, I requested Mr. Nessie to take the account and call upon him for an explanation, and to ascertain whether he had actually received the prices charged. Mr. Mundt denied all knowledge of the transaction; indeed, utterly repudiated it. He appeared before me and testified under oath as follows: After examining the account, he says:

I have no acquaintance with either Logan H. Roots or P. K. Roots, (who acted as clerk and deputy at Helena for Logan H.,) and, to the best of my recollection, never had any dealings or business transactions with the marshal's office under Roots's administration. I am positive I never had the above transaction with Logan H. Roots.

After looking at the signature to the receipt, he says, "It is not my signature." He further testified that he had been in business at Helena since August, 1870; that there has been no other person of his name there since that time; that his brother and Mr. Myer were clerks in his store in 1871 and 1872, and as such were authorized to sell goods and to receive and receipt for the amount in his name. As both these parties were then in Helena, I examined them, and they both swear that they never had any such transaction, and did not sign the voucher, and that they never heard of it before. They all unite in saying the signature to the receipt is a forgery.

These parties are respectable, stand high in the community, and are worthy of belief. I therefore call special attention to their testimony.

If this case stood alone it would hardly be worthy of notice and scarcely cast a suspicion upon the character of a person occupying so exalted a position as the late Marshal Roots; but when considered in connection with the vast number of similar transactions referred to in the testimony taken at Fort Smith, it tends to prove the existence of a settled conspiracy to defraud the Treasury of the United States.

I, however, submit this with the other instances given in the testimony of fraudulent accounts of the marshals for the western district of Arkansas.

That thousands of dollars have been drawn by them upon similar false, fictitious, and fraudulent accounts, since July, 1870, no one who will carefully read the testimony can doubt.

Whether any further effort will be made to recover the money by suit or otherwise, is for you to determine. I am certain not a tithe of the details of the vast system of frauds has been developed, but which could be exposed in a judicial proceeding.

I have felt constrained from a sense of duty, with the testimony before me, to recommend the disallowance by the accounting-officers of the Treasury of thousands of dollars claimed upon fraudulent vouchers in the hands of third parties entirely innocent of the perpetration or even suspicion of the frauds. It will be indeed a hardship upon those parties to lose their money, and they will feel it all the more when they know that the perpetrators and beneficiaries of still greater and more glaring frauds are permitted to enjoy, without molestation, their ill-gotten plunder.

Among the accounts in the hands of third parties at Fort Smith, which were presented to me for examination, were two for services as
posse comitatus in the case of the United States against John Knowles, certified to be correct by Robert A. Donnelly, deputy marshal, and by whom the arrest purported to have been made. These accounts were in favor of Samuel Ames and P. K. Polly, and each for thirty-six days' service as posse comitatus in the above case, from September 21 to October 26, 1872, at $3 per day, amounting to $108. They were both sworn to before J. C. Pritchard, deputy clerk, who certifies under the seal of the court that they were subscribed and sworn to before him. I was unable to find any one who had any acquaintance with Samuel Ames.

P. K. Polly, however, is well known at Fort Smith, and came before me and was sworn, and testified as follows:

I have resided for the last four years in the Chickasaw Nation. I am now residing in Cherokee town, Chickasaw Nation.

Witness was here shown a posse account in his name for $108, for services from September 21 to October 26, 1872, to the account referred to is marked "A," and I have indorsed it with my signature.

R. M. Johnson, esq., a citizen of Fort Smith, who is the holder of the above account, also testified as follows:

My impression is that I bought two of the accounts (Holmes and Polly) from R. A. Donnelly. I got these vouchers in the regular course of business as a dealer and purchaser of various kinds of paper or vouchers. At the time I purchased them I had no knowledge or suspicion that there was anything wrong about marshal's paper. I think I purchased these vouchers in November, 1872. I am satisfied I did not purchase either Holmes's or Polly's voucher from the posse themselves. I know nothing of the correctness of the vouchers, or whether the services were performed as stated.

Mr. Johnson requested Donnelly, who was in Fort Smith at the time, and nearly every day in the building where I was taking testimony, to come before me and establish the accounts, but he refused to do so.

Robert A. Donnelly is the brother of James W. Donnelly, who was chief clerk in the marshal's office, under Roots and Britton. He was a deputy for both, but did very little riding, being employed most of the time as a clerk in the office.

This is but one instance of the manufacture of false, forged, and fictitious vouchers which were put in circulation in the community. The larger amount of them were returned as vouchers to the marshal's settlements with the Treasury.

They conform in every respect to the forms prescribed for vouchers, are regularly certified as having been sworn to before the deputy clerk or one of the commissioners; indeed, there is nothing on the face of them to indicate their fraudulent character. Most of the large amount of the floating debt of the marshals belongs to persons who have either purchased it on speculation, or took it in the payment of board or other indebtedness.

An investigation which had for its object the detection of frauds and the disallowance of such claims, even in the hands of innocent parties as holders, was not likely to be regarded with much favor in a community where money was scarce and business of every kind was languishing. The people of Fort Smith had suffered largely from the delay of payment
of the marshal's indebtedness, occasioned by the gross recklessness in the management of his (Britton's) affairs. This state of things will naturally account for the general opposition the investigation encountered, without the necessity of imputing a want of honesty and integrity to the masses of the citizens. The parties who perpetrated and profited by the fraudulent practices in the marshal's office, artfully created the impression that it was my fault that all the vouchers and checks in the hands of third parties had not been paid. I state it as a fact that the general feeling was opposed to the successful exposure of frauds, because it involved a pecuniary loss to individuals wholly innocent. The statement of affairs there, as above indicated, made such a feeling the natural one, and I do not wish to be understood as casting any reflections upon the honesty and integrity of the mass of the people there. The operations of the marshal's office had created rings which profited by the extravagant expenditures, and were able to control and direct public sentiment.

The testimony taken by me indicates the existence of these rings and the parties who compose them.

The manner in which the business had been conducted, the sending out of a host of deputies with instructions to arrest without warrants, to ferret out crimes, and to bring in parties charged or suspected, no matter how trivial the offense, the constant practice of issuing checks in payment for services, in lieu of money, all had the effect to bring the court, commissioners, marshal, and deputies into disrepute and to weaken the confidence and respect of the people in the Government itself. The parties responsible for this state of things are the judge and the marshals, whose duty it was to see that the laws were properly executed, and that the machinery provided by law for that purpose was not perverted into an engine of oppression, extortion, and plunder.

I do not understand, under all the circumstances which have been developed, how the plea of ignorance, urged in the defense of the marshals, can receive any consideration whatever. The judge himself, when confronted with his responsibility for these disorders before the Judiciary Committee, was constrained to resign to escape the consequences. The marshals, whose sworn duty it was to execute the laws, and to guard the public funds in their hands for disbursement, must have known of the perpetration of these frauds, because they themselves reaped the fruits of them. In my opinion, the testimony shows them not only to be legally but morally responsible, and plain justice requires that that legal responsibility should be enforced.

I had the honor to make to you a report on the 1st day of December, 1874, in which I set forth the causes which I believe led to the failure of the cases which I had laid before the grand jury at the November term, 1874, of the district court of the United States for the western district of Arkansas. Subsequent events and reflection furnish no reason to modify or alter my convictions as then expressed.

I was employed and appointed special assistant United States attorney for the western district of Arkansas, before Judge W. H. H. Clayton, the present United States attorney, received his appointment, and on our first interview it was agreed and understood between us that I should have the exclusive management of all matters connected with my special duties. He afforded me every facility in his power that I requested of him in regard to the issuing of subpoenas for witnesses before the grand jury. If there is anything in any of my former reports which can be construed as a reflection upon his official action in relation to the cases presented by me to the grand jury, I desire to correct it now.
Our official, professional, and social intercourse has been pleasant and agreeable, and I have no complaints to make of him, nor did not intend that the language used by me heretofore should be so considered.

Hon. H. O. Caldwell, who held the court, extended to me all the necessary privileges to enable me to have access to the grand jury, and did all that was consistent and proper he should do as a judge.

With that report I forwarded an abstract of the vouchers of Roots and Britton, which the testimony positively proved to be false, fictitious, and fraudulent. It tends to show fraudulent vouchers to a much larger amount which have been allowed and credited to them in their settlements with the Treasury.

I have in this and my former reports set forth faithfully and truly as facts what I honestly believe the testimony proves, and the obstacles encountered and their causes.

Although there was a failure to indict the parties implicated in these frauds, the investigation is a success. The large amount which will be saved to the Treasury in the disallowance of accounts proven to be fraudulent, as well as the detection and exposure of frauds heretofore committed, by which a large amount may yet be recovered, and especially in the reforms which have already been inaugurated, suggested by the facts elicited in the investigation, which will reduce the future expenditures of this district to a reasonable and lawful amount. Complaints will, no doubt, be made that lawlessness and crime will be rampant throughout the district, owing to the restrictions which have been imposed upon the operations of the marshal and his deputies.

I have no doubt, from a life-long experience of frontier life and a close observance of the conduct of the officers of the United States court in this district since its creation, that all crimes deserving punishment can and will be punished, and the people of the district will learn again to respect the court and its officers, if they will honestly and in good faith discharge their duties in conformity with the orders and rules prescribed by the court at the last term.

Of course, fewer deputies will be required, and a smaller number of persons will be arrested and imprisoned, but I am confident that the citizens of the Indian Territory will cheerfully co-operate in the arrest of all offenders against the laws of the United States, as soon as they become convinced that the officers of the court honestly intend to execute the laws in good faith and will not use their power to harass and oppress them. There is scarcely a neighborhood in the Territory where the marshal could not, if it were necessary, call to his aid willing and energetic citizens to assist in the execution of process in his hands.

Accompanying this report will be found a statement of the amount of claims presented to me for examination, the amount allowed thereon, and also of the vouchers proven to be fraudulent or to establish which no testimony has been offered.

I also file herewith the testimony taken by me, and respectfully ask that it be printed. I desire this for my own protection, as garbled and distorted accounts of what is stated herein will be given out, to my injury.

Mr. Joseph G. Peevey, of Van Buren, Ark., who had been deputy marshal under Roots and Britton, rendered valuable assistance from the commencement to the close of the investigation. His familiarity with the operations of the marshal's office and his habit of keen observation enabled him to point out many frauds which might otherwise have remained undiscovered. He was in Washington City at the time of my employment, having been a witness before the Judiciary Committee of the
In the Story impeachment case, and detained here by your Department.

He has faithfully withstood the violent hostility manifested toward him by his former associates in the marshal's office, and faithfully rendered me all the assistance in his power. He deserves to be well compensated for his services.

In passing upon the unpaid accounts, I have conscientiously endeavored to be guided alone by the evidence and circumstances, without regard to the parties who were the holders or owners of the claims.

The investigation made by the Judiciary Committee of the House of Representatives, and especially by the Committee on Expenditures in the Department of Justice, had developed the existence of frauds in the posse and deputy marshal's accounts. The testimony taken by me shows that the manufacture of fraudulent posse vouchers, and the forging of names of deputies to the certificates on same, was a constant practice; that the names of persons whose existence could not be proven were also used. And it is further established that it was almost universally the practice to charge more mileage than is authorized by law, and, consequently, more days "endeavoring to arrest," for subsistence and transportation of prisoners and for posse comitatus.

The old deputy marshals examined by me testify that in all cases, they were allowed by the marshals to charge mileage on writs for the number of miles actually traveled from the place where the writ was returned to where the arrest was made, no matter how circuitous had been their route. The law provides as follows: "For travel in going only to serve any process, * * * six cents per mile, to be computed from the place of service to the court or place where the writ is returned." (Section 11, act approved February 26, 1853, 10 Statutes at Large, 164; 1 Brightly, Digest, 275.) A practice also prevailed of allowing, where several arrests were made by a deputy marshal, mileage in all the cases to the place most distant where arrests had been made by him. The law was uniformly disregarded, and, in the large amount of business transacted, the excess of mileage and per diem was considerable.

It appeared to be the settled policy of those parties directly interested in the investigation committed to my charge to throw every obstacle in my way, and to withhold whatever evidence they might have, and to prevent persons from coming before me to testify, and, in fact, to ignore my proceedings and devote their energies to the inventing and circulating falsehoods and slanders against me, and to create and use a political influence for my removal.

Under these circumstances I cannot claim that my decision upon the merits of the unpaid claims, whether favorable or adverse to them, is absolutely correct. I therefore recommend, in all cases where I report "no evidence," or that the evidence is insufficient, that the holders of the claims be permitted to adduce to the First Comptroller further testimony, if they desire to do so. In passing upon accounts for posse, I have allowed such number of days as the evidence and my knowledge of the distance traveled would warrant.

The accounts for compensation to deputy marshals cannot be passed upon until the marshal shall have taken them up in his "emolument-return," and his entire account adjusted at the Treasury. In law, the Government can only deal with the principal marshal, and it would lead to endless confusion for the accounting officers of the Treasury to undertake to settle these accounts with any other person than the marshal himself.
As I have heretofore pointed out, one of the causes of the enormous and unlawful expenditure of the public money in this district, after the discontinuance of the making arrests without warrants, and having them issued and antedated, was the universal practice for writs to be issued on the application of deputy marshals who had no knowledge of the facts.

This has been forbidden by an order of court made by Hon. Henry C. Caldwell, who has, since the resignation of Judge Story, been acting judge for the western district under the provision of act of Congress August 6, 1861, (12 Statutes at Large, 318.)

There is now but one commissioner for the western district, and under the wise and salutary orders and instructions of Judge Caldwell, a recurrence of the disorders so prevalent heretofore cannot happen without a willful disregard of them. Judge Caldwell has also adopted rules and regulations in regard to the employment of posse comitatus, based upon the construction of the law as given in a preceding part of this report, which, if the marshal faithfully observe, will reduce the annual expense of the district many thousands of dollars.

The rigid but just examination of accounts by Judge Caldwell, with the light thrown upon the subject by the investigations which have been made, will make difficult in the future the perpetration of frauds.

There is no reason why the expenditures of the district, as at present organized, should exceed seventy-five thousand dollars per annum. If that portion of the district added by the act of March, 1871, should be restored to the eastern district, the amount required would be considerably less, that is to say, from $5,000 to $10,000.

In the discharge of the duty devolved upon me by your employment, I have endeavored to be just toward those to be affected, and have not been influenced by the violent and bitter warfare made upon me. At least, as far as my human nature is concerned, I have repressed the natural feelings of resentment produced by malicious and persistent efforts to blacken and destroy my character. The obstacles I have encountered have been of no ordinary character. Threats of personal violence have been made, not only in my absence, but to my face, and other means have been resorted to for the purpose of influencing my action or deterring me from the performance of my duty. Whatever may be your judgment, or that of others whose good opinion I esteem, my conscience tells me that I have been faithful and zealous in the interests of the Government and the cause of justice.

Knowing it was your wish that the resolution of the House of Representatives should be carried out, and the matters referred to be fully investigated, I have devoted nearly all of my time, since the first of July, to the investigation; have earnestly endeavored to make the expenses as light as possible; diligently sought for information, and patiently taken and considered the testimony. That a long-continued system of fraud, supported by forgery and perjury, has been exposed, implicating parties holding high offices connected with the administration of the laws in the western district of Arkansas, cannot be attributed to me, but to the fact that these crimes were perpetrated and the Treasury plundered.

I certainly had no preconceived theory of the guilt of any one, and did not, therefore, search for testimony to strengthen a foregone conviction; but in this case, as in all others, I treated the subject as a lawyer, examined the witnesses and weighed their testimony, and have advanced no position not in my judgment warranted and supported by it.
It has been with reluctance that I have mentioned the names of parties, many of whom have been my friends and patrons; but having undertaken the performance of a duty, I have not shrunk from its requirements.

It may be said that the witnesses whose testimony establishes the facts are unworthy of credit, and that they stand self-convicted of the perpetration of crimes, and that their evidence should not be received to blacken the character of men of high standing; but when it is considered to what an enormous amount these frauds reached, and that the fruits of them were willingly received and appropriated to a sum far beyond the maximum compensation authorized by law, we may well believe that the pretension of ignorance and innocence is affected, and, indeed, an after-thought.

The statute of limitations has now thrown its mantle of protection over the criminal responsibility of these parties, as the grand jury, at the November term, 1874, saw fit to ignore the bills presented against them.

The third, fourth, fifth, sixth, and seventh sections of the act of March 2, 1863, (12 Statutes at Large, 693,) provides for the recovery of a forfeiture of $2,000, and, in addition, double damages which the United States may have sustained in the allowance and payment of a false, fictitious, and fraudulent account, by a civil suit; and that, whenever any such suit shall be instituted, the defendant may be arrested and held to bail in such sum as the district judge may order, not exceeding two thousand dollars, and twice the amount of damages sworn to.

The several district courts of the United States, the several district courts of the Territories of the United States, and the circuit court of the District of Columbia, within whose jurisdictional limits the person doing or committing such act shall be found, have full power and jurisdiction to hear, try, and determine such suit.

I have prepared a number of complaints under this law, but have not filed them, because there is some doubt in my mind whether the law has not been repealed by the act adopting the revision of the laws.

Logan H. Roots has already submitted to you, through me, a proposition to refund to the Treasury $5,000 in satisfaction of all demands against him.

I think that a suit can be successfully maintained against him on his official bond for the recovery of money advanced and paid him on false, fictitious, and fraudulent vouchers.

As before stated, in a civil suit it would be far more easy to obtain the testimony than in a criminal proceeding, where the presence of the witnesses would be required in court; and witnesses would testify in a judicial proceeding, when called upon to do so under the process of the court, who could not be induced to do so in an ex-parte investigation. I submit, therefore, to you the testimony with my conclusions for your approval and action. I have bestowed much labor on the matter, have encountered violent opposition and made many bitter enemies, and doubtless injured my business in the community where I practice my profession. The results of that labor, I am satisfied, are not only the exposure of frauds already committed, but will [be the] means of preventing them in the future, thereby saving thousands of dollars to the Treasury.

I have had, throughout this investigation, the earnest, fearless, and indefatigable assistance of Mr. William H. Nessele, of the First Comptroller's Office, Treasury Department. He willingly discharged the ad-
ditional labor devolved upon him in this matter. Leaving the comforts of home and the comparatively light duties of his position, he patiently worked day and night with me under circumstances where a man of less nerve and integrity would have fallen. He was at all times faithful to the interests of the Government, and performed his duties undeterred by threats of personal violence, and uninfluenced by flattery or persuasion. The knowledge Mr. Nessle has gained by this investigation will be of vast benefit to the Government in the examination of the accounts of marshals in the future.

For his valuable services rendered in this matter he ought to receive liberal compensation, inasmuch as he has incurred expenses which he would not have incurred under the ordinary circumstances of his official position, and which he has been obliged to meet out of his salary.

BEN. T. DUVAL,
Special Assistant United States Attorney, Western District of Arkansas.

NOTE.—In the statement of the gross amount of compensation to marshal and deputies given in the foregoing report, it is understood that the expenses for “endeavoring to arrest” and for subsistence and transportation of prisoners from place of arrest to the place of trial is included.

These items are not fees, but expenditures; yet it is shown by the testimony of witnesses that Roots, Britton, and Sarber retained, under their contract, one-third of the gross amount of their accounts, including these items of expenditures, as their part, and also 10 per cent. as a protection against disallowances. The amount stated above, $34,650.35, received by Roots, is the amount he was actually entitled to under his contract.

The emolument-returns made by Roots do not show the above amount as received by him, because nothing appears on that except the amount of fees allowed by law, exclusive of these items of expense. Strange as it may seem, the marshals actually received, as emoluments of their office, one-third of the money expended by their deputies, so that for every dollar claimed to have been expended by a deputy in “endeavoring to arrest,” and “for the subsistence and transportation of prisoners,” he received from the marshal the sum of 66⅔ cents.

I have made the above statement in order to explain the difference between my statement and the emolument-returns of the marshal. The testimony of W. D. Allnutt, a clerk in the marshal’s office under Sarber, shows clearly how the emolument-return was made.
Abstract of fraudulent vouchers in the accounts of Logan H. Roots, late United States marshal, as appears from testimony taken by Benjamin T. Duval, special assistant United States attorney.

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Abstract of fraudulent vouchers in the account of William A. Britton, late United States marshal, as appears from testimony taken by Ben. T. Duval, esq., special assistant United States attorney, western district of Arkansas.

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<td>36</td>
<td>6</td>
<td>Jesse Allison</td>
<td>84.00</td>
<td>See W. H. Johnson's testimony.</td>
</tr>
<tr>
<td>40,021</td>
<td>33</td>
<td>6</td>
<td>J. C. Jones</td>
<td>96.00</td>
<td>See W. H. Johnson's testimony.</td>
</tr>
<tr>
<td>39,388</td>
<td>51</td>
<td>6</td>
<td>E. F. Ford</td>
<td>84.00</td>
<td>See W. H. Johnson's testimony.</td>
</tr>
<tr>
<td>40,021</td>
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<td>G. M. Stephens</td>
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<td>See W. H. Johnson's testimony.</td>
</tr>
<tr>
<td>Total</td>
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<td>18,032.80</td>
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</table>

Abstract of fraudulent vouchers in the account of Logan H. Roots—Continued.
Abstract of fraudulent vouchers in the accounts of William A. Britton—Continued.

<table>
<thead>
<tr>
<th>No. of voucher</th>
<th>No. of abstract</th>
<th>Amount</th>
<th>Names of deputy or posse com.</th>
<th>Remarks</th>
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</thead>
<tbody>
<tr>
<td>40,066</td>
<td>9</td>
<td>6</td>
<td>Roland Wiley</td>
<td>$60.00</td>
</tr>
<tr>
<td>B. 72 (3)</td>
<td>7</td>
<td>6</td>
<td>Theo. Putnam</td>
<td>Do.</td>
</tr>
<tr>
<td></td>
<td>8</td>
<td>6</td>
<td>Geo. Logan</td>
<td>Do.</td>
</tr>
<tr>
<td>105</td>
<td>6</td>
<td>6</td>
<td>Silas Moody</td>
<td>87.00</td>
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<tr>
<td>109</td>
<td>6</td>
<td>6</td>
<td>Henry Thomas</td>
<td>104.00</td>
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<tr>
<td>15</td>
<td>6</td>
<td>6</td>
<td>Wm. J. Spence</td>
<td>103.00</td>
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<tr>
<td>67</td>
<td>6</td>
<td>6</td>
<td>Wm. Kent</td>
<td>54.00</td>
</tr>
<tr>
<td>29</td>
<td>6</td>
<td>6</td>
<td>Lawrence Morris</td>
<td>108.00</td>
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<tr>
<td>138</td>
<td>6</td>
<td>6</td>
<td>Joe Conrad</td>
<td>12.00</td>
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<tr>
<td>121</td>
<td>6</td>
<td>6</td>
<td>Sam'l Conrad</td>
<td>18.00</td>
</tr>
<tr>
<td>16</td>
<td>6</td>
<td>6</td>
<td>Wm. W. Breck</td>
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<tr>
<td>17</td>
<td>6</td>
<td>6</td>
<td>Wm. Y. Wally</td>
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<td>64</td>
<td>6</td>
<td>6</td>
<td>George Morse</td>
<td>13.00</td>
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<td>47</td>
<td>6</td>
<td>6</td>
<td>C. S. Tibbs</td>
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<tr>
<td>43</td>
<td>6</td>
<td>6</td>
<td>W. T. Walker</td>
<td>102.00</td>
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<tr>
<td>B. 3, 72</td>
<td>22</td>
<td>4</td>
<td>J. T. Lytle</td>
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<tr>
<td>40,066</td>
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<tr>
<td>35,309</td>
<td>10</td>
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<td>Edward Farr</td>
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<tr>
<td>33</td>
<td>4</td>
<td>4</td>
<td>Geo. Waite</td>
<td>60.00</td>
</tr>
<tr>
<td>36</td>
<td>6</td>
<td>6</td>
<td>Chas. Shoup</td>
<td>60.00</td>
</tr>
<tr>
<td>38,938 (1)</td>
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<td>4</td>
<td>Dan'l Ferrill</td>
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<tr>
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<td>4</td>
<td>E. A. Ayres</td>
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<tr>
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<td>4</td>
<td>R. A. Donnelly</td>
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</tr>
<tr>
<td>29</td>
<td>4</td>
<td>4</td>
<td>E. A. Kline</td>
<td>150.00</td>
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</table>

Table of distances, as revised by Judge Story.

<table>
<thead>
<tr>
<th>County</th>
<th>County-site</th>
<th>Miles</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phillips</td>
<td>Helena</td>
<td>240</td>
</tr>
<tr>
<td>Monroe</td>
<td>Clarendon</td>
<td>378</td>
</tr>
<tr>
<td>Woodruff</td>
<td>Augusta</td>
<td>464</td>
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<tr>
<td>Jackson</td>
<td>Jacksonport</td>
<td>514</td>
</tr>
<tr>
<td>Independence</td>
<td>Batesville</td>
<td>609</td>
</tr>
<tr>
<td>Marion</td>
<td>Yellville</td>
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<tr>
<td>Fulton</td>
<td>Salem</td>
<td>644</td>
</tr>
<tr>
<td>Randolph</td>
<td>Pocahontas</td>
<td>540</td>
</tr>
<tr>
<td>Sharpe</td>
<td>Evening Shade</td>
<td>555</td>
</tr>
<tr>
<td>Lawrence</td>
<td>Powhatan</td>
<td>552</td>
</tr>
<tr>
<td>Izard</td>
<td>Mount Olive</td>
<td>150</td>
</tr>
<tr>
<td>Saint Francis</td>
<td>Madison</td>
<td>170</td>
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<tr>
<td>Cross</td>
<td>Pittsburg</td>
<td>205</td>
</tr>
<tr>
<td>Poinsett</td>
<td>Harrisburgh</td>
<td>100</td>
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<tr>
<td>Crittenden</td>
<td>Marion</td>
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<tr>
<td>Craighead</td>
<td>Jonesborough</td>
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<td>Greene</td>
<td>Gainesville</td>
<td>180</td>
</tr>
<tr>
<td>Mississippi</td>
<td>Osceola</td>
<td></td>
</tr>
</tbody>
</table>

The above is a table of distances on file in this court under which mileage was allowed before the completion of the Arkansas Central Railroad.

E. L. STEPHENSON, Clerk.
### Table of distances.

<table>
<thead>
<tr>
<th>County</th>
<th>County-site</th>
<th>Miles</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crittenden</td>
<td>Marion</td>
<td>100</td>
</tr>
<tr>
<td>Craighead</td>
<td>Jonesborough</td>
<td>125</td>
</tr>
<tr>
<td>Cross</td>
<td>Wittsborough</td>
<td>75</td>
</tr>
<tr>
<td>Fulton</td>
<td>Salem</td>
<td>250</td>
</tr>
<tr>
<td>Greene</td>
<td>Gainesville</td>
<td>165</td>
</tr>
<tr>
<td>Independence</td>
<td>Batesville</td>
<td>165</td>
</tr>
<tr>
<td>Izard</td>
<td>Mount Olive</td>
<td>205</td>
</tr>
<tr>
<td>Jackson</td>
<td>Jacksonport</td>
<td>125</td>
</tr>
<tr>
<td>Lawrence</td>
<td>Powhatan</td>
<td>165</td>
</tr>
<tr>
<td>Monroe</td>
<td>Clarendon</td>
<td>50</td>
</tr>
<tr>
<td>Marion</td>
<td>Yellville</td>
<td>300</td>
</tr>
<tr>
<td>Mississippi</td>
<td>Osceola</td>
<td>160</td>
</tr>
<tr>
<td>Phillips</td>
<td>Helena</td>
<td>160</td>
</tr>
<tr>
<td>Poinsett</td>
<td>Harrisburgh</td>
<td>105</td>
</tr>
<tr>
<td>Randolph</td>
<td>Pocahontas</td>
<td>165</td>
</tr>
<tr>
<td>Sharp</td>
<td>Evening Shade</td>
<td>205</td>
</tr>
<tr>
<td></td>
<td>Fonesburgh</td>
<td>45</td>
</tr>
<tr>
<td>Saint Francis</td>
<td>Madison</td>
<td>50</td>
</tr>
<tr>
<td>Woodruff</td>
<td>Augusta</td>
<td>90</td>
</tr>
<tr>
<td>Lee, (Phillips, Monroe, Crittenden, and Saint Francis.)</td>
<td>Mountain View</td>
<td>200</td>
</tr>
<tr>
<td>Stone, (Izard, Independence, Van Buren, and Searcy.)</td>
<td>Corning</td>
<td>65</td>
</tr>
<tr>
<td>Clayton, (Randolph and Greene)</td>
<td>De Voll's Bluff</td>
<td>65</td>
</tr>
</tbody>
</table>

From my knowledge of the country here, I state that the pencil-marks, as above, represent the true distances to the points opposite to where they are placed.

Witness: W. H. N.

NOTE BY THE PRINTER.—The distances given in the column "County-site" are in the manuscript in pencil.

### EXHIBIT A.

Statement of the accounts and amounts which have been paid at the Treasury, since the adoption of the resolution of the House of Representatives, the same having been examined and approved by Benjamin T. Duval, special assistant United States attorney, western district Arkansas.

To J. W. Fuller, services as jailer, and payments to guards and witnesses ................................. $1,668 80
Samuel McCloud, payments to witnesses, and for feeding prisoners confined in jail ........................................ 3,679 70
D. A. McKibben, payments to witnesses and others .......................................................... 1,131 30
Duval and Cravens, payments to jurors, &c ................................................................. 365 25
James A. Garrett, payments to witnesses, &c .......................................................... 640 85
C. F. Chamberlain & Co., stationery for court .................................................. 277 80
Jacob Baer, payments to witnesses ................................................................. 756 38
George S. Birnie, payments to witnesses .......................................................... 595 20
Thomas Lanigan, payments to jurors ........................................................................ 233 30
C. C. Ayres, payments to witnesses, jurors, &c .................................................. 294 00
Thomas Carter, services as petit juror ........................................................................ 27 00
Henry Williams at al., jurors and witnesses ................................................................ 1,063 90
Amount disbursed to various parties by J. F. Fagan, United States marshal, under instructions from the First Comptroller ................................................................. 6,278 65

Total ........................................................................................................................................ 17,012 13
EXHIBIT B.

Statement of the outstanding indebtedness of the United States marshal's office for the western district of Arkansas, under the administration of William A. Britton, at the expiration of his second term of office, consisting of accounts, vouchers, due-bills, &c., as presented to Benjamin T. Duval, special assistant United States attorney.

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jurors and witnesses</td>
<td>$11,591 74</td>
</tr>
<tr>
<td>Services of deputy marshals</td>
<td>10,271 78</td>
</tr>
<tr>
<td>Expenses of prisoners in jail</td>
<td>11,980 60</td>
</tr>
<tr>
<td>Services of posse comitatus</td>
<td>15,618 00</td>
</tr>
<tr>
<td>Contingencies of court</td>
<td>1,894 80</td>
</tr>
<tr>
<td>Miscellaneous claims paid by the United States marshal</td>
<td>6,278 65</td>
</tr>
<tr>
<td>Total</td>
<td>57,565 57</td>
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</tbody>
</table>

Note.—There was paid direct from the Treasury the sum of $24,834.60 to the parties who held the vouchers or checks, and there was a large amount due from Britton to his deputies and others, all of which is included in the general statement that, at the close of his administration, the office was in debt $100,000. A large portion of this indebtedness, investigation has shown to be fraudulent. I meant to say that there was a nominal floating debt which would reach or exceed that sum.

EXHIBIT C.

Statement of the outstanding indebtedness of the United States marshal's office for the western district of Arkansas under the administration of John N. Sarber, at the expiration of his term of office, consisting of accounts, due-bills, &c., presented to Ben. T. Duval, special assistant United States attorney.

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Jurors and witnesses</td>
<td>$2,497 40</td>
</tr>
<tr>
<td>Services of deputy marshals</td>
<td>5,188 17</td>
</tr>
<tr>
<td>Expenses of prisoners in jail</td>
<td>10,490 08</td>
</tr>
<tr>
<td>Services of posse comitatus</td>
<td>4,686 00</td>
</tr>
<tr>
<td>Contingencies of court</td>
<td>509 76</td>
</tr>
<tr>
<td>Total</td>
<td>23,371 41</td>
</tr>
</tbody>
</table>

Of the above sum there has been disallowed by Ben. T. Duval... 591 00
Amount not approved, and on which no evidence was offered... 3,196 50
Total                                  3,787 50

EXHIBIT D.

Statement of the amount of deputy marshal's accounts and vouchers for services as posse comitatus, under the administration of Wm. A. Britton, not approved, and on which no evidence was offered; also, the amount of disallowances made by Ben. T. Duval, special assistant United States attorney, western district of Arkansas.

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accounts and vouchers not approved</td>
<td>$6,325 00</td>
</tr>
<tr>
<td>Accounts and vouchers disallowed</td>
<td>6,669 00</td>
</tr>
<tr>
<td>Total</td>
<td>12,994 00</td>
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</tbody>
</table>
DEPARTMENT OF JUSTICE,
Washington, February 17, 1875.

SIR: I transmit herewith a copy of the report made by Mr. Benjamin T. Duval, as special assistant district attorney, appointed by me to investigate the affairs of the office of the marshal of the United States for the western district of Arkansas. I also transmit the evidence taken by him during his investigations.

I have to request that you will cause the accounts of late Marshals Roots and Britton of that district to be re-examined and stated, in accordance with the recommendations of Mr. Duval, and that I be informed of the condition of the accounts of these marshals after such restatement. In regard to the miscellaneous accounts due by late Marshal Britton, I would suggest that they also be disposed of in accordance with the recommendations made by Mr. Duval in his report.

Mr. Duval informs me that he will render you any assistance that you may require in the examination of these accounts.

Very respectfully,

GEO. H. WILLIAMS,
Attorney-General.

Hon. R. W. Tayler,
First Comptroller of the Treasury.

W. D. ALLNUTT, deputy marshal, sworn and examined.

Question. Do you know of any person having an interest, directly or indirectly, in the feed-accounts of Charles E. Berry?—Answer. I do not, of my own personal knowledge, but I was told by Berry that John N. Sarber, late United States marshal, required one-third, or deducted one-third.

Q. When did Berry tell you this?—A. About the 10th of last July.

Q. How did he come to make this statement to you?—A. He was somewhat angered because Sarber would not settle with him, and we were talking about Sarber's way of doing business generally; how he was treating his deputies in making deductions from their accounts, &c.

Q. Had you any means of knowing whether or not Berry allowed one-third of his claim, as above stated, to Sarber?—A. On one occasion I saw the private books, (two in number,) in one of which was kept his account for feeding prisoners confined in the United States jail at this place, and in that book I saw the following entries, or entries made in the following manner:

<table>
<thead>
<tr>
<th>1,800 rations, at 60 cents</th>
<th>$1,080 00</th>
</tr>
</thead>
<tbody>
<tr>
<td>$1,080</td>
<td>720 00</td>
</tr>
<tr>
<td>$1,080</td>
<td>360 00</td>
</tr>
</tbody>
</table>

These figures are by way of illustration.

The books were in the hands of J. N. Sarber when I saw them, and he and myself examined them, and Sarber remarked at the time that Berry had his feed-account divided off to make believe that he (Sarber) was interested in the account. Sarber referred to the entries therein.

Some time in May, 1873, Berry bought a bill of clothing from Wolf & Loeb, of this place, for issue to United States prisoners in jail here. The articles comprised in the bill were put down at retail-prices, and amounted, in the aggregate, to near six hundred and fifty dollars, as made out by Wolf & Loeb. Mr. Berry got the bill received for $650, or whatever the amount actually was, for which he paid to Wolf & Loeb, in full satisfaction thereof, the sum of $500. I saw a statement of this in Mr. Berry's books. Soon after this clothing was delivered certain portions of it were issued to prisoners confined in the jail, for which an account was made out in the name of C. E. Berry, against the United States, for clothing furnished prisoners confined in the United States jail here, which account amounted to $783. This account was made up by Edward Main, Sarber's chief clerk, from data furnished by C. E. Berry, then jailer. For some reason the account was made over and cut down to $637, or thereabouts. The account, as last made up, was sworn to by Berry, and paid by Sarber.
The clothing actually issued at that time consumed, probably, half the amount of clothing purchased as above from Wolf & Loeb.

I think this is the only bill of clothing purchased by Berry while he was jailer. I was appointed jailer October 12, 1873, and of the clothing purchased of Wolf & Loeb there remained at that time considerable on hand, which I afterward issued to the prisoners.

(Mr. Allnutt here referred to the manner of issuing clothing, and cites to George Maledon, as a witness.)

On making up his return of fees and emoluments, Sarber would actually retain out of the total earnings of each and every deputy one-third of all his fees and expenses incurred and earned in pursuit of criminals, &c. Sarber would then take the items of fees as follows: Service of warrant and subpoena or other writ, and mileage on same, and mileage returning for deputy only, and add them together, and divide this sum by 4. The quotient thus obtained, or one-fourth of the fees, would be carried to the emolument-return, as showing the amount to the credit of the marshal, when in fact he deducted and kept out of the aggregate of fees and expenses one-third of the whole amount, and the deputy marshal, instead of getting the full amount for which he received, in point of fact receives several dollars less, according to the amount of fees earned. When the deputy started out, or when he had made his return on the first writ served by him, he was required and compelled to sign duplicate and payment returns in blank.

On the 9th August, 1873, Sarber gave me a check on the National Bank of Western Arkansas for $100, and on the 12th day of August, 1873, he gave me a check on the same bank for $15, both of which were paid. I was then working for Sarber in a private capacity, and was not paid by the Government.

Bocquin & Reutzel, of this place, purchased of me the voucher given to me by Marshal Sarber, for my services as jailer, from June 1 to 30, 1874, at 80 cents on the dollar. By taking the amount of the voucher in goods out of their store they would give dollar for dollar, but if they paid cash, they would give but 80 cents. I took $25 in goods from them, which they deducted from my voucher of $90, and from the residue they deducted 20 per cent., and paid me the balance in cash. I had previously been to the bank to sell this voucher, but P. K. Roots, the cashier, declined to purchase it at any price.

Some time in September, 1873, Deputy Marshal James Brizzolara arrested one Harmon, charged with introducing spirituous liquors in the Indian country, and brought him to this place. The witnesses had been summoned, but refused to attend, and the prisoner was turned loose by order of the commissioner, (Brooks,) Sarber refused to pay the account because the prisoner had been turned loose. A pose-account was made out for G. L. Gardner for forty days' service. The fee-account of the deputy amounted to somewhere near two hundred and forty dollars, and I have heard Sarber say to Ed. Main to charge this account against the Government, remarking, that he guessed he could get away with all it. The account is not yet paid.

In case against Henry Marshall, and case vs. William Gordon, alleged to have been arrested by T. E. Lacey, deputy marshal, 365 miles from Fort Smith, these arrests were made by C. D. Hawkins, at Northforktown, ninety-five miles from Fort Smith, and J. N. Sarber had personal knowledge of the facts in these cases, and all about them at the time. The fee-bills, as put in, amounted, in both cases, to $245, or about this sum, when the fees should have been $73.90 or thereabouts.

Deputy Marshal Tapping turned over to me his fee-account for taking John Broderick to the penitentiary at Little Rock, amounting to $157.05, from which Marshal Sarber deducted one-third as his share, leaving the deputy's share at $104.70. From this $104.70 Sarber deducted 10 per cent., or $10.47, and credited my account with the balance of $94.25, which has not yet been paid to me.

The following sums were paid me by Sarber:

June 20, 1873, cash ........................................ 50
September 5, 1873, cash ..................................... 50

The following are the amounts earned by the deputy marshals under Sarber, in his accounts-current, numbered as below, with the sums deducted by the marshal and retained by him as his portion of the fees:

1. Deputy's fees ............................................. $5,497.58 ÷ ⅓ = $1,832.52
2. Deputy's fees ............................................. 721.25 ÷ ⅓ = 240.41
3. Deputy's fees, (Helena) .................................. 21.80 ÷ ⅓ = 7.26
4. Deputy's fees ............................................. 46.18 ÷ ⅓ = 15.37
5. Deputy's fees ............................................. 3,341.42 ÷ ⅓ = 1,113.80

9,628 23 3,209 38

These amounts were paid and sent up from the time Sarber went into office up to December 31, 1873. Other accounts were sent up during the same time, but I have no knowledge of the amounts.

For the months of May, June, and July, 1873, C. E. Francis and Christ Gardener were each given a voucher for ten days' services as guard at the jail, at $2 per day, making...
$20 each for each month. These accounts were sworn to by Francis and Gardner, and paid by Sarber; neither of these men were employed as guards at that time. Francis was Sarber’s hostler, and drove his team, and Gardner was E. M. Main’s hostler.

In December, 1873, proceedings in bankruptcy were instituted in the court here against Reese J. Price, of Augusta, by Dodd, Brown & Co., of Saint Louis, Mo. I was sent to Augusta to serve the processes in the case, and before service I compelled Mr. Young, agent for Dodd, Brown & Co., to pay me the amount of the marshal’s fees in advance, which amounted to between $70 and $80. The matter was afterward amicably settled by mutual agreement between Reese J. Price and all of his creditors, and Dodd, Brown & Co. were to pay all costs as between them and Reese J. Price. Reese J. Price, under an arrangement with Dodd, Brown & Co., came to Fort Smith to pay the costs, and when the bill of costs was taxed up, I told Sarber’s chief clerk that the amount of the marshal’s costs had previously been paid to me by Mr. Young, agent for Dodd, Brown & Co., notwithstanding which he again taxed in the bill of costs about $62 as marshal’s fees, and the parties were compelled to pay the marshal’s fees the second time.

W. D. ALLNUTT.

In the matter of the posse-account of C. D. Hawkins in case vs. Henry Marshall, from September 23 to October 19, 1873, W. D. Allnutt testified that Hawkins brought the account to him and asked him what he had better do about it; that Sarber wanted him (Hawkins) to swear to it, &c. I told him not to do so, and the account was not sworn to.

In the matter of the case vs. Henry Powell, charged with larceny, account of John N. Sarber, late United States marshal, Service by R. J. Tapping, deputy United States marshal, on bench-warrant.

The account is in my handwriting. On the night of the 12th or 13th of March, 1874, there were eleven prisoners broke jail here, of whom Henry Powell was one. Bench-warrants were issued for all of them, and the one in case vs. Henry Powell was put in the hands of Deputy Marshal R. J. Tapping to serve. They started after them on the 14th of March, and on the 15th of March Deputies Tapping, Hugh McGuire, and C. E. Francis returned to Fort Smith, having Henry Powell and four others of the escaped prisoners in custody. The return on the bench-warrant, in the case of Henry Powell, is made in my handwriting, and the data from which the return was made, as also the account, was given to me personally, by Deputy Marshal R. J. Tapping, and he stated to me that he had Daniel Sullivan and George Blackburn employed as guards. And I further swear that the names of Daniel Sullivan and George Blackburn, and the charge of $10 for guards’ fees, in case against Powell, was written therein before the account was either signed by Robert J. Tapping or certified or sworn to before the commissioner.

W. D. ALLNUTT.

Witnes: W. H. N.

Testimony of William D. Allnutt in the matter of the account of Charles E. Berry for feeding prisoners.

Examined by Mr. Duval:

In February, March, April, May, and June, 1874, I was jailer in charge of the United States jail for the western district of Arkansas. Mr. Charles E. Berry fed the prisoners during that time. I made these accounts for February, March, April, May, and June, 1874, from the time-roll of prisoners. We had a regular time-roll kept. They are all correct, to the best of my knowledge and belief. The accounts are as follows:

<table>
<thead>
<tr>
<th>Month</th>
<th>Accounts</th>
</tr>
</thead>
<tbody>
<tr>
<td>February</td>
<td>$826.80</td>
</tr>
<tr>
<td>March</td>
<td>903.69</td>
</tr>
<tr>
<td>April</td>
<td>851.40</td>
</tr>
<tr>
<td>May</td>
<td>915.00</td>
</tr>
<tr>
<td>June</td>
<td>874.00</td>
</tr>
</tbody>
</table>
Whenever prisoners were put in jail on commitment from a commissioner, they went on the feed-roll from that time. If they were put in prior to commitment by a commissioner, the Government was not charged with their feed.

On the 23rd March, Wesley Rich, J. M. Rich, and Robert Rich were put in jail by a deputy marshal, prior to their examination before a commissioner. On the 26th March they were all taken before a commissioner, and Robert and Wesley Rich were committed for their appearance at court. J. M. Rich was discharged. He never was on the feed-roll.

Question. Have you any interest in these accounts, direct or indirect?—Answer. None at all.

Ralph Edmunds and Henry Clay were put in jail on the 2d of May by deputy marshal Johnson, but were not taken before the commissioner until the 14th. They were taken up on the feed-roll only from the time of their commitment.

I am not the jailer now. I am a deputy marshal under General Fagan.

W. D. ALLNUTT.

STATE OF ARKANSAS,

County of Sebastian:

Sworn to and subscribed before me this 22d day of August, A. D. 1874.

C. P. SWIFT, J. P.

SEPTEMBER 22, 1874.

WILLARD R. AYERS, deputy marshal under Roots, sworn and examined.

vs. J. M. Stone.—I arrested defendant at Baxter Springs, Kans. I went to Topeka afterward and got an order from the judge of the Kansas district, for the arrest and removal of defendant, and the deputy marshal of Kansas (Taylor, afterward killed) arrested defendant and turned him over to me. John Blythe was the only posse with me on this trip. Samuel Lafferty was not with me; I never knew such a man. His posse account, $72, is fraudulent, and my name to his account is a forgery. Baxter Springs is about one hundred and sixty-five miles from Fort Smith; J. W. Donnelly said that, as we went to Topeka, we were entitled to charge three hundred miles, to cover our expenses. He did not tell me so, but my brother, C. C. Ayers.

(Only this one case under Roots.)

UNDER BRITTON

vs. Wash Lee.—Thirty-nine days charged endeavoring to arrest; I was not above fifteen days engaged in looking after this man. I handed the writ into the office, stating that defendant could not be found. I never made any return on the writ; my name on the return is forged. I never received any pay for my services in this case.

vs. George Telumskey and John Adams.—Bob Hill, George Waite, George Seckard, and Fred Wishard, are charged as guards in this case; I know nothing about the case; I never arrested any such persons; never received any pay for such services.

vs. W. A. Musgrove.—Services, as charged, are correct.

vs. Israel Burns.—Fifty miles charged prisoner, deputy, and two guards. Arrested beyond Hartford; don’t think I had any guards.

vs. Sam'l Paul and Jos. Brierly.—Everything, as charged, is correct.

vs. Peter Harrison.—Everything, as charged, is correct.

vs. J. Baker and one Happy.—Everything, as charged, is correct, except my name is forged to voucher.

vs. Charles Cranwell.—Larceny; overcharge of one hundred and fifty miles. The posse-account of B. F. Ayers is correct.

vs. James Kasterson.—I had no guards. James Ayres and Leonard are unknown to me.

vs. R. Timberlake.—Mileage is correct. John Wilson and E. S. Thomas were not guards in this case; don’t know such persons.

vs. Paris Green.—Mileage seventy miles. Guards, O. S. Lathrop and P. M. Fall, are unknown to me; I arrested and brought defendant in without guards.

vs. John Thompson.—I arrested defendant above Chetopa, in Kansas; had no warrant. Mileage is excessive. Had no posse in this case. A. H. Morely, $81, and Jas. H. Clovry's, $51, posse-accounts for services in this case are fraudulent; don’t know any such persons.

vs. George Cook and William Rice.—Had no writ in this case. Had no guards with me. Walter Lucas and James P. Stroud were not with me; the charge for their services, as guards in this case, is fraudulent.

vs. E. M. Hersf ord.—Mileage, three hundred and fifty miles, excess of one hundred and fifty miles. Arrested, Cherokee Nation, near Chetopa. B. F. Ayers and Thomas Blackard were my posse in this case, and their accounts are correct.
38 WESTERN JUDICIAL DISTRICT OF ARKANSAS.

vs. W. K. Rector.—Subpœna on David Frey and Eli Bodkin. Travel to Baxter Springs was actually made by me. Distance, one hundred and sixty-five miles. United States vs. William Wirsham.—Robert C. Lamson, deputy. The posse-account of W. R. Ayers is correct as to service, but I never received any money on the same, and my name to the receipt is a forgery, as also to the affidavit.

W. R. AYERS.

September 22, 1874.
Witness: W. H. NESSL.

FORT SMITH, September 3, 1874.

Testimony of W. R. Ayers as to the posse-account of John Johnson in the case of W. F. Robertson; D. L. Winton, deputy marshal; also other accounts. See below.

Sworn and examined by Mr. MARCUM:
I know John Johnson. He lives now up in the Ottawa country. I don't know exactly where he lived at the time this service was performed. I never was right at his house. He lived right across from the Neosho River. He was a posse for D. L. Winton on one trip. I know on that trip they arrested several parties. I don't know all of them. I do not know W. F. Robertson. I do not know whether he was in the crowd or not. I heard Winton and Johnson say they had three or four prisoners on that trip. They arrested this William Hurt, but I don't know whether it was at the same time they arrested Robertson. I know they had Hurt, because I helped arrest him.

United States vs. Robert French.—I knew Perry Duval. I knew Robert French was arrested. I do not know of Perry Duval having been a posse under B. F. Shoemaker. I know of him being a posse. I do not know exactly how long he rode as posse. He was here altogether about a year, I expect, or probably over a year, at the time of his death. I know Robert French was arrested and gave bond here. I heard that he was arrested for assault with intent to kill. He told me himself that there was a whisky case against him. Robert French lived this summer at Fort Gibson. I don't know where he lived at that time. I never got acquainted with him until last winter, I believe. I am pretty well acquainted with him now.

United States vs. Boyd and Haskell, in which Jordan O. Flack was marshal, and Isaac Ellis posse. Account for $60.

Question. Are you acquainted with Isaac Ellis?—Answer. Not by that name. I knew him by the name of Curly. He rode several trips with different fellows as posse. I do not know of his riding under Jordan O. Flack. I do not know anything about the arrest of Boyd and Haskell.

United States vs. Richard Clark; J. H. Bowers, marshal.

Question. Are you acquainted with Frank Taylor?—Answer. Yes. I know of his having been posse. He rode for several. I think he was out with Joe Bowers once or twice. He told me so. I didn’t see him. I have seen him with Bowers frequently. I never saw them together in the Indian country. I have seen Taylor in the Indian country acting as posse. I don't know that he had a commission, but some said he had a commission under Britton the last time. I do not know Clark, the defendant.

FORT SMITH, ARK., September 3, 1874.

Testimony of WILLARD R. AYERS as to his posse-accounts for twenty-six days, from January 22 to February 22, ($78.), in the case of United States vs. Harry Willmott, and also in the case of Joseph McCombs.

Sworn and examined by Colonel DuVAL:
I am twenty-seven years old. I reside near Fort Smith. I have been a posse most of the time in the employment of deputy marshals. I was out on the trip after Willmott to serve the writ on him. We got him near Elgin, Kans., near the line. We had another raid, and we were out fifty days endeavoring to arrest the parties. I do not recollect the date of his arrest. I do not remember how long we had him in custody—some time, though. We brought him here in a wagon. The writ for Willmott was issued at Fort Gibson.

Question. This account is for twenty-six days. Do you swear positively that you were engaged twenty-six days as posse?—Answer. Yes, sir; I was out twenty-six days with Columbus Ayers.
My brother, Columbus Ayers, got the writ for McCombs before we started from here. We went first to the Ottawa Nation, and then back once to Coody’s Bluff and got a prisoner there. At the office I believe they call it two hundred and twenty-five miles or two hundred and forty miles to where we arrested him. I do not know, myself, how far it is. We brought the man here. Scovill was with us on this trip as a posse from Gibson. He was a posse for Ross, I think. I think my brother had two persons, Willmott and Griffin, besides me.

Question. Did your brother return anybody but you as a posse in either of these cases, that you know of?—A. Not that I know of.

Q. Were there any others besides the two prisoners?—A. McCombs, that is, when he was first arrested. This was for the second arrest of McCombs, when there was a bench-warrant for him, after he had escaped from jail.

Q. Did your brother have any other prisoners than McCombs at the time he was arrested?—A. Only just McCombs.

Q. How many trips have you made as posse with your brother under Sarber’s administration?—A. I could not name them, I don’t believe. I think I went out with him every trip he made under Sarber. Under Britton’s second administration I was a deputy myself, but not long. When they discharged all the deputies here, after the election, Britton revoked my commission. My brother got one then. I did not serve with him after the November election, 1872, I think. I served as posse for my brother, though.

Q. Do you know of any instances where there were fraudulent accounts returned for posse?—A. No; I could not state positively, but some men made returns who never went out nowhere.

Q. Who were they?—A. I never saw William M. Griffith down in the nation. I never saw Duff in the nation, nor Loefer.

Q. Do you know E. M. Fowler, the partner of Messler in the saloon?—A. Yes, sir.

Q. Do you know whether he rode as deputy in 1872?—A. I never saw him in the nation. I never heard of him riding as a deputy. At least, I never saw him out, and I saw nearly all the fellows that were out at all. We were constantly in the nation, and would meet a great many deputies. However, I did not know all the deputies that were on the force. My brother and I did a great deal of riding under Britton’s last administration.

Q. Do you know of instances where these returning deputies returned processes that your brother had?—A. No, sir; he never allowed them to return his writs; at least, not any that I ever knew of.

Q. Is there anything due you from the Government for services as posse besides these two posse-accounts you have spoken of, or in any way?—A. I have. I have some checks, and some that I have bought, and I have some to collect for other parties. I have a bailiff-account for services in court under Britton, and I have got a jury-account to collect.

C. C. Ayers’s Sworn Statement—Services under Britton.

vs. Isaac Ellis.—I arrested defendant in Cherokee Nation, about two hundred and fifty miles from Fort Smith. H. C. Ford is a fraudulent guard. I had no such person; don’t even know him.

vs. James Welle, Isaac Davis.—I arrested defendant in Kansas, six miles west of Chetopa, about one hundred and seventy-five miles from Fort Smith. My posse were Thomas Blackard and B. F. Ayers. William Hubbard, as charged, was not a posse. The account for $102 is fraudulent. My name to William Hubbard’s posse-voucher is a forgery.

vs. William Towers, William Rogers, Charles Harlow, and Lewis Keyes, scf. fa.—Served on L. Keyes, on Red River, two hundred miles from Fort Smith. Served writ on balance of defendants, except one, in Fort Smith.

vs. Prince Steadham.—I arrested defendant on Red River, about two hundred and eighty miles from Fort Smith. S. P. Walker, as charged, is a fraudulent posse. I had no such man with me. I don’t know him. My name to S. P. Walker’s posse-account is forged; I never signed it. John Dameron was my posse. His account as charged is correct.

vs. George Brown and William French or Lynch—Contempt.—I arrested defendants near Coody’s Bluffs, two hundred and twenty-five miles from Fort Smith. Perry Duval was my posse, and his account as charged is correct. Silas Moody’s account for services in this case as posse, $87, is fraudulent. I had no such person with me.

vs. William P. Hickman.—I arrested defendant in Choctaw Nation, fifteen miles from Fort Smith. The fees as charged are correct, but I never received one cent as compensation in this case.
vs. William Foreman. I arrested defendant in Cherokee Nation, two hundred miles from Fort Smith. Willard Ayers was my posse, and his account as charged is correct. Thomas Baldwin was not with me, and his account is fraudulent.

vs. A Chickasaw Indian.—I returned the writ in this case "non est." Did not return any posse at all. I was not allowed any compensation for my services in this case. Have Baldwin and James Colbert's account of $45 each, for services as posse in this case, as fraudulent. (See testimony before Sener committee.)

vs. Moreton—Contempt.—Never received one cent for services, the writ being returned "non est." Did not serve any posse at all. I was not allowed any compensation for my services in this case. Have Baldwin and James Colbert's account of $45 each, for services as posse in this case, as fraudulent. (See testimony before Sener's committee.)

vs. Robert McAffee—int. sig.—The whole account, $112, is fraudulent. I never had such a writ in my possession. The posse as charged are Theo., Putnam, George Logan, and Roland Wiley. Do not know any such men. The signature to the deputy voucher is a forgery. I never signed it.

vs. W. M. Archer, R. Sears—sci. fa.—Served the writ at Joplin, Mo., one hundred and fifty miles from Fort Smith.

vs. Jos. Corcoran, Joe Queen—internal-revenue law.—I arrested Joe Corcoran in the Cherokee Nation, two hundred and eighty miles from Fort Smith. Perry Duvall was my posse in this case. His posse-account is correct. R. P. McCoy's posse-account in this case is fraudulent. I did not have him with me. My name to it is forged.

vs. John Brown.—I arrested defendant in Cherokee Nation, about two hundred and sixty miles from Fort Smith. Perry Duvall was my posse in this case. His account as rendered is correct. A. B. Wilson's account for $93, as posse in this case, is fraudulent. Did not have him. I have never received one cent for services rendered under Britton's first administration, either as deputy marshal or posse.

The following posse-accounts are shown by witnesses' testimony to be fraudulent, viz:

<table>
<thead>
<tr>
<th>Name</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Roland Wiley</td>
<td>$60.00</td>
</tr>
<tr>
<td>Henry Baldwin</td>
<td>45.00</td>
</tr>
<tr>
<td>William Hubbard</td>
<td>102.00</td>
</tr>
<tr>
<td>Silas Moody</td>
<td>87.00</td>
</tr>
<tr>
<td>S. T. Walter</td>
<td>78.00</td>
</tr>
<tr>
<td>James Colbert</td>
<td>45.00</td>
</tr>
<tr>
<td>William Wells</td>
<td>15.00</td>
</tr>
<tr>
<td>John Brighton</td>
<td>15.00</td>
</tr>
<tr>
<td>Theo. Putnam</td>
<td>60.00</td>
</tr>
<tr>
<td>George Logan</td>
<td>60.00</td>
</tr>
<tr>
<td>Robert P. McCoy</td>
<td>83.00</td>
</tr>
<tr>
<td>A. B. Wilson</td>
<td>93.00</td>
</tr>
<tr>
<td>Deputy marshal's account, case of McAffee</td>
<td>112.00</td>
</tr>
<tr>
<td>Deputy marshal's account, Chickasaw Indian</td>
<td>39.00</td>
</tr>
<tr>
<td>Deputy marshal's account, Moreton</td>
<td>10.00</td>
</tr>
</tbody>
</table>

905.00

September 21, 1874.
Witness: W. H. Nessle.

UNDER ROOTS.

vs. Wm. B. Penn.—Place of arrest and mileage is correct. My guards were J. W. Wilkins and John Subs. Had no such persons with me as W. R. Ayers and J. H. Conant as guards.

vs. John Friend.—Mileage and other services as charged correct.

vs. Charles Washington.—I arrested defendant in Cherokee Nation, two hundred miles from Fort Smith; Willard Ayers was my posse.

vs. Van Norman.—Arrested near Chetopa, near Kansas line; W. R. Ayers and Thomas Blackard were my posse in this case. J. S. Moore's account for $54 as posse in this case is fraudulent. Had no such person.

vs. Peter Quiet.—Arrested defendant in Choctaw Nation, one hundred twenty-five miles from Fort Smith; Milo Barron was my posse in this case, and his account is correct. Chas. H. Mudgin's account for services as posse in this case is fraudulent; my name is forged to his account.

vs. John Bly.—Arrested defendant near Chetopa, one hundred and seventy miles from Fort Smith; Willard Ayers was my posse in this case, and his account is correct.

vs. Johnson Miller.—Place of arrest and mileage is correct as charged.

vs. A. Gilbert and J. R. Grant.—Willard Ayers was my posse in this case, and is correct. James Slocum's posse-account for $54 in this case is fraudulent, and my signature or name to the voucher is a forgery.
vs. one Gilbert and Jno. Coleman.—Fees correct as charged.
vs. A. Gilbert and J. R. Grant.—Fees correct as charged.
vs. George Wilson—contempt—Correct as charged.
vs. Walter West.—Correct as charged.
vs. Andrew Parrish.—Correct as charged.
vs. James Parrish.—Correct as charged.
vs. Edmond Downing.—Correct as charged.

(In the above three cases, complaints were made at the same time before Brooks, and he issued separate warrants.)

vs. W. K. Rector, J. K. P. Morris.—Arrested at Baxter Springs, Kansas, one hundred and sixty-five miles from Fort Smith, by Taylor, a deputy marshal of Kansas, who turned defendants over to me. I served my warrant after I got into the nation; W. R. Ayers and T. H. Blake were my posse.

vs. H. Higgins, Jas. Boozeley.—Same service as in first case above, except I did not arrest Boozeley; had no guards; and those charged in this case are fraudulent, (Sweet and Gould.)

vs. J. M. Stone, Benj. Morris.—I arrested Morris, same as in case against Rector and Morris. I had no guards. Those charged in this case are fraudulent, (A. A. Phillips and Thos. Alden.)

The apparent excess of mileage in last three cases arises from the fact that I was obliged to go from Baxter Springs to Topeka to get warrants from the Kansas authorities, and I charged as much mileage as possible under the circumstances under direction of J. W. Donnelly, in order to get back a portion of the expense I was put to.

C. C. AYERS.

FORT SMITH, August 24, 1874.

Testimony of C. C. AYERS as to his accounts as deputy marshal, the accounts of W. R. Ayers as posse, and sundry other matters.

Sworn and examined by Mr. Duvall:

I reside at Fort Smith, Ark. I was a deputy marshal under Marshal Sarber.

Question. Do you recognize the account in voucher No. 5 to abstract No. 4, in report No. 43451 of Sarber's accounts, which is shown to you, amounting to $73.25?—Answer. Yes; I did all that service. I rendered services as deputy marshal prior to January 14, 1874; I see this receipt is dated January 14, 1875; that is a mistake; it ought to be January 14, 1874.

Q. What other services did you render prior to that time, not embraced in this receipt?—A. In the cases of United States vs. Henry Armstrong, for larceny; arrested near Port Sill; returned, I think, for three hundred miles; I won't be positive; that was returned in August, 1873.

The United States vs. Pres. Gander and Pat. Nail, for larceny, arrested near Shawneetown, Choctaw Nation; returned two hundred and twenty-five miles; that was in the forepart of September, 1873.

The United States vs. John Billy, alias Chuffee Tubbie, for assault with intent to kill; arrested in Chickasaw Nation, on Little River, northwest of Cherokee Town; returned two hundred and twenty-five miles; in October, 1873.

In the November term, 1873, of the United States court here I was on duty as bailiff for twelve days with the grand jury, for which I was allowed $2 a day, amounting to $24. I signed a voucher to that effect—that voucher—over to the office. I recognize voucher No. 32, in abstract No. 6, account No. 43451, as my bailiff-voucher.

Prior to the 14th of January, 1874, I received for my services from Marshal Sarber $100 in money. Prior to that time I turned in vouchers and receipts amounting to $341.88 as the amount due me for my services as deputy marshal and bailiff. In January, 1874, Sarber paid me $100 in money and gave me this due-bill for $241.88, the balance due me for services rendered, and for which I had previously receipted accounts. In March 31, 1874, I received $35, and July 27, 1874, another $25. So that there is yet due me from the United States, on account of my services as deputy marshal and bailiff, $191.88; and there is ten per cent. deducted from that. When we turned in our accounts to the office they would take off one-third for the marshal, and retained ten per cent. of our two-thirds subject to approval at Washington; that was the pretext for retaining the ten per cent. for final adjustment of the account at Washington.

Q. Was that the custom under former marshals?—A. Yes; under Roots, and under Britton's last administration. That custom of retaining ten per cent. originated with Roots. That ten per cent. which was retained from me by Roots was repaid to me, but I never re-
received a nickel from Britton, nor Sarber either. Subsequent to January 14, and prior to March 11, 1874, I rendered services as deputy marshal in the cases of Michael Griffin and Harry Willmott. The vouchers in those cases I turned over to the marshal's office and took a receipt for them; no returns were made. The amount due me on those two cases was $123.59; that is, after ten per cent. was deducted. I have never received anything from the United States, from Sarber or any other person, in payment of those accounts; a receipt for the accounts is all I hold. I have demanded payment of those accounts of Sarber several times; I have demanded payment nearly every month; the last time was more than a month ago than the 29th or 29th of July last, just before he left here the last time. He told me he had no money; that he had never received, as he termed it, a final settlement from Washington. I told him that my account had been sent to Washington so long that I was satisfied it had been paid; but he said he had never received any settlement since June, 1871, so he wasn't going to pay it; in fact, that he had no money.

Q. In signing this bailiff-receipt, I want you to state specifically whether, when that receipt was signed, you received any money?—A. Not a nickel, sir. They stated that they could not draw any money without they sent on the voucher; that it had been signed and sent on to Washington to draw the money on it. My vouchers in the cases of Mike Griffin and Harry Willmott are in the possession of Mr. Main, Sarber's chief clerk.

In the case of the United States vs. Joseph McCombs, arrested on a bench-warrant for assault with intent to kill, McCombs was committed to jail by the commissioner and escaped from prison. The total amount of my voucher in that case is $314.50; two-thirds of the belongs to me. The account states that I was eighteen days in endeavoring to arrest a party, June 4 to June 21, on a warrant for his arrest. I was actually engaged in searching in the man that length of time; a copy of the original warrant is attached to the posse-account. He was arrested at Coovy's Bluff, Cherokee Nation; that is on the Verdigris River, about one hundred and forty-five miles above Fort Gibson. It is fully two hundred and twenty-five miles from here, the way we have to go. When we first went after him he lived near Baxter Springs, in the Ottawa Nation; he was not there, and we went over to near Coovy's Bluff. We traveled in all more than two hundred and twenty-five miles. We first went to where his known residence was, and then to where we got him. The distance is no hardly two hundred and twenty-five miles by the ordinary traveled route; it is seventy-five miles from here to Fort Gibson, and one hundred and forty-five from there to Coovy's Bluff which would make two hundred and twenty. In returning here we did not come by way of Fort Gibson; we came through the main line by Missouri, and right down; that is the best way, on account of there being cheaper places to stay all night. There is no good accommodation coming down through the Indian country. We came the cheapest and best route. We traveled the nearest practicable route, which took us two hundred and twenty-five miles. W. R. Ayers, of Fort Smith, was my posse on that trip; he went with me all the way around; he is my brother. We were twenty-five days making the trip. I did not make any other arrest on that trip; I tried, but did not succeed. I have not returned any other posse-account on that trip. There is due him on that trip, as posse, $75. In fact, he brought the prisoner in, and I staid to try catch another party, but I failed to catch him, and gone in a couple of weeks afterward. That account for $75 is for twenty-five days, from June 4 to June 28, and is correct.

Here is another little account in my favor, in the Mike Griffin case, amounting to $6.90 service made at Vinita, Cherokee Nation; mileage is one hundred and fifteen miles. The account is correct, and has never been paid.

I also present the account of W. R. Ayers, as posse, in the case of United States vs. Harry Willmott, from January 28 to February 22, twenty-six days, $78. Copy of original warrant is attached to the account. He actually rendered the service. You will notice that he charges two hundred and twenty-five miles going, and three hundred miles returning. He actually went from Fort Gibson, the place where the warrant was issued, to the place of arrest, and then brought the prisoner from Fort Gibson here and lodged him in jail.

Q. During the time for which this is charged was he returned in any other case?—A. No, sir; he was my posse, and that is all he ever returned during that time. I have no interest in the posse-accounts, but present them for my brother, who is absent now.

Q. Do you know a deputy marshal by the name of Charles Western?—A. I do not. I know a man that was here who had two or three names, and I heard him called Charles Western at one time. I don't remember his being here under Colonel Roots; he was under Britton; he rode as posse I think, for Chambers. Chambers was not a deputy, but he told me he was going out for Duff. That man went by the name of Curly a good deal. I never heard him called Charles Western but a few times. I arrested him once, and he then gave me his name as Isaac Davis. He was arrested for selling whisky in the Indian country; he was a white man.

Q. Do you know a deputy by name of C. T. Worth, under Roots?—A. No, sir.

C. C. AYERS.
C. C. Ayers sworn and examined.

In the case of United States vs. John Fitzlawrence, returned non est by W. R. Ayers, deputy marshal, Daniel Ferrill and Charles Shoup are returned as posse in this case. I was with my brother, W. R. Ayers, on this trip. He had no posse with him except myself, and I never got an account. Ferrill and Shoup's accounts are fraudulent. W. R. Ayers received no pay for his services in this case, to my certain knowledge.

vs. John McCready.—Was not arrested. I and my brother went after defendant, but, finding no testimony against him, we did not arrest him. Had no posse; no pay for duty's services.

vs. Samuel Hickman.—The fees as charged are correct, except the guards are fraudulent.

vs. Lock Moreton et al.—Same remarks as in case against Hickman, above.

All the above facts I know from my own personal knowledge, as I was along all the time.

SEPTEMBER 25, 1874.

Witness: W. H. Nessle.

FORT SMITH, ARK., AUGUST 31, 1874.

Testimony of B. Baer in relation to the accounts held by the National Bank of Western Arkansas.

Sworn, examined by Mr. Marcum, attorney for the bank:

I reside at Fort Smith, Ark. I am thirty-seven years old. I am president of the National Bank of Western Arkansas. I am acquainted with William A. Britton, late United States marshal of this district.

Question. Was there ever any agreement or arrangement between the bank and Mr. Britton, as marshal, whereby he was to withhold the payment of and the bank to buy marshal's vouchers or claims against the Government?—Answer. None whatever.

Q. Did the bank ever use any of the funds of the Government in the purchase of marshal's vouchers or other claims against the Government?—A. No, sir.

Q. Did the bank ever have any transactions with the marshal's office during Britton's administration?—A. None that I know of.

Q. Was there ever any collusion between the bank and L. H. Roots, as United States marshal, in regard to the purchase of marshal's vouchers or other claims against the Government?—A. None that I know of.

Q. Have you examined the proceedings of the directors of the bank at their various meetings?—A. I have not examined them exactly, but I can tell you of one meeting held at a time that Marshal Roots issued certificates of indebtedness, which meeting shows on our books. At that meeting the question came up whether the bank should purchase the certificates of Roots, and, if so, at what price. The board called upon Mr. Roots, who was also an officer of the bank, to communicate to them when he could pay those certificates. His answer was that in dealing in his vouchers and certificates we must stand the same as any other individual; that he could not tell when he could pay them; that whenever the money would come he would pay them, and not before; and that he could not state how long we would have to wait for the money, and we would, therefore, just have to take the risk the same as any other business risk. That was before a full board of directors—Dr. Duval, R. C. Kerens, myself, Arthur Gunther, and E. S. Mitchell, I believe.

Q. If there had ever been any collusion between the bank and the marshal's office you would have known it?—A. I think I should. I am president of the bank.

Q. Did the bank ever buy marshals' vouchers or other claims at the instance or suggestion of either Roots or Britton?—A. Not that I am aware of.

Q. I see the bank holds a claim in favor of Mr. Brooks for 2,100 and some odd dollars. State how the bank came to receive that claim.—At one time—I don't know exactly the time, but the books will show—Colonel Brooks came to me or cashier Roots; I don't know which, and said that they needed some money very much, and that he had a statement from the Comptroller showing that so much pay was due him, but could not be paid until the deficiency bill was passed; that he would deposit that with us as collateral. I don't exactly know the amount we loaned him—the books will show—but it was not less than $1,200, I think, and it may be $1,500. He deposited with us a power of attorney for the draft, and also this letter of the Comptroller, as collateral.

[The letter referred to was produced, and a copy is appended hereto.]

It was upon the faith of that letter that the bank received that claim. Of course we
should not have touched it, except upon the faith that the amount due him would be
paid as soon as the deficiency bill passed. As a general thing, we make no loans except
upon certainties—Government paper or two good names.

Q. There is a claim held by the bank in favor of Messrs. Wolf & Loeb for $29,421.
State how the bank came to buy that claim.—A. Some time in 1873, before Wolf & Loeb
left here, they came to us here with that claim, and showed us a letter from the Attorney-
General, and asked us to purchase the claim from them. We did so, and paid them the
money, and they transferred the account to us, with a power of attorney, and it was con-
firmed upon this letter of the Attorney-General, saying that it would be paid, that we bought it.

[Copy of the letter from the Attorney-General here referred to is attached hereto.]

I will further state that I believe—I would not positively swear to it—but I believe that
a telegram was sent to Wolf & Loeb before they furnished the clothing that if they would
furnish the clothing they should be paid.

Q. It was upon this that the bank received the claim?—A. Yes, sir; and just paid the
amount less the discount.

Q. Do you know of any frauds committed by Mr. Brooks, as commissioner, against the
Government?—A. I do not. I never had any connection with any of the commissioners of
marshals.

Q. You have no knowledge or information that he has committed any frauds as commis-
sioner?—A. None whatever.

Examined by Colonel Duval:

Q. You speak of a meeting of the bank directors for the purchase of Roots's outstanding
certificates; what was the date of that meeting?—A. I could tell you exactly by the book
I think it was in 1872—perhaps in May.

Q. Was there a record made of the proceedings of that meeting?—A. I think so.
Mr. Duval. If there is, I would like to see that.

[The witness left the stand, and afterward returned and produced the book.]

By Mr. Markham:

Q. Do you know of any collusion between Wolf & Loeb and the marshal's office in re
gard to accounts?—A. I do not.

Q. Or between any one else and the marshal's office?—A. I do not. These accounts
came to me in the course of business as president of the bank. If I had known there was
any collusion or impropriety I would not have touched the account. We paid our money
and expected to get the money back.

By Mr. Duval:

I think the meeting was a regular meeting, called for the purpose, I think, on the 15th of
May. The bank was organized, I think, the 15th of April. I think that was the date we
were authorized to do business. On the first of May we opened. Our currency did not
come until the 1st of May, 1872.

Q. When your bank was organized, what amount of stock did Logan H. Roots hold in
this bank?—A. I think the first certificate was issued to Logan H. Roots for something like
$30,000. Our stock-book would show how this is.

[The stock-book of the National Bank of Western Arkansas was produced.]

Q. Here on the book is "B. Baer, 28 shares."—A. Afterward this was issued to
P. K. Roots.

Q. How long afterward?—A. I think about six months afterward.

Q. What was the capital stock at the time the bank was organized?—A. $55,000.

Q. Logan H. Roots was then United States marshal?—A. Yes; he held $29,100. Sub-
sequently he transferred to his brother P. K. Roots $10,000. When stock is changed, as
soon as the original certificate is surrendered a new one is issued.

Q. You state that at or about the time of this meeting the question was discussed as to
the propriety of dealing in the checks or certificates issued by Logan H. Roots as marshal:
was the rate of discount fixed?—A. No, sir. Logan H. Roots himself said that it might be
that we would not get our money for a year, until the deficiency bill passed. We bought
the vouchers at 80 to 90 cents, and we waited, I suppose a year at least, before we got our
money.

Q. Did Roots, as marshal, keep any deposit in the bank?—A. No, sir; not as marshal.

Q. Did he keep any private account in the bank?—A. I think he did; I think he had
some money there; I am not positive about it. The book would show.

[The witness produces the book, and, by reference thereto, answers further.]

On the 15th May he had nothing in the bank; on the 18th he had $50. In June at differ-
ent times he had $2,600, $2,500, and $2,100; and at one time $14,000; at another $12,000,
and another $1,000, and so on. That shows the balance due every day. The highest
balance in his private account is $14,411, some time in June. He had before that paid up
his stock in full. Every stockholder had.

Q. How many of the vouchers of Logan H. Roots did the bank purchase?—A. In Jan-
uary, 1873, we held $49,164.13. I think they were all Roots's. There may have been some
other vouchers in that, but not many, if any.
Q. When were those paid?—A. They were wiped out entirely on the 4th of June, 1873.

Q. Did not Roots pay a large amount of those vouchers in January, 1873?—A. [After referring to book.] There appears to be a payment on the 14th of January, 1873, $18,000 or $20,000.

Q. Did not the bank at that time hold nearly all the outstanding indebtedness of Marshal Roots?—A. Of course the largest part. There were others that held some. Boecquin & Rootzel held a lot, and Dickens and Hannaford and many others. The bank held over three-fourths, though.

Q. Was payment of this indebtedness of Marshal Roots made through the bank from money deposited there?—A. I think that P. K. Roots paid all the others as they came in. I know he advertised here for them to come in, and he paid them all himself.

Q. How did it happen that the bank did not get paid in full when the others did?—A. I don't believe the others got their pay at the same time. In May, I think Major Roots paid us as he got his money. He did not get all his money at one time.

Q. Was the bank paid first or the others first?—A. No; I think they were all paid alike as they came in. Whatever proportion of pay he received he paid out, as I understand it.

Q. I know that P. K. Roots was here a long time writing everywhere for the certificates to come in.

Q. What was the general rate of discount of the bank on these vouchers?—A. The lowest I think we ever paid was 80 cents, and we gave as high as 95 cents. There were some vouchers that were to be paid somewhere about the 1st of July, 1872, I think for services, and I think we were assured they would be paid as soon as the money came in; but unfortunately the money ran out much quicker than Logan H. Roots supposed. There were some certificates out which read "For services rendered up to July, 1872." Those Logan H. Roots paid as far as his money went, preferring others to the bank. I think he paid outsiders first, and let the bank wait for their pay until the next year, until he could pay off the whole. I remember one instance where we had a lot of some $800 or $900 that we got from Frizzell.

They were certificates for services rendered prior to July 1, 1872. His money gave out in paying others and we had to wait until the next year.

Q. He paid you in January $20,000?—A. That was January, 1873, some eight months afterward.

Q. Is it in testimony in this investigation that Roots did not issue any vouchers until about May.—A. I suppose not. Early in May I think we took some $1,500 worth, at 95 cents. I don't believe that there was $1,000 worth bought at less than 80 cents. I am almost positive. This book will show the exact amount, the day when they came in, and how we bought them.

Q. Just refer to the book, and state what month shows the largest amount of purchases by the bank: and see for May, 1872.—A. On the last day of May we seem to hold $12,708. I suppose on this day they were separated. Up to this time we carried discounts and vouchers all in one account. On the 22d June, $15,790. On the last of June, we held $18,663. On the 1st July, we held $12,708. On the last of July, $29,343. August 1, $29,452. August 31, $35,245. On the 2d September we commenced with $35,245, and on the 30th we had $37,130. October we commenced with $37,130, and on the 31st we had $40,911. We commenced November with $41,328, and left off with $44,936. From that time on they came in very slow. December we commenced with $44,936, and we left off with $49,164. I think that is the maximum amount that we bought. January, 1873, we commenced with $49,164, and we left off with $27,700, showing that nearly $20,000 had been paid. There was no payment then until May. On the 1st of May, 1873, we commenced with $34,700, and they went through all that month about that way, until the 4th day of June, when they appear to have been paid.

Q. Does your statement that there were only about $1,000 worth taken at less than 80 cents apply to all the purchases throughout that entire year ending in May, 1873?—A. I would not like to state the exact amount, but I have no idea that it amounted to any more than that we paid less than 80 cents for, to my own knowledge. Of course I did not buy half of them myself.

Q. Were those vouchers generally bought at the counter of the bank, or were they bought...
by you?—A. Partly by me and partly by the bank. Sometimes persons would come to
me and I would buy them at the store, and sometimes they would go to the bank, and Mr. Mitchell
or Mr. Seymour would purchase them.

Q. Did you generally buy them from the parties to whom they were originally issued, or
did you buy them in lots from persons who had bought them from the original parties?—A.
I think the bulk of them were purchased from the original holders. You can see that the
bulk of them were purchased during the session of court. The largest part was bought
during the month of June, about the end of the May term, I think. I suppose when it was
found out that there was no more money coming to pay these vouchers, they came in pretty
heavy. They were sent in from every direction; some even came from Kansas.

Q. Did Colonel Roots or the bank give notice that you would buy these claims?—A. No.
that I know of. I know for the bank that the bank did not give notice.

Q. Did they not in some way solicit purchases?—A. None whatever. In fact at first we
decided taking from a great many, because from my experience in dealing in Britton's
paper, I had very little faith in marshals' paper. I knew Colonel Roots would pay us, whenever
he got the money, but I had but little faith in the exact time when they would be paid.
I was myself opposed to buying any large amount of the paper.

Q. Did Roots hold any other office than director of the bank?—A. He was vice-president
He is vice-president yet, and has been ever since the organization of the bank; but so far
as that is concerned he had no more rights and no more to say than any other of the directors.
He only had a voice.

Q. During six months of that time he was the owner of over $29,000 of the stock?—A.
Yes; and subsequently transferred to his brother 100 shares, I think. I think he now
holds may be $12,000 or $13,000. I know I bought $2,200 from him, and he sold some to
Sparks and others. I bought my stock from him about a month ago, and Sparks, I think,
bought 20 shares about a month ago. [Witness refers to the stock-book.] On the 1st
May there was issued to Logan H. Roots 292 shares, which were surrendered, and others
issued instead. That certificate was returned January 29, 1873, and one for 100 shares, and
one for 192 shares, issued instead. Richard C. Kerens, 66 shares, January 3, 1874.

Q. Did he cease to become a stockholder?—A. No. I suppose a subsequent stub will show
what was done with it. The same date there was issued to Fanny Kerens one certificate for
65 shares, which was also subsequently surrendered; Arthur Gunther, 33 shares, which he still
holds. Here is Logan H. Roots, 100 shares, issued in lieu of certificate No. 10. That is the
certificate that he had split into two parts, one transferred to his brother, P. K. Roots. April
2, 1873, certificate to P. K. Roots for 100 shares, and No. 8, of Logan H. Roots, for 192 shares.
That was surrendered August 3, 1874, and in lieu thereof were issued certificates Nos. 17, 18,
20, 21, 22, and 23. No. 17, to George T. Sparks, for 20 shares; No. 18, to B. Baer, 22 shares.
That makes me just $5,000 in all. No. 20 to Logan H. Roots, 50 shares; No. 21, 50 shares,
to same; No. 22, for 25 shares; No. 23, to P. K. Roots, for 25 shares.

Q. That makes Roots the holder of 125 shares?—A. Yes, sir; $12,500 par value. I think
these 25 shares belong to P. K. Roots's children, but they stand in his name.

Q. Let us see if we can get the present stockholders of the bank as they stand. —A. E. S.
Mitchell, 55 shares; E. R. Duval, 10 shares; Arthur Gunther, 33 shares; B. Baer, 22 shares;
B. Baer, 22 shares; Harmon Brothers & Co., 50 shares, (half of this will be surrendered back
soon; he left it with them as collateral;) Harmon Brothers & Co., 66 shares; P. K. Roots, 10 shares;
R. C. Kerens, 10 shares; Fanny Kerens, 55 shares; George T. Sparks, 20 shares;
Logan H. Roots, 50 shares; Logan H. Roots, 50 shares; Logan H. Roots, 25 shares; P. K.
Roots, 25 shares—total, 550 shares.

Q. Was not Logan H. Roots aware that the bank was dealing in marshals' paper?—A. I
think he was. Considering the length of time that we were out of the money, we really did
not make our regular interest on this paper. Our regular rate of interest is two per cent. a
month.

Q. Do you state that from any actual computation you have made, or generally?—A. Only
just from my general observation; because, on an average, we were out of our money for
not less than ten months.

Q. Do you say there was no understanding between the bank and Logan H. Roots in
reference to such purchases, except what occurred in that public meeting?—A. None what­
ever. In that meeting he was very particular in putting it to us that we must take the paper
whenever he received it; that he could not state when that would be; and that we might be
out of our money at least a year.

Q. Did he give any reason why they would be out that long?—A. The reason was that
the money had run out for which those accounts were made, and he said in all probability no
deficiency would be passed until the last night of the session of Congress.

Q. Were not those vouchers being issued every day for the current expenses of the court?—A.
Each voucher stated what it was for. Some stated, "For services rendered since the 1st
July, 1863," and the others stated "For services rendered on," such and such a date, and
subsequent to that date. There was some small amount of money came in. I just faintly
remember that Roots received a small draft for $7,000 or $8,000, and he paid off vouchers
up to that amount, and that I had a slight falling-out with him because he refused to pay
some that the bank held. He said that we could wait much better than outside parties could, and only paid us $700, when we held some $3,000 or $4,000.

(A recess was here taken for dinner.)

I would like to make a correction of my testimony. Since the forenoon testimony was given, I have been looking at the books, and I find that the average price paid for vouchers was about 82½—from 80 to 82½ cents.

Q. When did the bank first declare a dividend?—A. In January, 1873, payable in July, 1873, after we got our money out of those vouchers.

Q. In declaring that dividend, you counted those vouchers as cash assets?—A. Yes, sir; not payable until those were collected. The dividend was 12½ per cent. Our profits were about 16 or 17 per cent. We made a reserve of about 4 or 5 per cent. We added 2½ per cent. to the surplus fund, and the balance went toward the payment of premiums on United States bonds. We did not declare another dividend in July. We declared a dividend in January, 1874, payable in July, 1874. Our profits were about the same, nearly all from the legitimate business, loaning money. We had no vouchers that year of any consequence—perhaps $2,000.

Q. Did you, as an individual, buy vouchers, or did all you bought go to the bank?—A. All those I bought went to the bank. I suppose I bought $1,200 or $1,500 for Mr. Gunther of Roots's vouchers.

The bank bought some jury certificates and witness certificates that were issued under Britton's administration. They were issued by Temple and Churchill.

Q. Can you inform me what amount of those vouchers and certificates was outstanding, and over and above what the bank had?—A. I really don't know. I suppose at the time he paid off there were from $8,000 to $10,000 outside that came in and were paid off. There was quite an amount paid to Bocquin & Rentzel. I don't know how much.

Q. Did Major Lanigan hold any of them?—A. I think not; not many, if any.

Q. Did you buy a good many from persons here who had accumulated them in the course of business?—A. Yes; early in the season I bought a great many of them; no large amounts, however. Just as they got them, they came in and sold them.

Q. Did he pay out of that $14,000?—A. I could not tell.

Q. Can you state whether that was his private or Government fund?—A. I cannot tell, though in those days he never said anything about his business, and I did not inquire. I suppose, however, that if it had been Government money he would have said so. It would have been placed to his credit as United States marshal.

Q. Did you not know there was a law prohibiting him from depositing Government money there?—A. I did not know that. I have no means of knowing whether they were private or Government funds. When he first came here he had a great deal of his own means. I know that he kept money always. That was after he had gone out of office.

Q. You were not sufficiently familiar with his business at the time he had this $14,000 to know whether he had that much of private funds or not?—A. I was not. But I know that up to the time he bought stock in the Little Rock Bank, he had always considerable loose means. I know that he kept money always. That was after he had gone out of office.

Q. You do not know what his pecuniary condition was before he came here?—A. I do not. In fact he was marshal six months before I even talked with him.

Q. Did Judge Story keep any deposit account in the bank?—A. He did. I saw it this morning in the book. It was a small account. I saw him deposit different drafts that he got from the Government for services as judge. I don't recollect the amount of them, but I don't believe he deposited over $1,500 at one time.
Q. Who originated the idea of establishing this bank here?—A. I think R. C. Kerens, Logan H. Roots, and Arthur Gunther. The starter of the bank was Mr. Ayers, who was interested in the First National Bank, and wanted to sell out that bank, and was looking around for a purchaser. Dr. Main, Mr. Handlin, Logan H. Roots, R. C. Kerens, and Mr. Gunther met there and several others held a meeting to see whether they would not buy out the bank. Ayers was to become a stockholder in the new bank, provided they would buy direct of the old First National. They would not do that, so a new bank was started. Mr. Handlin and several others were to take stock, but did not.

Q. Do you know that it is a fact, or that it is generally understood here, during the latter part of Roots's administration and Britton's, that there was a large amount of frauds being perpetrated in the marshal's office?—A. I do not know anything about it. During Roots's administration I never heard one word said about it. On the contrary, everybody seemed to be pleased with Roots. So far as Britton is concerned I have heard a good deal of talk about him, but I do not know anything about his business. I never had anything to do with him.

Q. Do you know that the very large expenditure here in Roots's administration was the subject of remark and conversation as being extraordinarily large?—A. I heard no conversation of that kind at that time. I have since heard a great deal, but not while he was marshal.

Q. Was it not understood and spoken of here that Roots had paid out a very large sum of money? Was it not a subject of remark to you and other business men that his outstanding indebtedness should be so large as it proved to be? It must have been, according to your statement, $60,000.—A. I paid no particular attention to the matter at the time. I heard nobody say anything against Mr. Roots as to his management or official standing, and I was very free to make inquiries about it, as I was president of the bank. I was told that the reason he did not pay the accounts was because the Government did not furnish any money to pay with. There were some certificates coming in as late as September and October for writs that had been issued, and I was solicited to purchase them, but I positively refused to do so at one time, although I had Mr. Roots's assurance that they would be eventually paid. Those certificates read, if I remember right: "This is to certify that such a man is entitled to so much money to be paid him whenever I collect the amount from the Government"—something to that effect.

(A copy of the checks used by Marshal Britton was shown to witness.)

They were not exactly like that. Those issued after the 1st of July said also: "For services rendered since the 1st July, 1873," or something to that effect.

Q. Did Marshal Sarber ever deposit any public funds in the bank?—A. I think Sarber did deposit some money, but I am at a loss to say whether it was public or private. The book would show what kind of money was deposited.

Q. Did he not pay the persons whom he paid by check on the bank?—A. I am not prepared to say how they were paid. I remember him drawing at one time some $8,000 or $10,000 in greenbacks and took it away.

Q. How did that get there?—A. I suppose he had a draft or something that the bank cashed for him.

Q. I have understood that it was the custom for the witness or the juror to sign the roll, and the marshal, during Sarber's time, marked upon the voucher "O. K." or some mark to indicate that the roll had been signed?—A. That is the case. We have some of them yet, and would like to get the money on them.

Q. Have you got them here?—A. Yes, sir.

Q. I would like to have you bring one of them up.—A. We did buy some of Sarber's in that way that had O.K. on them, because we would not buy them unless we knew that they had signed the roll.

Q. Was Kerens one of the purchasers of Roots's paper?—A. Not that I know of.

Q. Did he buy for the bank?—A. I think not. I think that at the time I or Mitchell (I am not certain which it was) made that offer to McLoud for his paper, Dick Kerens said he was going to Washington, and that he thought he could get the money for them, and that we had better buy them. But it is so long since that I can hardly remember.

Q. What is the stock of this bank worth now?—A. I bought mine at par.

Q. What does Roots propose to sell at?—A. I don't believe he wants to sell. There were one or two offers made, and he would not accept. Sparks paid par for his, I know.

Q. You don't know anything about the sale from Logan H. to P. K. Roots?—A. I know that there were some certificates of deposit standing to the credit of P. K. Roots's children, and also his wife. I don't know exactly the amount; it was, may be, $1,500 or $1,500.

Q. Where did that money come from that went to the credit of his children?—A. P. K. Roots deposited there himself when he came here. It was an advancement he was making for his wife and children. He told me once as soon as his children were born he gave them $200, and at the end of so many years, or whenever they became 21, it would amount to about $2,000. I am willing to swear that the certificates were standing to the credit of those children.

Q. You don't know about that first $10,000 of stock transferred to P. K. Roots?—A. I have always understood that P. K. Roots and Logan H. Roots, in everything they had, were
partners. They had a good many plantations, and I know that he, P. K., owns $20,000 of stock in the Merchants' National Bank of Little Rock.

Q. When did Roots become an owner of stock in the Merchants' National Bank of Little Rock?—A. It seems to me that he swapped his plantations for stock late in the fall of 1872. I think he and his brother together own 600 shares in that bank. I have always understood that. I could not be accurate about it.

Q. Do you know when that bank at Arkadelphia was started?—A. That was started early in 1873. Its capital is very small. I don't believe that Logan H. Roots had more than $5,000 to $10,000 invested in that; but it was no national bank. It was a private bank. I know he is not connected with it now.

Examination of B. BAER resumed.

By Mr. MARKHAM:

Question. Did you for the bank ever buy or receive for collateral security for advances, any marshals' vouchers or claims against the Government, upon the promise of either Roots, Britton, or Sarber, while they were marshals respectively, that they would pay them in preference to claims other than claims held by the bank?—Answer. We took a great many vouchers and certificates of Roots's. I won't say of Britton's, because we took very few of Britton's, and some of Sarber's as collateral, but we never got assurances from any of the marshals that they would pay them in preference to other claims.

Q. What is the amount of claims held by the bank against the Government as collateral which accrued while Britton was marshal?—A. I suppose in round numbers about $10,000, if you call the Brooks account one of Britton's vouchers. We hold an account of Brooks against the Government for about $2,300 as collateral for about $1,200 advanced.

Q. What kind of claims are they?—A. Posse, bailiffs, witnesses, jail-guards, and we have one account for fixing the jail, and one for taking prisoners to Little Rock, and that account of Wolf & Loeb for furnishing clothing to the prisoners.

Q. State how those claims are held.—A. Really only as collateral, upon which we made loans, with the exception of the Wolf & Loeb account, and the jury-roll of $60, upon which we paid the jurors. The balance are held as collateral.

Q. Do you know anything about Roots advancing any of his private funds for the payment of expenses arising in the marshal's office?—A. I have always been told that when Roots commenced as marshal here, he advanced of his own personal funds, $27,000 before he received any money from the Government; and that subsequently he borrowed from his friends, so that in all he had about $70,000 or $75,000 of his own money invested in the office.

Q. Do you know whether he had ever been re-imbursed up to the time he commenced issuing the tickets in 1872 on suspended payment?—A. I think not. I heard him say, I think, about the time, that he expected to be relieved, and he was trying to get his money out of the office, which he had advanced, and that he would not advance any more.

Q. Do you know what the population of Fort Smith was in 1871 and 1872?—A. It was estimated above 4,000.

Q. Can you give an estimate of what it is now?—A. About 2,500.

Q. Were there not a great many transient persons here in 1871 and 1872?—A. There were a great many, and the place was then in a flourishing condition.

Q. Were not a great many of those transient persons in service under the marshal?—A. A great many; the marshal's office was besieged with applicants for office. A great many of them who obtained employment have since gone.

By Mr. DUYAL;

Q. Do you know when Marshal Roots qualified as marshal and entered upon the discharge of his duties?—A. I could not say the exact time; I presume it was in May, 1871.

Q. How many thousand dollars did you say you understood Roots advanced before he received a dollar from the Treasury?—A. I understood something like $70,000 to $75,000; I understood that from Logan H. Roots, and P. K. Roots, and R. C. Kereus.

Q. Do you know what time in May the first term of the court in 1871 convened?—A. I do not remember; I know it commences usually on the second Monday in May and November of each year.

Q. That would be the 8th of May, 1871; have you any knowledge of Roots, as marshal, having incurred any expense upon the part of the Government prior to the 5th of May, 1871?—A. I have not; at that time I was not acquainted with the marshal's office; was not even acquainted with Colonel Roots. I think the May term, 1871, was the first term held after Roots was appointed.

Q. I find here from a report made by the First Comptroller of the Treasury to the Senate committee, that on the 5th of May, 1871, there was advanced from the Treasury to Marshal Roots $30,000; on the 25th June, 1871, $30,000 more. Do you know of any facts which would justify Roots in the assertion that he had advanced $70,000 out of his own funds before he received anything from the Treasury, in view of this statement, taking the statement

H. Ex. 175—4
to be correct?—A. I wish to state in regard to that, that at that time there was a bank here, but they had no money; that I myself furnished a great deal of money every day. What I say that he advanced $75,000, I do not mean that he advanced it before he received any money whatever, but that he advanced it all along. Because sometimes the drafts would remain out for two or three weeks before reaching him here. He advanced it all along when there were not sufficient funds advanced him by the Government to pay current expenses. It is to be remembered that Roots never issued any certificates until in 1872. I do not remember the exact time; of course he did not advance the whole $75,000 in one lump. He invested it all along during his term of office until he had that much invested in the office. I myself furnished sometimes from $3,000 to $5,000 a day. That continued for quite a while; I know that all the currency I could get he took away from me. I suppose that I didn't let him have less than from $1,000 to $1,500 and $2,000 in currency per day. I shouldn't wonder if, from first to last, it all amounted to $10,000 to $15,000.

Q. Do you remember of any person else who furnished him money?—A. Yes; I remember Mr. Kerens commencing at the bottom of the street and going out to the end of the street getting currency from people.

Q. Do you suppose that he borrowed as much as $50,000 here in this town?—A. Not here in town. I know Mr. Kerens told me he loaned him $7,000 of his own. Mr. Griffith went to Little Rock twice, and I understood then that each time they got $7,000—one from Dr. Weeks, and $7,000 from a man named Coy; and I have always been told that he brought $27,000 with him when he first came; I do not know that, but it was told me long ago, before there was any talk of investigation. Kerens told me that.

Q. When did he repay you the money he borrowed from you?—A. He paid me very soon afterward. I wish it understood that I did not loan him the $15,000 in one bulk. He would get $1,000 from me one day and repay me in two or three days afterward by draft on Saint Louis.

Q. Were those drafts drawn upon the assistant treasurer or upon private funds?—A. I cannot remember. I think some were drawn upon the assistant treasurer, and I think some were drawn upon some bank there, and some were repaid by Dick Kerens himself. I think they were mail-drafts that he got from the Government for carrying the mails. The larger bulk of it was paid back in that manner.

Q. I find from a statement here, made by the clerk of the court, that the compensation allowed the grand jurors for that term of court was $1,976.15; to petit jurors, $3,973; and to witnesses, $9,160.80. That makes a total of $15,109.95.—A. I suppose if he got any draft from the Government it would almost take that up. Then there were the guards, posses, deputies, and hangers-on around the court to be paid. Mr. Kerens told me in those days that it cost to run the court from $2,000 to $5,000 a day during the whole term of court at the time he ran around so much for currency. I was not acquainted with Colonel Roots in those days, and all I know about it was from Mr. Kerens. That is all I know about it.

Q. You cannot state whether the drafts you speak of on Saint Louis were upon Government or private funds?—A. I cannot. I think one draft of $7,600 alone was paid me by Mr. Kerens for mail-pay—on Saint Louis or New Orleans, I think.

Q. What did that have to do with Roots?—A. I never loaned any money to Roots myself. I loaned my money to Kerens and he paid me back. I would not take Roots in those days, as I did not know anything about his financial condition.

Q. Did not Kerens tell you that Roots had advanced money for the Government before he received a dollar?—A. I think he did. I always understood that he came here with $27,000 of his own money. I think he did not get any money from the Government until some time after he was here. That is what I always understood.

Q. When was it that you were told by parties that Colonel Roots had advanced money to the Government until it was indebted to him $70,000?—A. I think he told me that himself shortly after he went out of office. It was about $75,000 or $80,000, I think.

Q. Had the bank then commenced purchasing his outstanding liabilities?—A. Yes, sir.

Q. Did claim that he had due him from the Government, for actual expenditures made by him, $70,000?—A. I think he did. I took it in that sense, that the Government owed him that much money, independent of the outstanding liability that was purchased by the bank.

Q. Did he not start the report, or did you not hear from some one connected with the office, about the time he suspended payment, that the Government was indebted to him some $70,000; that is, accounts against the Government overrunning the amounts advanced to that amount?—A. I always understood that the Government was indebted to him for advances that he had actually made to the Government. What I say here I merely say from what others told me. I had nothing to do at all with the marshal's office; was never inside of it.

Q. I understood you to state, the other day, that about the 1st of May, 1872, Roots suspended payment?—A. Yes, sir.

Q. I find that on the 21st May, 1872, Roots received from the Treasury $25,000; on the 25th May, 1872, $50,000; on the 12th June, 1872, $30,000; making in all, within six weeks after he suspended payment, $95,000. Do you know what disposition he made of that?—
A. Yes, sir. In the first place, I understood that, from the particular shoot in politics he had taken, he expected to be relieved, and he was trying to get his own money out of it as fast as he could. In the second place, I remember that he advertised here, in the New Era, for certain amounts of indebtedness that were out, to be brought in; that he was ready to pay it. I accidentally saw the advertisement the other day in an old number of the paper.

Q. Did you know how much of that $95,000 he paid out under that advertisement?—A. I cannot state the exact amount, but I always understood that there was something like $18,000 or $20,000 that, I supposed, he was compelled to pay out.

Q. That would leave a balance of $27,000. Did you understand that he applied that to the payment of his own account?—A. For monies advanced by him to the Government.

Q. He appropriated that to his own use?—A. I heard it whispered—he never told me, but I heard others say—that, from the particular shoot in politics he was taking, he expected to be relieved, and he didn't want to quit with the Government indebted to him; that he had advanced a sum of money, and that he was bound to re-imburse himself.

Q. Do you know anything of his having any private funds of his own, before he was appointed marshal, that he could so invest?—A. Not of my own knowledge, except what I heard from others. Since then, I may also say, I have heard that he received from the Cairo and Fulton Railroad $40,000, and that P. K. Roots also received that amount. I always heard, even in those days, of Roots being quite a wealthy man.

Q. All the knowledge you have in regard to his finances is derived from information, and you know nothing of your own knowledge?—A. Nothing of my own knowledge, except that when he said the Government was indebted to him that amount. I believe that he wrote that to me once in a letter; perhaps I could find the letter.

Q. There is $188,000 that he received during the first eight months of his office. His statement to you contradicts the report of the Comptroller that the total expenditure for the fiscal year, 1871, was $245,000. According to his account given to you the total expenditures, for that year, would have been $263,500?—A. I cannot, of course, be very positive in figures, it is such a length of time; he might have told me a few thousand less or more. I believe that Kerens, who could talk of his own knowledge, could state the matter much more positively than I can.

Q. I find that Roots drew from the Treasury, after he ceased to be marshal, $82,808, which balanced his account?—A. Of that he paid the bank nearly $50,000, and I know of various parties here that he paid at least, with the 10 per cent. that he paid to his deputies, (see testimony of deputies,) I suppose, not less than $20,000, right here, in different amounts. That would be $70,000. Right here I would call your attention to another thing. Before he received his final pay in Washington they demanded of him the return of all his outstanding certificates. I believe he was the only marshal that was allowed to issue these certificates, and before he could get any money out of them they demanded of him either the return of the certificates, or that they would send out a disbursing officer here to pay them off. So he sent P. K. Roots here and paid those certificates off with his own money before he received any pay from the Government. At any rate all the certificates were returned to the Department before he received a cent of money—with the exception of some $300 which he could not get in, and which he subsequently paid, but for which, I believe, he never received any pay.

Q. Do you know what disposition Roots made of that money that he retained out of this $95,000, that you understood he appropriated for the payment of his private debts?—A. I really do not know.

Q. Do you know that he deposited any large portion of that in the bank here?—A. I think not; I do not know what he deposited, or whether it was out of that at all, or not. He always had money. Even later than that he had quite a deposit in the bank, and even now he has money in the bank. I could not tell the amount without looking at the book. I know that he had some $3,000 or $4,000 there a few weeks ago; I accidentally looked at the books and saw there was something to his credit.

Q. I asked you the other day to look into the state of Sarber's account and to give me the dates and amounts that he had deposited.—A. I have looked over the books and find that there is no credit to him. I looked away back. There was a few hundred dollars to the credit of Mrs. Sarber.

Q. Then the books of the bank do not show that he kept any account with the bank?—A. Not as far I looked back. I remember on one or two occasions he came into the bank, and at one time thought he had a draft for $11,000 or something like that. He took the money right out. I did not pay any attention, but from what P. K. Roots told me he just took the money and took it off.

Q. Do you or not know whether he did not pay money to persons to whom the marshal's office was indebted, by checks on the bank?—A. I could not tell. I do not pay out or receive the money.

Q. As far as the books of the bank show, they show no transactions between the bank and Sarber as marshal in the way of deposits?—A. Not as far as I have seen. I looked back as far as December, 1873. There were some very small amounts. I think at one time some $1,300 to the credit of J. N. Sarber.

Q. Was that bank in the habit of paying money out on checks of persons who were not
depositors?—A. If the parties were to come and make arrangements for it beforehand, for
example, very often Major Lanigan would say, "I expect to have some money here day after
tomorrow," and we would make an arrangement to honor his checks. We would allow
regular customers an overdraft.

Q. Would the bank allow me, for instance, to take my money out of the bank without the
books showing anything of the transactions?—A. No, sir; I think not. If a special deposit
was drawn the books would not show anything of that.

Q. You said a while ago that there was no understanding or arrangement between the
bank and Sarber, Britton, or Roots by which you were to be protected in the purchase
accounts.—A. None whatever.

Q. Do you know of any arrangement made by the officers of the bank with Sarber that
the bank should take up any accounts which might be presented, either marked by him "O. K.," or any other mark?—A. Yes, sir; he told us that those accounts marked O. K. were all correct, and would be paid whenever money came into his possession. In dealing in Government vouchers we wanted it understood that we did not want any except such as were correct, and Mr. Main told us that whenever he found an account was correct he would mark O. K. on it, and then we might buy it.

Q. You bought them, then, upon that assurance?—A. That they were good, yes; and that whenever the money came he would pay them, but not in preference to anybody else or anything else.

Q. That private mark O. K. was an assurance that they would be paid out of the first money that was received?—A. Yes, sir.

Q. Do you know whether the bank dealt pretty largely in those vouchers?—A. Not in Sarber's; no, sir.

Q. Do you know what amount of those O. K. vouchers the bank purchased?—A. I suppose all we have purchased we have got yet. I suppose $4,000 or $5,000. I think we purchased some last year, and we have got the larger part of them.

Q. You purchased the witness-vouchers for the November term, 1873; are they still unpaid?—A. I think so, some of them. I think we have $3,000 or $4,000 of witness-voucher now.

Q. What was the regular rate of discount on those vouchers?—A. I think we paid seventy-five and eighty cents for them; I could not exactly tell.

Q. Don't you know you did not give but 70 cents?—A. May be not more than 70 cents toward the last; we got scared. I know we have quite a lot that costs us 80 cents. We loaned money on some of them at collateral at 25 cents on the dollar.

Q. Did you, as an individual, make an arrangement with Britton by which he turned over to you the witness-roll of witnesses who were to be paid at a certain term of the court, and you kept that roll in your possession and the witnesses signed the roll in your store?—A. I did not with Britton. I bought witness-vouchers and had a roll and made them sign the roll, but not with the connivance or knowledge of Britton.

Q. How did you get hold of the roll and take the receipt to Britton without his knowledge?—A. I think I found the roll in the bank. I don't know how it got there. I think there are some rolls down there yet.

Q. Did he not have notice that you were buying those vouchers?—A. I think not. If he did it was not from me. I don't suppose I spoke two words to Britton during the whole term of his office.

Q. Did not Donnelly or some one who was managing his business understand it?—A. I don't think he did. I think that Jacob Baer was also buying them.

Q. Do you think that that arrangement where you assumed to buy those vouchers was entirely unknown to any of the parties connected with the marshal's office?—A. So far as I am concerned, it was entirely.

Q. After that roll was signed did you present it to Britton or to any one in charge of the office?—A. I think not. I believe that perhaps some form that it was necessary for Britton to sign was afterward presented to him, but not by me, but by some officer of the bank.

Q. Was that transaction of yours individual, or in behalf of the bank?—A. In behalf of the bank. I think what we bought amounted to $1,000 or $1,100; I am not sure; I think that is what the witness-roll amounted to. We bought those at fifty cents on the dollar.

Q. Did you buy any as low as forty cents?—A. May be; and some as high as sixty or sixty-five cents; but I believe the average cost was about fifty cents. And right here I will state that I have got now a letter from the First Comptroller of the Treasury, in my possession, as an officer of the bank, written to me in response to a letter which I wrote him, in which I explained to him that the marshal was not paying anybody, and that if he would assure me that he would pay the money to the bank instead of to Britton, I would create a market for those vouchers, and purchase them at a good price, for there was a great deal of suffering among the witnesses in that year. He answered that he was not aware that Britton was without money; that the Government had furnished him money to pay everything, but everybody knows that he paid nothing. That was before I bought the witness-roll. I did not understand from that letter that the Comptroller authorized me to buy. The bank drew the full amount of that witness-roll from the Treasury.
Q. I will ask you what witness-roll it was that amounted to something over $3,000?—A. I think that was the one turned over by Lanigan to the bank as collateral, and which had been turned over by Britton, or Donnelly perhaps, to Lanigan for advances which Lanigan had made to them. From what I gathered, Lanigan had at one time advanced money to the amount of $8,000 or $10,000, and that he turned those which he considered the best vouchers over to him. I believe one of them was a witness-roll. I do not remember how much that roll amounted to; perhaps $2,000, perhaps more.

Q. Didn't it amount to over $3,000?—A. It might; it is nearly two years since; I think it was put in at the beginning of 1871, may be; I don't remember the exact time; I think it was paid some time in the spring of 1873.

Q. Has the bank ever collected anything for the vouchers issued during Sarber's time?—A. Yes; I guess he paid them some, because we certainly have bought more than what we have now.

Q. You have no knowledge or information how that blank witness-roll came into the possession of the bank?—A. No, sir; unless it was that it was left there with Colonel Roots's papers; something of that kind I suppose. I don't know whose name was printed in it—Britton's or Roots's.

Q. In purchasing these witness-claims, you had nothing to do with Britton?—A. Nothing whatever.

Q. Was there any special animosity between the officers of the bank and Britton?—A. There was.

Q. What was that occasioned by?—A. Because the bank would not allow Britton to use the bank and their money, and he tried to break them up. I peremptorily refused to have anything to do with it in any shape whatever, because I knew him to be a very unreliable gentleman.

Q. Was not Mr. Donnelly in the habit of visiting the bank?—A. Not at all. The animosity between Donnelly and the bank was equally as great as between Britton and the bank. I regarded him unreliable in money matters, as I did Britton. I remember one time when Judge Story refused to hold any court because there was no money to pay the witnesses, and Donnelly came over with Judge Story and wanted to make arrangements with Mr. Mitchell, I think, to advance money enough to pay the expenses of the court, and I peremptorily refused to entertain the idea unless they could bring us some security that was acceptable. They promised to give us the rolls, and I would not even entertain that because I did not know whether they would do it or not.

Q. They did not propose to turn over the rolls and take the witness-receipts, as they did on a former occasion?—A. No, sir.

Q. Did the officers of the bank consider it a safe transaction to volunteer to pay those witnesses and take this receipt when there was this state of hostility existing between the bank and the marshal's office?—A. We did not. We held a meeting in the bank in regard to the purchase of these witness-vouchers, and we could well afford to risk $500. We considered it a risk whether we would ever get anything, but thought we could afford to risk $500 and see whether we could make $500 or lose $500, and we took it exactly in that sense.

Q. Was it regarded by them as a good business transaction?—A. It was regarded as a risk in a business transaction, whether we should make or lose. We did not regard it in the light that we regarded the Roots investment, because we knew they were authorized and would be paid.

Q. Do you know that Roots was authorized to issue those certificates?—A. I have always been told so. In the letter that the comptroller wrote to me, he said that the certificates would be paid as soon as the deficiency bill was passed; that he did not authorize Britton to issue any certificates, but that he had furnished him money enough to pay everything, and that he did not want the certificates sold to anybody.

Q. Roots never showed you any authority, did he?—A. No, sir; he never did. Then we considered the character of this, He was considered a man of his word. We had more confidence in him than in Britton. It is well known that Roots's checks never sold for less than 70 to 80 cents, while Britton's, at one time, would not bring 15 cents.

Q. Mr. Marcum asked you in relation to the population of Fort Smith. How long have you been living here?—A. Since 1868. I have been engaged in business all that time.

Q. I will ask you whether business has improved or deteriorated since 1871.—A. Business commenced improving from the time I came here until about 1872, when it reached its maximum. Since then it has been coming down.

Q. It appears from the statement of the Treasurer that, for a period of about three years, from 1871 up to 1874, there was over $750,000 expended here, or drawn out of the Treasury for expenditures in this western district of Arkansas. Can you state from your knowledge of the business whether any such sum as that has been expended here, and put in circulation during those three years?—A. I really could not tell. I know that, during the fall of 1871 and spring of 1872, there was a great deal of money in circulation, more than there ever was before since I have been in business here, and more than there ever has been since. That was during the last six months of 1871 and the first six months of 1872. I attribute that, in a large measure, to the disbursements of the marshal's office and the consequent
travel and traffic that it brought here. People came here from all parts of the country and were paid and spent their money very liberally.

Q. Was not that attributable, to some extent, to the disbursements that were made west of us in the construction of the Missouri, Kansas and Texas Railroad?—A. I do not believe we got a great deal of that. They generally went back toward Saint Louis.

Q. In the latter part of 1872, you recollect, Britton was marshal. Were the expenditures large during any portion of his last administration?—A. I suppose, if he had paid they ought to have been very large. I have been told that he had 260 deputies on his roll. I know the claims for pay were very large, and the number of those who received anything was very small.

Q. Did Roots make any expenditures outside of the business of the office? Did he purchase property or engage in any other business?—A. I do not believe he did. I think he invested $100 in the Episcopal church. In a business way, I know of his making no expenditure.

Q. Don't you know that, prior to 1872, a large number of persons had been attracted to this place as the prospective terminus of the Little Rock and Fort Smith Railroad, which was in process of construction, and that they contributed to the prosperity here?—A. In some measure, but I think very little. From my own knowledge, I believe that the largest part of the access of population was in deputies and witnesses and the consequent want of lodgings, &c.

Q. I know a great many who kept lodging and boarding houses at that time have moved away because many of their customers have gone, and those who remained had nothing to pay with.

Q. In your judgment, has not the manner in which the marshal's office has been conducted here since the court has been here been an injury to the business of this town?—A. If you inquire among the business men of the town nine-tenths of them will say that the administration of Colonel Roots was very beneficial to the town, and that all subsequent administrations hurt the town more than anything else ever did hurt it.

Q. Was Roots's suspension of all payment and putting his paper upon the market a benefit to the town?—A. I think so. Up to certain time he paid everybody; I heard no complaint whatever in talking with people, yet they all had a grateful remembrance of Roots's administration. They all say that his tickets found a very ready market; that even those to whom he owed anything he paid promptly; but that since they cannot sell their certificates for anything, and get nothing for their services.

Q. Is there not a very warm friendship existing between you and Roots?—A. There is now, but was not in those days. There was animosity between us then.

Q. You have been associated together in the bank since then?—A. Yes, sir.

Q. You loaned him plenty of money?—A. Not to him; I lent it to Kerens. To show you how matters were during his term of office, I will merely say that at one time there was a deputy—I believe his name was King—came to my store on a Sunday, with a voucher for $65. He said he had to go over the river and he wanted to sell it for $65. I was not in the store, but my brother was, and he bought the voucher. He first refused, but as King begged so finally gave him $65 for it. On the next day Dick Kerens came into the store and told me that Roots was swearing at me for discounting his vouchers. I did not know anything about his vouchers at all, and, as I said before, did not even know Roots. After inquiring and learning how the voucher had been bought, I immediately went over to Roots's and told him that I did not care what he said about me; I did my business to please myself, and if he didn't like it he could do anything he pleased; if he didn't want to pay that voucher he could let it alone. While I was talking I believe the very man that my brother bought the voucher of stepped in, and I asked him and he told a very pitiful story that I had been shaving his voucher, &c. I called him off and asked him whether this arrangement about his voucher was proposed by me or my brother, or by him, and after a great deal of clawing he at last admitted that he asked for the money.

Q. During the time that he was marshal you established this bank, did you not?—A. Yes, sir; it was the 1st of May we opened, I think. We made application in February, but did not get our papers nor our funds ready until, I believe, the 18th of April.

Q. You were on friendly terms at that time?—A. Yes, sir; I think we became better acquainted and more friendly, commencing about the 1st of January, 1872.

Treasury Department, First Comptroller's Office,
January 25, 1873.

Sir: Your account for official service from July 1 to November 29, 1872, has been adjusted per report No. 39,702, and the sum of $2,154.90 found due to you from the United States, as shown by inclosed copy of Treasury statement. A draft will be duly remitted by the United States Treasurer.

Your account from May 13 to June 30, 1872, cannot be paid until the deficiency in the
appropriation for the expenses of courts for the fiscal year ending June 30, 1872, has been supplied by an act of Congress, which will, doubtless, be done at its present session.

Very respectfully,

E. J. Brooks, Esq.,
United States Commissioner, Fort Smith, Ark.

A true copy:

JAS. O. CHURCHILL,
United States Commissioner.

DEPARTMENT OF JUSTICE,
Washington, May 18, 1873.

GENTLEMEN: I have received your letter of the 10th instant transmitting your account, amounting to $294.35, for clothing, &c., furnished to the United States prisoners in the jail at Fort Smith.

In reply I have to inform you that as soon as a marshal shall have been appointed for the western district of Arkansas he will be directed to pay your account if, upon examination, it shall appear to be correct.

Very respectfully,

GEORGE H. WILLIAMS,
Attorney General.

Dr. J. E. BENNETT, deputy marshal under Britton, sworn, and examined by Duval.

Case of Benjamin Mudeater.

Question. Were you 52 days in endeavoring to arrest this party?—Answer. No, sir. At request of witness I left here December 6, 1872. Changed date at request of witness.

Q. Did you know where defendant was when you left here?—A. No.

Q. Where did you go?—A. I went to Muscogee; thence to Leavenworth, Kansas; thence to Fort Wallace, Kansas, on Kansas Pacific Railroad. There I got a horse and ten soldiers, (cavalry,) and went to the plains in the interior of Kansas, among the buffalo-hunters, where nobody lives. Two of the soldiers got frosted, and I sent them all back on the third or fourth day. I then traveled alone, I think about eight days; came back to Fort Wallace about 25th of December, 1872. I was laid up two days here, and in the mean time I hired J. Mudeater, brother of defendant, and one other person I cannot remember, and sent them out scouting for defendant. They were out two days. On the evening of the 27th of December I received a telegram in reply to one I had sent to Kit Carson, sixty miles west of Fort Wallace, informing me that said defendant, Mudeater, had gotten on a sleeping-car at that point two nights previous and went toward Denver. On the arrival of the cars at Fort Wallace that night about dark, going west, I got the route-agent to conceal me in the mail-car until after the train had passed Kit Carson. I then went back into the cars and presented my ticket to the conductor. I arrived at Denver December 28, about daylight; went to the house of the United States marshall, Colonel Shaffenburg; informed him of my business, and got a letter requesting all officers in town to give me assistance. On my way down from his house I met a man who told me that Mudeater was in town, and probably in jail, as he had been in a fight the evening before. I went to the calaboose and found him there. I left Denver that night and arrived in Leavenworth, I think, the morning of January 1, 1873. I took defendant before a United States commissioner at Leavenworth, who committed him to jail at this point. The defendant was in prison here at Leavenworth, in the county jail, and was sick, until January 24. I started home by way of Saint Louis, reaching Little Rock, from which place I returned via Saint Louis to Leavenworth. In four days after my return to Leavenworth I delivered the prisoner to the United States jailer at Fort Smith. (The original order of removal, from Kansas judge, is filed with the account., as also a disclaimer of fees.) I employed L. P. Converse as a guard at Kansas City, on my way out; perhaps it may have been Leavenworth. Mr. Converse went with me to Fort Wallace, and from that point I sent him alone to Denver. J. D. Taylor was employed by me as a guard at Denver, and came with me in that capacity to Leavenworth. The prisoner was put in the county jail at this point, there being no United States jail. John L. Hall and Thomas Barker were reported to me as having attended the prisoner during his sickness in jail, (by the jailer, I believe,) They did no service under me or by my direction. I think J. D. Taylor came
with me from Leavenworth to Sedalia, Mo., I think, and from this point to Fort Smith was accompanied only by Colonel Schorte, United States special agent for the Post-Office Department. Mr. Converse was not with me at any time during the period in which defendant was in my custody.

Q. You state that you actually paid the $50 for board of prisoner and the $50 medical attendance?—A. Yes, sir. I was in a hurry to get off, and did not stop to consider.

Q. Did the physician present you any evidence that he was actually and necessarily attendance upon prisoner, as charged?—A. No, sir. The bill was presented and I paid it.

Q. How do you arrive at the distance, 1,306 miles, as charged?—A. It is exactly 1,106 miles by the usual public route, and I made a detour of 200 miles, which makes 1,306 miles, as charged on the writ.

Q. This is not the first time Mudeater was arrested on this charge?—A. No, sir.

Q. Had he been arrested, and you were his bail, and the prisoner had forfeited his bond?—A. Yes, sir.

Q. What was the amount of his bail-bond?—A. $2,000 on both bonds, at request of witness, changed the figures.

Q. Were you a deputy marshal at this time, or were you specially commissioned for service in this case?—A. No, sir; I had never been a deputy marshal before, but I was commissioned for general service at this time.

Q. Which of the bonds was forfeited?—A. The one for $500 was forfeited November 19, 1872. On examination, I find that the writ was issued December 6, 1872, instead of November 6, 1872, as charged. It also appears that no return was made on the writs either by me or any one else. I knew nothing about making out returns. I handed my papers into the marshal's office, and the account in duplicate in case vs. Mudeater was handed to me as all correct by J. W. Donelly, I think. I supposed the return on the writ had also been made. I made the affidavit to the account without examining the same, and I was not aware until now of the discrepancy between the date of the writ and the date of the same as given in the account. The affidavit to the account was made May 13, 1873, several months after the service was rendered. This may account for the oversight in not noticing the discrepancy in dates, as I had no papers in relation to the account in my possession.

Q. Did not your motive in going after the defendant arise from the fact that you were the only security on Mudeater's bond, which had been forfeited?—A. That was partly my motive, and partly because I was security on another bond for $1,500, which had not been forfeited, and partly because I wanted to see defendant punished, if guilty.

Q. Did you keep any account of your expenditures on this trip, and how much did it amount to?—A. Yes, sir. It amounted to nearly $500. It cost over $500, but I paid out some money of which I kept no account.

Q. If you had made your account for your personal expenses and for transportation, &c., of prisoner, it would have amounted to more than the mileage, would it not?—A. Yes, sir. I have not received one dollar from any person for my services and expenses in this case.

UNDER SABER.

Case vs. Charlie Janes and One Janes.

I made the arrest without process. The murder or killing was done near Caddo, where I was at the time. I was informed of the killing, and immediately repaired to the spot. Next day I made the arrest in Caddo, Choctaw Nation, I think, 170 miles. That is what it is, 170 miles.

Q. Who were your posses?—A. I do not remember.

Q. Do you remember whether John D. Taylor and Edward Barnes were your posse?—A. I do not.

Q. Do you know John D. Taylor?—A. I know who calls himself that.

Q. Do you recollect such a person on this trip?—A. I recollect of a man calling himself by that name coming in with us.

vs. Ben. Scates.—I arrested defendant without process, because I ascertained he was guilty of violating the law, and that he was attempting to escape justice.

Q. Do you know who were your posses in this case?—A. I can't remember.

Q. Do you remember of having two posses in this case?—A. No, sir. There were thirteen prisoners; myself, C. D. Measles, John Ingle, Lee M. Lemore, Wm. Deveren, and John Kemp alias Jack O. Lane, as deputy marshals, and some posses. We divided the posses in coming in.

vs. Downey Allen.—Fees as charged in the account are correct. Don't remember my posses in this case. Can't say positively that Wm. Johnson was actually engaged 14 days with me in this case.

vs. Geo. Street and Cleveland Dodd.—I arrested defendants without process. I was within a mile from the scene of the killing, and at the instance of the citizens I arrested defend-
ants the same night the killing was done. I telegraphed the information to Fort Gibson for a writ.

_vs._ Frank Fox.—Had a writ for the arrest of this defendant. My son, L. E. Bennett, was my posse, and his account is correct.

_vs._ Henry Killian.—I arrested defendant in the Choctaw Nation, about forty miles from Fort Smith. Balance of account as charged is correct.

Have received some money, but never in full, for my services under him.

J. C. BENNETT.

September 25, 1874.

Wit n ess: W. H. Nessle.

F O RT S M I TH, ARK., September 2, 1874.

Testimony of J. E. Bennett as to the posse account of Leolin Bennett in the case of United States vs. John Dillon.

Sworn, and examined by Mr. Duval:

Question. Did you have a writ for Dillon?—Answer. Yes, sir; and on the 16th of August we started to the Indian country with it. I had no posse with me, except Leolin Bennett. We arrested Dillon at Atoke, in the Choctaw Nation. I see I have charged 140 miles. I think the mail-contractor is allowed 145 miles. I believe 140 is what Captain Churchill has on his list. I went to get the account made out at the office. Marshal Sarber told me it was not worth while to make it out, as the man was released, and that Judge Story had made a ruling that no posses were to be paid where the parties were released. I now make it out nunc pro tune, as the lawyers say, for services performed as therein stated and sworn to, for the full length of time.

Q. That was the only reason given you, that Judge Story had made a ruling that he would not allow a posse account where the prisoner had been discharged by the commissioner?—

A. That in the future he would not.

Q. Whether a writ had been issued for him or not?—A. It did not make any difference, writ or no writ. Sarber stated in as many words that when a party was not held to bail, after being brought in, that no posse account would be allowed; consequently it was not worth while to make it out. I had another prisoner with me on this trip by the name of M. Fox, him and his brother, on the same writ. Deputy Marshal Devine was along. I helped him along with his prisoners.

Q. Was there any posse paid?—A. Not by me. Devine had two posses on that trip. There were five prisoners altogether brought in that trip, and only two posses returned. I was a special deputy.

Q. Did you swear to any other writs at this time?—A. I had other writs, but I don't remember of returning any others.

Q. Did you ever make any other trips beside those two?—A. Yes, sir.

Q. In what case?—A. I went down at the time Dillon was sick in bed and brought up two negroes, for murder, as far as Fort Gibson. One of them was released. George Street was the one I brought here. He is here under indictment.

Q. How many trips did you make in all?—A. I think I made five trips altogether.

Q. Did you get your pay for any of the trips?—A. I got my deputy marshal's pay on the Jaynes trip. I don't know that I have anything more to say in this case. The papers are all right.

F O RT S M I TH, ARK., September 1, 1874.

Testimony of Dr. J. E. Bennett as to posse-accounts of Frank Fox, 20 days' service, October 25 to November 13, 1873, $60; and Hugh Cox, 15 days' service, from 14th to 28th September, $45.

Sworn, examined by Colonel Duval:

I was a special deputy under Sarber. Hugh Cox was arrested in the Choctaw Nation, near the Texas line, about 27 miles beyond Boggy Depot. I think that is about 133 miles from here.

Q. Did you have any other writs on either of these trips?—A. When I brought Fox I brought two murderers as far as Fort Gibson. I brought in Street.
I see that 11 days is charged, endeavoring to arrest, in the Frank Fox case. I had been living at Caddo, but took his goods and ran down to a bend in the Red River, down in the Kiamicbe. I believe that is where I arrested him. Churchill put "near Shaw-stown." He said it was near there. I was actually engaged 11 days in that service. I traveled more miles than I charged for, because I went back and forth three times, I believe.

Q. Who is Leolin Bennett? A. My son. He is seventeen years old; but is, with one exception, the best guard I ever saw. He is always wide awake.

Q. State whether you ever presented this account to the marshal for payment, or whether it has ever been presented by your son or yourself for payment. A. Yes. I presented it to Sarber for payment. He said he did not have the money. I told him I needed the money, and wanted it. He said if I would go and see Judge Story, and get him to approve it, he would O. K. it. I went to Story, and he said he would approve it if Sarber said it was all right, provided I would make an affidavit of the character that you find on the back of the accounts. I made the affidavit before Churchill, and took them to Sarber. In the meantime I found what the O. K. meant; it meant 75 cents on the dollar, and I would not take it.

Q. Explain that more fully. A. When he said "O. K. it," I thought I might get the face of the accounts. But at the bank they told me "O. K." meant 75 cents, instead of 80 cents, as I had been told. I pulled out the vouchers and showed them to P. K. Roots, and showed how they were fixed up with that affidavit a little more fully than it was the custom to fix such vouchers, and asked him if that was all they were worth, and he said 75 cents was all the O. K. was worth.

Q. Was the bank at that time engaged in the purchase of vouchers, or do you know? A. I don't know; I heard they were; I was recommended by somebody about the marshal's office to go there; I don't remember now who it was; I did not charge my mind with it.

Q. I see you state in this affidavit on the writ, as a reason for employing a posse, that you thought he was a dangerous man and had resisted process by drawing a shot-gun on a deputy marshal. Was that on you? A. No, sir; that was Charley Robinson, or some other deputy; it was a long time before that. When I arrested him he did not know me: I arrested him in his own yard; I gave a Spencer rifle to the boy and told him to use it if necessary; I had no other posse on this trip; I had one guard at Caddo; this posse-account was traded off for the face of it in order to get supplies for my family. Leolin was a member of my family and lived with me. Sarber did not O. K. these accounts; I applied to him several times afterward to pay them, every time I heard he had money, but he said he had no money.

Q. What became of your vouchers as deputy marshal in these cases? A. They were paid by Sarber.

FORT SMITH, ARK., September 5, 1874.

Testimony of FLOYD C. BACCOCK, in regard to sundry accounts.

I reside at Fort Gibson, and am a commissioner of the United States district court for the western district of Arkansas.

Case of the United States vs. one Ramsey.

Question. Where does Ramsey live? Answer. He lives between 12 and 20 miles from the Kansas line, in the Cherokee Nation. I could not state the distance exactly from Gibson. There is a way, I believe, to get to his house in about 125 miles. The route that was traveled at the time he was arrested was somewhere in the neighborhood of 150 or 160 miles; he was not arrested at home, however.

Q. Was he arrested at all before he appeared before the commissioner? A. Yes, sir.

Q. Did he not give himself up and give bond before he was arrested and brought before the commissioner at Fort Gibson? A. He slipped away and we followed him into Kansas from his home. The night got to his house, his father seeing us, drove up, gave him warning, and slipped his son away, and we followed him into Kansas. When we got to Kansas we learned that he had taken the route to Gibson; and he went down to Gibson before E. S. Bastine, a commissioner, and gave some sort of bond for his re-appearance. In coming back we met him, I should judge about 30 miles from his home, coming home from another road to avoid us in getting back, and we, knowing nothing of his bond, the writ was read to him.

Q. Did you take him into custody? A. No, sir; he showed me his certificate from Bastine, and being bonded, he was not taken into custody.

Q. You did not bring him at all to Fort Gibson? A. No; we did not bring him there, but he came in afterward. His bondsman gave him up and we held him there some time.
Q. How long were you endeavoring to arrest him? — A. I could not state at this time.

Q. This account is for twelve days in endeavoring to arrest him? — A. I went for him three times, and his father slipped him off every time.

Q. There is a charge here of actual expenses of eleven days' feeding prisoners, from December 14 to 24, inclusive; is that correct? — A. I don't remember the days now, but I think it is correct, if it is so returned.

Q. You state that you did not arrest him? — A. But I stated that afterward his bondsmen gave him up, and we took him in charge before he was examined before the commissioner.

Q. Where did the bondsmen give him up? — A. At Fort Gibson, I believe.

Q. This account states that he was arrested in the Cherokee Nation on the 14th December, 1872; what does that refer to? — A. That refers to the service of the writ upon him at the time we were after him.

Q. At that time you did not take him into custody? — A. Not that day.

Q. You did not keep him in custody from that day, and did not furnish him with any meals or subsistence at that time, did you? — A. No, sir; not at that day, I believe.

Q. How long afterward was it before his bondsmen surrendered him? — A. It seems to me it was the next day. His bondsmen lived near Gibson, and as soon as they heard the way he acted, he voluntarily surrendered to them, and they came in and gave him up; and we went after him again when they gave him up.

Q. Did they bring him in and surrender him? — A. No: they came in to the commissioner and wanted to give up the bond.

Q. You charge here 225 miles; did you go that distance from Gibson in one day? — A. No, sir; it took at least three or four days; we traveled on horseback. But you understand that 225 miles is from Fort Smith, not Fort Gibson.

Q. The writ was issued at Gibson? — A. No, sir; I think not. I don't remember as to that. My impression is that it was issued at Fort Smith.

Q. It says here, "Issued by E. S. Bastine, at Fort Gibson." — A. I will say that that was the first prisoner I ever arrested, and my writs I turned over to Mr. Donnelly and told him what I had done, and asked him to show me; and I believe he did make the returns for me. He told me we were entitled to mileage to Fort Smith on prisoners taken in that way; and the mileage was put in in that way, because we went out of here and returned them here.

Q. Was he committed to jail by Bastine? — A. No: he was not committed to jail. I think he was discharged, if my memory serves me right, on examination before Bastine.

Q. According to your statement, this account is bound to be incorrect, the way it is stated. — A. That is the way it was done. The distance is calculated from Fort Smith.

Q. There is this item, "Twelve days endeavoring to arrest." — A. That is correct; at least we were after him longer than that; that is what we returned.

Q. You charge the 225 mileage from the place of arrest to Fort Smith? — A. Yes, sir.

Q. The distance from Fort Smith to Fort Gibson is estimated to be 75 miles, is it not? — A. 75 or 80.

Q. This item of actual expenses, eleven days' feeding prisoners, December 14 to 24 inclusive; what do you say to that? — A. I think the return is correct. He was taken into custody immediately after the writ was served; not more than a day or two afterward, I think.

Q. You say that the service of December 14 was the service you made when you read the writ to him and did not take him into custody; yet this item of feeding commences on that very day. — A. I must confess that this return—I was ignorant of what was due a marshal at that time; if it is made out wrong, it is a mistake of Donnelly's. He might have made that out without asking us in relation to those eleven days of feeding. I never noticed that. In fact, on all my writs the fees were indorsed by Donnelly, I think.

**Case of United States vs. John Warford.**

Q. Where did you arrest Warford? — A. We arrested him on the Verdigris River; no particular locality; it was in the neighborhood of what they call the McCook neighborhood. I don't know that I could state how far it is from Fort Gibson. I usually charged my mileage by the number of days it took me to ride the distance.

Q. Did you arrest him on the same trip that you arrested Ramsey? — A. Yes, sir.

Q. You charged mileage on both those writs? The arrest of Ramsay purports to have been made on the 14th December. — A. I don't remember whether they were made at the same time or not. I don't think they were arrested at the same time; I could not say; I don't remember now.

Q. Here is a charge of five days' feeding prisoners—December 29 to January 2. Do you know how long you had that prisoner in charge? — A. I had him long enough to bring him to Fort Smith for examination before Mr. Churchill.

Q. You charge mileage 200 miles returning, and you only charge 125 miles going. How does that happen? — A. Perhaps the writ was issued by Bastine, at Gibson.

Q. No; it was issued by Churchill. — A. I couldn't say how that comes. There must be some mistake. Certainly the distance is more than 125 miles from Fort Smith. The 200 miles from here is correct, as near as I can remember now.
Q. The writ in this case was issued by Churchill, and executed on the 3d day of January. Do you remember where you arrested Chambers ?—A. He was arrested between Minerva Thornton's and Muskogee, on the road.

Q. The charge here is 40 miles. Is that about right?—A. I should judge it was.

Q. Actual expenses of feeding prisoner from 3d to 6th January, four days; how do you account for that?—A. We left Fort Smith the same day the writ was issued, and rode hard, and met him on the road that evening, and took him in charge and brought him to Minerva Thornton's. There we were weather-bound, and staid there some two days. He was riding then as posse for some one, I believe. We actually took him into custody and guarded him here.

Q. I see a charge here for returning prisoner, one guard, John Anderson, and deputy, forty miles each; you had a posse along also?—A. The reason of that was, John Anderson was a witness that was along with James Chambers, and also had a prisoner in his charge; we took charge of his prisoner. That was the direction we had from the marshal when we went out—if he had any prisoners, to take them in charge, and consequently we turned this witness into a guard to bring him in.

Q. Do you know whether he got pay as a witness?—A. I don't think he did.

Q. What case was he a witness in?—A. I don't know. I paid him as a guard.

Q. Was he not a witness before the grand jury?—A. I don't know; I think not at that time. I believe the grand jury was not in session at that time.

Q. He is returned on your accounts as a witness before the grand jury, served on the 31st of January. How many prisoners did Anderson have in charge?—A. He had none in charge. Chambers, the man we arrested, had one or two prisoners, I think; I don't recollect which. He had no commission either; he was out as a posse, I presume.

Q. Did you make any return of his prisoner?—A. No, sir.

Q. That is all the explanation you have to make in regard to how Anderson came to be employed?—A. Yes, sir.

Q. Was he not accompanying Chambers at that time?—A. That was my impression, that he was coming as a witness, but I don't know. I turned him simply into a day-guard, not as a posse, and paid him out of my own pocket.

Q. You drew four dollars for his mileage?—A. How is that possible?—Q. You charge here "mileage one guard, John Anderson, and one deputy, forty miles each," at ten cents a mile; that would be four dollars for him and each of you. I suppose it has never been paid yet?—A. No; not to my knowledge.

Q. Did you have a posse along with you at that time?—A. I think Mr. Lacy was with me at that time. I never had but one regular posse. It was no intention of mine that Mr. Anderson should be returned as a posse, simply as a guard.

Q. That is so; but you charge here four dollars for his mileage?—A. If it is wrong it is a mistake of Mr. Donnelly's.

Q. The writ in this case was issued by Bastine at Gibson, and served on the 10th of January, 1873. Do you remember where you arrested him?—A. The precise locality I could not give. He was scouting. We found him in the bottom with his horse, when we arrested him. It was near or beyond Chouteau Station, I should judge in the neighborhood of sixty miles from Fort Gibson.

Q. Here is a charge of actual expenses, feeding prisoner eight days.—A. He was brought to Fort Smith and committed to jail.

Q. Are you sure that he was brought to Fort Smith?—A. Yes; I know that he was.

Q. The mileage is charged at eighty miles?—A. That is eighty miles both ways.

Q. No; eighty miles going and eighty miles returning. Is that mileage going charged from here or from Fort Gibson?—A. I think it is calculated from Fort Smith. Donnelly told me that we were not allowed to charge more coming back than going, so he averaged the mileage, I remember. He allowed us eighty miles both ways. The writ was issued, I believe, at Fort Gibson.

Q. You arrested the prisoner sixty miles from Fort Gibson and then brought him from Gibson here after he was committed; how was it that they allowed you only eighty miles?—A. He averaged the mileage; I expect that is the way he did it. He didn't allow us the full distance in going.

Q. Then the charge of mileage is not correct?—A. It is correct as far as the average is concerned. He did not allow me as much as he should have allowed me. Since that time I believe they have been allowed a per diem for bringing prisoners down. At that time there was no such regulation, and Donnelly said he did not know how to fix it unless he averaged the distance in that way.

Q. How did it happen that you were three days before the commissioner?—A. I believe they were waiting for witnesses.
Q. Did the witness reside in the neighborhood of where you arrested this man?—A. No, sir; some almost opposite, I believe. This man resided at a water-tank on the railroad, and was in the employ of the railroad.

Q. "Transportation of prisoners from Fort Smith to Fort Gibson, 75 miles, at 70 cents a mile, $7.50; same for Babcock, $7.50; certificate to writ and commitment to jail 20th January, $2.50;" do you know anything about those charges?—A. I do not, I am sure. It must be that he has allowed the coming from Fort Gibson. Eighty miles is the distance from Gibson to the place where he was arrested. We traveled night and day, I think, for two nights and one day.

Q. In whose handwriting is that account made out?—A. I think it is Mr. Donnelly's; either in his or his clerk's, Mr. White.

United States vs. Billy Rider and Thomas Bevert et al.

Q. Only one of these parties was arrested, I believe. Where did you arrest him?—A. I don't recollect the place of service. I remember that one of the parties was caught and one got away. It seems to me it was close to Fort Gibson. I think we got him in the Arkansas bottom, if my recollection serves me right—some 30 miles, I think, from Gibson.

Q. What was done with him?—A. I don't recollect whether he was bound over or not. Bevert appears to have been arrested on the 31st of January; do you know where you arrested him?—A. No, sir; I could not say now.

Q. Didn't you arrest him right there at Fort Gibson?—A. No, sir; I don't think that I ever did arrest a man in Fort Gibson.

Q. Very near there; so near as not to charge mileage upon it?—A. Perhaps so; I don't know.

Q. Here is "ten days endeavoring to arrest."—A. We first got one of them and the other slipped us, and I had forgotten that we got the other one.

Q. Do you know whether you were ten days hunting the other?—A. I remember we were hunting him some time.

Q. Here is an item for "discharging the defendant." Where did you get authority for charging for discharging a prisoner?—A. I never charged anything that I know of. I am not responsible for that.

Q. It is supposed to be sworn to by you before Churchill, the clerk of the district court. —A. It is not in my handwriting, and I could not explain it at all.

Q. I suppose the service of these grand-jury subpoenas on John Wood and John Anderson are all correct?—A. Yes, sir.

United States vs. Robert French, assault with intent to kill.

Q. Do you remember anything of that case?—A. Yes, sir; there was a fellow that I hunted for some length of time. He was one of the greatest scouts we had in the Cherokee Nation. We had two or three cases pending against him. I went to his place of scouting several times, and twice made arrangements with his friends that he should give up to me, and at last appeared a note from Bastine that he could give a bond in Fort Gibson, and then I succeeded in getting him.

Q. How far from Fort Gibson did you arrest him? Did he not give himself up?—A. He gave himself up in that way. He gave up to me at a point where he made his headquarters, beyond Vinita, somewhere in the neighborhood of Horse Creek.

Q. At whose house did he give up?—A. Not at any house.

Q. Did he not give himself up at Shoemaker's?—A. After he had had the service, I believe, from me, and given bond, I think Mr. Shoemaker took him somewhere.

Q. Was he not discharged by the commissioner?—A. No, sir; he gave bond in my case, I am sure. I know that both cases came close together, and he gave bond in one and in the other he was discharged.

Q. Who had him in the other case?—A. I think the other was a liquor-case. I think Mr. Shoemaker had the other writ for him.

Q. Is not this mileage of 75 miles on the writ constructive mileage from Fort Gibson to this place?—A. I cannot say. I don't recollect what mileage I did charge on that writ. I may state here that I only constructively arrested the man. The writ was never served upon him at all until he got to Gibson; but, constructively, I arrested him at his rendezvous.

Q. You did that by letter?—A. No, sir; I was there and made arrangements for him to come down with another party at my expense.

Q. Is that seventy-five miles charged from Fort Gibson to the place of arrest?—A. I couldn't say; I expect not; I expect it is from Gibson to this place; it is about that distance.

Q. You never brought the prisoner here to Fort Smith, did you?—A. No, sir; he gave bond, I think, in my case.

Q. He was taken before Bastine, at Fort Gibson?—A. Yes, sir; and either gave bond or was discharged, I don't recollect which.
Q. This charge of mileage of seventy-five miles returning prisoner and deputy is correct? — A. That is so.

Q. Was that made out for you in the office? — A. I have never made out any writs, at least if I have I have made them out under the advice of the clerk in the office, stating the circumstances; at that time I knew nothing of what mileage a deputy was allowed, or what fees. Afterward I instructed myself in that matter. But I supposed he was correct. I swore to my accounts as they were given to me by that clerk.

United States vs. Joseph S. Moore, for larceny.

Q. Do you remember anything of that case? — A. Yes, sir; he was arrested on Pryor's Creek, between sixty and eighty miles from Fort Gibson.

Q. I see a charge here of forty-five miles. — A. May be it is given forty-five miles there, but the distance, as I know it now, is at least fifty miles. I went by other people's mileage in most cases.

Q. “Two days' feeding prisoner.” Did you have him in custody two days? — A. Yes, sir.

Q. What was done with him? — A. He was bound over.

Q. Did you have warrants for all these parties we have been speaking about, or did you make the arrest and afterward get out the warrant? — A. I had the warrants.

United States vs. Alfred Aspen.

Q. Do you remember that case? — A. Yes, sir; he was arrested on the line of the railroad. His business was selling liquor to the railroad-hands.

Q. Do you know how far it was from Fort Gibson? — A. He was arrested between two sections on the railroad. It seems to me one section was at North Fork, and the other below, in the Creek Nation.

Q. Here is 100 miles of travel, at six cents; is that correct? — A. No, sir; I don't think it is. I don't think I went any 100 miles from Fort Gibson. I should not judge the distance was more than sixty miles from Gibson. Bastine was away when we brought him in, and he was brought before Churchill, at this place.

Q. Here is “ten days' feeding prisoners.” How do you account for that length of time in feeding the prisoner, when it was only 100 miles mileage? — A. It was more than 100 miles, taking it from Fort Smith to where he was caught. It must have been at least 150 miles from Fort Smith to where he was arrested.

Q. Is that the way you account for that? — A. I expect that was averaged; I don't recollect. The writ was issued at Fort Gibson, and the prisoner was brought to Fort Smith for examination. Under the ruling of the Department a deputy was not allowed to return more miles than he went.

Q. They did not follow the law? — A. I don't know.

Q. The law says the mileage shall be estimated from the place where the arrest is made to the place where the writ is issued. — A. I don't think the law makes that discrimination; I think that is merely a ruling of the Department. That is what he told me at the time. I know there was a talk as to how this should be fixed. I cannot explain the delay. It might have been before the commissioner; I cannot recollect.

Q. When you brought a prisoner before the commissioner here, did you commit him to jail or did you hold him for examination? — A. At that time we were not allowed to put him in jail until after examination.

Q. Then you charged the Government for feeding the prisoner pending the examination? — A. I don't know; I say that might have been the case. I know there was such an order, that they would not receive a prisoner in jail without an order of a commissioner.

Q. I see you charge “one day before commissioner.” — A. That would make one day here. Then it was from some other cause that he was held; I don't remember now.

Q. Do you remember what disposition was made of Aspen? — A. He was bound over, if I recollect right.

United States vs. Eugene Triplett.

Q. Where was Triplett arrested? — A. It is my impression that he was arrested in Muskogee; that, I believe, is eighty-five miles from here.

Q. Did he not make his borne in Muskogee? — A. I don't know; I did not know him at that time. He has since made his home at Fort Gibson.

Q. You charge 14 days endeavoring to arrest him. What efforts did you make to arrest him that it took 14 days to do it? — A. I don't remember now what the course was in relation to him.

Q. Were you actually employed 14 days in hunting for him? — A. I suppose I was; the exact recollection of the case does not occur to me now.

Q. You found him living at Muskogee? — A. I don't know whether I did or not; it has almost entirely slipped my mind.
Q. Where did your posse, T. E. Lacy, live at that time?—A. He lived on the railroad over near Muskogee, I believe; at least he pretended to live there.

Q. Did you arrest Triplett yourself, or did Lacy arrest him?—A. We both went together, if I recollect right. We hardly ever went separate in our arrests.

Q. Was it not customary when you got a writ and subsequently made an arrest on it to charge all your per diem from the time the writ came into your hands until you made the arrest?—A. No, sir, it was not, unless I spent the time in some manner, either in looking for the man or riding after him—in such a way as that.

Q. Did you make inquiry for this man Triplett anywhere else except where you found him?—A. Yes; he was inquired after.

Q. Where did you go to inquire after him?—A. I could not state now. The writ was given to me to serve, and the locality where he was supposed to be was not the locality given. There was a pencil-mark on the writ, I think, when given to me, stating where we would find him, but we did not find him there.

Q. You have no recollection of going anywhere else, except to Muskogee, to hunt for him?—A. I don't know that I did.

Q. Where were you making your home at that time?—A. Fort Gibson was the point called my home at that time.

Q. How far is that from Muskogee?—A. About ten miles.

Q. Were you frequently in Muskogee?—A. No, sir.

Q. You were there occasionally, I suppose?—A. I suppose I was there once in a while.

Q. There is no penciling on this writ. It seems to be a duplicate at the request of the marshal. In making up this charge for per diem, how was it estimated? Did you only charge for the actual time you were engaged in searching for the man, or did you make a sort of a liberal charge in your own favor, that you had a right to charge enough to cover the time that you had the writ in your possession?—A. In all my cases when I had a writ, I generally made it my business to look for that man, before I took up any other case, until I found him.

Q. Can you state now from your memory about how long you had Lacy in your employ-ment as posse?—A. He was with me all the time after I commenced riding, with the exception of some eight or ten days, I think it was, that he was detained before the grand jury here in Fort Smith. The time he commenced with me must have been about the time Whitney came to Fort Smith, I think. All the accounts I have spoken of belong to me, and they are held by Mr. McLoud as collateral.

FORT SMITH, ARK., October 3, 1874.

J. F. BETHEL, deputy marshal, sworn and examined.

In the matter of the posse-account of M. W. McInturff for eight days' service as posse, from November 7 to 14, 1872, $24, and another account of same person for ten days' service as posse, from October 23 to November 2, 1872, $30, the property of Samuel McLoud.

Case against Ross.—McInturff was my posse. He went with me from this place. I had a writ; arrested Ross at Talequah. I suppose we were out ten days. I certified the posse-account of McInturff. I heard McInturff say that he had left the account with McLoud for collection.

Case against Sol. Foster.—McInturff was with me as posse. I arrested Foster near Fort Gibson. McInturff went from here with me. I had a writ for defendant when I left here. I never returned any other posse in any case. I had a man with me once by the name of Benham, but we done no business, and I made no return. I live twelve miles from here, with Joe Coody, Cherokee Nation.

J. F. BETHEL.

CASES.

JACOB BAER, deputy marshal, sworn and examined September 28, 1874.

UNDER LOGAN H. ROOTS.

Case vs. Wm. Porter.—The name signed to return on the writ is my signature. I arrested defendant in Cherokee Nation, one day's travel from Fort Smith, on the Gibson road. May have signed the deputy voucher, but do not recognize it fully as my genuine signature. Do not recollect the guards as named in the account.

vs. Wm. Walker, contempt.—I think the fees, as charged, are correct. I went to Van Buren after defendant.

vs. C. N. Seavell.—Fees as charged are correct. I had quite a time with him.

vs. Loran Williams, larceny.—Do you remember where you arrested defendant?—Yes.
Where at?—Somewhere between Cherokee town and Fort Sill. Distance from Fort Smith to Cherokee town is about 220 miles; from there to Fort Sill 65 miles. Do you know where Williams's home is?—No. Who were your posse in this case; do you remember?—No; unless I refer to the papers. [Posse-voucher of W. Nichols in this case was shown, and witness identified the signature of Nichols as genuine; thinks he has the posse-account.] Do you have any recollection of having W. Nichols and H. H. Smith with you as posse in this case?—I have a recollection of having two men with me, but do not recollect their names. I think Lee McLemore was with me as a deputy marshal on this trip. [Items as charged in the account were here read over to witness, who states they are all correct.]

Q. It appears that in the account, case vs. Wm. Porter, you charge for a full day feeding a prisoner on the 5th day of June. In this account you charge for same day endeavoring to arrest Loran Williams; how do you account for this?—A. The only way I account for this is that the clerk in the office may have made a mistake in making up the account, as they kept the time.

Q. Is the signature to the return on the writ your genuine signature?—A. It doesn't look like it. I think I had a writ for Williams before I started out.

vs. Charles Choate.—Where did you arrest defendant?—A. I think in the Creek Nation. I don't know how far from Fort Smith. I think about 200 miles. I don't remember what posse I had with me. Generally took two posse with me. I think I had two on this trip. I think I had Nichols (W.) with me. I know David Barnett. He lived in Choctaw Nation at that time, above McCallister's, and worked for Jim McCallister before that. I employed him at Fort Smith; he came down the trip before, not as posse, but to get to be a posse; he came from McCallister's. I am certain I had Barnett with me as a posse.

Q. Why do you change your posse in every case?—A. We generally take those who make information in the case. I don't have any recollection of C. A. Jones; I have recollection of the case against Choate.

(My account as bailiff, or crier, rather, from May 8 to June 3, 1871, §48, is correct.)

vs. Ben Seminole.

Q. Do you remember this case?—A. Yes.

Q. Where was defendant arrested?—A. In the southern part of Chickasaw Nation.

Q. Wasn't he in jail at Tishomingo?—A. No.

Q. Who did you have as posse on this occasion?—A. We had several; I don't remember who.

Q. What deputy marshal was with you?—A. Lee McLemore.

(Witness was here shown three posse-accounts for $90 each in this case: one for Eugene Merchant, October 1 to October 30, 1871; one for Windeline Nickle, same period, and one for R. S. Roberts, for same period, and his signature to the certificates to the posse-vouchers are pronounced by him to be genuine, and that they were each and every one of them with him as posse the number of days charged; so witness states under oath.

Q. Do you know that Colonel Roots established a rule in his office that only one posse should be employed in any one case?—A. No. If such rule was established it was not communicated to me.

Q. Do you remember any special circumstance, rendering it necessary to employ three posses in this case?—A. No, I do not.

vs. Mathias Russell.—I have examined the posse-accounts of William McKinzie and Windeline Nickle, for services as posse in this case, and pronounce my signature thereon to be genuine. I remember W. Nickle, but have no recollection of William McKinzie.

vs. One Merritt, one Harrison, one Chum, Henry Vormar, and Jack Gardner.

Q. Is this account correct? (Looks at voucher.)—A. Yes, sir; it is correct as charged.

Q. Look at the posse accounts, and see if they are correct.—A. Yes, sir; these accounts are correct as charged, viz: Thomas Maxwell, Joseph H. Harrison, and Z. T. Taylor, seventeen days' service as posse, in case vs. Chum et al., from March 12 to 28, 1872, §51 each.

Q. Do you remember whether you arrested any other persons except Chum and others, on this trip, viz: one Chum, one Merritt, Henry Vormar, et al.?—A. No, sir, I do not. The signatures to posse-vouchers, as first stated above, are my genuine signatures, and I had them with me. I do not know where any of the persons named first above reside.

vs. Dr. Haley.—(The posse-accounts in this case were here shown to witness, viz: A. S. Williams and J. E. Ellington, for thirty days' service as posse in this case, from January 30 to February 28, 1872.)—I pronounce my name to these posse-accounts to be my genuine signature, and I had them with me; I do not know where they live. Wherever my name is signed to an account and the signature is genuine, the account is correct. Deputy Tywman went out on this trip with me, but did not return with me.

vs. William Coleman, P. T. Travel, and one Scott.—I have seen the account as charged by
Roots, and I pronounce the same to be genuine. Joseph Thomas, Lee T. Polk, and Samuel E. Hunter, are posses.

Q. Where did they live at that time?—A. No particular place.

Q. Where do they live now?—A. I don’t know.

vs. Jack Cutchey, larceny.—W. W. Blanton is charged as posse. (Items as charged in the account were here read over to witness, and he states that they are correct.)

Q. Do you remember who was your posse?—A. No, sir; but the account of W. W. Blanton is correct. Don’t know where Blanton resided at the time I employed him. Don’t know where he lives now. I employed him at Fort Smith. He was a white man. I had a warrant a long time for defendant.

vs. R. A. Zachariah.—(Items as charged in the account by Roots were here read over to the witness, who pronounces the account correct.)

Q. Did you arrest Healey, Cutchey, and R. A. Zachariah all the same time or on the same day?—A. Either myself or posse did, if it is so stated in the account.

vs. John Conway and H. H. Fellers, K. K. K.

Q. Did you have any guards in the arrest of these men?—A. Yes, I think I did—two or three.

Q. Is this (showing posse-voucher) the genuine signature of Blanton?—A. I don’t know.

Q. Can you name any point in the Chickasaw Nation, which by the ordinary traveled route is 420 miles from Fort Smith?—A. I don’t know; I can’t name any place. In charging mileage, if I went to the northwestern part of the nation for a prisoner or criminal and did not find him there, and then went to the northeastern portion of the same nation and found the defendant, I would charge all the miles traveled viz, from Fort Smith to the northwestern and from northwestern to northeastern portions of the nation.

Q. How does it come that you charge the same travel returning?—A. Sometimes we had to go back the same way we came—though not generally.

General character.

Q. Was there more than one man named Foley who traveled with you as posse?—A. No sir, not to my knowledge. I think he resides at Little Rock, cutting lumber.

JACOB BAER.

W. H. NESSLE.

Colonel Duval declined to interrogate further.

JACOB BAER sworn and examined.

In the matter of two posse-accounts, as follows:
Lee P. Polk, for 31 days’ service from October 5 to November 4, 1872. Jacob Baer, deputy marshal.

Case against Wm. Brown, Charles Brown, and John Dansley $93, and William Gallo­way for like services in same case, $93.

The two accounts as above were here shown to witness by Mr. Marcum, attorney, and witness pronounces them to be correct as charged.

My signatures to the accounts are genuine. I picked these men up along the railroad. I don’t know where they lived.

Q. During the years 1871, 1872, and spring of 1873, were there not a great many transient men residing here?—A. Yes, sir; and a great many were riding as deputy marshals’ posses.

H. Ex. 175—5
By D.:

Q. Do you know where either of these parties are now? — A. No, sir.
Q. When did you last hear of Lee P. Polk? — A. I think that was the last trip he made with me. Never seen him write. The account was made out in the office. Both the above men were with me as posses in this case. I arrested defendants in extreme southwestern part of the Chickasaw Nation. I did not arrest them at their homes. They were part Indian and part negro.

Q. Were you here at the election of 1872? — A. Yes, sir.
Q. How long before? — A. I don't know. It couldn't have been long.
Q. Did you have any more prisoners than these three on this trip? — A. No, sir.

WITNESS: W. H. NESSLER.

FORT SMITH, August 26, 1874.

Testimony of JACOB BAER, as to a check signed " W. A. Britton, marshal, by Donnelly," dated November 22, 1872, issued to JACOB BAER, deputy marshal, for $84, for services rendered; said check being in the possession of Mr. Devenger.

Sworn.

By Mr. DUVAL:

I was at this time, and prior thereto, a deputy of Britton, who was then marshal, and this check was issued to me in part payment of the amount due me for services rendered prior to that time. I don't know what case the services were rendered in. They kept a running account with me at the marshal's office. All the money I ever got from Britton's office, I got on a surrender of checks like this issued to me for services. I think that I either gave Tandy Walker this check, or got an order myself and gave it to him. I think I was out at the time, and he came over and went to the office and got the check, or I may have written an order in the court-room and sent him over; I don't remember. I can say that this check has never been paid to me or allowed to me in any settlement. Some of those checks belong to me now; I gave them to Mr. Whitney when he was here. I think there is a balance of some $200 or $300 still due me from Britton. I have never had any settlement with Britton. I don't know whether this account is charged to me or not; I can't swear positively.

Q. Have you turned in to Britton such vouchers as he could use in settlement with the Government? — A. Yes, sir; whenever I got through with making returns, I turned over all the vouchers and got credit for the amount, and took checks, such as I could use at the time, and left the balance standing to my credit. The vouchers for which that ticket has been issued were turned over before the date of that ticket. This was drawn upon a general balance which stood to my credit there for services rendered.

Q. Were you a deputy marshal in 1872? — A. Yes, sir.
Q. Do you know a deputy by the name of J. H. Monroe? — A. No, sir.
Q. Was Walker ever arrested more than once on a charge of an assault with intent to kill? — A. I don't know.
Q. Do you know Gideon S. Monks? — A. No, sir.
Q. Do you think that Johnson brought Tandy Walker down? — A. I think so, in the fall of 1871; it was cold when Tandy was arrested.
Q. Do you know a deputy by the name of A. Holt? — A. No, sir.
prisoners, which verbal offer I accepted. This arrangement was made about the time of
the senatorial election. My impression is that the bills of Wolf & Loeb were made out in
my name, and I paid them out of what I considered my own money. I obtained the money
from the marshal. I drew on him for about $4,000, out of which I paid the wood bills,
clothing bills, drug bills, guard bills, &c., &c. I furnished Wolf & Loeb's bill, receipted,
to Sarber, and it is in his possession. These bills were left in the jailer's office with the balance
of my receipts. When I quit for good some of them could not be found. I don't think I have
any of Wolf & Loeb's bills in my possession. I think they are all in Sarber's office. My im­
pression is that the amount of the first bill purchased was $800. The clothing purchased by
me was charged by me to John N. Sarber, United States marshal, and was issued by me to the
prisoners, and a list of the articles issued was furnished to the marshal. This was done under
his direction. The items of issue were furnished to Sarber and he made up the account. At
the time Sarber came here the marshal's office had no money or credit. The understanding
was that if I advanced money to him to make purchases for the jail I was to have a liberal
commission allowed to me on my purchases. The value of clothing issued between May 1
and June 30, 1873, as represented by the accounts, I cannot state. My impression is that
there were no more bills for clothing subsequent to the one in my name. My impression is
that of the clothing purchased of Wolf & Loeb some remained on hand at the end of the
quarter ending 30th June, 1873. I think a small amount of clothing was issued to Lydia
Martin, and also some to Buck Rabbit. I do not know whether the amount of clothing is­
sued to them was or was not retained or deducted from their pay as witnesses.
I have frequently receipted to Sarber for sums of money on bills presented to him, which
sums of money had not been received in full, and Sarber would send the account on to
Washington; at least he so informed me.
My impression is that a certain percentage was added on to the clothing purchased, but
the amount fixed by Sarber I cannot state. Sarber did not pay my bill for feeding prisoners
in full. He retained from a fourth to a third of each account, stating that if at any time
he could pay more he would do so. In our arrangement I agreed to give him what other
deputy marshals were giving him—about ten per cent. He did not know whether he could
pay me all or not. In my settlement with Sarber for these accounts, he has retained the ten
per cent. I won't state this positively, however. I still claim that he is indebted to me on
divers accounts.
I charged to Sarber, for the bill of clothing purchased from Wolf & Loeb, more than I
paid for the same. I made out my bill at what I thought I ought to have for my commis­sions.
[The account for wood from May 7 to June 30, amounting to $40, and the account for
wood from July 1 to 31, $20, were here shown witness, who states that they are correct.
There was no wood used by me for cooking that was charged to the jail.]

FORT SMITH, ARK. December 19, 1874.

The examination of CHARLES E. BERRY resumed at his instance and request:

Wolf & Loeb's clothing bill, as rendered by them, was $800. I paid them for the clothing
$805.45, which they agreed to take in full. The voucher for the clothing issued and sundries
amounted to $792.00. Sarber has me charged on his books with the whole amount
of $792.00, and I have received that amount in money from the marshal, J. N. Sarber, which
would be $177.25 more than I paid to Wolf & Loeb. I think, however, there should be
allowed me $39 paid by me for clothing which was issued but not covered by a voucher.
This should stand as a credit in my favor from the $177, if that amount should be disal­
lowed.

I furnished more wood than appears in the vouchers. The accounts for fuel were made
out in the marshal's office, and the prices were increased and the number of cords of wood
decreased; as the amount was the same, I made no complaint or objection to this mode of
making out the account. I do not understand why this was done and the accounts made in
this manner.

I furnished, for the sick in the hospital, by direction of Dr. Pearce, the physician in
charge, food of a different and more costly kind than that fed to the other prisoners. This
food consisted of chickens, cheese, and other delicacies, which cost me considerably more
than I have charged in an account which I have made out and will present.

The well at the prison would not furnish sufficient water for the use of the jail at the times
when the accounts show a charge for water. A large supply of water was necessary for
washing and cleansing purposes on sanitary grounds by direction of the physician in charge.
I actually paid out the amount charged for water furnished, as appears in the vouchers.

Since the above was taken I have examined the copy of the voucher and sundries issued
to the prisoners in jail; the items for coal-oil, water-buckets, brooms, and lime were not pur­
chased of Wolf & Loeb. The amount of them, that is $39 should not be included or esti­
mated in the profit above mentioned of $177.

CHAS. E. BERRY.
HELENA, ARK., October 23, 1874.

C. F. Babcock, late deputy marshal, sworn and examined.

By Duval:

"B" 43,368, part 1; voucher No. 1 to abstract 4.

The mileage in all cases in this voucher is charged by river routes, and is computed in accordance with the table of distances in the clerk's office of the United States district court. Cases vs. Samuel Cooper, vs. George Cooper and James Anderson, all charged with illicit distilling. Writs issued by Commissioner Tisdale, at Helena, and executed in Izard County all the guards in the cases were witnesses.

I went to Izard County to serve grand-jury subpoenas. While there I learned of a distillery being in operation in that vicinity. I went to this distillery and looked around some, and after learning that the same was being run in violation of law, I returned to Helena with my witnesses summoned for the grand jury, at which place a warrant for George Cooper was sworn out by S. S. Prater, I think, and on consultation with Britton, and I think with Judge Story, I swore out a writ for Samuel Cooper and James Anderson who were in the distillery at the time I was there. I went to Izard County and arrested the parties. The writ was returnable before Commissioner Tisdale, but the examination was had by Commissioner W. H. Rosa, at Batesville. Samuel Cooper was discharged and the other two were bound over.

In no case where I have made service on parties charged with contempt have I received any pay for such service.

[The voucher or account presented to B. T. Duval for his examination, amounting to $565.18 for services under Britton, was here shown to witness, who states that the mileage is computed by river routes based on tables of distances on file in the clerk's office.] I cannot say whether I made the trips by water or not. One trip I went around by Memphis. I think I made four trips to the northern part of the State—one by Clarendon, one by way of Memphis, and two by way of White River. Fees in this account have never been paid to me.

My residence is Helena, Ark. Am twenty-six years of age, and am deputy sheriff of this county. Have resided in Helena four years and nine months. Was a deputy under Britton only. I was deputy under Britton from September 7, 1872, to the date of his removal in May, 1873. I never had charge of the office here.

Mr. Britton gave a commission to W. A. E. Tisdale, clerk of the district court, to ride a deputy marshal. I know of him bringing one prisoner in under arrest. I think he went under the name of Alvin Tisdale when acting as deputy. He is generally spoken of as Will, or Major Tisdale—not Alvin. I think I have employed special deputies one or two occasions and sent them out to serve subpoenas, and I made the returns, although I did not actually perform the service, in the case against James Coker in the account presented to you. I did not serve the subena on Leroy Rose, nor did I actually travel six hundred and nine miles, as charged. Mr. Duffey actually performed the travel from Batesville up to Marion County. I was in Batesville and gave the subpoena to Mr. Duffey there.

C. F. BABCOCK.

The amount received by me for services as deputy marshal under Britton is stated in the paper herewith filed marked "A" on the vouchers is $328.30. Nothing more has been paid than as shown in Exhibit "A."

C. F. BABCOCK.

Sworn to and subscribed before me this 23d day of October, 1874.

[Seal.]

E. L. STEPHENSON, Clerk.

C. F. Babcock to William A. Britton, marshal western district of Arkansas, Dr.

1872.

Sept. 7. Cash .................................................. $20 00
  9. Livery bill, (Ramsey & West) ................................ 23 00
  20. Cash .................................................. 20 00
  21. Cash .................................................. 75 00
Oct. 5. Cash .................................................. 100 00
  15. Cash .................................................. 75 00
  1. Pistol and scabbard ................................... 15 30

328 39

C. F. BABCOCK.
Testimony of J. H. Bowers, as to his posse-account in the case of United States vs. Pickens Benge, (W. C. Ross, deputy,) and other accounts.

Sworn and examined by Colonel Duval:
I live in the Cherokee Nation near Fort Smith. Mr. Ross employed me as a posse in arresting Benge in the Creek Nation, about two hundred miles from here. I was gone about nineteen or twenty days in making the trip. I think there was a difference between me and them. I wanted pay for twenty-one or twenty-two days. I think we had the prisoner in charge about nine or ten days. I was a special deputy once under Sarber. I was a deputy under both Britton and Roots. Under Britton's last administration I made two trips.

Q. Did you serve a writ under Roots in the case of Wm. Wilicer, Wm. Hampton, and John Holland? — A. That name should be Whittaker. I recollect now that the name was spelled wrong. I remember the other two. I arrested the other two, and Whittaker had gone up somewhere on the railroad to work with a team. I did not arrest him until afterward. I had Frank O'Brien with me at the time I made his arrest; I forget whether I had two men with me as posse or not.

Q. Do you know John Marion or Marvin? — A. No, sir; I do not.

Q. You made an affidavit before Whitney, didn't you? — A. No, sir; I did not. I never spoke a dozen words to him. He merely spoke to me two or three times on the street and invited me down. I do not remember either the name of Marion or Marvin. If I had had a man with me thirty days traveling I would recollect him. I arrested Whittaker (or Wilicer) somewhere between Vinita and Chetopa. I think it is about two hundred miles from here. That return is made out in Donnelly's handwriting. I did not make out the figures on that cost bill. They made that out at the office; they would ask me who my posse was and I would tell them.

Q. In certifying to posse-accounts, do you remember whether you signed the posse-accounts in blank or not? — A. Yes, sir; I did that several times.

Q. Was that the uniform practice? — A. I can't say that it was the practice. I have done it; I can't say as to anybody else. It was uniform so far as I was concerned, under Roots and the last two trips I made under Britton's last administration. The practice was, when we brought our prisoners in and took them before the commissioner and disposed of them, to hand in the writ to the office; the posse-accounts were handed to us and we signed in blank, and they made out the returns, and we were afterward called upon to sign them. All the writing and filling up of the posse-accounts was done in the office. Sometimes the posse-accounts were delivered to me, and sometimes they would be handed to the posses themselves. Under Roots we didn't have to swear to the accounts at all, only just signed the return on the writ and handed it in. I had a memorandum-book of all my business under White, Rowland, White, Britton and Roots, everything I did as a deputy. At the time of the fire here, I lost all my books and papers. I have no means now of telling exactly how much fees I got in the Whittaker case. I remember the man by the name being wrong. I don't think I put in 400 miles as mileage in the Whittaker case. I have no doubt that I traveled very near that far, but not in a direct line. At that time Story did not rule exactly as he did under Sarber. A man could then get his mileage for all the distance he traveled; but under Sarber if a deputy traveled thirty days after a man and finally arrested him within thirty miles of here, he was only allowed for the distance in a direct line from here to the place where the arrest was made. If I charged 400 miles in that case it was for the purpose of covering the distance actually traveled. You cannot travel 400 miles in a direct line anywhere in the Cherokee Nation.

Q. How do you account for this 800 miles for returning, which is just double charge, making §30? — A. They allow the deputy ten cents a mile and a prisoner ten cents.

Q. It was not 400 miles from Fort Smith to where you arrested the prisoner? — A. I know it was not that. I made two or three trips after Roots went out of office. If I had my book where I had all my business put down, I might explain it.

Q. You are satisfied that you could not have traveled 400 miles in any direct line? — A. That is a certain fact.

Q. Did you know a deputy marshal under Roots by the name of Alex. Holt? — A. No, sir.

Q. Have you any knowledge of the case of R. L. Edwards, for larceny? — A. I know something about that case. He was arrested on the 15th July, in the Cherokee Nation. I don't know where he lived. I think I have seen him, and I know last summer I read a letter from him directed to the commissioner at Gibson. Stephenson knows more about Edwards than I do.

Q. Do you remember a deputy marshal who was riding that summer by the name of Joseph H. Monroe? — A. No.

Q. You are one of the oldest deputies in the service here, are you not? — A. Yes. I have been at it about six years.

Q. Do you know anything of the case of John Karn and Isaac Wood? — A. No. I don't remember anything about them.

Q. Do you know Ben. Hoskins? — A. No.

Q. Do you remember any other cases that you served under Roots? — A. Yes; a man named Jack or John Childers. That is not the same Childers that was hung here.
Q. Do you know a deputy by the name of J. T. Howard?—A. No, sir.
Q. Do you know Charles Myers, a deputy?—A. No, sir.
Q. J. H. Lamar?—A. Yes; I know Lamar, but I don't know whether he was a deputy or not.
Q. Were you a hostler in the livery-stable here?—A. I know that Lamar, but I don't know whether he ever rode as a deputy. I don't know whether his name was J. H. Lamar.
Q. Did you know J. H. Leeman?—A. Yes; I knew him somewhere.
Q. Did you know R. T. Jones, a deputy?—A. No; I don't know that I do. The name is very common, but I don't remember him.
Q. Do you remember anything about the case of David Frame and Bill Randall, for larceny?—A. No, sir; I don't know the names.
Q. Do you remember anything of the case of Charles Corbett?—A. No, sir.
Q. Mike Reagin and R. B. Brennan?—A. No; I don't know them.
Q. Do you know Charles Western?—A. No; I have heard of him.
Q. Did you know a fellow they called "Curly," that kept a bar down here by this bawdy house?—A. Yes; there was a fellow there by "No. 11," but I don't know his name. Western might be his name; but it seems to me Western was brought here under a charge of something, off the railroad, I think.
Q. Thomas Marshall, a deputy in the case of Lem. Simmons and Jacob Flowery, do you know anything about them?—A. I know Marshall; I knew him about here; I don't know whether he was ever employed by the marshal's office or not; he came here from somewhere up on the railroad.
Q. Do you know anything of J. T. Black, J. A. Walton, and Jack Beam?—A. I know there is a man named Black somewhere about here, but I don't know anything about him.
Q. Do you know William Alexander and Sam. Keeps?—A. I think I had a writ once for a man named Keeps. I don't know them.
Q. Did you ever know a man here named W. F. Harding?—A. No.
Q. Did you ever know R. H. Downey?—A. No, sir.
Q. Do you know a man named Squire D. Turner?—A. Yes, sir; I think in the fall of 1872 he lived about Webber's Falls; either there or else not far from Van Buren. He has moved about a good deal; I have known him four or five years. I don't know anything about his being arrested in 1872; I don't know anything about his being tried for larceny in 1873. I have known of him being here as a witness in a larceny case, a year ago last March I think it was.

In regard to preparing our accounts, I never had access inside the railing down there at Roots's office; they just handed me the papers and I signed in blank. Jim Donnelly generally did the business there; he is the only man that ever did any of that business for me.
Q. Was Roots frequently in the office attending to the business?—A. I never had any business transactions with him at all; I have just spoken to him sometimes.
Q. What other clerks were in there?—A. Gilbert Myers was in there, and this man White. I don't know whether Bob Donnelly did any business there as clerk or not. I think I saw him there writing several times.
Q. Do you know of his doing much riding?—A. He did some business under Roots. Roots owes me for all of the 10 per cent. retained by him during the time I was under him; I don't remember how much it is. When he was up here, a year ago last winter, to finally settle up his business, I went to him—myself, Ross, and Troymon—and told him that I was broke; I didn't have a dollar at that time; it was shortly after the fire; I understood he was paying the 10 per cent., and I told him I would like to have it. He said he was only paying his regular deputies. I told him it was more than I wanted to lose. He said then that he hadn't done anything with my account and Ross's and Troymon's; he said he considered us regular deputies, although we had special appointments at that time. That was January 1, 1873; it was after he was out of office and came back here. He said he had failed to get up our accounts and it would be a great deal of trouble to fix it up then so as to pay us. I told him I wouldn't ask him for it, only that I needed the money and I couldn't earn any under Britton. He said there had been several special deputies to see him about it, and he couldn't pay one without paying all. He didn't pay me at all; he still owes me 10 per cent of two-thirds of the whole of my accounts; it occurs to me it must be $75 or $80.
Britton owes me something also; he owes me the 10 per cent.; it is not a great deal that he owes me on account.
Barber owes me but very little; he owes me so little that I thought I would let it go, without I was obliged to make up my accounts through you. I haven't got anything to show what it is; he has got all my returns. It is very little he owes me; he has paid nearly all.
J. H. Bowers.
Testimony of J. H. Bowers as to the posse-account of Frank Taylor in the case of the United States vs. Richard Clark, October 10 to 30, 21 days, §63.

Sworn and examined by M. Marcum, attorney for National Bank of Western Arkansas:

Question. There is a certificate on the back of this account as to its correctness. Is that your signature?—Answer. Yes, sir; that certificate is correct. I am acquainted with Frank Taylor. He resided at that time in Fort Smith. Clark was arrested in the Cherokee Nation, somewhere in the neighborhood of Baxter Springs, I think. At least, he lived in that part of the country. He was an Ottawa Indian, I think. Frank Taylor was my posse in this case. I have been a deputy marshal the best part of the last six years.

Q. Are you positive that you charged no more than the law allowed?—A. I don't think I did.

Q. You charged for no greater number of miles than you actually traveled from the place of arrest to Fort Smith by the nearest route?—A. No, sir; I did not.

By Colonel Duval:

Q. [Writ exhibited.] Is that signature of yours a genuine signature?—A. Yes, sir.

Q. Did you sign the name of Frank Taylor, too?—A. No, sir; that is his own writing. I don't know who filled up the posse-account. It was done in the office.

Q. Did you have a writ for this man before he was arrested?—A. Yes, sir; I don't know how long before it was issued, but it was before he was arrested. I employed Taylor at Fort Smith. I did not have any other posse with me on that trip that I know of. I don't remember whether I arrested more than one man or not.

Q. Did you keep any memorandum of posse with you on trips?—A. I did have, but it went up at the time of the fire.

Q. You cannot remember whether any other posse accompanied you on this trip except Taylor?—A. I cannot remember. I know that one trip he and I went together and we made two trips, and we arrested two on one trip. I don't remember whether we brought in more than this one man on this trip or not.

By Mr. Marcum:

Q. You never certified to posse-accounts without the posse having done the service?—No, sir.

By Colonel Duval:

Q. Did you sign these posse-accounts in blank, or were they filled up before you certified, as a general thing?—A. In some cases I signed in blank. I have done such things as that.

Q. Do you know whether there were parties here in town who did no riding who were in the habit of returning writs for deputies where they had a number of prisoners?—A. No; I don't know anything of that kind.

Q. Nobody ever returned any of your writs?—A. No, sir; I always done the work myself and made the returns for the prisoners I arrested.

WILLIAM A. BRITTON, late marshal, sworn and examined:

The two drafts of date November 8 and 9, 1872, the first for $13,000 and the second for $20,000, were indorsed by me and deposited with Thomas Lanigan, of Fort Smith, under the following arrangement: Mr. Lanigan was to collect the face of the drafts and to furnish me, as United States marshal, with currency to pay the expenses of the November term of court, which was then in session. I drew upon Lanigan from time to time, and at one time I sent for money and was refused, Mr. Lanigan sending word that with the money already drawn and the vouchers or paper of mine that he held, the amounts of the drafts were exhausted. I immediately called upon Mr. Lanigan in relation to the matter, and found that he held a lot of my paper. This paper, with the sums of money advanced to me by him, he claimed, exhausted the United States funds in his hands, and I could do nothing but take up the vouchers or paper held by Lanigan, and allow him to retain their face value out of the United States funds, which he did. At this time I stated to Mr. Lanigan that I did not want him to take up any more of my paper issued as marshal. The draft of December 5, 1872, for $20,000, was also placed in Mr. Lanigan's hands, under the arrangement before stated.
The paper herein referred to is drafts, checks, &c., issued by me as United States marshal as well as a large amount of posse-accounts.

No more drafts were given to Mr. Lanigan after the above transactions. My reasons for letting Lanigan have these drafts were that I did not wish to take them through the bank, because the bank was in antagonism to the marshal's office, and if I had been so disposed I could not have dealt with the bank, as it was not a designated depository.

When I was at Little Rock, about the first days of January, 1873, the draft of December 30, 1872, for $20,000, came to Fort Smith. T. G. Scott, then postmaster here, came to Little Rock, bringing this draft with him. I do not know how he came into possession of it unless through J. W. Donnelly. I obtained the currency on this draft and gave Scott about $17,000 to my best belief, I think to bring to Fort Smith. At the time I sent these funds I wrote J. W. Donnelly a private letter, giving him special instructions to pay the floating indebtedness of the marshal's office, such as witness-checks, jurors' checks, &c., and not to pay any of the vouchers or witness-checks, &c., that were held by either Lanigan or Scott until it was seen how far the money went toward paying the other claims.

Scott and Lanigan put what marshal's papers they held together, and out of the United States funds then in his hands, which he had brought from Little Rock, Scott paid himself for the vouchers he held, and turned the balance—about $2,000—over to J. W. Donnelly.

C. W. Pierce, at one time physician to the jail under my administration, some time during the year 1872, borrowed from me, out of my private funds, the sum of $500, with the understanding that I was to be repaid by him out of money that might be allowed to him on the next accounts presented. This sum has never yet been paid to me, nor any portion thereof, and I would like to have the amount of $500 stopped out of any money that may be found due to Dr. Pierce on his unpaid accounts against the United States, and passed to my credit on the books of the Treasury Department.

At the time I received the letter from the Department of Justice, notifying me that $100 per month would be the maximum authorized to be paid to the physician to the jail, I showed the letter to Dr. Pierce, and said to him that if he continued on as physician to jail he would have to take his chances toward getting more than the sum authorized by the letter above referred to. There was no arrangement or understanding between Dr. Pierce and myself, as marshal or otherwise, by which he was to be paid in excess of $100 per month for his services and medicines, &c., after that time.

FORT SMITH, August 26, 1874.

Testimony of HUGH CARROLL as to his posse-account in the case of United States vs. John Lewis, now in possession of H. F. Dwengers.

Sworn and examined by Mr. Duval:

I reside two miles from Fort Smith. On the 24th of February last, I was living here in Fort Smith.

Question. Here is a posse-account of yours for thirty days' service, from the 24th February to 25th March, $90. State whether you rendered that service or not.—Answer. I did. I went with J. H. Smith, deputy marshal; we went to the Choctaw and Chickasaw Nations. I think we arrested on that trip one Brown, and a man named John Lewis; I made two or three trips up there. William Billy was arrested up near Little Red River. I believe; I don't recollect exactly how long we were out on that trip. I believe I got a $90 posse-account; I have got all the trips set down in a little book at home; I think at that time we were out thirty-five days; I know it was over thirty days; I think they only allowed a month on a trip; I think Mr. Allnutt made out the account. That is my signature. I made affidavit to the account before the deputy clerk. I think we left here on the 4th day of February, I believe; I forget the date. I never paid attention to the days only when I went to leave and come back.

Q. I see it is put down here on the 24th of February.—A. Well, I don't recollect. I don't remember the date when I got back.

Q. What became of John Lewis or William Billy?—A. He was sentenced to jail; he was an Indian.

FORT SMITH, ARK., October 2, 1874.

BRADLEY COLLINS sworn and examined relative to his arrest on the charge of assault with intent to kill, in the Indian country, for which offense he was arrested by Deputy Marshal W. H. Johnson.

I find here a writ which shows that you were arrested January 11, 1872; where were you arrested by Deputy W. H. Johnson?—On Arkansas River, near Old Fort Davis, about two and a half miles from Muscogee.

How far from Fort Smith?—About eighty-two or eighty-three miles.
Were there any guards to guard you down here?—No, sir. From Muscogee to Webber's Falls I came alone; from Webber's Falls here I came with a man named Scoon, but he was not a guard; when I was arrested the deputy had a blank bond, which we took to Muscogee and got filled up; I then promised my bondsman and the deputy that I would come to Fort Smith, which I did as above stated. Scoon did not come down with Elizabeth Drum and Geo. Drum, but came with me, but not as a guard. There was one colored man along with us, either as a prisoner or witness, I don't know which. Scoon claimed to be a posse of Johnson's, and disarmed me when we got to the ferry near here. The bond which was brought from Muscogee was accepted and I was discharged.

Were there any other persons along with you except Scoon and the colored man?—No, sir.

Do you know any such persons as C. H. Ford and A. L. James, who are returned as guards in your case?—I do not. I was not committed to jail.

**Second case.**

I was charged with assault with intent to kill Mike Allen, and was arrested by eight soldiers, with Mike Allen's assistance, about March 6, 1872.

What did the soldiers do with you?—They turned me over to Mike Allen, who claimed to be the marshal.

Where were you arrested this time?—At Muscogee.

Did Mike Allen bring you down here?—He came along with the crowd.

Was Deputy Marshal Owens along?—Yes; he and Johnson both. I was turned over by Mike Allen to Owens, where I was kept in a hotel three or four days with some three or four other prisoners, after which we came down here with several other prisoners.

Call over the names of as many of the party as you can of those who came down.—Hawkins, Owens, Johnson, and a man by the name of Van Horn, and a man named Wilson, and some others whom I don't remember. Scoon claimed to be a posse of Johnson's, and disarmed me when we got to the ferry near here. The bond which was brought from Muscogee was accepted and I was discharged.

In regard to the first arrest, did Johnson or any one else offer you a sum of money to come in, by warrant or otherwise?—No, sir.

**October 2, 1874.**

**W. H. Nessle.**

**Fort Smith, August 27, 1874.**

Testimony of JAMES O. CHURCHILL as to posse-account of John Murray in the case of United States vs. Thomas Dana, in possession of Samuel McLoud.

I am clerk of the United States district court for the western district of Arkansas, and one of the commissioners of that court.

On the 25th September, 1872, Josiah Foster, a deputy marshal, came before me and filed an information against Thomas Dana for stealing two head of cattle from Samuel Chalk, of the value of $30, down in the Indian country, which was indorsed by the district attorney, and a writ and subpoena issued. Afterwards, on the 17th day of October, Foster brought the party before me, and he waived an examination, the district attorney assenting. He was admitted to bail for his appearance at the next November term. The writ shows that he had as posses J. C. Foster and Isam Bremman. A true bill was found against Dana, and he was sent to the penitentiary, at the November term, for eleven months.

I find among the papers on file in the clerk's office proceedings before Commissioner Brooks against the same party on the same charge. The writ is sworn out on the 1st of October by Sam. Chalk. It is shown by the writ that Dana was brought here on the 12th day of November, 1872. The court was then in session, having commenced the day before, and the proceedings were probably sent over directly to the grand jury. The court being in session, I presume he was committed to jail. I find the return on the writ is made on the 12th of November, 1872, by John C. Porter, deputy marshal, and has indorsed upon it the names of John Murray and J. H. Waid as posses. All I recollect about the case is what is shown by the records and papers produced here.

JAMES O. CHURCHILL,

Clerk United States District Court W. D., Ark. and U. S. Commissioner.

**Fort Smith, Ark., November 13, 1874.**

COLUMBUS ERVIN sworn and examined.

My name is Columbus Ervin. Reside on Red River, near Doakesville, about 185 miles from here. In the case against E. Monatubbie, Charles McGhee, and others, arrested on
Red River, near Doakesville, I was employed by J. H. Willis as a posse in the case. I went with him from here. We were some days in hunting the defendants. I was out 9 days. Joe Everidge, Joe Moore, and Bill Eldridge were also along as posse. We brought in four prisoners on the trip. Deputy Willis had a warrant for these defendants before leaving here. I was boarding with Mr. McLoud and sold him this voucher of $60.

W. A. Eldridge's account for similar services in same case as mine is correct.

COLUMBUS ERVIN.

Testimony of Josiah Foster.

Sworn, and examined by Mr. Duval:

I reside in Crawford County, in Arkansas. I have heard read the testimony of Squire D. Turner, given before Colonel Duval on the 19th of August, 1874, relative to deputy marshal's accounts for his (Turner's) arrest for larceny. All that portion of his testimony about my coming here, and Turner's surrendering himself to me at my house in Crawford County, is correct. I was deputy marshal at that time under Wm. A. Britton. When Turner and I first came in town here I saw Bracken up the street, and I knew that he would want Turner. Turner said he was satisfied that Bracken would want him, from the fact that he had been told that Bracken had a receipt for him. I told Turner to remain where he was until I went and found out whether there was a writ for him. I went and saw Brooks, the commissioner, who told me that the grand jury had found a true bill against Turner, and the onlunchance was for him to give a bond for his appearance at court. I then went back and brought Turner up to Brooks's office. On the way I saw Bracken looking for Turner. After we came into Brooks's office, Johnson came in and spoke to me. I don't recollect the words, but he knew, from the fact that I had married one of Turner's girls, that I had something to do with Turner's coming there. He told me he had a writ for Turner, and had arrested him up above here, or something to that amount. He said he wanted him. I told him he couldn't get him; that he was in my charge, and was going to give bond. I told him the pay was all he wanted, and if it was he could get it. He never said anything more then, and turned and walked out. We then went over to the clerk's office, and Turner gave bond and went back home with us that night.

Question. Are you acquainted with Charles Western, who is said to have been a deputy marshal?—Answer. I do not know of any such man. I have a general acquaintance with the deputies. I think I know most all of them. I rode but very little as deputy marshal in the fall of 1872. I never was in the Cheyenne and Arapahoe Nation in my life. To the best of my knowledge Turner was at his home at Webber's Falls in September, 1872, up to the time he surrendered himself. I was at his house and saw him. He was a man of family, and resided at Webber's Falls. I know that he was not lying out in the brush at that time, but was at home pulling his corn and driving his team as usual. After Turner returned from Texas it is the first time he ever came to my house after I was married.

Q. Do you know whether he was in the habit of coming to Fort Smith or not?—A. Sometimes he would be here in hauling. I do not know of my own knowledge whether he was there that fall or not. I think the distance from here to Webber's Falls is between forty-five and fifty miles. I have rode it several times in a day between suns. It is not exceeding fifty miles.

JOSIAH FOSTER.

Testimony of Josiah Foster in regard to his claims vs. the United States under Britton.

Abstract filed herewith.

Sworn, examined by Colonel Duval:

I was a deputy marshal under Britton's first administration.

Question. Are these accounts unpaid?—Answer. They are, every cent of them. I turned over to the office my vouchers without receiving anything for them. The services were rendered, and the mileage and everything is correct. I have noted on this abstract what posse I had, and I had no others that I recollect. It has been so long that I entirely forget about one case. I never received any checks. I never swore to my voucher—just signed them in the marshal's office and left them there. I did some service under his last administration, in the civil service of the State. He owes me for that, and the ten per cent. on other claims which he had retained. Then I got a wagon from him for which I gave him a receipt for $50, and that is all I ever got for that.
Q. Did you ever make a demand on him for payment?—A. Yes, sir. He told me the last time I asked him that he thought he would have the money in a few days, and for me to leave my accounts at the office. That is the way I came to leave them there. Every time I came into town I asked him, and he told me if the money did not come he would borrow some for me. He never did borrow any for me, and I never got any from him.

Q. I see you have Dyer Nettle's posse-account in the case of the United States vs. Bocquet Louis Emilie. Did he have any other name than Dyer Nettle?—A. I think he did, but I don't remember it; that account is correct.

Q. Here it is signed Joseph Nettle; do you think that is the same man?—A. I know that is the same man. That is the only Nettle I ever had with me, and it does seem to me like they called him Jo sometimes.

Q. Do you know who this account belongs to now?—A. No; I do not.

Q. When did you last see that posse-account?—A. Jo. Peevey showed it to me in Van Buren about three weeks ago and asked me if I knew anything about it, and I told him yes, I knew all about it. I think Nettle kept it three or four months, and could not get anything on it, and my brother gave him a six-shooter for it, and sold it to D. C. Williams, and I don't know whether he has it yet or not. My brother got merchandise for it.

FORT SMITH, ARK., September 30, 1874.

J. M. COLLINS sworn in the matter of his account for feeding horses and mules, placed in his custody by W. A. Britton, the United States marshal for the western district of Arkansas, amounting to $794.25.

By Mr. Duval:

Was there any special arrangement between yourself and the marshal as to the keeping of this stock?—A. No, sir; they were sent out to my place by the marshal or Donnelly, I don't know which. I was told by Donnelly or the marshal that the Government allowed six bits (75 cents) a day for keeping stock.

Q. How was the stock fed; in the stable or out?—A. Sometimes in the building and sometimes out. I fed them the same as I fed my own stock.

Q. Were these horses and mules worked during this period charged in the account?—A. No, sir; except occasionally when a darky wanted a horse to go to town I would tell him to take a Government horse.

Q. This charge of six bits for keeping stock was made on the assertion of the marshal that the Government would allow six bits for the same?—A. Yes, sir.

Q. Did you buy any of the stock when it was sold?—A. No, sir.

Q. Did any person purchase for you?—A. No, sir.

Q. How many wagons were sent out to you with the stock?—A. Two. The account was made out by Donnelly from memorandum I furnished the office. It is not worth 75 cents per day to keep stock; it is worth $15 per month, or 50 cents per day. I have never received any pay on this account. I have kept stock under Roots's administration, but never made an account as against the Government. R. C. Kerens always paid me by way of trafficking in harness, horses, &c. I think I never seen but $5 of Kerens's money in my life. I never gave any receipt to him. He did not pay me for keeping stock at the rate of 75 cents per day.

J. M. COLLINS.

SEPTEMBER 30, 1874.

W. H. N.

FORT SMITH, ARK., November 13, 1874.

WILLIAM CHUNN sworn and examined.

By Mr. Nessle:

My name is William Chunn. I am thirty-one years of age. Am a farmer. Reside at McCallister's Station, on Missouri, Kansas and Texas Railroad, Choctaw Nation. I have resided in the Choctaw Nation for nearly twenty years. In the spring of 1872 I resided at Perryville, in the Choctaw Nation. The distance from this place to Perryville is 110 miles. In the spring of 1872 I was charged with being implicated in a murder, or the hanging of a person at Perryville, in the Choctaw Nation. The distance from this place to Perryville is 110 miles. In the spring of 1872 I was charged with being implicated in a murder, or the hanging of a person at Perryville, in the Choctaw Nation. I do not know whether a complaint was made against me or not. On the 10th or 12th of March, 1872, I was arrested by Jacob Baer, a deputy marshal. He read a warrant to me and told me to consider myself under arrest. I was arrested at Perryville. After my arrest I remained at home, attending to my business as a merchant, and was not under guard during any of the time. At the expiration of eight or ten days I started and came down to Fort Smith alone, to the best of my knowledge. Jacob Baer did not bring me to Fort Smith. I came alone, and paid my own expenses. Jacob Baer came in advance of me some five or six days. Jacob Baer and, I think, Joe
Willard were in Perryville looking up this case against myself and some others, and there were there, I think, some four or five days, during which time I was in Perryville, attending to my business as a merchant. I have seen his account against the United States in which he charges for eight days' expenses in endeavoring to effect my arrest, which is a false charge. I was at my place of business every day Jacob Baer was in Perryville, and saw him every day, more or less. There was no posse or guard with me. I came alone and paid my own expenses, and never received or had returned any part thereof by Baer or any person else. I was well acquainted with Jacob Baer before he came to Perryville on this trip. When Jacob Baer left Perryville in advance of me he had one Harrison and some three or four others, but I think one Merritt did not go down to Fort Smith with Baer. Merritt was charged with the commission of the same crime for which I was arrested. He was a clerk in F. A. Hyatt's store at Perryville. The charge made against the United States by Jacob Baer for transporting one Merritt, one Harrison, and myself is false. Merritt and Harrison both lived in Perryville, and were arrested there. The true distance from Fort Smith is 110 miles by the overland mail-route. I paid my own expenses, and the charge of $23 for my transportation is fraudulent. I do not think there were more than five persons, including Jacob Baer and J. H. Willard, the deputies, who came down to Fort Smith in a wagon. I do not know such persons as Joseph H. Harrison, Thomas Maxwell, and Z. T. Taylor, who are charged as posses in this case. The charge of $20.25 for feeding me, the same having been charged by Jacob Baer in his account against the United States, is fraudulent and false. I came down alone and paid my own expenses.

In the case against William Coleman, P. T. Travel, and one Scott, charged with murder in the Indian country, I state that I am and at the time of their arrest was acquainted with the defendants. Coleman is my uncle. These defendants were arrested at the same time and at the same place as myself, Merritt, and the parties Harrison, Gardner, and Vorman. The charge by Jacob Baer of 230 miles for transporting the above prisoners is false. The true distance from place of arrest to Fort Smith is 110 miles. I do not know Joseph L. Thomas, Lee T. Polk, or Samuel E. Hunter, who are charged as posses in this case. I do not think these persons were along as posses from the fact that the prisoners and deputies went away together—the deputy on horseback, and the prisoners in a small two-horse wagon which could not hold as many persons as are charged for in the amount, and because I believed the prisoners to be good men, and of a character not requiring a posse. From conversations had with them in my store, I am satisfied all were willing to come to Fort Smith without any guards, and would have done so. I am acquainted with Dr. Haley. He is my brother-in-law. In January, 1872, Dr. Haley resided at Perryville. At present he is a physician at McAllister's, Choctaw Nation. I know of Dr. Haley having been arrested about January, 1872, for an alleged violation of the internal-revenue laws. He was arrested at Perryville, by Jacob Baer or J. H. Willard, one or the other. Dr. Haley's office was about 75 yards from my store; was always at home, and was not absent unless to go out and see a patient in the daytime and return at night. I think the charge of $30 made by Jacob Baer against the United States for 15 days' expenses endeavoring to arrest Dr. Haley to be false. Dr. Haley was a man of business, and was always at home. He is a man of good character, and it would not require a guard to bring him to Fort Smith. Jacob Baer has had no conversation with me about these accounts up to this date.

Witness:

W. H. NESSLE.

FORT SMITH, ARK., September 4, 1874.

Testimony of E. R. Duval.

Examined by Mr. MARCUM, attorney for National Bank of Western Arkansas:

I reside at Fort Smith. I am acquainted with Wm. A. Britton, ex-United States marshal. I am acquainted with all the officers and stockholders of the National Bank of Western Arkansas. I am one of the directors myself. I have been present at most, if not all, of the meetings of the board of directors of that bank.

Q. Have you noticed the proceedings of the various meetings?—A. Yes, sir; the majority of them. I have not examined the book.

Q. Was there ever any argument between the bank and Britton and L. H. Roots, or either of them, as marshal, whereby they were to withhold the payment of, and the bank to buy, marshal's vouchers and other claims against the Government?—A. No, sir; I know at one meeting of the directors we had, at which Roots was present, the subject of buying vouchers was discussed, and he stated that if we bought any of his vouchers we did it at our own risk; that he had not any money to redeem them at present, and he did not know how long it would be before he could take them up; we might be out of our money a year or more. I know a considerable number of his vouchers were bought, at, I think, eighty-
five cents on the dollar; that is my recollection. So far as Britton was concerned, it was generally understood we would have nothing to do with him or with any of his paper.

Q. Did the bank ever, to your knowledge, use the funds of the Government in the purchase of marshal's vouchers or other claims against the Government? — A. If it ever did, I don't know it.

Q. Did the bank ever have any business transactions with the marshal's office during Britton's administration? — A. None to my knowledge. I have no recollection of any.

Q. Was ever there any collusion between the bank and the marshal's office whatever? — A. None that I know anything about.

By Colonel Duval:

Q. You know nothing about the transaction of business in the bank, except such matters as were brought before the directory? — A. That is all. Now and then, of course, I was consulted by the cashier about loans.

Q. In regard to purchasing these vouchers and the collection of them, you had no knowledge of how the business was transacted other than such as was reported to the directors at their regular meetings, if any report was made? — A. They were purchased on our own responsibility, and it was understood that that was the view of the directory.

Q. The directors decided that they would buy them, notwithstanding this statement of Roots's, and did buy them? — A. Yes, sir.

Q. Roots was the largest stockholder in the bank at that time, was he not? — A. Yes, sir.

Q. Did not the bank make money out of the purchase of these vouchers? — A. I presume they did; that is my understanding.

Q. Roots was a director himself at that time, and vice-president, was he not? — A. He was vice-president.

Q. You only know that the price paid for the vouchers was eighty-five from information derived from the officers of the bank? — A. I never bought any. I think I sold one or two of Roots's vouchers, that I got eighty-five cents for, from Baer.

FORT SMITH, ARK., September 3, 1874.

Testimony of Thomas Edwards as to posse-account of V. H. Bryant for $69 in the United States vs. one Anderson; also account of Joseph Everidge in the case of Jefferson Perkins.

Sworn, examined by Mr. Marcum:

I live at Red Oak, in the Choctaw Nation; am forty-seven years old. I have seen J. H. Willis several times, and know him; he lives in Kiamichia County. My only acquaintance with V. H. Bryant was, when he was coming to town to court he staid at my house. I spoke to the man, and asked him if he was any relation to Governor Bryant, and, to the best of my recollection, he said he was a cousin. That was in the summer of 1873, I believe.

United States vs. Jefferson Perkins.

I know Joseph Everidge and Jefferson Perkins. Perkins was coming to town as a witness against some parties. I don’t know the name of the prisoner they had. They had been down previously with prisoners.

FORT SMITH, ARK., November 13, 1874.

Joe Everidge sworn and examined in the matter of the posse-accounts of Joe Moore and Columbus Irwin for twenty days' services each in case against E. Monatubbie et al., from December 6 to 25, 1872, twenty days each, at $3 per day, $120.

My name is Joe Everidge; am twenty-one years of age; reside 12 miles southwest of Doaksville. I am acquainted with Joe Moore and Columbus Irwin. Irwin now lives in Doaksville. Moore lives on Boggy Depot road, near to Jim Colbert’s. Defendants as above were arrested about ten miles west of Doaksville by J. H. Willis. The deputy had a writ for the parties. The accounts as above stated are correct, as well as one in my own name for twenty days' services in same case. I was with the deputy during the whole of the trip. Joe Moore and Columbus Irwin can both write their names.

Joe Everidge.

W. H. N.
Testimony of JORDON O. FLACK as to his posse-account in the case of the United States vs. Mitchell Jones, for twenty-six days, August 4 to 29, 1872, $75.

Sworn, examined by Colonel DUVAL:

I reside at Greenwood, Ark. I made a trip with Deputy Marshal Bradshaw in August, 1872, when Britton was marshal the second time. I rode awhile for Britton as deputy marshal myself, but it was some six months, probably, after he was appointed before he gave me any commission. I was rather accused of being a brindle-tail, which I understood was the cause of my not getting any. On that trip with Bradshaw we brought in a man named Mitchell Jones. I don't recollect what account was put in at that time. [Voucher handed to witness.] That signature looks very much the way I generally write. I let McLoud have that account. I boarded with McLoud all the time and owed him hotel-bills, and I bought a wagon of him once on credit. Sometimes I owed him $100 or more, and we would settle up. Sometimes I paid him money and sometimes I let him have an account of this kind. Me and him had pretty considerable dealings for several years along. I explained this account to Whitney when he was here.

Q. Where is Bradshaw now?—A. I understand that him and his father-in-law, Chapmans, has moved to California. I think Bradshaw had a commission as a regular deputy. I am pretty certain I saw his commission. I was called upon by Whitney in reference to this account. I did not see it or any other papers that he had. I saw the backs of some that he was running over, and asked him to allow me to look at some that my attention was rather drawn to, but he refused. He asked me if I went a trip and did I let McLoud have an account; I told him I did.

Testimony of JORDON O. FLACK as to his posse-account in the case of the United States vs. Boyd & Haskell.

Sworn, examined by Mr. MARCUM:

[Voucher presented to witness.] That don't look like Ellis's handwriting; but $60 is what his account come to. We were gone longer than that, and ought to have had more. My recollection is that Ellis shaved this account at four bits on the dollar. We were gone over twenty days on the trip. Those are the parties we arrested and brought down here. I think their right names was Silas Boyce and Betsey Haskell. Boyce is at Shawneetown; I don't recollect what account was put in at that time. [Voucher presented to witness.]

Q. Do you state that that signature of yours is genuine?—A. Yes; I think that is. I never noticed Ellis writing his name on that. That may be his signature. I can't state about that. I don't recollect with whom he shaved this account. We almost always call Ellis "Curly." I only knew him a few days before I made this trip. Some one here recommended him, and thought he would be a useful man. He seemed to be an Irishman, and said he was raised in New York. I think he would weigh about 165 pounds; not quite as tall as me; rather red-complexed, and, I think, rather red, sandy hair, that curled some, as well as I recollect. I do not know what his occupation was before that or afterwards. I never knew him by any other name than Curly, and I asked him finally what his name was, and he said it was Ellis. That was on the road going down to make this arrest. It seems to me like he said his name was Ellis; I am not positive, though. The days that I gave account; I told him I did.

By Colonel DUVAL:

Q. Do you know whether he made a trip with Deputy Marshal Bradshaw in August, 1872, when Britton was marshal the second time?—A. I believe I was, and I think I have any means of fixing the exact date at which we made that trip.

Q. Do you know whether he made a trip with Eugene Brocken or John S. Wilson?—A. I know them, but I don't know whether he did or not. He never made but the one trip with me. I don't think I have any means of fixing the exact date at which we made that trip.

Q. I will ask you if you were at home on election-day, 1872?—A. I believe I was, and it seems to me like Curly voted here too. I am not certain whether I was at Fort Smith or at Greenwood that day. I recollect me and Curly talked together about the election, and
Curly said he was going to vote what they called the brindle-tail ticket. I think I was at Greenwood that day. Me and John Strout were sent out there as deputy marshals to keep the peace if the sheriff could not, and we were to arrest anybody that disturbed the election.

Q. You are pretty confident Curly could not have been in the Arapahoe Nation about that time?—A. I know he wasn't in the Arapahoe Nation at that time. Me and him were together at that time. I think he was here and voted, and I think you will find it so if you look at the books. I don't think I ever heard Curly called Charley West or Western. I recollect he signed the same name (Ellis) that he told me his name was. I don't recollect whether I saw him sign this account or not.

By Mr. Marcum:

I think James Chambers lived in the Creek or Cherokee Nation, not far from where Tom Monroe lived.

Q. Do you know of his riding under Frank O'Brien?—A. I saw him with O'Brien once up here at this Minerva Thornton's. O'Brien had come down with some prisoners, and this fellow was with him. They had a wagon. I don't think he had a woman with him. I feel pretty certain of that. It was this side of Minerva's that we got together, somewhere about Perry's.

FORT SMITH, ARK., September 1, 1874.

Testimony of E. S. Freeman.

Sworn. Examined by Colonel Duval:

In the summer and fall of 1872 I lived in Fort Smith, on the next block below the stable of Griffith & Kerens. I think I lived there two years. I was acquainted with Wm. M. Griffith and Richard C. Kerens. I was at their stable, I think, every day or every other day, or not more than three days' interval at any time, with the exception of about two months, March and April. I was well acquainted with a man named J. H. Lamar. He was working in Kerens's stable. He was there when I moved into town, and was there when I left. He was a heavy-set, small man, and would weigh 140, I guess.

Q. Do you know whether he ever acted in the capacity of deputy marshal or posse?—Answer. I do not. If he did I am satisfied he was not absent from the stable three days at any one time while I lived there, except once, when he went down, or proposed to go down, to Dardanelle. I think he went out, then, on one day and came in on the next.

Q. Here is an account running from September 20 to October 17—28 days—which purports that he was absent as deputy marshal and made the arrest. From your knowledge of what he was doing, was it possible for him to have been absent 28 days during that year at that time without your knowing it?—A. No, sir; he could not have been. I never heard of his arresting or bringing any prisoners in here. I was familiar with the business of the marshal's office after Britton came in.

Q. There are two cases here—Charles Corbett, one case, and Mike Reagin and T. R. Brennan another. These writs purport to have been executed on the 4th October, in the Cherokee Nation, 295 miles from here, and the parties were engaged in executing the process from September 20 to October 17, 28 days. Do you state that it would have been impossible for Lamar to have been away from Fort Smith that length of time without your knowledge?—A. I don't believe he could have been. I went to Washington City in April.

Q. Here is a writ in the case of United States vs. Charles Hall and S. H. Carlisle, which
purports to have been served by William M. Griffith, deputy marshal under Roots, in the Cheyenne and Arapahoe Nation on the 9th September, in which it appears that he was absent from Fort Smith, in the execution of this process, from August 21 to September 28, days.—A. I have no special dates to go by, but I don't believe that he could have been absent at that time that long. I never heard that he was a deputy under Roots; I don't believe that he was. If he was I am most certain that I should have known it. I had a list of the deputies under Roots. I think I have got that list now, if it is not in my wife trunk in Missouri.

Q. Did you know a deputy by the name of P. L. Ward?—A. I do not.
Q. Did you know Joseph H. Monroe?—A. I won't be sure.
Q. Do you recollect any such deputy?—A. I don't think I do.
Q. Do you know a James Monds?—A. No, sir. There was a man here by the name of Monds. He was a prisoner.
Q. Did you know Alf. Crowley, a deputy marshal?—A. No, sir.
Q. Did you know C. S. Worth?—A. No.
Q. Did you know a man here who figured a little in the marshal's office as a posse, named Curley—a red-haired Irishman?—A. Yes. I don't know his true name. Curley was in jail here some time, and got out on bond, I think; and I think that he rode one trip with a little fellow that was killed by an Indian.

Q. At Going Snake?—A. Yes, sir. I know I saw him go out at one time with Perry Duval. Whether they were going out on a marshal trip or not I don't know. I don't think Curley acted as a deputy himself. I think perhaps he made one or two trips as posse.
Q. Do you know whether his name was Charles Western or Isaac Ellis?—A. No. That was not his name. I can find out what his real name was.
Q. Do you know whether Logan H. Roots was intimate with Griffith & Kerens, and frequently about their stable?—A. He was.
Q. Do you know whether he had a personal acquaintance with Lamar?—A. Yes, sir. I do not know anything about Lamar driving Roots's carriage.
Q. How about Judge Story? Was he familiar about that stable?—A. Yes, sir. I am satisfied he knew both of those parties. If Kerens rode as a deputy I never knew it.
Q. In addition to keeping that livery-stable what other occupation did Griffith & Kerens follow?—A. I understood that Kerens had a stage-line at Little Rock, and one to Sherman, Tex. Kerens & Griffith appeared to have charge. Griffith need to go out once in a while on business connected with the stage-line.
Q. Do you know of any other circumstance connected with the management or administration of that office under Logan H. Roots which would be of interest or service in this investigation? If so, state it.—A. I am not fully prepared to answer that question, and would not be without a set of notes that I have at home. One thing I am satisfied of is that I could testify to, if I had my notes to refresh my mind. There are a good many cases where men staid here in this town who returned accounts as deputy marshals, and would return other men here in town as posse men, and draw one-half of the pay on the accounts. That was a frequent occurrence. I can name some of the men. One was Dr. Miller. He was here in jail, but not at that time. I don't know his given name—J. M., I think; and a butcher up here, whose name I don't know and never did. There are a good many such cases as that of deputies that staid here and never made a trip.
Q. Can you name any others?—A. There is one man, I think, by the name of Eli Rod.
Q. Do you know whether W. A. Harris was in the habit of returning?—A. Yes, sir.
Q. C. D. Mesler—do you know him?—A. Yes; I know him. I think he made one trip as a deputy under Roots.
Q. Do you know whether he was in the habit of returning writs that he did not serve?—A. I could not swear to it. If he had made more than one or two trips I should have been apt to know it. I used to go to his saloon every day to get my bitters. He went to Fort Sill once, and appeared to bring some prisoners with him; or I understood he had gone there. It appears to me that that was under Britton's administration. If Mesler was a deputy under Roots I did not know it. I met him once at Minerva Thornton's. He had charge of the outfit, I know. How many prisoners he brought in I don't know.
Q. Did you know Thomas Marshall, a deputy?—A. I did not. I think there was such a deputy under Britton. The Government has got the most of these statements, or they are in the hands of Clayton. I made my reports to Clayton twice a week. I think they went into the possession of the Department. I think they were there when I was in Washington.

FORT SMITH, August 26, 1874.

Testimony of E. L. Freeman as to Wm. M. Finley's posse-account in the case of United States vs. John Schaffer, in the possession of Samuel McLeod.

Sworn. Examined by Mr. Duval:
I live in the Choctaw Nation, four miles this side of Scullyville, and ten miles from here. Question. Here is an account in favor of Wm. M. Finley, as posse, in the case of The
JOSEPH A. GRAHAM sworn and examined.

By Mr. NESSLE

Question. What is your name?—Answer. Joseph A. Graham. Sometimes I am called Turner Graham.

Q. Where do you live?—A. In Fort Smith. I am the person who was arrested for larceny in the Indian country by Deputy Marshal Jas. H. Mershon. I was arrested about the latter part of November, 1872, near Mountain Station, seventy-five miles from Fort Smith. The deputy marshal had a warrant for me. He had a posse with him named Thos. Staley, whom I knew previously. Staley then lived in the Choctaw Nation, near Mountain Station. Don't know whether Staley was employed by the deputy at his home or at Fort Smith. Mr. Staley is a farmer in the Choctaw Nation, and about forty years of age. I was arrested about seventy-five miles from this place. Mershon had no other prisoners with him on that trip. They were six or seven days in bringing me down, and Staley guarded me about three days before I was brought before the commissioner.

Witness:

JOSEPH A. GRAHAM.

The above in the matter of the posse-account of Thos. R. Staley for 10 days' service in case of Turner Graham from November 30 to December 10, 1872.

FORT SMITH, Ark., September 30, 1874.

J. S. GAGE sworn and examined:

About the 10th of January, 1873, I met William A. Britton at Little Rock, and in a conversation with him said to him that I had something over $500 in witness and jurors' checks, and that I wanted them paid. Britton replied that he was expecting money, and that as soon as the draft came, I should be paid. I returned to Fort Smith, and shortly thereafter learned that a draft had come for Britton, and that F. G. Scott, then postmaster here, had taken the same to Little Rock to get cashed. Scott returned here on or about the 18th of January, 1873, with the money. I went to the marshal's office and demanded payment of my witness and jurors' checks of J. W. Donnelly, Britton's chief clerk, who told me that Scott

H. Ex. 175——6
had not yet turned over the money to him. I immediately called on Scott at the post office, who told me that he had turned over the money obtained on the draft. I immediately returned to the marshal's office, and told Donnelly what Scott had told me. Donnelly replied that he had no money, and could not pay the checks, and that Scott had not turned over the money. I went directly back to Scott and offered to sell him $339, and offered to take $200 for the $339 of checks held by me. He (Scott) then took out of the safe in his office, where there was a large amount of money, the sum of $300, which he paid me, and took the vouchers. The next morning I went to the marshal's office and demanded payment of my checks, and Donnelly replied that "Scott paid" me "those checks last night." I replied, "No, sir, he did not: I sold those checks to Scott last night, and I am very glad to learn that Scott was buying up marshals' checks with Government funds; that I had been trying for some time to find this out."

Donnelly said, "There is no use of making a fuss about it. How many more checks have you?" I told him I had $200. He then gave me an order on Captain Scott for the $200 worth of checks, and I then went to Scott's office. He opened his safe and took out of the same drawer from which the $300 previously mentioned had been taken, the sum of $300, and paid me. The vouchers had been taken up by Donnelly when he gave me the order.

**J. S. GAGE.**

**Witnes:**

**W. H. NESSLE.**

During the fall and winter of 1872, witness and jurors' checks were selling at from 60 to 65 cents on the dollar. Deputy marshals' checks and posses-vouchers were selling from 41 to 55 cents.

**J. S. GAGE.**

I received the three posses-accounts of W. C. Snider, John Conns, and George Allen for $111 each from Edward Evans, to whom they had been sold by William W. Wheeler. I received them for collection. I will further state that I have examined the records in the case against the Williamson's, and find that the defendants were brought before E. J. Brooks, United States commissioner, and that the above-named posses were all that were returned in the case, and that the checks presented were received from deputy marshals for money loaned them and for other debts.

**OCTOBER 12, 1874.**

**Deposition of J. S. GAGE, esq., in reference to the transactions of Thomas Lanigan with the marshal's office under Britton.**

Examined by Ben. T. Duval January 7, 1875, at Washington City.

**J. S. GAGE being duly sworn:**

**Question.** Do you know anything in relation to any transactions between Thomas Lanigan, a merchant at Fort Smith, with the marshal's office under Britton? If so, state all you know about them.—**Answer.** I called on Mayor Lanigan in December last, about the first, and presented to him a receipt for marshal's accounts placed in his hands for collection by a client of mine. He told me the accounts had been put in the hands of James W. Donnelly, former chief clerk in the marshal's office, and that he would see Donnelly and ascertain whether they had been paid. In a few days afterward I went back to see him, and he then told me that Donnelly said they had not been paid. I told him I was satisfied they had been paid. The date of receipt given by him is September 28, 1872, and that he (Lanigan) since that date had received from the marshal's office two drafts of $20,000 each, and asked him how it was that these vouchers were in his hands; he did not collect the amount of them while he had so much money of the marshal's in his possession. He replied that he had turned over to Donnelly all of the vouchers and papers he held against the marshal's office and there was a balance due him (Lanigan) on those vouchers and papers of about $4,000; and Donnelly had promised him that he should have the next draft which should be received from the treasury department, and that the next draft, which was for $20,000, was turned over to Thomas C. Scott, instead of to him, (Lanigan.) He then made Mr. Donnelly return to him a sufficient number of marshal's accounts and vouchers to balance his account against the marshal's office; that more accounts were there, that is at the time of our conversation, in the possession of the National Bank of Western Arkansas for collection. I then told him that my client had instructed him not to permit the accounts and vouchers delivered to him to go into the hands or possession of Jim Donnelly without they were paid. He then said Britton was absent sick, and he had turned over to Donnelly all of the accounts and vouchers in his hands being assured by Donnelly that he would deliver to him the next draft received from the Treasury Department, and as he did not get the draft...
according to promise he went to Donnelly and made him deliver to him vouchers and accounts equal to the amount of those turned over as before stated, and those have not been paid and were then in the hands of the bank for collection.

Q. Did you understand from Lanigan that he received from Donnelly the same accounts and vouchers he had delivered to him?—A. I understood that he received others equal in amounts to the balance due him on those delivered. I understood, also, that the accounts and vouchers delivered by Lanigan to Donnelly had been forwarded to the Department and the draft turned over to Scott had been issued upon them.

Q. Have you the receipt alluded to? If so, will you give me a copy of it?—A. I have it. The following is a true copy:

"FORT SMITH, September 28, 1872.

Received of J. G. Peevy, United States marshal’s vouchers, $216, for collection and his credit when paid.

"$216.

THOS. LANIGAN."

Q. If you know anything further in reference to the matter please state it fully.—A. Lanigan at that time told me that the transactions spoken of were had with Donnelly, the chief clerk of Britton, while Britton was absent, and that the latter knew nothing of them; and whenever the vouchers received from Donnelly in lieu of those turned over to him were paid, he would pay the amount specified in his receipt.

Q. Do you know where Britton was during the months of November and December, 1872?—A. He was at Fort Smith and Van Buren. Court was in session until about Christmas. On the 22d and 23d of December he went to Little Rock, and then took sick and did not return until some time in March, when he came back to Van Buren, where he resided. He was sick when he got back and was confined to his bed, and was not able to give personal attention to his office until about the time he was relieved by Sarber. His wife died after his return from Little Rock, and his life was despaired of for a long time. He did not give his personal attention to the transactions of his office after the 23d December, 1872, Most of the time he was too ill to do so. The office was in charge of James W. Donnelly, his chief clerk, who transacted all the official business in the name of Britton during his absence, and generally exercised control over it even when Britton was about the office.

Q. Do you know whether any forged marshal’s checks or due-bills were in circulation about Fort Smith at any time while Britton was marshal? If so, state all you know about it.—A. During the last few months of Britton’s administration it was reported that forged “marshal’s checks and due-bills,” purporting to be issued on deputy marshals’ and posse vouchers, were in circulation at Fort Smith. I presented to Donnelly some checks issued on deputy marshal and posse accounts, for him to indorse on them in what case they had been issued; this was about the time Whitney was at Fort Smith in August, 1873. Donnelly told me that a large amount of checks were out which had been irregularly issued, and he could not and would not make the indorsement as requested. I asked him to let me see the stub-books so that I could find the matter out myself, which he refused, and declined to give me any information whatever.

Q. Where are the checks you refer to in your last answer?—A. Whitney refused to receive them without the title of the case being indorsed on them. I turned them over to J. S. Robinson for collection, who returned some of them to me, and the remainder he never returned or gave me any account of them.

Q. Do you know where the stub-books referred to now are?—A. I do not.

J. S. GAGE.

WASHINGTON COUNTY,
District of Columbia, ss:

Personally appeared before me, a notary public in and for the county and district aforesaid, J. S. Gage, who executed the foregoing instrument of writing, and duly made oath to the truth of the same to the best of his knowledge and belief.

Witness my hand and notarial seal this 8th January, 1875.

D. RITTENHOUSE,
Notary Public.

UNITED STATES
vs.
DANIEL FIELDS.

E. C. Robinson, special deputy.

JOHN HAYS, a witness, says: I knew Daniel Fields. He was killed in September, 1873, near the mouth of the Canadian, Cherokee Nation. I was sheriff, and had a writ for Fields, and was after him. He resisted, and was killed. He was charged with horse-stealing. A few days afterward Mr. E. C. Robinson came to my house. He had a writ as deputy marshal for Fields for stealing a horse from a white man. I had the horse that Fields had
when he was killed. Robinson identified the horse as the one stolen, and took him about fifty-five miles from Fort Smith. Mr. Crawford, the owner of the horse, was still Robinson when he came to my house.

JOHN HAYES

Claim of Thomas Harney.

FORT SMITH, ARK., August 17, 1874,

Testimony of Thomas Harney.

Examined by Mr. Duval:

I acted as a posse comitatus with J. C. Wilkinson, who was a deputy marshal, in 1873. We left Fort Smith I think on the 16th of August, 1873, to go out and execute a writ. We arrested two men. I remember one of their names; it was Peter Downing. I think he was charged with introducing liquor into the Indian country. We returned here in about thirty days. I think it was on the 14th of September that we returned. The account is for $84. I told the deputy that we were out thirty days, and he ought to have made the account for thirty days. The account was sworn to before Commissioner Brooks, and was receipted and turned over to Marshal Sarber.

Question. This receipt seems to have been made in favor of Wilkerson?—Answer. The reason of that is that I was absent at the time, and so it was given to Wilkerson, and Wilkerson turned over to me a receipt for it from E. M. Main, the marshal's head man in the office.

Q. Do you know whether this receipt was given on the day it bears date, January 15, 1874?—A. Yes, sir. I kept the posse voucher in my possession until then, when I handed it to Sarber to be paid; but he always refused to pay, making one excuse and another. Wilkerson told me that I would have to make an affidavit upon the back of the account, and I went to Brooks and made oath to it. I made at least four or five applications to Sarber for payment of that posse account. He did not say he would not pay it, but he always put me off with some excuse or other—that he had no money, or something like that. I got no money at any time from Sarber, and the account is still unpaid to me. This receipt for the account is all I have ever received from Sarber. The amount of $84 for service as posse is still due me. At one time since I got this receipt I went over to see Mr. Main, Sarber's chief deputy, and showed him the receipt. He told me to hold on to it till Colonel Du Val should come back from Washington. I have never spoken to Sarber personally about it since I got the receipt. I did before that. I have never received any payment on the account at all—not a cent. I made application to Sarber himself altogether as many as four or five times before this receipt was given.

Q. What inducement had you to give up your account and take this receipt for it?—A. Mr. Sarber told me he would have to send on the account to Washington before he could collect the money on it. Upon that statement I gave him the receipted voucher. When I applied to Mr. Main for payment I handed him my receipt, and asked him if that account had been paid yet. He said no. I said it has been due a year, and it is time it was paid. He then handed it back to me, and told me to keep it till Colonel Du Val would get back from Washington.

Q. What did he say I would do with it?—A. He did not say.

[Witness produces a letter from Hon. R. W. Tayler, First Comptroller of the Treasury, addressed to witness under date of July 17, 1874, together with the receipt for his account above referred to. A true copy of said letter and receipt is appended hereto, marked A.]

I received that letter from the First Comptroller in due course of mail, in reply to one I had written to him. I never showed that letter to Sarber.

Q. Have you any other claims against the Government growing out of services rendered the United States marshal?—A. I have a claim against Marshal Britton for $280 for services as jail guard. I have a receipt for that from Mr. Whitney.

Q. Did you ever ride for Root, Sarber, or Britton as a deputy marshal?—A. I rode only once specially for Sarber, but only in one case; I got my pay for that.

Q. I understand, then, that all the connection you have ever had with the marshal's office is when you acted as posse with Wilkerson, when you were jail guard, and when you rode once specially for Sarber?—A. Yes, sir; that is all. I acted as jail guard during all of Britton's second administration excepting two weeks. I received pay for all that exceeding the amount of the account that I turned over to Whitney.

A.

TREASURY DEPARTMENT, FIRST COMPTROLLER'S OFFICE,

WASHINGTON, D. C., JUly 17, 1874.

Sir: The account of John N. Sarber, United States marshal, in which is charged the bill for your services as posse comitatus in the Downing case, has not yet been passed through...
This Office. But this ought not to make any difference to you. The marshal was furnished in advance with money to pay his expenses, and he should not have taken your receipt without paying the sum due. He states that he did pay you.

Very respectfully,

THOMAS HARNEY,
Fort Smith, Ark.

R. W. TAYLER,
Comptroller.

OFFICE OF UNITED STATES MARSHAL
FOR WESTERN DISTRICT OF ARKANSAS, JOHN N. SARBER, MARSHAL,
Fort Smith, Ark., January 15, 1874.

Received of J. C. Wilkerson, one posse comitatus account, drawn in favor of Thomas Harney, amounting to $84.
This paper is not negotiable.

J. N. SARBER,
United States Marshal,
By E. M. MAIN,
Deputy.

C. D. HAWKINS, late deputy marshal, sworn and examined:

Question. What do you know about the posse account of Hickory Rogers for fifteen days' service in case of the United States against Henry Marshall, charged with larceny in the Indian country, from October 5 to 19, 1873, the property of J. B. Latham, T. E. Lacey, deputy marshal?—Answer. I left here September 25, as a posse in company with T. E. Lacey, deputy marshal, and returned about the 16th of October, 1873.

Q. State the circumstances of the arrest of Marshall.—A. On the 28th of September, 1873, I left here as a posse in company with T. E. Lacey, deputy marshal, and proceeded with him as far as Webber's Falls, in the Indian Nation, at which place Lacey left me and started for Muscogee. I went from Webber's Falls to North Fork in the Creek Nation, and there arrested Henry Marshall, for whom I had no writ. When Lacey left me at Webber's Falls he told me to go to North Fork and arrest one Tomb-ma-toy, for whom Lacey had the writ. Tomb-ma-toy being on a scout when I reached North Fork, I did not arrest him, but waited two or three days at North Fork until Lacey came up; Lacey and I then spent one or two days in looking for Tomb-ma-toy, but did not succeed in finding him. Before starting back to Fort Smith, Lacey told me that he was going to Saint Louis after a murderer, and remarked that he did not know how he could return me to cover my expenses. He said that there was a charge against Henry Marshall, and directed me to arrest him and take him before F. C. Babcock, esq., United States commissioner at Fort Gibson, and swear out a writ. Lacey sent word to Babcock by me to antedate the writ, which was done. On examination the defendant was sent to the United States jail at Fort Smith, and I took charge of him and brought him here and delivered him to the United States jailer. Hickory Rogers was a witness in a murder trial coming on at court, and came with me in that capacity only to this place; he was not a posse in this case, did not assist me in bringing the prisoner down, nor did I employ him so to do. I think the writ was dated back by Babcock from October 13 to September 18. At the time I arrested Henry Marshall I also arrested William Gordon, for whom I had no warrant, and took him before Babcock for examination, Gordon was also committed to jail at Fort Smith. Both Gordon and Marshall were examined by Babcock on the same day, either the 12th or 13th October, 1873, but the commissioner made out the warrants of commitment as though the defendants had had their examinations on separate days, one on the 17th and one on the 18th October, 1873. Mr. Babcock told me he done this in order to get more fees than he otherwise would be entitled to, and that the deputy marshal would get two per diems for his attendance instead of one. Babcock told me not to say anything about his action as above stated. The writs in both cases were sworn out on the same day the defendants were examined. When I reached here with the prisoners, and, after I had turned them over to the jailer, I met T. E. Lacey on the river-bank, at which time he wanted me to take a posse-account for my services in the cases. Lacey, Armstrong, J. S. Gage, Hickory Rogers, and myself met at the marshal's office. Armstrong had been returned as a posse. Lacey, Gage, and myself went from the marshal's office to the residence of Mr. Gage, at which place Gage figured up how the accounts were to be made up, and gave the figures to Lacey. Next morning we returned to the marshal's office, where the accounts for Armstrong, Rogers, and myself were made out and handed to us. My account was for $81. Lacey told Sarber, the marshal, and Ed. Main, the chief deputy, that he himself had arrested Henry Marshall and Wm.
Gordon at Fort Sill, (which is about 250 miles farther from here than where the prisoners were actually arrested by me,) and Lacey had previously asked me to tell the same story. The conversation between Lacey and Sarber was in my presence. I told Marshal Sarber and Main, both before and after the accounts had been made out, that I had arrested three men at Northfork. Sarber replied that it didn't make a d—d bit of difference whether I had arrested them at Poteau River, (near here,) I should go on and swear to my account as made out and get my money. I positively refused to do so, because the account was wrong. Sarber offered to give me my own fees and one-half of those falling to the other, and my recollection from Gage's figures is that the aggregate fees in the cases amounted to upwards of $600, if I would consent to make affidavit to the account, which I again declined to do, after which I was discharged from Sarber's employ, he at the time telling me that he did not want such a—d fools as I was around him. He further added that he did not expect to hold the office long he wanted to make money, and had endeavored to have me make money, but that I was too d—d big a fool for him.

Some time after the occurrences above stated, I was indicted in the State court here for trading a posse-account to a merchant in Fort Smith and obtaining goods thereon under false pretenses. After I had been arrested by the sheriff, I applied to J. N. Sarber to go to my security, which he would not do, because I had previously refused to swear to a false and fraudulent posse-account for him. I then called on Mr. Cravens, of the law-firm of Davie & Cravens, who went upon my bond, and I then engaged Mr. Cravens to defend me.

The same night I was released James O. Churchill, then clerk of the United States district court, came to my house with a paper purporting to be an affidavit. This instrument of writing was signed by him as clerk, I think, and bore what appeared to me to be his seal of office. The paper was all ready for my signature. Churchill asked me if I knew this paper or had seen it before. I replied that I had not. He then read the same to me, and ask me if I would not sign it, stating that Sarber had sent him to me to get my signature to the paper, and he assured me if I would sign it would be well paid for it by Sarber. I said to Churchill that I could not sign the paper. Just at that moment John N. Sarber came in, and shortly thereafter Mr. Main. I think they had been standing outside the door during the time Churchill was talking to me. This was about 9 o'clock at night. About 12 o'clock that same night Churchill came back to my room and asked me if I had made up my mind to sign the affidavit which he then had with him. I replied that I had not, and that it was no use for him to come again with it, as I would not sign the paper under any circumstances. Between two and three o'clock next morning Sarber and Main came back to my house and called me to get up, that the sheriff was coming after me—that Cravens and Young, my bondsmen, had given me up, and that I should make haste and get across the Poteau River. I immediately got up. My wife asked me what I was going to do. Main quickly shoved $12 in my hand, which Sarber had given him for that purpose, and said for me to come on. After getting our horses, Sarber, Main, and myself rode to Leflore's Ferry, and I crossed over, Sarber and Main remaining on the opposite side of the river. In the morning I sent a note by a Mr. Bowland to Mr. Cravens, explaining the circumstances of my leaving so suddenly, and stating to him that I would soon return. From this point I immediately started for McAlistier's on the railroad, where I expected to get work. About 50 miles out on the road toward McAlistier's, I was overtaken by two persons, who said they had been sent by my bondsmen to arrest me and take me back to Fort Smith. I came back with them to Sculleyville, in the Nation, at which place I escaped my captors. I returned to Bowland's, got my supper, after which I laid out of the house that night. Next day I reached Bower's Ferry, which is close to Fort Smith. Bowland, who preceded me, came on to town. Soon after I reached the ferry, C. E. Francis, who was in Sarber's employ, came over to where I was. He brought word from Sarber that I should remain over the river; that if I came to Fort Smith I would get myself as well as him into trouble, for the sheriff was after me, &c. Sarber had sent the affidavit before mentioned by this person Francis to me, and a note accompanying it addressed to me was to the effect that he (Sarber) would be very grateful if I would sign the paper which Francis had with him at the time, and if I did so he (Sarber) would make it all right with me. Sarber asked, through Francis, for authority to sign my name himself, at the same time requesting Francis to say to me in the event of my allowing or authorizing him to sign my name to this paper nobody could tell the difference. I refused to consent to anything of the sort. Sarber stated that he wanted to send the affidavit to Washington. After that I left Bowers and went up to Leflore's Ferry, and sent for Cravens and Leflore. They came to see me, and I told Mr. Cravens what Sarber had told me in relation to my bondsmen, when he replied that nothing of the kind was true—4, e., about having me arrested—and that I need not be uneasy; that he would see that I did not go to jail, as he was satisfied that it was a put-up thing on me by Sarber and his party to get shut of me. I came to town with Mr. Cravens, and, soon after my arrival, Sarber sent for me to come immediately to his office. Colonel Craft told me not to go.

Soon after getting my business fixed up here, I moved out to Leflore's place in the Nation. I was there but three or four days, when Sarber sent Bob Topping, one of his deputies, out to see me. Bob said Sarber wanted me to come into town; he wanted to see me. I told Bob to tell Sarber that I could not come that night, but I might see
him next day. Bob started back, and was gone about two hours, when he and Sarber came back to my house together. Sarber talked to me a long time; said he wanted me to leave, and finally asked me how much I would take to go away and not return. He said that Cravens had the bond fixed so that he (Cravens) would not be a loser by my going. Sarber said, "Hawkins, I have been a friend to you, but Cravens is not; and if you will leave this part of the country and not come back again, I will give you $500." I answered that I would see about it. He replied, "Now is the time to settle," or words to that effect. He also said, "I want you to stay away from Duval and Cravens and do not go to town until I see you again." And, "Do not tell any one about what I have said to you." The next morning I went to town, reaching there before Cravens had got to his office. Sarber met me in rear of the bank, near to Mr. Cravens's law-office, and said to me, "Hawkins, ain't you going to do what I asked of you last night?" I replied that I had not yet made up my mind what I would do. He then called me to one side, others being present, and asked me if I had told any person about what he had said to me the night previous. I answered that I had not. He said to me, "Don't you go up to Cravens's office, for I know what you are after—you are going to make an affidavit against him. And, "Hawkins, if you do make an affidavit of this kind it will ruin me." He further said, "Hawkins, I have always been a friend to you and let you know a heap," and "put confidence in you," &c. He told me to say to Duval and Cravens that I was not able to make any fight against him, (Sarber,) and to tell them I knew nothing about his affairs or business, and if I would do this he would put me on as guard at the jail, or he would give me a commission as deputy marshal, and I could live in the Nation, arrest persons, bring them to the line between the Nation and the State, and C. E. Francis would meet me at the line, bring my prisoners over the river, and make my returns for me; and, in addition, he would give me the $500 before mentioned.

After this conversation I went immediately to Mr. Cravens's office and reported the same to him. He advised me to say nothing about what had been said to me, and to keep away from Sarber entirely; which I observed as near as possible.

Not long after this I was standing in front of the bank when Sarber drove up in a carriage, and, jumping out and drew his pistol on me, and remarked in an excited manner, that he understood that I had been making affidavits against him and, said he "Now, d---n you, what do you know?" &c. Persons near at hand prevented him from injuring me. In ten minutes after this occurrence Sarber sent me a note asking me to step over to his office; that he was not mad at me; that he had been drinking, &c.

That same evening, Sarber left here by boat. Charles Berry, who was feeding the United State prisoners, under Sarber's direction, came to see me after Sarber left town. He said that Sarber wanted me to get back the affidavits I had made, or a copy thereof, so that he (Sarber) could see what he would have to meet at Washington; that Sarber had told him (Berry) to pay me well for any service; and Berry told me that Sarber had left the money with him to pay me. Berry said, "Hawkins, you know we all know a great many things against Sarber, but what's the use in making a fight on him? Go on and get the papers;" which I never did, nor attempted to do.

C. D. HAWKINS.

**WESTERN JUDICIAL DISTRICT OF ARKANSAS.**

**OCTOBER 5, 1874.**

**Witness:** W. H. NESSLE.

**Sarber's accounts.**

**FORT SMITH, ARK., October 2, 1874.**

C. D. HAWKINS sworn and examined.

By NESSLE;

Case against George Downing and case vs. Peter Downing.

**Question.** What do you know about the arrest of this defendant?—**Answer.** On the 26th day of August, 1873, or about that time, I left here with J. C. Wilkinson and W. C. Ross, both deputy marshals. We went from Fort Smith to Fort Gibson, Cherokee Nation, distant 75 miles from here. At Fort Gibson Wilkinson and myself were joined by Thomas Harney, who had followed us with a wagon from here, and one other person whom they called Ab—I don't know his last name, nor do I know for certain where he came from—and we four persons went on beyond Fort Gibson, 20 miles, and made the arrest of George Downing and Peter Downing, both at the same time, and returned same day with prisoners to Fort Gibson. On our return to Fort Gibson I was taken sick and did not start with Wilkinson and the prisoners to Fort Smith, but overtook them before they reached here. I never received one cent for any of my services in these cases. Sarber told me I could not draw any pay, as I had been sick, and did not do full service.

Q. Did Wilkinson bring any other prisoners down on this trip?—**A.** He brought two others, John Thompson and John Thomas.
Q. Did you have writs for all the defendants? — A. All except Thomas and Thompson; we obtained the writs for them after their arrest.

Q. Did you guard John Thomas at any time on the trip? — A. No, sir.

Q. From the time you made the arrest of George and Peter Downing, how long were you in reaching Fort Smith, or how long was Wilkinson in going down? — A. About 10 days coming. They were one or two days in Fort Gibson before starting.

C. D. HAWKINS.

Case against Isaac Fillmore, Black Bill, and case against Nat Hawkins.

These defendants are alleged to have been arrested in the Creek Nation and Seminole agency, and mileage is charged at 340 and 420 miles, respectively. I know these parties live near North Fork, about 80 miles from here. I have been to their houses. W. T. Armstrong, and Hickory Rogers, who were posse and witness respectively, both told me that the defendants were arrested at their homes near North Fork, as they were present at the time of the arrest.

C. D. HAWKINS.

FORT SMITH, August 28, 1874.

Testimony of Edward Hunt as to account of Geo. Heckler for services as jail-guard for February, 1874 — $56; said account being in the possession of Hunt. Also as to claim of Richard Harkins as posse, September 7 to October 3, 1873, in case of Mrs. L. McCurten and Daniel Webster.

Sworn. Examined by Colonel Duvall:

I am the owner of this voucher. I got it in March or April last. Heckler owed me about $60, I think, and I took the voucher in payment, dollar for dollar, and he took up the balance of it in coffee, sugar, &c. I got the voucher in the regular course of business.

Question. Did you ever supply the prisoners in jail in the last year with clothing, tobacco, or other supplies? — Answer. I only furnished fire-wood. I don't recollect if I ever got any voucher for it. I think I got the money for it.

Q. Did you ever make out a voucher for anybody, or were you ever present when anybody made out a voucher for supplies furnished to prisoners in jail, under any marshal? — A. I saw some of them under Britton, first, when he first got in. Dr. Pierce was the doctor at that time. I don't know who was jailer. Britton told me to furnish whatever Dr. Pierce would let me know that he wanted; and he would send to me that be wanted so many pair of shoes, &c. I don't recollect that the jailer had anything to do with it at all. I took whatever Dr. Pierce ordered right over there in the guard-house myself. This articles were shoes, pots, blankets, and tobacco, I believe. I believe all I ever furnished was in two lots. I only furnished for ten days. I commenced, I think, on the 20th of the month. I told Britton I was willing to furnish goods, but I wanted my money on the first of every month. I says, "I am a poor man, and must have the money for my goods, and if you can't pay me on the first of every month, I ain't going to furnish any goods." I furnished, I think, $200 or $300 worth. When the first of the month come Britton didn't have the money to pay me, and Dr. Pierce sent me an order to furnish him a box of tobacco and some more shoes, and I just sent word back that if he would become individually responsible I would send the goods, and if not, I wouldn't send them. When didn't get my money I quit them, and he went to Wolf & Loeb's and bought everything.

Q. Did you make out a bill for your goods? — A. I made out a regular bill, just the way I would make out a bill to you, and I believe Britton handed it to Dr. Pierce. Afterward one day Britton came by my store and told me there was money up there if I wanted some, and I went up and he paid me the money.

Q. Was the bill made out for the money you received, or did anybody ask you to make it out for a larger sum? — A. No, sir; it was made out for just what they owed me. Afterward—I don't know what bill was made out—I sold a lot of bed-ticks; that was the time Girard was there where Saber. I believe Berry was jailer. It amounted to $32 or was for twenty-two bed-ticks, I forget which. I sold the single bed-ticks for 40 cents and the large ones at $1 each. I run and run for my money on that bill and couldn't get it; and Girard told me, he says, "You will make out a bill, and," he says, "you can just sign it; it don't make any difference to you, I guess; you can charge a little more; that is the way you can get your money." I says, "I ain't going to sign no bill only what I get." He gave me a paper and I signed it, and how it was filled out I don't know, but from Girard I understood that they were going to make it out at double price. They were old bed-ticks which I had bought at Government auction and I could afford to sell at that price.

Q. Can you tell by looking at your books what amount you actually received for the bed-ticks? — A. Yes; I can find that out, and will do so.
Q. Did Dr. Pierce have anything to do with the transaction? — A. No.
Q. In the transactions you had with Dr. Pierce did he ever suggest to you that you should make out a bill for more than the goods were actually worth? — A. No; not that I recollect. I was told after I stopped that I stopped too quick; that there was money in it. I never spoke to Dr. Pierce; he only sent me one bill after I quit, and he once told me afterward that I ought to have held on to it, and I told him that I wanted to get what they owed me first, and that was enough for me.
A. Did you have any conversation with Berry, the jailer, in regard to this bed-tick transaction? — A. He was right in the office; I didn’t talk to him. He was in the office when Girard told me to sign the receipt; him and Girard was talking about the price.
Q. Have you any other claims against the Government in either of the administrations except this? — A. None, except what I showed you the other day; I have two from Mr. Whitney.

Case of Mrs. Lewis McCurten and Daniel Webster. Posse account of Richard Harkins, from September 7 to October 3, 1873—27 days.

I hold this claim as collateral security from little Bill Walker. I guess he owed me about $35 or $40 on it.

FORT SMITH, August 28, 1874.

Testimony of GEORGE HECKLER as to his own account for services as jail-guard for the month of February, 1874, amounting to $56, the account being in the possession of Edward Hunt.

Sworn. Examined by Colonel DUVAL:
I reside at Fort Smith; have lived here about sixteen years. This account has never been paid. I was on duty as guard at the jail during the whole month of February. I have presented the account for payment, and they told me there was no money here. I had some other accounts against the Government for guarding prisoners. I traded them off to Henry Rentzel and Caspar Rentzel for payment of my debts. It is six months since I have received any money from the marshal. I quit serving as jail-guard about the 13th July last, and am not engaged there now. I never traded off any of my accounts to any one except Henry and Caspar Rentzel and Edward Hunt. I turned them over in payment of debts I owed for groceries and so on, dollar for dollar. I have not received any pay on any of my accounts since the 1st of February, 1874. There is still due me the pay for my services as jail-guard from the 1st of February, 1874, to July 13, 1874. I believe there are two old vouchers for November and December, 1873, which Mr. Rentzel got.

Question. While you were employed at the jail did you render any other services than as guard? — Answer. No, sir.
Q. While employed at the jail did you know of any persons being on the roll who rendered no service as guard? — A. Not to my knowledge.
Q. Do you know a man by the name of Charles Francis who was on duty as jail-guard? — A. Yes, sir; he was employed regularly. He sometimes put another man in his place on account of sickness and so on.
Q. During that time was he not hostler for the marshal? — A. I don’t know if he was a hostler. I thought a man named Crist attended to the horse. Crist was not on the guard-roll, to my knowledge. He never rendered any service as guard. Francis was as regular in the performance of his duty as guard as the other guards. I don’t know whether Crist was on the guard-roll; if he was, of course he never did any guard duty.
Q. Was not Francis often employed in taking care of Sabre’s horse and driving? — A. Yes, sir. I know he went one time to Clarksville to drive, and another man took his place. Several men took his place at different times. Bob Tepping once took his place, and Male- dou’s boy once took his place. I think Charley Francis paid them.

UNDER ROOTS.

JAMES M. HARRUB sworn and examined.

Question. Were you acting as a posse in 1872 for any of the marshals? — Answer. Yes. Some time in March, 1872, or the last of February, I went out in company with Jacob Baer and Jo. Willard.
Q. How long were you on the trip, and did they continue together all the time? — A. Yes, sir; they continued together so far as I know, but I did not remain all the time with them.
don't remember how long I was out on this trip. I went as far as Perryville, and
Twyman and I remained about there, while Jacob Baer and J. H. Willard went on further.
I don't know where. Twyman and I remained about Perryville some days, looking after
mob who had been engaged in the murder of Spence Finney, or one Finney. Baer and
Willard returned in six or seven days, bringing with them two men; I think both prisoners.
William Henderson was arrested in Perryville, one hundred and ten miles from Fort Smith.
I am certain he was arrested at Perryville.
Q. Name over those you remember as having been arrested in this Finney affair, or mob.—
A. Coleman, the owner of the team that brought the other prisoners down; Harrison, a hotel-
keeper; Scott, also a hotel-keeper, and several others, whose names I do not remember.
Q. Do you remember the names of any of the posse who started out from here with you
on this trip?—A. None, except Rector, Twyman, and myself. Perhaps Rector may have
been a deputy marshal.
Q. Were there any other persons along with you, or did any other persons start out from
here with you on this trip?—A. None, that I remember of.
Q. Did you start from Perryville immediately after the arrest of these parties—the mob
men?—A. No, I think not.
Q. Do you remember how many days you were in coming down?—A. No. I don't know
how long; we were water-bound. Baer and Willard were left by us at Perryville, and
did not come down with us.
Q. Do you remember what posse accompanied you in on this trip?—A. No one but Rect or
and Twyman. There were no others that I know of.
Q. I will read over to you the posses returned. In the cases,

Case vs. One Merritt, William
Chum, one Harrison, Henry Vorman, and Jack Gardner, the names of the posse are
Joseph H. Harrison, Thomas Maxwell, and Z. T. Taylor. Case vs. William Coleman, P.T.
Travel, and one Scott, the names of the posse are Joseph Thomas, Lee T. Polk, and Samuel
Hunter. These are returned by Jacob Baer. Case of Charles Rich, the posse are J. M. Harr
rub, C. L. Withrow, and A. R. Mayhew. Case of William Henderson, the posse are T.A.
Twyman and F. A. Rector; returned by J. H. Willard. These were all returned upon that
same trip. State which of the above persons you remember as being on this trip.—A. I re
member only Twyman, Rector, and myself. Do not remember any such persons as Z. T.
Taylor, Joseph H. Harrison, and Thomas Maxwell being along on this trip.
Q. Were Joseph Thomas, Lee T. Polk, and Samuel Hunter along as posses?—A. They
did not come in with us. I do not remember any such persons. I remember one person
who was not a prisoner coming in with us. I do not know whether he was returned as a
posse or not. He did not start out with us.
Q. In the case of Charles Rich, in which you are returned as posse, there is also returned
as posse C. L. Withrow and A. R. Mayhew. Do you know any such men?—A. No, I do
not.
Q. Do you know of any such men as those I have named over as posses?—A. No, I don’t.
Q. Did you ever make any other trip with Willard or Baer, as posse?—A. No, sir.
Q. Did you get pay for your services in this case?—A. Yes, sir, in some form. I think I got
a check for my pay, which I think I afterward sold to B. Baer for seventy cents on the
dollar.

JAMES M. HARRUB.

Witness:

W. H. NESSELE.

OCTOBER 1, 1874.

FORT SMITH, ARKANSAS, October 2, 1874.

J. M. HARRUB sworn and examined.

Case vs. George and Elizabeth Drum, introducing spirituous liquors into Indian Country.—
Johnson, deputy.

By NESSELE:

Question. Who arrested the parties?—Answer. I did.
Q. Where did you arrest them?—A. Near Webber’s Falls, about 50 miles from here.
Q. Did you have a warrant for their arrest?—A. No, sir.
Q. Did the prisoners come along with you to this place?—A. I brought them to Ford’s,
where Johnson was; and from there we all came together.
Q. Were you employed as a posse in this case?—A. No; not in any case in particular.
Q. How many days were you out on this trip?—A. I don’t remember. There was an
old man called John ——, Paul Jones, and a man called Nick, who came in on this trip.
Q. Who came in with you as posses on this trip?—A. No person that I remember of.
We left Scoon at Webber's Falls. Johnson and myself, with the prisoners, were all together.

October 2, 1874.

Witness: W. H. N.

FORT SMITH, ARKANSAS, November 17, 1874.

In the matter of the posse-account of M. Stewart for 23 days' services as posse comitatus in the arrest of Tom Kitchens, from October 24 to November 15, 1872—$69.

A. D. IRWIN, deputy marshal, sworn and examined.

I arrested Tom Kitchens in the Chickasaw Nation, near Love's Oil Springs, about 350 miles from here. I live near Boggy depot. I am satisfied I had a writ for the defendant when I left Fort Smith. I did not bring any other prisoners in at the time I brought Kitchens. I employed Stewart at Fort Smith, and he started with me from this point. I had no other posse on this trip. The name of A. D. Irwin to the certificate on the posse voucher, I am satisfied is my genuine signature. Mr. Stewart sold this account to Mr. McLoud over one year ago.

A. D. IRWIN.

Testimony of W. H. Johnson.

FORT SMITH, ARK., August 31, 1874.

Sworn. Examined by Mr. Duval:

I want first to show the accounts that have been charged up as paid, to the Government, during the administration of Rootz, that I never received and knew nothing about—posse comitatus accounts and deputy marshal accounts that are forgeries, so far as I am concerned.

In the first place, in the case of George Simmons, I see a posse-account for $33, in the name of C. D. Capshaw; that I know nothing about. I never had Capshaw with me at all; I do not know him. I have seen the return on the Simmons writ; it is signed by me.

In the case of J. L. Marshall, October 30, 1871, I see a posse-account of Wm. Johnson for $63, which I know nothing of.

I see here the case of Isaac Ellis, for larceny, November 27, 1871, a marshal-account, $145.25, that I never made the return upon at all. There was a case of that kind, but I arrested him here in town, and only charged $2 for it; the account was raised from $2 to $145.25.

In the case of Jacob Cross (or Crapo) January 21, 1872, for $73.55, there are two posse-accounts, J. M. Taylor and C. S. Sharp, $84 each, that I know nothing of. I never had them at all.

In the case of the United States vs. Dick Agerson, Paul Jones, and John Tereaux, there is $169 charged when there ought not to be, but $6. I made my return and only charged $6, for I made the arrest on the bank of the river here. I arrested those fellows once after that, in the Indian country.

In the case of Bradley Collins the posse-account of C. H. Ford and A. L. Jones, $66 each, are forgeries; the date of that is 18th January, 1872.

In the case of the United States vs. J. D. Brison, there are two posse-accounts, Wm. Parker and S. C. Crawford, $66 each. I arrested the party, but did not have those posses.

Case of James Hynes, March 11, 1872, two posse-accounts, $78 each, W. S. Sullivant and A. S. Ross.

United States vs. Joseph A. Denton, March 12, 1872; marshal-account for $77.25. I know nothing of service at all. I returned the writ non est.

United States vs. Sandy Ennis, March 11, 1872, $77.25. I know nothing of that case whatever.

Thomas T. C. Brackett, posse-account for Robert Foster, April 8, 1872. I did not have Foster with me, and do not know him.

United States vs. Charles Garland and Charles Austin. Austin I did not arrest, and do not know anything about. I arrested Garland. I only got $102.25 for the service. It is charged in the account $204.50. Here is a posse-account for Robert Wilson that I do not know anything about. That is a forgery. All those posse-accounts I gave are forgeries.

United States vs. Mr. and Mrs. Page, Rockwell, Slaughter, and Buckskin Joe, April 30, 1873. I arrested these parties in Texas, all except Buckskin Joe. I did not arrest him at all. The posse were C. M. Marion, T. S. Samuels, and S. B. McCord, for $66 each. I never had them or either of them with me, and I do not know anything about them.
United States vs. Charles Wenshaw; marshal-account for $87, May 21, 1872. I returned the writ non est. The marshal's fee was nothing.

On that same trip that I brought in Mr. and Mrs. Page, Rockwell, and Buckskin Joe, I brought in Alexander Brooks and Walter Covington. I sent them in by E. A. Kline and John S. Wilson, and Martin joined them at McAllister's. I returned those three as posse.

United States vs. J. J. Grace; marshal account for $77. I know nothing of that whatever. It is dated June 27, 1872.

United States vs. Newt. Schrimpfshur, one posse, C. P. Blanton. I do not know him at all, and never had him with me. Dated July 17, 1872.

Willard (or William) Robinson. July 19, 1872, is the date of the return. Posse-account of T. G. Hays for $60. I do not know anything about Hays.

United States vs. Josiah and Mrs. Pigeon. I returned all of the writs non est; that is, I signed them in blank, and put them in the office to be returned. The Government paid $246 as marshal-account. That I do not know anything about. Also two posses for $9 each—John Scott and John Davis. I was in Little Rock at the date of that return.

Q. Where was Newt. Schrimpfshur arrested?—A. In the Cherokee Nation, up near Chetopa, Kans., on Big Cabin Creek. I don't think it is 300 miles from here.

Q. How far is it from Fort Gibson to Chetopa?—A. It is 7 miles from Fort Gibson to Gibson Station: 77 miles from there to Vinita, and 32 from there to Chetopa, 116 miles. I think 215 miles would cover the distance to where he was arrested. On that same trip I went to Elgin, Kans.

Q. In charging mileage where you had several writs, and arrested one, did you make your mileage so as to cover the distance actually traveled on the whole trip?—A. Yes.

Q. You went to Elgin for what purpose?—A. To get some witnesses.

Q. Where was Willard Robinson arrested?—A. On the bridge of the Missouri River and Topeka Railroad, crossing the Arkansas River; that is not quite 100 miles from here. I will not say positively as to this distance, because I don't know.

Q. I find here a charge of mileage of 300 miles in the Robinson case, and ten days feeding prisoner. I. A. I guess I fed him more than ten days, but I don't think I traveled the miles. I arrested him as I went out, and left him with Brocken, I think.

Q. Jake Craven seems to have been arrested on the same day also?—A. We always made our returns as though we arrested them all on the same day. I think Jake Craven was arrested in the Seminole Nation and brought to me by some one—I don't recollect who. My recollection is that I paid $20 to have him brought to me. Donnelly always made us make our returns of our prisoners as all from the same nation, on each trip. He didn't like us to put in different nations. He said the Department grumbled at it, and could not reconcile it.

Q. You say the returns were filled out in the office, and your deputies signed them afterward?—A. No, sir. We generally signed up blanks. When they were printed blanks we signed them up in blank, and we always signed the posse-accounts in blank.

Q. Did you sign any more blank posse-accounts than you had posses?—A. Frequently we did. Mr. Donnelly and Mr. White used to give us quite a number of posse-accounts to sign, and we never counted them particularly— at least I never did. And frequently they would tell us they had "spoiled two or three of the damned posse-accounts, and we must sign a couple more; that they were difficult to make out, and had been spoiled.

Q. I see that Jack Dinsmore is returned here on that same trip?—A. Yes. We had him and Jack Walker, too, on the same trip, I think.

Q. In the Dinsmore account the posse is J. N. Martin. How about him?—A. I had Martin with me, but I don't recollect whether he was on that trip or not. I don't think he was on that trip. J. N. Martin is a brother of E. N. Martin, I think. I took E. N. two or three times and J. N. two or three times, and I frequently got their names mixed.

Q. Here is John Davis's posse-account in Jake Craven's case. A. I never had him with me on that trip. Dinsmore was arrested beyond Elgin, Kans.; I call it a little over three hundred miles from here. That mileage is correct.

There is one thing I wish to state. In making up these mileages, Donnelly and Roots always told me that we were entitled to mileage on all the writs for the farthest one, so as to make the mileage as near uniform as possible.

Q. They were aware that where you returned several writs as having been served on the same day, that was false as to dates?—A. Yes.

Q. And also false as to mileage, as they stated that you had a right to charge the longest distance, no matter where the writ was served?—A. Yes, sir.

Q. United States vs. Mike Allen, and James Brown; sentenced to the penitentiary July 1, 1872. Who took them to the penitentiary?—A. I did.

Q. Who is S. Michael's?—A. I don't know.

Q. Who accompanied you on that trip?—A. I didn't have anybody from here going down with me. Before I started down, Colonel Roots gave me some blanks, and I signed up the blanks before I started. I never swore anything about that account. He gave me $45. I was going to Little Rock on business for myself. He paid my expenses, and that is all I ever got out of it.

Q. Did you sign S. Michael's name?—A. No; I did not sign anybody's name but my
I had no guard with me at all, from here. I hired some fellows on the steamboat to help me guard the prisoners, and paid them out of my own pocket. The $45 paid me by Roots was for my expenses. The fare from here to Little Rock was $15. I took the prisoners in the cabin, and had a state-room for them. We went on the "Little Rock" or the "Gibbou," I forget which. I do not know Michael Sharp nor Kelly.

(The writ in the case of United States vs. Captain Rivers being produced, the witness says):

The writ has "W. A. Britton, United States marshal," printed on it. That "W. A. Britton" is scratched out and "Logan H. Roots" written over it. I know I returned it under Britton. I got the man above Preston, on Red River, and I suppose the mileage is pretty nearly correct; it is over 300 miles. It is above the old agency, Red River Station. Bracken was with me; he did not go up there with me; he went out toward Fort Arbuckle.

**Case of George Barnes, Lo. Barnes, and James Barnes.**

That was returned under Britton; (Roots?) I arrested all three of them. I arrested Lo' and George, on Red River, above Colbert's Ferry, I don't know how far; above Wichita, though; and I arrested James Barnes at what is now called Caddo, in the Chickasaw Nation. They all went with me to Sherman, Texas; there they all gave bonds before Commissioner Williams. James Barnes was a hotel-keeper on the Missouri, Kansas and Topeka Railroad, and had a good deal of business, and I permitted him to go back home and stay. Lo. and George came with me to Fort Smith; and also Captain Rivers came with me to Fort Smith. I brought the bond here, and Churchill accepted it, and I turned the fellows loose.

Q. Here is a charge of 380 miles.—A. I am not positive about the mileage; I don't think it is that far.

Q. Seventeen days' feeding prisoners?—A. I didn't feed but two of them.

Q. Here is a charge of returning three prisoners and deputy 380 miles, $152. A. I guess the miles are about correct. The $114 for feeding is incorrect as to one prisoner.

Q. Posse-account of John Beer, Francis Lane, and David Beer?—A. That is correct. I had those men with me. I don't know where the two Beer boys are. Frank Lane is down in Saber County; he was last fall. I don't know where he is now. I hired those posses here and sent them on ahead, and I went to Muskogee and went down the railroad. They went from here.

Q. One of these posses is incorrect; you had Eugene Bracken in the Captain Rivers case?—A. I had all of them. I had four on that trip. At that time we had no ruling as to the number of posses—only to get along with as few as we could.

Q. Did not Roots make this ruling or order: that there should be only one posse allowed to the prisoner?—A. I believe he did.

Q. United States vs. Sandy Walker; writ served July 4. Who served that process?—A. Eugene Bracken, as a posse under me.

Q. Who made the return?—A. I gave the papers to R. Fitz Henry and James W. Donnelly. Donnelly was chief clerk in the marshal's office, and Fitz Henry was a deputy marshal. I sent Bracken out to make the arrest. Bracken and Wilson were out, and when I came in we had quite a number of prisoners; and Fitz Henry asked me to let them return some of my writs. I gave them that writ and another for this Jack Harvey at the same time. They returned one or the other of them. I know Wilson signed his name to the posse-account in blank, and so did Bracken; and they were handed back to them signed by Pritchard, I think, as already sworn to; I am not positive as to Wilson. Wilson may perhaps have sworn to his before Brooks, but I don't think he did.

Q. Here is a writ, the return upon which seems to be signed by Joseph H. Monroe; did he have any existence?—A. I never knew him.

Q. In whose handwriting is that signature of Joseph H. Monroe?—A. I think it is in the handwriting of R. Fitz Henry. The reason I think so is that I gave the writ to Fitz Henry. Q. Does it resemble his handwriting?—A. It does partly. I am not an expert, and can't tell anything about that.

Q. Did you receive anything of the fees charged in that case?—A. I think they gave me $42 or $52 for the two cases. They gave Wilson $75. That was all that was paid to...
me and him. I think Wilson arrested Jack Harvey himself; and then he was returned either on the Jack Harvey or the Tandy Walker writ; I don't know which.

Q. Case of United States vs. Frank Emmons, for contempt?—A. I had that writ, did not make the arrest. I had the writ and I sent "Curly" out to make the arrest, and I made out the return as though I had served it myself. Emmons, on his way in here, took sick and died between here and Fort Sill. He was arrested about thirty miles beyond Fort Sill so "Curly" told me. I did not see him. The distance is between three hundred and five hundred miles.

Q. The writ seems to have been served on the 11th November, 1872. You were in town at the time?—A. Yes. I was in Fort Smith at the time, and remained here until 9th December.

Q. The cases of United States vs. Cad, Wadsworth, Ce-he-che-pe and S. D. Turner are next. A. They were charged with having stolen some cattle. I returned the writs for Ce-he-che-pe and Cad. Wadsworth non est, I think; and, if I mistake not, I wrote on the writ myself. "These parties cannot be found in the western district of Arkansas," and signed my name to it. I am pretty positive I made that return, and wrote it myself.

Q. Did Charles Western or "Curly" have anything to do with that writ?—A. Not that I know of.

Q. When was that return of non est made by you?—A. Some time about the commencement of the November term of the court, 1872, I think. I am not positive as to the date.

Bracken swore out the writ and filed the information.

Q. Here is a bill in the Cad. Wadsworth case for serving this writ in the Cheyenne and Arapahoe Nation, four hundred miles, mileage, transportation, and feeding, amounting to $102. A. I do not know anything about that.

Q. Here is the Ce-he-che-pe case, $206 charged on that, and John T. Scott and W. D. Harding are the posse. A. I don't know anything about that case at all. I returned the writ non est.

Q. Did "Curly" have those writs when he made the arrest?—A. I don't think he made any such arrests.

Q. Who was "Curly"? Was he Charles Western?—A. Charles West was the name I knew him by.

Q. Was he a deputy at all?—A. He rode under me as posse, and it seems to me that he had a special commission. I don't know, though.

Q. Do you know whether these two parties were ever arrested at all or not?—A. No, sir; I do not. I know that I returned the writ non est. I know I did not arrest them.

Q. You have no recollection, I suppose, of their case being before the court at the November term, 1872?—A. They were not before the court.

Q. The next is the case of United States vs. S. D. Turner. A. I signed the return at the same time I did the return in the Frank Emmons case; and that I charged only $2 for Turner's son-in-law, Josiah Foster, came from over in the Nation somewhere, about where he lives, and told me he wanted to come over and give bond; and he came here and surrendered to me.

Q. Did you return any posse in the Turner case?—A. Bracken was out with Curly, and I don't know what case he was put in.

Q. Now the Emmons case?—A. I made up the return, or bad it made up, and placed the account in, and, if I mistake not, swore to the Turner account; and it had this Emmons account attached to it, and put it in, and the court refused to approve it and gave it back to me; and he took some of the grand jury out privately and told them that Johnson had made a false return, and they must indict him. I withdrew this account and tore it up, and wrote it myself. I am pretty positive I made that return, and wrote it myself.

Q. Did you return any posse in the Turner case?—A. Bracken was out with Curly, and I don't know what case he was put in.

Q. You will swear positively that you made out no such return as this in the S. D. Turner case?—A. I swear that I never charged anything but $2 in that case. I never left Fort Smith.

Q. I will name over the posses. In the Cad. Wadsworth case there appear to be J. D. Wallace and J. P. Simms; in the Turner case R. H. Downy?—A. I do not know anything about them.

Q. In the Ce-he-che-pe case, John T. Scott and W. T. Harvey?—A. I know John T. Scott, and have had him with me as posse, but not on that trip. I don't know where he is now. He went to Texas. So far as I know, this account in the Frank Emmons case is a fraud. I never received any compensation whatever for the service, but am out Curly's expenses on the trip, except $15 or $20.

Q. Do you know where Curly is now?—A. The last account I had of him, he was on the Missouri, Kansas & Texas Railroad, somewhere about McAllister.

Q. The United States vs. John Wells and Charles Rich?—A. Wells and Rich were brought in by Jim. Scovel, Dick Hood, and J. C. Wilkerson, under the name of John Johnson or Wm. Gossnell. I don't know who made the return. I signed up the return non est and gave it in the office. I had writs for them under other names. After which Jim. Donnelly
came to me and asked me to sign the name of R. T. Graham. I had already signed my own name to it, and it is erased.

Q. Is there any evidence that that non est has been taken out as well as your name, W. H. Johnson?—A. I just signed it in blank and told him to write out the non est return over that. He then gave me $50, and gave me six or seven posse-accounts, all blanks, and I signed the name of R. T. Graham on the posse-accounts. He gave me a check for $50 and I went to the post-office and drew the money.

Q. Did he give Bracken anything? I see he signs John Davis's name.—A. I don't recollect about that. No; Bracken was a witness in that case.

Q. Was that indorsement as posse made by you?—A. I think so; that looks like my handwriting.

Q. Walter S. Brown?—A. I don't think that is my handwriting. I think that “Davis” and “Smith” is mine. I think I had Smith out as guard on a trip some time before this, but I don't recollect how the name came there.

Q. Was there any such name as R. T. Graham in the service, as deputy or posse?—A. Not that I know of. I know one R. P. Graham, I think it is.

Q. You did not have authority from anybody by that name to sign his name?—A. I don't know anybody by that name at all. I signed that at the request of James Donnelly. I did not know what the object was till after I signed it. It was a good while before I understood it thoroughly.

Q. State whether it was the practice to make such returns in that office.—A. I don't know what the practice was, except as to my own business. It was not the practice with me, I know.

Q. You stated to me the other day that about the first returns you made you were a lot of returns of a similar character at the instance of Roots; some of the writs being returned as under Britton, and some under Roots.—A. This is the same thing. The date of this is September.

Q. Do you know whether Roots was privy to that transaction?—A. My recollection is that he was. It was perhaps a month or two after he was removed from office.

Q. Do you know that Roots, Donnelly, and others were engaged in making up their accounts in order to balance with the Government, or for any other purpose?—A. No. I cannot swear positively as to that, for I don't know. I am not familiar with the workings of the marshal's office outside of my own affairs.

Q. Did you know a Jim Lamar?—A. No. I know a fellow they called Lamar, who staid at Dick Kerens's stable. I don't think he ever rode as deputy.

FORT SMITH, September 1, 1874.

W. H. JOHNSON's testimony continued:

During the May term of the court, 1871, Colonel Roots asked me to give him a list of the oddest Indian names that I knew in the Indian country. I did so. I don't recollect any of the names now. I did not charge my memory with it. Afterward I saw a portion of those names that I had given him on the witness-roll, and I saw their names on the back of indictments—some put there by Pritchard, some by Huckleberry, the district attorney, and some by Marshal Roots, and some by the grand jury.

Question. Do you know whether or not they were in the habit at that time of making the witnesses prove up their attendance in the court-room, and entering the amount due them on the records?—Answer. No, they were not.

Q. Do you know of any instances where false posse-accounts being made, or that he gave any instructions in regard to them or was present when they were put in, and had knowledge that they were fabricated?—A. He told me at one time that if I wanted to put in extra posse-accounts, I must whack up with the office. To “whack up with the office” meant that I was to divide what I got. That is, if I put in a false posse-account I was to give them half of it.

Q. In these cases where false posse-accounts were put in, did they retain a portion of it?—A. I can't say on that, because I don't know. I never returned but two false posse-accounts. I gave one to Roots and I took the other. I can't remember what case that was in.

Q. How were those false accounts prepared?—A. I never knew how that was done. All that I knew was that I gave mine to Fitz Henry. The posse-account was all made out and signed up and given to me and ready for the approval of the commissioner or clerk, and I gave mine to Fitz Henry, and gave him $10, and he brought them back sworn to before Pritchard. What the names were, or what cases they were in, I can't recollect.
Q. Do you know of any instance where any of the other commissioners signed posse-accounts and signed the jurat as though they had been sworn to?—A. No, sir, I don't. I not know of my own knowledge. I have heard it said that Brooks did it, but never to him do it. He never did it for me.

Q. Do you know of any instance of Churchill's having taken affidavits to these false-accounts, either of the deputies or posses?—A. No, sir.

Q. Do you know whether Robert Donnelly rode as a deputy?—A. Yes; he rode some. He made one or two trips that I know of.

Q. Was Robinson in the habit of making returns of deputy marshal in cases where did not serve the writ?—A. I have heard it, but don't know it. I know that he returned two writs for me, but I can't recollect the names.

Q. Here are two cases against Hugh Henry and Patrick Henry returned by A. K. Coward, which appear to have been served on November 2, 1872, in the Chickasaw Nation. A. Coward did not ride in the nation. Jim Chambers arrested Patrick and Hugh Henry a North Forktown and brought them in here. After they were brought in I went to Brooks and got the writs for the parties. That was the custom then; we always did that, and ante-dated them. Jim Chambers swore to the information before Brooks, and he gave Coward the writs and Coward made the returns. He returned three posses. There were no posses at all on that trip.

Q. Do you know that there are any such men as John C. Chapman, John Wait, and John Henry?—A. No; I don't know them. I know a John Hendry. I made out the papers myself for Coward. Coward got one-half, and I think they gave me $50 for making out the papers for them.

Q. What do you know about Ben. Haskins?—A. I don't know anything about Ben. Haskins. I think Ben. Haskins and Gilbert Myers were one and the same man.

Q. Do you know anything about the Sarah Wilson case?—A. Yes, sir; I think she was arrested near North Fork Switch, between eighty-five and one hundred miles from here.

Q. Do you know anything about the James McCoy case?—A. I don't know anything definite about it. I think he got them down below Caddo somewhere; 150 or 175 miles from here, I suppose.

Q. Do you know anything of the Pat. Nail case?—A. Yes; Kline brought him in here, but I don't know where he got him. I think he got him beyond Scullyville, about thirty miles from here.

Q. Do you know E. M. Fowler?—A. I know a Fowler that staid at Mesler's. I don't know his name.

Q. Do you know whether he was in the habit of riding under Roots?—A. I never saw him do anything while Roots was here but deal faro.

Q. Do you know anything about the case of A. Holt?—A. I was in the office at one time and saw Gilbert Myers making out papers, and I saw the name of A. Holt signed at the bottom of those papers. They corrected something in the papers, and I saw Bob Donnelly put them in his pocket. Bob Donnelly was a brother of Jim Donnelly, the chief clerk in the office.

Q. Do you know anything about the case of Bob Short, charged with assault with intent to kill?—A. I know Short; I believe I don't know who arrested him.

Q. Do you know who arrested Wm. H. Luster and Thomas Kent for murder?—A. It seems to me that Winton arrested them and that Bob Donnelly made the return; I am not positive about that.

Q. Do you know of Wm. M. Griffith riding as deputy?—A. No; the first riding I ever did under Roots, I had Griffith's commission in my pocket. I had no commission myself under Roots at first. I arrested George Simmons, Donaldson, W. H. Green, and some others, I forget who, now, and gave Griffith half the proceeds. I signed the return myself as deputy.

Q. Did you know a deputy here by the name of C. S. Worth?—A. No, sir; there is no man here by that name.

BRITTON.

I was a deputy under Britton's last administration. I did not serve but four or five cases; not over $400 worth.

Q. Have you examined those cases to see whether there were any fraudulent posses returned on the writs?—A. It seems to me there were some. I can't be positive until I look at my books to see.

Q. Have you ever looked at the books in the marshal's office?—A. No. I saw the abstract in Washington, and saw that there was a case or two there charged up in my name that I did not serve.

Q. Who managed the business of the office for Britton?—A. Donnelly was chief clerk, and he had White, Gilbert, Myers, and J. W. Anderson.

Q. Were you sufficiently familiar with the workings of the office to know what they were doing in the way of manufacturing accounts of posses?—A. I knew there was a vast number of them manufactured.
Q. Did Britton ever pay you any money for your services? — A. No, sir; he never paid me a dollar in his life. He is indebted to me for my actual services some $300 or $400, for witenesses that I brought in and on account of friends of mine who were here and had no money to get away with, and I took their accounts and advanced them the money. Those vouchers I have yet.

Q. Do you know whether Britton has received credit for them? — A. I expect he has; I don’t know it.

Q. Do you know of any forgeries or duplicates of those checks that were put upon the market? — A. No.

Q. Do you know of Gilbert Myers having a lot on hand at one time and offering them for sale? — A. Yes, sir. I know that when Whitney was here he came to me and asked me if I had seen a certain check that he named, and told me if I saw it to buy it at any cost and give it to him.

Q. Did you ever hear of him having $500 of them which Bob Donnelly took away from him? — A. I heard that he had accounts, but not the amount. I heard that they were taken away from him, but did not hear by whom. I have heard that he had quite an amount of them, and was drunk, and they were taken away from him.

Q. Did you ever see either Bob or Jim Donnelly, Clarence White, or Gilbert Myers sign any name to a voucher or marshal’s account of persons who had no existence, or to imitate the signature of any other person? — A. I have seen them imitate signatures often. They used to show me that they could write their name better than I could myself. They used to do Shoemaker’s the same way, and Hugh Maguire’s. They used to show me Maguire’s signature and their imitation of it, and mine too. They wrote a good hand. They could write almost any kind of a hand. They could imitate almost any signature that I saw them try.

_SARBER._

I was a deputy under Marshal Sarber. I have received pay from him for services as deputy. I received checks upon the bank. I cannot call to mind the dates when I received the checks on the bank here. I can find out. I got $100, $200, and $400 at a time. I think the checks were signed by him as marshal, but am not positive. The first checks were given on the National Bank of Western Arkansas, and the next on the assistant treasurer at Saint Louis.

Q. Do you know anything of the practice which prevailed of their marking claims “O. K.,” or some other mark, which claims were afterward bought by the National Bank of Western Arkansas? — A. Yes. I recollect that on one occasion John Dameron, who rode with me as posse, (this was on the 3d of December last,) had a posse-account for $60, I think, and I went to the bank to sell it for him. P. K. Roots, the cashier, told me to take it over and have Sarber indorse it. I went over and told Sarber I was going to Little Rock to take some prisoner down, and Dameron was going with me and had to have some money, and told him to mark “O. K.” on it and put “Sarber” just below it. He put “O. K.” on it anyway, and I told him if the account was disallowed by Judge Story I would pay it. I went back to the bank and sold it. I had a witness-account which I sold for $37.50 and something. Billy Walker had one for the same amount, and got the same amount for it that I did; and I sold John Dameron’s also. I think I sold the accounts at eighty cents on the dollar.

Q. Did you act as acrier, at the last November term of the court? — A. Yes; I was crier the last court that was held here, I believe.

Q. Did you know George Winston, a colored man? — A. Yes, sir; he brought water, swept, made fires, and attended to things generally in the court-room. I think he waited on the judge. There was another man performing the same duties in the court-room, but I have forgotten, now, who it was, and there was one of the prisoners out a part of the time. I do not know what compensation Winston actually received.

Q. Was he not kept under employment by Sarber or Judge Story at times when court was not in session? — A. Yes, sir; all the time, ever since Sarber has been here. He was a servant under Roots, too. I think he was under Britton.

Q. Does he hold a commission as deputy marshal? — A. I think not. I never heard of him being anything but an office-boy.

Q. What was the custom, under Roots, in regard to retaining 10 per cent. of the money due the deputies? — A. He took off one-third and then retained 10 per cent. of the other two-thirds to indemnify him, I think he said, in case that the account was disallowed; that practice prevailed under Britton and Sarber. Roots has paid me all my 10 per cent., except a little for the time I rode as special. His practice was to pay back all the 10 per cent. except the specials.

Q. Last night when we were looking over the accounts of Sarber, there was an account for taking Wolf, Martin, and others to the penitentiary, do you desire to make any explanation in regard to that account? — A. I want to present that account; that account has never been paid to me, and I still hold it. I made out that account, I think, for $375. I made it out for the two guards who did not go with me. I had them with me a little while.
and in making out the account I gave their names. I afterward withdrew that and made out a new one.

Q. I see it has been forwarded by Sarber to Washington City. Did you ever receive anything upon it?—A. No, sir; I think not. I know I did not. In fact, I got only $300 out of Sarber since that account was forwarded. I did a great deal of service, and I have got quite a number of orders that have been accepted, and $500 of orders to the bank, and the bank took at 70 cents—Sarber's own individual note, issued to me in consideration of my services as deputy marshal.

FORT SMITH, ARK, September 3, 1874.

Testimony of W. H. Johnson, as to a posse account of John L. Dameron, in case of United States vs. Jack Edwards et al., for $60.

Sworn. Examined by Mr. Duval:

I was deputy marshal, and had Dameron with me on this trip. We arrested the parties and brought them to Gibson, where they gave bonds for their appearance at court. I had the posse with me the number of days specified. Directly after we came in here Dameron got into a difficulty in town here, and I forwarded the papers to him at Vinita, and he swore to them before the Indian agent. I think we were gone on this service twenty-three days. I think I also had Lewis Marshall and John Poling with me as posse, and I had a guard with me a few days, Charles Butterfield.

Question. What was the necessity for having a posse at all on that trip?—Answer. There is a necessity to have a posse in every case. Those particular parties I could have arrested by myself, but on that same trip my guards had to kill two horse-thieves, and we had a considerable fight with them.

Q. So that the danger was such as to make it necessary to take a posse with you from here?—A. Yes, sir.

Q. Where is that writ?—A. I don't know. I returned the writ. Those are genuine cases, and that posse was with me. The time covered here has not been covered in any other voucher. In fact all the time that he was with me is not covered there. I think he was with me twenty-three days, and there is only twenty put in.

SEPTEMBER 19 1874

W. H. Johnson, deputy marshal, sworn and examined.

UNDER ROOTS.

vs. Charles Austin.—Arrested, but does not recollect where; thinks Wilson, the posse in the case, caught him at Boggy, 155 miles from Fort Smith. The posse account is correct.

vs. Charles Winshaw.—Arrested by witness, perhaps at Fort Smith; is certain he never brought the defendant in from the country; never received any fees in this case.

vs. John Priest for contempt.—Fees as charged correct.

vs. Charles Garland and Charles Austin.—Names of posse as charged in the account—James Hawkins, Isaac Ellis, and Robert Wilson; had no such man as Robert Wilson Witness's name to certificate on Wilson's posse voucher is a forgery. Hawkins and Ellis as charged are correct. A writ for same parties, dated February 15, 1872, appears to have been executed same day and returned by Shoemaker, and fees to the amount of $90.50 are charged thereon. No other writ is to be found in the clerk's office.

vs. Daniel West.—Don't know anything about this case; don't know the man; never got any fees in this case.

vs. Thomas T. C. Brackett.—The fees as charged are correct, but the posse account is fraudulent; did not have Robert Forrester as posse in this case; don't know any such person. Witness's signature to Forrester's posse voucher is a forgery.

vs. Azemander Brooks, Walter Covington.—Arrested in Texas; with this exception the fees as charged are correct.

One Page, one Page, one Slaughter.—Arrested in Texas. Posses as charged are C. M. Marvin, T. L. Samuel, and S. F. McCord, all of which are fraudulent. Witness thinks his certificates to each of the posse accounts of above-named persons are of genuine nature, but he does not know any of the parties, nor did he have them employed in this case.

vs. Lewis Marshall.—Arrested in Fort Scott by Deputy Marshal W. W. Martin, of the
district of Kansas. Witness never charged or received any fees in this case. The posses in this case as charged are Charles P. Lawson and James S. Thomas, both of which are fraudulent. No such persons were employed in this case. Witness's signatures to posse accounts as above are forged. Prisoner was turned over to witness by the deputy marshal of Kansas.

vs. William Campbell.—Arrested in Parsons, Kans. Stephen Carr's account as posse in this case is fraudulent; had no such person in the case. Signature of witness to posse voucher is genuine.

vs. Doctor Dudley.—Arrested at Chetopa, Kans. The posse in this case was Wilson, and is correct.

vs. Chas. Williams.—Arrested in Parsons, Kans. J.N. Martin was a posse in this case and is correct.

vs. Pig Carr.—Arrested at Fort Gibson, overcharge of 225 miles' travel. Eugene Bracken as posse is correct.

vs. John H. Haley.—Arrested in Chetopa, Kans. S.A. Smith, the posse charged in this case, was not with witness on this trip, and the posse account is fraudulent.

vs. J. J. Grace.—Return on writ shows the arrest to have been made in the Cherokee Nation, June 16, instead of the Cherokee Nation, as charged in the account. Witness knows nothing about the case or the man; never received any compensation whatever in this case. Witness does not know Joseph Porter, who is charged in the account as having been a posse. Witness believes his signatures to the deputy marshal's and posse voucher to be genuine. (See his former statement for explanation.)

vs. John Priest.—Internal-revenue account is correct, except defendant was arrested in Thayer, Kans. C.H. Mathews and R.P. Jefferson are charged in the account as posses in this case. Witness thinks he had C.H. Mathews, but he did not have R.P. Jefferson in this case. Does not know such a man.

vs. J. S. Marshall.—Arrested in Humboldt, Kans. H.L. Shaw and T.P. Linton, the posses as charged in this case, are unknown to witness, and were not employed by him, and are therefore fraudulent.

vs. Wesley Love, Scig. Mansas, Joseph Monds.—Sentenced to penitentiary at Little Rock. Total amount charged by the marshal for this service, as appears from the account, is $241.50. Charge is made for transportation of five guards as follows: Coleman, Landers, Carr, Gilstrap, and Penter. Witness does not know any such persons, nor did he have either of them with him on this trip. Witness had but two guards along with him, viz, James Hawkins and P.A. Bolton, and the only compensation they received was the payment by witness of their fare to Little Rock by river, which was about $10 each. These two last-named persons were going to Little Rock to work. Witness received $15 from Logan H. Roots, out of which he paid all the expenses of this trip.

vs. Thomas Snyder.—Selling spirituous liquors, &c. Had no such guards as Wm. Arnold and Eph. C. Ward. Had no guards in this case. Do not know any such a person as Eph. C. Ward; know Wm. Arnold.

vs. Isaac Ellis.—See statement heretofore made.

vs. George Simmonds.—Made the arrest without process; writ issued after defendant was in custody. A portion of the travel, as charged, was made by railroad.

vs. J. L. Marshall.—Correct, except had no such person as William Johnson as posse; I had a posse with me on this trip or in this case, but am certain I had no such person with me as Wm. Johnson.

vs. G. L. Helm.—Fees as charged are correct.

vs. Linhur Jack.—Correct, except had no writ.

vs. John Priest.—Correct, except no writ.

vs. Bob Coley.—Correct, except had no writ.

vs. Lawrence Tonlan.—Correct, except had no writ.

vs. George Bell.—Correct, except had no writ.

vs. John Lawery.—Correct as charged, except that Chas. Keepers was not a posse in this case. Frank O'Brien may possibly have been a posse in this case, but I am positive Chas. Keepers was not. Chas. Keepers's name was signed by F.C. O'Brien.

vs. Jack Dinsmore.—Excessive mileage. See former statement.

vs. Wm. Robinson.—I had no such person as Thos. G. Hays as posse in this case.

vs. John Cravens.—See former statement.

vs. N. Schrimscher.—C.P. Blanton was not a posse in this case. Do not know C.P. Blanton. The signature to certificate on Blanton's posse voucher resembles mine.

vs. Jacob Crapo or Cross.—I had no such guards as John M. Taylor and C.S. Shupe or Sharp. Had no guards. Did not make the arrest. Do not know John M. Taylor or C.S. Sharp. Arrest was made by Wm. Sooon, one of my posse. I think B.F. Shoemaker made the return. I have never seen the account before, nor received one cent as compensation for services.

vs. George Drum, Elizabeth Drum.—Introducing spirituous liquors into Indian country. Arrest was made by J.M. Harrub, one of my posses. I was along on the trip, but did not go up to the defendant's house. I sent J.M. Harrub up. The arrest was made above Weber's Falls. There is an overcharge in mileage of 200 miles. Never seen the account before.
as it appears here. I may have received some little compensation for services. (See Harrub's statement.— W. H. N.)

Bradley Collins.—Arrested on the Arkansas River, above Muscogee, about 200 miles from Fort Smith. I had no such guards as C. H. Ford and A. L. James. I do not know such persons.

NOTE.—The account, as made out by marshal, is $118.55; the return on the writ amount to $62.75. On the writ the charge is for return of prisoners. The account is for one prisoner and two guards, 250 miles each, $84.—N.

vs. Nick Egerson, Paul Jones, John Toreau.—Ed. C. Ross and W. H. Lane were not with me as guards; do not know any such persons; never seen this account before. $96 fees charged in the account. $84 charged on the writ. I think I received $8 as compensation. See, also, Harrub's statement.

vs. J. D. Bryson.—Arrested five miles from Coffeyville, Kans.; had no guards in the case. Fees charged in the account, $144.75; return on the writ, $76.75. Charge in the account for return transportation of two guards and prisoner does not appear in the return on the writ.

vs. James A. Cates.—Assault. Arrested in Kansas, 600 or 700 miles from Fort Smith; no mileage charged, because party was arrested out of marshal's district.

vs. James A. Cates.—Same as first above.

vs. M. Duncan.—Correct as charged in the account.

vs. Dick Walsh, W. H. West, Dick Cate.—Correct as charged in the account.

vs. James Hines.—Had no such men as W. H. Sullivan and A. H. Ross as posses. Examined the accounts of above-named posses in this case, and think my signature to the certificate is genuine. See, former statement for explanation as to how this was done.

vs. Joseph A. Denton or Dembo.—Arrested defendant in Parsons, Kans. Mileage is charged only from State line.

vs. J. J. Connelly.—Same as in case first above.

vs. Sandy Irving or Ennis.—Mileage is excessive; too much by 150 miles.

vs. John Boyle.—Arrested in Junction City, Kans.

vs. James Chambers.—Arrested in Springfield, Mo., by James Hawkins, one of my posses. I did not have A. J. Manley or W. H. Lovell with me in this case. I forgery. I never received any compensation for the services as charged in this case. The voucher is alleged to have been sworn to before James O. Churchill, yet I did not appear before him or sign my name. I never received one cent of money from W. A. Britton, late United States marshal, for services under him, but have received his duo-bills. I would sign the vouchers so as to enable him to send on his accounts and get money on them.

UNDER BRITTON.

vs. Scott W. Toll.—Fees as charged in the account are correct.

vs. J. L. Marshall, E. A. Kline.—Fees charged as though service was made in the Cherokee Nation. I served the writ in the Chickasaw Nation; probably a clerical error.

vs. Lem. Crane.—Same as first above. Bracken was my posse, as charged.

vs. Thomas Wilson, William Latta.—Posses, as charged, are James Hodges, J. N. Martin and William Mack. I don't know any person by the name of Wm. Mack. Hodges was hired by me, but did not go with me, as I sent him out in another direction with James Hawkins, but I returned James Hodges as posse.

vs. Peg Leg.—A. J. Manley, W. H. Lovell, and James Hodges are posses, as appears from the account. I did not have A. J. Manley or W. H. Lovell with me in this case. I did have James Hodges. I did the service, but the signature to the deputy-voucher is a forgery. I never received any compensation for the services as charged in this case. The voucher is alleged to have been sworn to before James O. Churchill, yet I did not appear before him or sign my name. I never received one cent of money from W. A. Britton, late United States marshal, for services under him, but have received his duo-bills. I would sign the vouchers so as to enable him to send on his accounts and get money on them.

UNDER SARBER.

vs. George Fisher.—I arrested defendant about 95 miles from Fort Smith.

vs. Gilbert.—I arrested defendant in Cherokee Nation, near Parker, Kansas. The posses in Fisher and Gilbert cases are correct. Mileage equalized; too much in Fisher case and too little in Gilbert case.

vs. John Dizon.—Four hundred miles charged on writ. This is an excess of about 100 miles. The balance of the voucher, as charged, is correct.

Cases vs. Ed. Burgess and vs. Laz. Martin.—Too much mileage charged in each case. The excess is about 100 miles each. Balance of fees correct as charged in the account.

Cases vs. Dr. Gouge and vs. Cobras.—All fees as charged in the account are correct. The posses as charged are correct.

vs. J. H. Morgan and Joe Queen.—Excess of 75 miles travel on the writ.

vs. Cyrus Herrod and Buz. Hawkins.—All services as charged in the account are correct.

vs. Lillo Shannon, B. F. Denton, M. D. Shannon, Thomas Denton, James Hood, and F. M. Shannon, interest, liquor, &c.—A writ was issued on information sworn out by John Homer against all the defendants, except one, whose name was added afterwards. Myself and
we went out to make the arrest. Hunt and Walker went in one direction, and Dameron, Kel-

I arrested the two Shannons and one of the Dentons at Evansville, Ark., forty miles from Fort Smith, on my way out, and proceeded toward Elgin, Kansas, by way of Vinita, taking the two Shannons and Denton with me. At Vinita I left Lillo Shannon on parole, he being sick. At Vinita we met C. J. Hunt and W. R. Walker, and from that point we all came to Fort Smith together. Between Talequah and Evansville myself and Hunt were informed by some citizens that they intended to rescue the defendants in our custody. I then employed A. G. Lewis, one of the witnesses, to go to Washington County to hire guards. He returned with fourteen guards, including all those named in the account presented by John N. Sarber, late marshal. The guards joined in the account presented about 70 miles from Fort Smith. (In the account these guards are allowed 140 miles.) After the prisoners were brought to Fort Smith I reported the case to Archibald Young, who was representing N. J. Temple, then United States attorney, who was then absent. After examining the witnesses Mr. Young declined to prosecute any of the defendants, as Mr. F. M. Shannon was an old client of his. I then employed Mr. W. M. Cravens to represent the Government. The witness (Peyton) left the place, and witnesses A. G. Lewis and Eph, Adair had been tampered with and refused and would not testify to anything like what they informed me they would when I summoned them. I never received one cent of fees or any other compensation whatever in this case. The account has been put in its present shape by us, but Judge Story refused to approve it.

Sarber told me that the account had not been approved, and that he had not sent it on—meaning to Washington. The prisoners were brought before the commissioner and Mr. Young appeared in their defense. The prisoners, on examination, were discharged. We met the parties who threatened to rescue our prisoners in the Goose Snake district. The guards in this case were paid 140 miles travel by me.

FORT SMITH, August 26, 1874.


Examined by Mr. Duvall:

I reside in Sebastian County. I was deputy marshal in this case. I know that I had Bracken with me on that trip, and arrested the parties, and brought them to Gibson, and they were bound over for their appearance at court. They were arrested in the Chickasaw Nation, out west of Fort Arbuckle, on the Wichita. They were peddling whisky in that country when I got there; they were white men; they said they lived in Kansas; I had a warrant for them when I arrested them. Big Jim, a conductor on the Missouri, Kansas and Topeka Railroad, gave the information upon which the warrant issued. That is all the name I know for him. I don't recollect what time it was when these parties were arrested; it was some time in the winter, though. I only had two posses with me—Bracken and John Dameron. We had two other prisoners on that trip; they were discharged. L. E. Bracken is the same man that goes by the name of Eugene Bracken. I don't know where he is now; I have not heard of him for some time. He was in Muskogee some time since. He is a deputy marshal in the western district of Texas now. He was up to Muskogee some days ago, when I was looking up some parties.

Q. Has he been in St. Louis since he left here, that you know of?—A. I don't know.

I don't think he has. I give in his name as L. E. or E. L. Bracken; I sometimes mixed the letters myself. His name is Eugene L. Bracken.

Q. Is this his signature?—A. His signature appears three times on this and the other; I don't know.

John Dameron is at Vinita or somewhere up there in the Cherokee Nation. I took Bracken with me from here, but the writ was issued by Babcock, and I only returned it from Fort Gibson. I had the writ at Gibson. I'll tell you how I got it. Big Jim wrote me a letter, in which he stated that these parties were constantly carrying whisky up there. I got that letter at Muskogee. I was up on business just before Christmas; I guess it was. I got the writ from Babcock, and went after them. I got to Dennison, Texas, and they had gone out with a load. I followed them up on the Wichita River. I went on the cars to Muskogee. They were traveling in a wagon; they were said to have left in a wagon. When I found them they were in a house. I didn't seize any of their property; I didn't find any that they claimed.

W. H. JOHNSON.
FORT SMITH, August 27, 1874.

Testimony of W. H. Johnson as to the account of Eli Roof for services as bailiff, November 6 to 28, 1872—twenty days, at $2, $40.

By Colonel Duval:

I was crier of the court at the November term, 1872; and I employed my bailiffs. The court convened on the 28th of October, and I employed Mr. Eli Roof as one of the bailiffs and placed him at the door. His duty was to attend to the door and the business there. He continued for a month, I think, or nearly a month, at the door when he was relieved, and James Barry, who is now a brother-in-law of mine, was placed at the door. I know that Roof performed the service. Mr. Britton, the marshal, authorized me to employ him. I had charge of the court-room. It was my duty to employ the bailiffs and summon special names and things of that kind. There were four bailiffs on duty besides myself. I think that the usual number of bailiffs allowed by the court was three besides the crier in addition to those who had charge of the grand jury, and that the custom was always to return or to place the number needed above that on the witness-roll, and pay them as witnesses instead of bailiffs. There was an actual necessity existing for more than three bailiffs at the time Roof was employed.

Q. Was Judge Story aware of the fact that men were employed there as bailiffs and put upon the witness-roll for payment?—A. I presume he was. I don't think any were ever placed on the witness-roll except those who actually served as witnesses in the court. Quite a number of the deputies were witnesses in cases where they had made arrests. I was a witness the same term of court, and didn't draw bailiff's fees. The bailiff's fees were $2 a day, and witness-fees $1.50. I signed the witness-roll.

FORT SMITH, ARK., October 12, 1874.

R. M. Johnson sworn and examined.

In the matter of the posse-account of P. K. Polley for thirty-six days' service in the case of the United States vs. John Knowles, R. A. Donnelly deputy marshal, from September 21 to October 26, 1872, $108; also the posse-account of John Holmes for thirty-six days' service in the case of the United States vs. Reuben Williams, R. A. Donnelly deputy marshal, from September 21 to October 26, 1872, $108. Also the posse-account of George C. Finley for twenty-eight days' service in the case of the United States vs. Jack Davis, F. M. Shannon deputy marshal, from October 18 to November 14, 1872, $84, the property of himself.

My impression is that I bought two of the above posse-accounts (Holmes and Polley) from R. A. Donnelly, and the other from F. M. Shannon. I got these vouchers in the regular course of business as a dealer and purchaser of various kinds of paper or vouchers; at the time I purchased them I had no information, or knowledge, or suspicion, that there was anything wrong about marshal's paper. It was not until Whitney came out here that I learned of a looseness in the management of the marshal's office. I think I purchased these vouchers in November, 1872. I am satisfied I did not purchase either Holmes's or Polley's vouchers from the posses themselves. I am not positive whether I got Finley's voucher from Shannon or Finley, or in fact whether I did purchase it or. I know nothing of the correctness of the vouchers, or whether the services were performed as stated.

R. M. Johnson.

John Kemp, deputy marshal, sworn and examined.

UNDER BRITTON.

Posse-account, Chas. Webber, $72, case vs. John Murphy, August 16 to September 8, 1872.

Question. What do you know about this account?—Answer. I employed Chas. Webber at Fort Smith; he was my posse in this case; he was a transient man, but I had known him before; I swear the account is correct; defendant was rescued from me; I came back to Boggy depot, got a shot-gun and followed defendant to Texas and arrested him there.

Posse-account of Michael Foley, case against Pig Carr, for $60, from November 8 to 27, 1872, inclusive, twenty days.

Pig Carr was arrested about two hundred and fifty miles from Fort Smith. I swear that Michael Foley's account as above stated is correct. I gave Charles Webber's account to Samuel McCloud for board. I bought the account from Webber; don't know how McCloud got the other one; had a writ for Pig Carr.

Witness: W. H. Nessel.
WESTERN JUDICIAL DISTRICT OF ARKANSAS.

FORT SMITH, ARK., October 9, 1874.

EUGENE A. KLINE, late deputy marshal, sworn and examined.

Case against Jerry Perry.—Larceny; fifty-nine days are charged for endeavoring to arrest, $118.

By W. H. NESSLÉ:

Question. Do you remember this case?—Answer. I don't remember anything about it. I don't think I ever had anything to do with it. It was my understanding that a deputy could not get pay on a non-est writ. My name to the return on the writ is a forgery.

vs. William Peoples.—R. C. Lamson, J. G. Peevey, and myself all started out together, and up near the Kansas line we separated and went in different directions. Lamson and myself returned together, and I think Peevey came in one or two days afterwards. I do not know which of we three made the arrest of Peoples; Peevey and Lamson each had some men with them; I did not have any person with me. I do not think Peevey was a deputy at the time, but he knew the country so well that we agreed to divide fees with him. This was my first trip. I did not know any of the men who were along as posse. Bob Lamson brought the posse-vouchers to me to sign, after we came in, as he did the business in the office.

Wm. Smallwood was not with me. His account is fraudulent.

Q. How about the mileage?—A. I think the mileage is correct. In going to serve process I always returned the actual miles traveled. If I would go one place for a prisoner and not find him there, I would go to some other locality after him, and would always charge the number of miles traveled.

vs. David Dunn.—I arrested defendant a few miles west of Beaver Creek. I had a warrant. Fulsom Randall went out with me as a posse. William C. Glenn was not with me. I do not know such a person. The posse-accounts were always handed out to me, and the clerk in the office would say they were all right; and, as they were generally in a hurry, I usually signed the posse-accounts without much examination.

vs. Patrick Neil.—Defendant was arrested near to where I got David Dunn. Alexander Irwin was my posse; I employed him in the Choctaw Nation, I think at Boggy Depot, some four days' ride from here. George Burke was not with me, and I do not know such a person.

UNDER BRITTON.

vs. Mitchell and Willis.—I arrested Mitchell in Texas, I think, and Willis was arrested on the opposite side of the river, in the Chickasaw Nation. The mileage is computed and charged in the account for the distance traveled, and not from place of arrest to court. I think three hundred miles will carry you to the farthest part of the Chickasaw Nation.

vs. James Russell.—Defendant was arrested about same place as Mitchell and Willis. Mileage is charged same way. I had a man by the name of Wm. Hollis as a posse, but did not have Wm. J. Spence. I don't know any such a man.

vs. one Gilbert, (larceny.)—Defendant was arrested near to where Mitchell and Willis were arrested, and there is about the same overcharge of mileage. J. D. Tapley went from here as my posse. C. S. Tibbs was not with me. I think Tapley brought Gilbert in a day before I came in. I think Henry Jones is mistaken in his affidavit before Whitney, in relation to what is said about me. He did not come in with me on this trip, but did come in ahead of me.

vs. Brit Willis.—Same overcharge of mileage as in cases above. Wm. Y. Walk was not my posse. I don't know him. His account is fraudulent.

vs. Ben Saphard.—Wm. Boutwell was my posse, but I did not employ him for three or four days after I left here. Mileage overcharged as above.

vs. Bob Walker.—Overcharge of about seventy-five miles. Samuel Pointer was my posse.

vs. Jim Christian, Joe William, and Ed. Bouram.—Same overcharge of mileage as in case against Mitchell & Mills. Posses as charged are Wm. Hollis, James Tapley, and Henry Stout. These persons all went out from here as my posse.

vs. Job Staultz.—Some overcharge of mileage as in case above. Sam and Joe Conrad were my posses, but did not go out from here. I employed them at Atoka, one hundred and twenty miles from here.

vs. Martha De Coe.—I arrested defendant near Boggy Depot—not Boggy Depot, but Colbert's Ferry, two hundred miles from here. I think I obtained the writ after my return to Fort Smith.

vs. Elijah De Coe.—Arrested same place as in case first above. Had a writ, I think. I had no guards. C. S. Coobey and George Hoffman are unknown to me, and I did not employ any such men.

EUGENE A. KLINE.

Marshal Britton always paid me by checks or due-bills of his, one of which he cashed, and this is the only time he ever paid me any money.

EUGENE A. KLINE.
Testimony of H. L. Lyons as to posse-account of James Story for $69, from September 4 to 26, in the case of United States vs. Uriah Anderson.

Sworn. Examined by Mr. Duval:
I live on Mazarid Prairie, in this county. In September, 1872, I resided at the same place. In 1872 I made a couple of trips as deputy marshal. I executed the process in this case of the United States vs. Uriah Anderson for passing counterfeit money. He was arrested near Colbert’s Ferry. I believe 250 miles is what some say it is, from here. I cannot tell how long I was on the trip. James Story accompanied me as posse. He lives down here on the river below me a couple of miles. No other posse accompanied me.

Question. Did you have any warrant for Anderson when you arrested him?—Answer. No, sir. I had a warrant for some other parties up there when I started from here, but I could not find them. Charley Robinson was the one that got the warrants up, and they were given to me in the office.

Q. Did you hold a commission?—A. I did.
Q. Did you ever get your pay for your services?—A. Yes, sir; I got money for the first trip I went. I let Mr. Thomas Lanigan have my account for the next trip. He gave me dollar for dollar for it. He paid me $50 in money and the balance in goods. I was owing him some on account.

Q. Did you have any other prisoner besides Anderson?—A. There was me and John Louderback together. I disremember, but I believe that is the only one I brought in. I believe Mr. Louderback brought in some at the same time. Mershon, I think, brought in a lady. He was with me. He was only a posse, I think.

Q. (Account exhibited.) Is that your signature?—A. Yes, sir.
Q. How did you come to arrest him without a warrant?—A. There was some parties up there (Ward’s) that got me to do it. They said he had been passing this counterfeit money, and was telling me about him when I was up there some two months before. When I saw Ward again he asked me if I wasn’t going to take Anderson for passing counterfeit money, and I told him yes, if he had passed it I was willing. It was my duty, I supposed, to take him up, and I done so. I brought him down here and he was released before the commissioner.

Q. Do you know how many days were allowed Story as posse?—A. I could not answer that right now. I suppose I could if I was at home, exactly. It was about twenty-four days, I think; not far from that.
Q. Did Louderback bring in any prisoners at the same time you did?—A. Yes, sir; he had two, I believe.
Q. Do you know Richard Harkins?—A. No.
Q. Was this the last trip you made?—A. Yes, sir.
Q. You were not out with Louderback any more?—A. No, sir.

J. H. LAUNDERBACK, deputy marshal, sworn and examined.

SERVICES UNDER BRITTON.

Relative to posse-voucher of Richard Harkins, case vs. Ed. Haggerty, retail liquor-dealer.

I arrested defendant in Chickasaw Nation, about 250 or 300 miles from Fort Smith. Richard Harkins was my posse in this case, and his account for services in this case as charged, $102, is correct. My signature to Harkins’s posse account is genuine. Harkins now lives in Chickasaw Nation on Red River. I employed Harkins eighteen miles from Fort Smith. I am not a son-in-law of Mr. McCloud.

SEPTEMBER 22, 1874.
Witness: W. H. NESSLE.
In the matter of the account of J. H. Smith, a deputy marshal, for the arrest of Cesar Checot, Coleman Thompson, Joe Colbert, and Fenton Camp:

Testimony of Campbell Leflore.

Examined by Mr. Duval:

I reside at Fort Smith, Arkansas. I am a practicing lawyer. I know that these parties Checot, Thompson, Colbert, and Camp were brought in charged with the murder of one Fulkerson, and I was employed and am now employed by Mrs. Fulkerson to prosecute them. At the last term of court they were tried by a jury and the jury hung—I think eleven for conviction and one for acquittal.

Question. Do you know anything of the circumstances under which they were arrested?—Answer. Nothing more than I suppose they were arrested by Smith without any writ. I know that at one time we were all looking into the matter to see whether any compensation could be allowed to Smith. These men who were arrested lived at Carriage Point, on Red River. I suppose it is about 170 miles from here to Carriage Point. The evidence on the trial showed that the killing occurred, I think, on Christmas, 1872.

Q. Do you know anything, from your own knowledge, or what was developed in the testimony, about the general character of these defendants in the community where they lived; whether they were regarded as desperate, dangerous men or otherwise?—A. The testimony developed that on that occasion they were showing rather a lawless spirit. I do not recollect about their general character. I know that I thought from the evidence in that instance that the killing was rather wanton.

Q. Do you know of any reason why the authorities of the United States or the parties interested in Fulkerson did not take out a writ for their arrest?—A. Yes; I think the matter was submitted to the agent and he wrote down here that there was no case in it. At least upon his statement the commissioner—and probably the judge and Mr. Temple, the district attorney, were consulted in the matter; I do not know—concluded there was no case. One of the negroes brought in the statement from the agent.

Q. I see that Smith states that he was acting under the orders of the agent in making the arrest?—A. That was afterward. After some further investigation, a different report coming from the scene of action, I think the agent took a different view of it, but the purport of his first letter was that there was nothing in the case. It was a very difficult matter to get a writ for the men even after they were brought in. At least there was considerable hesitation in issuing a writ; that was my understanding. But all four of them were indicted and put upon trial. I believe three of them were discharged afterward. They were probably acquitted. There was one of the jury, I think, in favor of acquitting all of them. I know there is one under bond now. I think I saw the bond myself. That is my recollection.

Q. Do you know whether, up to that time or about that time, it had been the custom for the deputy marshals to make arrests in the Indian country without writs?—A. Yes, sir; that was my understanding, that the writs were dated back. It seems that upon that occasion that question came up, and the court ruled adversely to the practice of the office. I think the office had been in the habit of dating back writs in order to cover the service.

Q. Do you know whether the Indian agents had been in the habit of asking, or whether they assumed it as their duty or otherwise, to call upon the civil authorities to make arrests in similar cases?—A. My understanding is that it comes under their duty to notify the United States authorities of any offenses of that character. I suppose it has been their practice, too. I know where Colbert Station in the Chickasaw Nation is. It is, I should judge, as far as one hundred and ninety miles.

Testimony of W. C. Ross.

Sworn. Examined by Mr. Duval:

I reside at Fort Smith. I have no occupation now. I have been a United States deputy marshal. I should think it is about one hundred and ninety-five miles from here to Carriage Point.

Question. Do you know that Smith made the arrest of these parties?—A. I do not know anything about that. All I know about it is that Griffith, the Indian agent, said he had ordered Smith to make the arrests.

W. C. ROSS.
Sworn. Examined by Mr. Duval:

I was United States district attorney at the time these men were tried. They were brought before the grand jury and tried, and three of them acquitted; the jury hung upon the fourth one, and he is still held for trial. Mr. Griffith, the Indian agent, wrote a communication here that there was no case, and my impression is that after he wrote that first letter, he wrote again that he had changed his mind; but in that second letter he did not furnish any evidence upon which I could act. Neither of the letters was addressed directly to me, but to the judge or one of the commissioners.

FORT SMITH, ARK., August 20, 1874.

Testimony of James M. Scoot.

Examined by Mr. Duval:

I live in Sebastian County, Arkansas. I had a team stolen, and at the time the court was in session, I went and got a commission as deputy marshal, to go after my team. On the day of the murder of Fulkerson I was at Sherman, Texas, and heard of it. I went right over there and went to the house where the man had resided who was killed, and was going to arrest them. I was advised not to attack them, and the citizens told me if I would stay there until the next Tuesday, they would turn out with me and arrest them. Then I went down to Boggy Depot, to the Indian agent. He was gone to Governor Harris's when I got there, and waited there that day, but he did not come back, and the next morning I came here. I did not get to see the agent at all. I came on here with the names of the witnesses and went to the United States attorney, but upon the information I had he would not give me any warrant. I went to Temple and then to Churchill, and tried it after these darkies came in and gave themselves up. They were tried before the commissioner and acquitted. When I was up there they were up on the Big Blue somewhere.

Question. Do you know that Smith arrested them? — A. He fetched them in; I suppose he arrested them. It is about 195 or 200 miles from here to where that murder was committed; it was done between 9 and 10 miles this side of Red River. I call it 200 miles from here to Red River. It is a mile and a half or two miles this side of Carriage Point.

Q. Were you here when they were tried and acquitted? — A. I was in town, but was not over there. I went over there a day or two afterward and showed a letter in regard to the case I got from there, and Colonel Churchill told me that they were acquitted by the testimony the Indian agent had sent in from Boggy Depot.

FORT SMITH, ARKANSAS, August 22, 1874.

Testimony of C. C. Ayers.

Sworn. Examined by Mr. Duval:

I was in the Chickasaw Nation, near Red River, at the time the arrests were made in May, 1873. Mr. Smith, a deputy marshal, was in that country at that time. I do not know positively that Smith made the arrests of these men, but I heard it currently reported there that he did make the arrests. The murder was committed near Colbert Station, on the Missouri, Kansas and Texas Railroad; it is about 200 miles from this place.

There was a desire on the part of the citizens there that those men should be brought to justice; they thought they had willfully murdered Fulkerson and ought to be brought to Fort Smith and examined. That was the general feeling throughout the country, that they ought to be dealt with.

C. C. AYERS.

FORT SMITH, August 25, 1874.

Testimony of Thomas E. Lacy, as to sundry accounts of his own.

Sworn. Examined by Mr. Duval:

I was a deputy marshal under Marshal Sarber. When I was appointed, I lived at Muskogee, in the Creek Nation; that was on the 18th May, 1873. (Abstract of witness's accounts shown him.) I have examined that abstract, and I find it all correct, with the exception of
three. I have never been paid in full for the service of any one of those writs. They have never settled with me at all, with the exception of giving me orders and due-bills, which I could do nothing with, and at one time I got a check on the bank for $240. That is the only money I ever got without a discount. I finally kept the due-bills for three or four weeks, and went to the bank and sold some of them for eighty cents on the dollar, and some for seventy cents; that is a discount of twenty and thirty cents. At one time I offered Mr. Frizzell $400 of them as security for $20, and he wouldn't take it. I could sell those due-bills in the bank, after holding them a while; I could not at first. After a while Mr. Roots would say, in his smiling way, as it was me, he would do so and so—thirty cents shave and twenty; eighty cents on the dollar was the best he ever did with me. I let the bank have, to the best of my knowledge, at one time $350, or $265; (I won't be certain,) that they gave me eighty cents for, and again I gave them $190 or $195, at seventy cents on the dollar. I also sold them a witness-account of, I think, $35, at eighty cents. And again here the other day I sold them a witness-account, that I had a power of attorney to collect, at eighty cents on the dollar, $36 worth of vouchers; that was for Major Scales. Major Scales was a witness before the court at the last November term, in the case of Isaac Fillmore, charged with murder, who has since been hung here.

In the case of the United States vs. Grayson, I called on the clerk, marshal's office, and on all the commissioners here, and I couldn't find the writ anywhere. I went to the fee-book, kept by the marshal, and found the charges to be more than I remember of returning. On the fee-book I found three hundred and fifty miles charged for; that is one hundred miles more than I remember of putting in. I served the writ in that case away up ahead of Deep Fork. I could not tell you whether it was in the Creek Nation or not. It was the first trip I made under Sarber. Grayson was a hard case. I had three or four men with me. I had to bring him to Gibson and put him in the guard-house there. My actual travel, to the best of my knowledge, was two hundred and fifty miles from where I arrested him to this place. That account is all right but the mileage; that makes it, in all, $26 too much. I fed Grayson longer than I got paid for. I had to keep him in the guard-house, and they charged me $1.25 per day. I am allowed $2.25.

In the case of the United States vs. George Alexander, I find that account to be correct in every respect. I served that writ with the Creek Nation, about forty-five miles from the North Fork. The writ was issued at Gibson by Commissioner Babcock. On that I traveled about eighty-five miles from Muskogee. Witnesses have been allowed one hundred miles from Muskogee here until lately. I think now it has been cut down to eighty-five. When we serve two writs at one time we don't get mileage for both. We only get mileage on one going and on both returning.

Question. I see the witnesses are only allowed seventy-five miles?—Answer. They were summoned to Gibson and discharged there to report here. I think the witnesses lived at North Fork, or near there. Some of them were at work on the railroad. They did not live where the prisoner was arrested. He was tried before Babcock, and the witnesses went to Fort Gibson instead of to Fort Smith, which will make one hundred miles less mileage. The prisoner was convicted and escaped afterwards.

Q. Where did you arrest Crawford?—A. Crawford and Alexander were arrested at the same place and were both convicted.

Q. Here is the case of D. W. Lipe and C. C. Lipe?—A. They were father and son, and were arrested on a court writ for contempt. I arrested them at Gibson. I charged seventy-five miles from here to Gibson. I think the road usually traveled is eighty-five miles, but they would not allow but seventy-five. In regard to finding those prisoners, when I got here, Judge Story sent a special request for me to get Nash here as soon as I could. I had Nash with me. He told me to bring the prisoners before the grand jury. That was on the 3d of July. The grand jury were ready to examine him, but Nash was sick and had a doctor's certificate. I asked Mr. Story what I would do with him. He told me if I wasn't afraid of him getting away to keep him. So I kept him for, I think, nine days, from the day he was arrested until he got through.

Q. This is the Lipe case?—A. Nash and Lipe were all the same. I actually paid their board-bills myself. They boarded at the Fort Smith House. I think I have got Nash's receipt at home for $26. In the case of Nab Hawkins, that account is correct. He was arrested at the Seminole agency.

Q. Where was Isaac Fillmore arrested?—A. On the edge of the creek and Cherokee Nation, on the east side, about 85 miles from Muskogee, I think.

Q. Black Bill was not arrested, was he?—A. Yes, sir.

Q. The next case is J. H. Baugh?—A. That is correct; he was arrested up near the Kansas line, in the Cherokee Nation.

Q. Tom Cox?—A. That is correct; he was arrested above Parker, in the Cherokee Nation, on the north side of the line. He was scouting, and had been for a year when I got him. The charge of 366 miles is correct.

Q. The next is Russell McKinney.—A. The return on that is correct—150 miles. I have never had any pay for that yet. He was arrested near Robinson's Academy. John McCay was my posse. He has never received any time for that yet; he couldn't get it. The writ
in that case was made before the arrest. It was handed to me at the office—both of the
writs. The marshal refused to pay and I just took the writs home with me.

Q. In this case of Crawford Thomas, the writ was issued before the arrest was made, was
it?—A. Yes, sir; both writs were handed to me at the same time. The mileage, 200 miles
is correct. I was actually engaged seven days in "endeavoring to arrest," and fed the
prisoner about two weeks, but never charged but for eight days. McCay was posse on
that case.

Q. How did it happen that you returned him in both cases? They were arrested at the
same time, were they not?—A. No, sir; one writ was executed on the 11th October and
the other on the 27th September. McCay was posse on both occasions.

Q. Here is the case of Lomb Matoy.—A. That is correct. I had him eleven days the
same time and he got away. I labored very hard to get him again and finally succeeded.
The mileage and keeping are correct. The 365 miles includes the travel in getting his
both times. I arrested him first in the Choctaw Nation, about 226 miles from here; and
the last time in the Cherokee Nation, about 190 miles. He was away about five months
from the first time until I got him again. The eighteen days represents only the time
I was employed the last time. I did not get any time when I first arrested him.

Q. On these two vouchers in the cases of Russell McKinney and Crawford Thomas the
amounts charged are still due you?—A. Yes, sir; two-thirds of the amount is due me; and
on all the rest of the vouchers there is due me all the 10 per cent. and, I think, about $175.
In all my accounts with Sarber he deducted one-third and 10 per cent. of the gross amount
and then gave me a receipt. There is due me from Sarber, according to the manner in
which he made his settlement, $175, besides the 10 per cent. upon the gross amount
of my accounts. I have never figured it up to see how much it is. I have several times
made application to Sarber for payment of my claims. I made application to him for
payment this morning. He said he had no money to pay any person. I told him I
had under stood by Colonel Duval that he had had $11,000 sent to him to settle up ac-
counts. He said Colonel Duval knew better; that he had no such amount. He said
neither I nor any one else could get any money out of him, unless at the point of a shed-
gun. He said I might write that to the Attorney-General if I wished; that that was what
he wanted me to understand.

H. LACY.

FORT SMITH, August 25, 1874.

Testimony of THOMAS E. LACY, as to his accounts in the cases of Henry Marshall and Will-
liam Gordon.

Sworn. Examined by Mr. DUVAL:

Question. I find here two writs issued by Floyd C. Babcock, United States commissioner;
one against Henry Marshall, for larceny, and the other against William Gordon, for larceny.
There is a return on both of them signed by you; the return in the Marshall case is that you
"served the within writ on the 5th day of October, near Fort Sill;" that you then and there
took into your custody the body of said Henry Marshall, and have his body before E.
Babcock, esq., &c. State whether you arrested that man at all.—A. No, sir.

Q. Is that your signature?—A. Yes, sir. I will explain that matter to you. I took from
here, by request of Mr. Sarber, a young man by the name of C. D. Hawkins, as posse. This
Lu. Motoy and Eli Donnelly got away from me at North Fork. I left Hawkins and Hickory
Rogers to get those two men, and gave them the writs to bring them in. I knew I could
not get them if I staid, because they knew I was in there, but I thought they might be got
by leaving these two parties. Instead of bringing in Lu, Motoy and Eli Donnelly, they
brought in Henry Marshall and Wm. Gordon. They got writs for them from Babcock
after Left; I could not say whether it was before the arrest or after. They arrested them,
brung them in and came across the river for me. I had got in, I think, two days
ahead of them. I went to Sarber and told him about Hawkins bringing in the men, and he
told me I had a right to make a return for it; that I could not cover my time without it,
and I was entitled to it, I went and made the return. After that I did not like the way
Mr. Hawkins talked about it, and I went to Mr. Gage for advice, and he told me he did not think I had any right to make such a return. I will state here that I was not so well posted then in regard to making returns in the marshal's office as I am now. Mr. Allnutt wrote the return; I do not think Mr. Sarber was present; I was
present. Mr. Allnutt filled it up from Mr. Hawkins's statement of where he got the pris-
ers. Hawkins told him that he got the prisoners near Fort Sill. I went to Rogers after
that, and asked him about it, and he said they traveled further than that; that they got
them up above Okamulgee; that they traveled more than 300 miles. I went to Sarber after
I had advised with Mr. Gage, and told him that I didn't want to present any account to the
Government on this writ; that I had advised with my friends, and found that I had
right to make the returns and get my fees. He told me he would fix that all right with Hawkins; I told him I didn't want him to. I demanded the writs, and got them, and scratched the returns off of the writs, just as they appear now; and I requested the accounts, and he and Mr. Main both looked for them. Mr. Sarber told me to come in next morning and he would give them to me. I went in the next morning, and he said he had found them and torn them up. They also told me that he testified so before the grand jury. I have never received a cent charged on account of that matter. Sarber told me, at first, that I had a right to make a return and draw these fees so long as I had Hawkins with me as posse; that I had the right notwithstanding I had not made the arrest. Yesterday I went to the marshal's office and found those writs, and saw them scratched out as I left them, and then went to the fee-book and found that they were charged to me on the fee-book as they are on the writ—charged to me as returning them. Sarber refused to pay my posses, Hawkins and Hickory Rogers; but they are entitled to their pay, for they were with me; they were not posses with me except in those two cases. They were with me for every day that is returned there, and Hickory Rogers for two or three days more, but I could not give him any more time.

Q. Do you know of any other cases in which the returns were signed by persons who did not execute the writ?—A. No, sir; not to my knowledge.

Q. You do not know whether those accounts were torn up or not, do you?—A. All I know about that is what he told me, and when you (Mr. Duval) and Mr. Gage went to Washington I requested you to look for those accounts, and Mr. Gage said he could not find them. I suppose Sarber has got them in his safe, from what I heard this morning. Columbus Ayers told me, this morning, that he saw certain accounts of mine there this morning.

T. E. LACY

FORT SMITH, ARK., August 25, 1874.

Testimony of Thomas E. Lacy, as to sundry posse accounts of his in the possession of Samuel McLoud.

Sworn. Examined by Mr. Duval:

(The affidavit made by Lacy before the "Sener" committee of the United States House of Representatives (p. 296 of report and evidence of that committee) was read to witness.)

Case of United States v. Musgrove.

Question. As you have made this affidavit, explain how it is that you did not object to the account.—Answer. The only thing I can say in regard to that is, that it was the first time I was out as a posse, and I was ignorant, I suppose. The only thing I looked at was the time I had served. I saw the account was for $54, and I told Donnelly at the time that I ought to have more than that. I never read it through, and didn't understand it. That is the only explanation I could make. We brought in four prisoners at that time. Van Horn and Smith were with me. Van Horn and I started with David Vinton for Fort Smith. We employed Smith at Muskogee some few days; I don't know how many. I don't know whether Smith got a posse account or not. I didn't read the account through when it was made out; I only read what I was entitled to, at the top, and I made objection to it, because it was not as much as I was entitled to. I would state that they tried to put me in as a witness and keep me out of any posse account, but I objected to that. That was the first service I ever performed for the marshal's office in any capacity. I had been a witness once before.

Case of United States v. Robert French.

We had one or two parties in custody beside French, and brought him to Gibson, and he gave bond before Mr. Bastin, a commissioner at Gibson. Babcock and Shoemaker arrested French somewhere on Grand River; I don't know exactly where. I was not with them when they arrested him. We had two horse-thieves, whose names I don't remember, besides French. I think the way my name come to be on that posse account was, that Babcock and Shoemaker traded prisoners, or made a change in some way. We had been after French a long time. I went out with Babcock two or three times, and did not succeed in getting him. I was out at that time and did the service. I was not engaged in guarding French for twenty-two days, but was guarding others, and didn't get any time, and I explained the account to Judge Story, and Judge Story said if I was out with Babcock it didn't make much difference where I got my time. I was out with Babcock as posse. We started from Muskogee on the 1st of November, 1872.

Q. This affidavit is that "I, T. E. Lacy, of Sebastian County, Arkansas, do say," &c.—A. I will explain about that Sebastian. Judge Story told me to put my name in as living
in Sebastian. He told me he didn't think I had any business living in the Indian country without a permit. On this trip we started from here. I don't remember the day. Babcock & Shoemaker were operating together. Shoemaker had Johnnie Smith with him as posse. That is not the same Smith I speak of in the affidavit on page 296 of the Senner report. I was engaged continually with Babcock from the 1st day of November, until along in April. I do not recollect the length of time I was out on this trip when French was arrested, but we would arrest all the prisoners that we could and bring them in Bastin at Gibson or down here, and Babcock would cover my time on some one of the writs. I was with him every day as a general posse. When we started out in this case I could not say whether we had the writs or not, but my opinion is that we had, because Bastin was Babcock's brother-in-law, and he got writs from him all the time.

Q. Were you returned on this trip or in any other case for the time which is embraced here from the 1st of February to the 22d February—A. The time covered in that writ was never been returned in any other case. I actually served as posse twenty-three days in that case and in others. When Robert French was arrested I was guarding two prisoners, horse-thieves, at Muskogee. I had them at my house a couple of nights. I kept them at Muskogee, at Honey Springs, at Grand River, and at Gibson in camp. I should think I had them for eight or ten days altogether. They were bound over; one of them is in jail, I think. My impression is that one of them gave bond. French was not guarded. They kind of made some arrangement with him for him to come in and give himself up, I believe, and he came down to Bastin and gave bond. This was after the Musgrove case.

Q. Have you any other explanation to make why you made this affidavit? The affidavit you see, sets forth that you were “actually engaged.”—A. I went to Judge Story and explained it to him, and Story told me how it was; that we were after French, and he said that if I done the service and hadn't my time in any other writ it wouldn't make any difference; that that was the only question with me. He said that these forms were gotten up here by the office, and they didn't amount to anything.

Case of Alfred Aspen, for services from 23d February to 14th March.

That account is correct. I arrested Aspen myself about eighteen miles from Honey Springs in the Creek Nation, I think. We come to Gibson with him and put him in the guard-house there, and afterwards brought him down here, and he was examined here. I should think the distance might be 185 miles from here—might be more.

Case of Billy Rider and Thomas Bevert, for ten days' service from the 27th January to 31st January.

Q. In one part of this account it appears that the service was rendered from January 27 to January 31, which would make five days. In the affidavit you swear that you were employed on the 22d day of January, 1873, and then you swear that you were actually and necessarily employed five days. The affidavit also further shows that you swear that you have signed duplicate receipts for $15. How much is due on this account—$15 or $30?—A. My impression is that it is $30. Mr. Whitney said he would leave it until Babcock came here and explained further, but he did not come down. Some of my original posse accounts were lost, and I think this mistake must have been made when they were made out again.

[NOTE.—By reference to the marshal’s account it appears that he returned ten days, endeavoring to arrest.]

I am willing now to swear that the amount of this account is $30 instead of $15, and that it is a mistake.

Q. Do you know whether there was a writ issued for Rider & Bevert before they were arrested?—A. I hardly ever knew about the writs. I was simply a posse; I know I never let a posse know anything about the writs.

Case of Chambers, for seven days' service from January 2 to January 8.

That account is correct. We traveled to Muskogee and back and found him at Big Sisaw, about forty or forty-five miles from here. We were sent out specially for him by order of Judge Story. We had gone to Muskogee, and on our way back overtook him at Big Sisaw and found him with some prisoners and arrested him. The reason we were seven days traveling is that it was raining and bad weather. Seven days embraces all the time from the time we left Fort Smith to Muskogee and back again.

[Subsequently Mr. Duval called the attention of witness to the difference between this account and the marshal’s. The marshal charges six days feeding prisoner and endeavoring to arrest; witness charges seven days. Witness explains that by saying that he was required to guard the prisoner one day after he got down, pending his examination.]

I think we had this man in custody five days before we reached here, and one day after we got here. Chambers was pretending to be a deputy marshal, but I reckon he was only a posse. He was with Joe Swift at the time he was arrested. They had two prisoners.
Case of John Warford, for eight days' service, from the 26th December, 1872, to January 2, 1873.

That is correct; I arrested Warford myself. The prisoner was brought to Fort Smith. Mr. Bastin's wife was taken sick, and he went to Wisconsin; so in the absence of a commissioner we took him to Fort Smith. He was arrested on Bird Creek, in the Cherokee Nation. I think about eighty miles from Gibson, or more than that; I would not be certain; I know we were two days riding it.

Q. Then it is more than 125 miles from here?—A. Yes; it is over 200 miles from here.
Q. You have put down "actual travel from your place of residence, 125 miles."—A. Story told me to put down my residence as Fort Smith every time. That distance then must be 125 miles from Fort Gibson.

Case of Samuel Fleming, ten days' service, January 9 and 10, and January 13 to January 17.

Q. That does not make ten days.—A. That must be a mistake. There were some of my accounts lost, and they could not be found. Judge Story told us to go and get blanks and make them out anew, and Babcock undertook to make them out, and that is how this mistake came. Some time after Whitney left here Story asked me if I had ever got those accounts fixed. I told him yes. It seems that he had them, himself, in the bank.
Q. What was he doing with them in the bank?—A. I don't know.
Q. There seem to be some erasures in the writing; who did that?—A. Babcock; he tried to correct his mistakes. I actually served for ten days, and am entitled to $30. I explained this mistake to Whitney when he was here, and he advised me not to make any change.

(Note.—In these two accounts Mr. Whitney receipted for them at $30, and has indorsed on them that he believes them to be correct.)

Case of Eugene Triplett for nineteen days' service, March 16 to April 3.

Q. State why it was that you had the prisoner so long.—A. At the time we had Triplett I heard of Charley Williams, and I told Babcock I would go for Williams. I went in pursuit of him, and was gone, I think, eight or ten days. I got him on the train, and telegraphed to Gibson and got some troops, and took him off the train, and brought him down here at the same time I brought Triplett. I never got anything for Williams. Babcock kept Triplett at Gibson during the time I was gone after Williams. I was a posse for Babcock. That was the time that Tymon and Donnelly went after Williams to New Orleans, but I got him between Muskogee and Gibson. Babcock arrested him. I guarded Triplett three or four days after we got back. Williams was a notoriously bad character, and had made his escape out of the jail, here, two or three times.

Case of one Ramsey, twenty-three days' service, December 2 to December 24.

That was the first case I ever went on with Babcock. I was with him all that time after Ramsey. He found out that we were after him, and he went up to Kansas to see the revenue-assessor, to see if he couldn't pay the revenue back in order to get rid of it. We caught him coming away from there, and brought him to Gibson, and he gave bond to Bastin, and was afterward tried by Babcock. I don't know what they have done with him. He was arrested between Muskogee and Chetopa, somewhere in the Cherokee Nation. Babcock arrested him. I actually guarded him a few days—I don't know how many days; I think only two days; the balance of that time I was actually engaged in pursuit of him.

Case of Billy Rider and Thomas Bevert, one day's service, January 31.

That is correct. I will state with regard to these accounts that I had a positive understanding with Story that if I was continually employed I was entitled to my accounts—it didn't make any difference who I was returned on. He said as far as the blanks were concerned, it didn't amount to anything.
Q. What disposition did you make of these posse-accounts?—A. I was owing Mr. Samuel McLoud for board, for borrowed money, and for a horse, and I gave him those vouchers in part payment. I gave him one or two of them at first and the balance all at once, to the best of my remembrance, and he receipted to me for the vouchers. I gave him to him as collateral, with the understanding that after they are paid by the Government if I owe him anything above what they come to I am to pay him, and if he owes me he is to pay me.
Q. Did you ever demand payment of these accounts?—A. I did; I did everything in the world—tried all the influence I had by everybody to get a little money, and could not. The understanding between me and McLoud was that as soon as he got any money we were to have a settlement. He didn't buy them, and I didn't sell.
Q. During all this time you have served, January, February, March, and April, four
months, did you ever receive any pay out of the marshal's office?—A. Not one dollar, on any vouchers.

Q. When your account was made out at the end of each trip did you then demand payment for it?—A. Yes, sir; they told me they had no money, and they would give me a check; but I thought the vouchers were safer, and kept the vouchers.

T. E. LACY.

FORT SMITH, September 3, 1874.

Testimony of T. E. Lacy.

Sworn. Examined by Colonel Duvall:

I got in on the 4th of last April from a trip, and I tried to get a little money on the accounts that I had just served and on a back account at that time, $200 or $300. I couldn't get anything. The next day I went over there, and Colonel Main, Sarber's chief clerk, commenced in his joking way, and wanted to know if I couldn't treat, and so on. I told him no; I was too poor. He then wanted to know if he gave me a $50 check, if I could not treat. I told him, yes. I asked him what it was for. He said it was for a posse-account. I had no interest in posse-accounts, and never had one under Sarber; not one cent. I knew I had no interest, and so I asked the advice of Colonel Duvall, Mr. Cravens, and Mr. Gage about it.

Q. Did he give you the check at that time?—A. He told me it was there, but I hadn't taken it. Colonel Duvall told me I could take the check, and if there was any trouble about it, I could prove that I had attorney's advice.

Q. You stated to me at that time that the office was indebted to you.—A. Yes, it was indebted to me $300, and you told me that the Government could stop it out of my pay, or something to that effect. I did not receive it from the office, however, as a part of any pay that was due me for services rendered.

Q. Were you required to sign any paper?—A. Nothing at all. I was handed a $54 check on the Assistant Treasurer at Saint Louis. I came down to the bank with it, and they cashed it, and charged me 46 cents discount, giving me $53.55. I thought afterward I ought to have kept a copy of the check, and went into the bank right away to get a copy, but they said they had sent it off. The check stated that it was for a posse-account.

Q. Is there anything else connected with the office under Sarber that you wish to speak of?—A. There is nothing else that I can speak of, of my own personal knowledge; only what Mr. Allnutt told me. At the time we were all recalled here in October, 1873, I came in, and Allnutt told me that if they had all returned the writs that I did, there would not have been any trouble in the office. He said they had been putting in men as posse who had not been out of town. He said Johnson and other deputies had. That was private conversation between me and Allnutt in October, 1873. He said that that was the reason they were all called in, and they would never go out again. He was in charge of the office at that time, in the absence of Colonel Main. I would say in regard to the statement I gave here in regard to my accounts as posse, those are the only accounts I ever made to Sarber.

Q. Where does V. Crawford live?—A. I don't know. He did live on the North Fork river bottom, about 115 miles from here. That is where he was arrested on the 29th May, 1873. He and George Alexander had been scouting.

Q. I see you have charged 350 miles mileage, when he lived but 115 miles?—A. That is both ways. I only put in 185 miles. The writs were issued at Gibson, and I had to take him there for examination.

Q. In both these cases of Alexander you charge 350 miles, as appears from this account?—A. I gave the mileage as 185 miles in both those accounts.

Q. How many days did you have those prisoners feeding them?—A. I had them a good while—at least twenty odd days. I did not get paid for all the feeding.

Q. How did it happen that you had them so long?—A. I was after this Jim Grayson. I arrested him at the head of Deep Fork, about 250 miles from here. All I knew of that return is from the book. That is the only writ I found wrong. This charge of 350 miles is 150 miles more than I put in.

Q. The Grayson accounts foot up $160, and the George Alexander $31; that is for the charge of 350 miles?—A. That is the only charge for mileage that was traveled after him and bringing him here.

Q. How did it happen that there was no charge in these cases for going after him?—A. You can't get time only after one. You can't cover your time but once after any person.

Q. There is 350 miles charged in the Grayson case, at six cents?—A. That is all that is allowed. That travel after Crawford and Alexander includes all the miles going after them and bringing them in.

Q. Was Grayson arrested 350 miles from here?—A. About 250, and that is what I put in; then there is $26 extra charge there that I never got.
Q. Who made out the returns?—A. White. They were my first returns as a deputy mar­
shal.
Q. In the George Alexander case there is 350 miles returned, at 10 cents, §35. That was 
for the prisoner, because you had got the 350 miles in the other case for yourself?—A. Yes, 
sir. In the office there they said to take my statement about where I got my prisoner, and 
divide it up, to have it according to law, as they said.
Q. Divide it up it how?—A. For instance, you go out after a prisoner and would be gone 
twenty-six days, and they would divide up that time. That is the way they have done in a 
good many cases.
Q. In this return in the Alexander case, look at that and see if there has not been a change 
of 150 to 350 miles.—A. Yes, sir. I think there has been.
Q. In these cases were those prisoners committed?—A. Yes, sir, and served their time.
Q. I see in the case of Tom Cox you had W. T. Armstrong as posse?—A. He was with 
me. Cox was arrested on the Kansas line, above Parker; I think about 210 miles from 
Muskogee.
Q. You have charged 355 miles?—A. Three hundred and fifty is what I put in. We have 
always got 100 miles to Muskogee till last year. That is what the stage gets.
Q. You stated the other day that you did not get anything on this Gordon and Marshal 
write?—A. I never got one cent.
Q. If there have been any accounts made out in that case, they are frauds?—A. If they 
have been made in my name they are.
Q. Where was Tu Motey arrested?—A. In the Cherokee Nation, near the Big Bend of the 
Arkansas, about 180 miles above Fort Gibson. I had him one time eleven days, and the 
last time I got him I put in that mileage.
Q. Isaac Fillmore and Black Bill, where were they arrested?—A. I could not swear posi­
tively. It was right on the line between the Creeks and the Cherokees. The other day 
you asked me if I had writs for them when they were arrested. That murder was committed 
while I was in that country. The citizens sent me word to come down and try to get him. 
I had no writ, but started after him and rode for three or four days. The citizens all turned out 
to help me, and we found him. Fillmore confessed that Black Bill was implicated in the 
murder. I sent here for writs, and left McKay guarding Black Bill and Fillmore, and took Arm­ 
strong with me. That is what Whitney speaks of. I told him I would not take those parties in 
till I got writs. If I had taken them in without writs, I would have got but §2. Fillmore 
was arrested before I got the writs.
Q. By whom and where was Mary Donalson arrested?—A. She was arrested by Wilson, 
a posse for Johnson, at Muskogee.
Q. Where was Jack Walker arrested?—A. On the wharf here at Fort Smith. Johnson 
sent Bracken to arrest him. I think that was between the 14th and 17th of July, 1872, as 
near as I can recollect; I might be mistaken in regard to the date.
Q. Do you know, or have you heard, of any other instances where parties were arrested 
by a deputy here in town, and charged for as if arrested at a distance?—A. I will state about 
Barnes. A year ago, last 3d of July, George Barnes came with me from Minerva Thornton's 
to town on his way to Hot Springs, and he told me about Johnson arresting him and his two 
brothers and taking them to Fort Smith. He said they fixed it up with Johnson to take a 
bond at Sherman. He said Johnson told them if they would lend him $30 apiece he would 
let them give a bond at Sherman. That was at Denison, Tex., he told them that. All I 
know about this is what George Barnes told me. When he came here he and Twyman went 
to the marshal's office, and he told me that he looked on the criminal docket, and said there 
was no charge. He said Johnson was pretty well scared, and offered to give his money back. 
I think I can prove very easy that they were never brought here. George and Lo Barnes 
are out on the International Railroad in Texas, and Dick Barnes is living at Denison.
Q. You were not employed under Roots?—A. No, sir.
Q. When was it you were arrested?—A. In October; I think the 28th October, 1872. I 
knew it was a day or two before I made out my report as foreman of laborers on the rail­ 
road. Bracken arrested me. Bracken and Hawkins brought me in from Muskogee. Johnson 
was not along at that time. Johnson had just gone home from a protracted trip in Ten­ 
nessee of some four or five weeks. I don't know who returned my writ. I was arrested 
in five miles of Perryville, Choctaw Nation; that is about 110 miles from here. I was 
charged with introducing whisky. I was acquitted. That is the only charge they have ever 
had against me in this court.
Q. Was not your wife arrested once on a whisky charge?—A. Not since I have been mar­ 
rried; it was before I was married.
Q. What was her name?—A. Mary McDonald.
Q. Wasn't she arrested in your name?—A. No, sir.

H. Ex. 175—8
JOHN T. LYTLE, deputy marshal, sworn and examined.

In the matter of the posse-account of John Collins, case vs. John Cetchum and James Moore, for 28 days' services, October 18 to November 14, 1872, $84.

Posse-account of W. N. Stewart, case vs. one Eaton, for 18 days' service, October 21, 1872, $54.

Posse-account of W. N. Stewart, case vs. M. L. Hogwood, 13 days, November 1 to 13, 1872, $59.

The property of W. L. Taylor, of Van Buren, and the posse-account of John T. Lytle, case vs. Mary Hewey, 11 days' services, from September 5 to 15, 1873, $33, Sol. Exon, deputy marshal.

The property of F. J. Helbling, Fort Smith.

I know nothing about the posse-account of John Collins. I was not the deputy marshal in this case.

Case vs. one Eaton.

Question. What is your recollection about this?—Answer. W. N. Stewart made the arrest and brought the defendant to Van Buren. I was detained in Van Buren by sickness in my family. I only went from Fort Smith to Van Buren on the way to arrest defendant, and returned only from Van Buren to this place when defendant was brought in. I made the return on the writ. I gave Stewart $50, when he left Van Buren, to pay his expenses. I did not go with him any farther than before stated.

Q. Did Stewart or you draw the pay as marshal?—A. I never received a nickel for my services or expenses. W. N. Stewart, who arrested defendant, received a posse-account for $54, which is correct. He was out 18 days. I had the writ for the arrest of defendant.

Q. Did you certify to any other posse-account in this case?—A. No, sir.

Q. Do you know anything about William Kent, who is also returned as posse in this case?—A. I don't recollect anything about him.

Case vs. M. L. Hogwood.

Q. Do you know anything about this case?—A. Yes, I think I do.

Q. How do you account for the writ being served 300 miles from Fort Smith on the same day it was issued?—A. The writ was sworn out after the prisoner was brought in. I gave Stewart $40 to make the trip. I was not with them. I made no travel at all. I made the return on the writ. I know Thompson was with Stewart. I have never received a cent for my services or expenses in any case. I think Thompson's posse-account is correct.

In cases vs. Columbus Moore and vs. William Woods.

I know nothing about these persons. The writs appear to have been issued by E. J. Brooks. I never obtained a writ or certified to an account before the said Brooks in my life, to my knowledge. I done no service in either of these cases.

In the matter of my own posse-account, as stated above, I would state that I was actually employed 29 days, as charged; in fact, more. The account, as charged, is correct.

I bought this account from John Ragsdale. I think it is correct, as charged.

Witness: W. H. Nessel.

JOHN T. LYTLE.

JOHN A. LONG, sworn and examined.

Presents a posse-account for 29 days' service, from January 1 to February 1, 1874, amounting to $87; case vs. Alexander Fisher and William Grass, the deputy marshal being John Williams.

I was actually employed 29 days, as charged; in fact, more. The account, as charged, is correct.

Presents a posse-account for 12 days, as posse in favor of John Ragsdale—12 days, September 22 to October 3, 1873. I bought this account from John Ragsdale. I think it is correct, as charged.

Witness: W. H. Nessel.
Isidore Mundt sworn and examined.

By Colonel Duval:

Question. Look at this account rendered against the United States in your name, for clothing alleged to have been furnished United States prisoners Thomas Smith, H. H. Hess, Witham, Buck Hammon, and Mitchell Reed, amounting in the aggregate to $54.85, and state whether you ever sold to the United States, through Logan H. Roots, as United States marshal, this clothing.—Answer. I did not. I have no acquaintance with either Logan H. Roots or P. K. Roots, and to the best of my recollection never had any dealings or business transactions with the marshal’s office under Root’s administration. I am positive that I never had the above transaction with Logan H. Roots.

Q. This account for clothing, as above specified, is alleged or appears to have been received by you to Logan H. Roots, as marshal, in the sum of $54.85, in full of the foregoing bill. Look at the voucher and state whether the signature to the same is your genuine signature. [Voucher here shown to witness.]—A. It is not my signature.

Q. How long have you been in the clothing business here?—A. Since August, 1870.

Q. Is there any other person in business here by your name, or was there at that time or since any person by your name?—A. No, sir; there is not, nor has there been any person of my name in business here since I have been here.

Q. Was there any person in your employ during the years 1871 and 1872 who was authorized to transact business for you and sign your name to papers?—A. My brother, Morris, and Mr. Myer were the only persons employed in my store during the years 1871 and 1872. They were salesmen, and as such could receipt a bill of goods sold during my absence, but they were not authorized to draw drafts or checks or such paper. I am familiar with my brother Morris’s handwriting, as well as that of Alexander Meyer, and I am certain neither of them signed my name to this bill heretofore specified.

The bill was here shown to the witness, who states that the prices charged are generally high, considering the quality of clothing usually furnished to prisoners.

The witness has signed the voucher referred to in this testimony, to fully identify the same.

Witness: W. H. Nessle.

Morris Mundt sworn and examined:

I am thirty-two years of age, and have resided in Helena Ark., since January, 1872. I am at present engaged in business for myself, but from January, 1872, to October 1872, I was in my brother’s employ as a salesman. I have examined the bill referred to in my brother’s testimony as above, and I state that I never sold any goods to Mr. Roots, nor did I sign my brother’s name to the voucher above specified.

October 22, 1874.

Sworn to and subscribed before me this 22d day of October, A. D. 1874.

Morris Mundt.

E. L. Stephenson.

Alexander Meyer sworn and examined:

My name is Alexander Meyer; am forty-four years of age; at present am a clerk in the store of I. Mundt. I have resided in Helena since 1864; have been in Mr. Mundt’s employ since April, 1871. I have seen the account referred to in the testimony of I. and Morris Mundt as above, and I state that I did not sell the goods as stated in the account, nor did I ever receive any money whatever from Logan H. Roots as marshal, or from any one else for him. I did not sign I. Mundt’s name to the account. I am familiar with I. and Morris Mundt’s signatures, and I am certain that neither of them signed the receipt to this voucher. I never had any transactions with Logan H. Roots, nor do I know P. K. Roots.

Alexander Myers.

Sworn to and subscribed before me this 24th day of October, A. D. 1874.

E. L. Stephenson, Clerk.

J. H. Minehart, deputy marshal, sworn and examined:

Case against George Page.

I arrested defendant near Red River station, about three hundred and twenty-five miles from here; it was my custom to charge the actual number of miles traveled in going to serve a writ; I had James Neil and J. H. Russell as guards; I had this defendant eight or
ten days in custody in the Chickasaw Nation before returning here. I think I obtained the writ on my return to Fort Smith.

vs. J. C. McGrew.—I arrested defendant on Red River, within four or five miles of where Page was arrested; I had a writ for this defendant when I left here. Eugene Trippelet and James Taylor were my posses in this case; Trippelet started from here with me. I employed Taylor about ten miles from here, in the Choctaw Nation.

(The writ in this case was originally dated August 30, but 20 was afterward inserted on the 30.—Nessle.)

vs. George W. Elborn.—I arrested defendant near Mud Creek, within ten or twelve miles of Red River station. I did not have a writ in this case at the time of arrest. I had John Pierce and J. C. Smith as guards; I fell in with Wm. Ish and Mike Wallace, and I think F. Rounds, all deputy marshals, and we all came in together; we had a number of prisoner guards, posses, and witnesses, all mixed together.

vs. Richard Childs.—I arrested defendant on the head of Bogg, in the Chickasaw Nation, about two hundred and fifty miles from here. I had Henry Jones with me; I employed him at Atoka, one hundred and forty-five miles from here; he was allowed a posses-account for the trip as though he had started from here with me; I told Jones I would explain the matter at the marshal's office here, and if they would allow his account for the time returning from here to Atoka, I would be satisfied that he should have it. I explained the matter to Donnelly, and the full time was allowed to Jones; Henry Jones brought this defendant within a certain distance of Fort Smith, (I do not know how near,) at which point he met Deputy Marshal Ish, who accompanied Jones to this place; at this time Ish was in pursuit of some prisoners who had escaped jail. I do not think I had a writ at the time of arrest George Morse was not with me on this trip; I do not know him; his posses-account is fraudulent, although my signature to it appears to be genuine; I think I have at times signed posses-accounts in blank, which may account for my signature to this account. The witnesses were subpoenaed in the same locality as the defendant was arrested; I had defendants in custody four or five days before sending him down to Fort Smith.

vs. Lem. Reynolds.—I arrested defendant on Red River above Mud Creek about 300 miles from here. I had a writ in this case. Jack English was my posses. I employed him here. Henry Thomas was not with me. The witnesses were summoned 15 or 20 miles nearer to here than where defendant was arrested. I came in with Reynolds.

vs. Isaac Pulsom.—I arrested defendant on Red River about 40 miles above Red River Station. I had a writ for defendant. I think I brought defendant in at the same time that I did Reynolds. Defendant was arrested close on to 400 miles from here. Jack Foster and Robert Wagoner were my posses. I employed them here. My testimony before Whitney as to mileage in this case is incorrect. The above are my cases under Wm. A. Britten, for which I never received any pay.

SARBER.

vs. David Allepaugh.—I arrested defendant without writ. Took him to Atoka and turned him over to Jno. Tinker and C. F. Robinson. They kept him 9 or 10 days above and over the time charged in the account, (10 days.) I went to Texas from Atoka, and on my return I brought defendant to Fort Smith. I brought defendant to within 7 or 8 miles of Fort Smith, at which place I left the party and defendant was brought into town by Tinker and Robinson. Wm. Jones, Joseph White, and Ben. Slater were guards. Defendant arrested 90 miles south of Atoka.

vs. Henry Cramer.—Arrested defendant as stated in the account without a writ about 440 or 450 miles from here. Dan. McCarty and Wm. Johnson (I think it was William) were with me as guards. I had no subpœnas for the witnesses in this case.

vs. Sam. Duke.—Arrested near Caddo Creek, about 350 miles from here. I had a writ in this case. I had James Williams and Jack Foster as guards.

vs. McLish Impson.—Arrested defendant near head of Boggy Creek, Chickasaw Nation, about 200 miles from here. I had a writ. Martin Dick, a colored man, was my posses. Jack Foster was a guard. I have received some pay for my services under Sarber.

Question. How long have you resided here?—Answer. I came here in 1858.

Q. Did you ever know any person by the name of John Minehart?—A. No, sir.

Q. Did you ever know any person residing here or in this section of the country by the name of Minehart, other than your own family?—A. No, sir; I do not.

Q. Here is a posse voucher, Henry Minehart, for 25 days' service in case vs. Joseph Monds from August 1 to 25, 1871, $75: examine it and state whether you performed such service, and whether the signature to the voucher is in your handwriting.—A. The signature is not mine. Sometimes I am called Henry Minehart; in one or two instances I have signed my name in that way. I never did the service above specified.

In 1871 I made a trip to Red River with deputy marshal Ingle, (under Roots,) at which time we arrested one Finch, one Russell, and two others I do not remember. I never received anything for my services, never went near the marshal's office, and don't know how I was returned. I never signed any papers whatever for my services.

The posse-account of Henry Minehart for 29 days' service in case vs. D. S. Russell
September 6 to October 4, 1871, was here shown to witness, who states that his name to the
voucher is a forgery—that he never saw this voucher before. I was with deputy marshal
Ingle in this case, but Ingle told me that instead of returning me as a posse he would do
better by me—he would give me half of his fees. On our return Ingle came to me and gave
me seventy-odd dollars, but not as much as $87, as my portion of the fees under our arrange-
ment.

The above is all the service I ever performed under Logan H. Roots' administration, and
I never receipted to him for any money or signed any papers whatever, for services as deputy
marshal, posse or guard.

I do not know such a person as Henry Minehart; my name is John Henry Minehart.

J. H. MINEHART.

FORT SMITH, ARK., September 1, 1874.

Testimony of James H. Mershon as to sundry accounts.

Sworn. Examiner by Mr. MARCUM, attorney for National Bank of Western Arkansas
I am 36 years old. I live in Fort Smith.

Case of United States vs. William Silsbee.

I know a man named L. T. Taylor; was said to be Twyman's posse; but as for riding in
this case or any other case I don't know anything about it. He took his meals at my house
sometimes. That is how I found out he was Twyman's posse. He told me if he came there
to board he would see me told. I am well acquainted with T. A. Twyman. I don't know
who he brought in. I didn't know much about the prisoners at that time.

United States vs. Wm. and Chas. Brown.

I knew Wm. Galloway. He was here in 1872, I believe. I have not seen him for a year
or so. I don't know where he went. It seems to me like it was the fall of 1872 I saw him.
I am not acquainted with his handwriting. I think he rode as a posse. I don't know that
he told me so; but I heard it some way. It seems to me like he was riding here during the
fall; may be it was before that. I don't know how I got that understanding. I know that
he came here and was said to be on a trip; but I don't know anything about the cases he
brought in. In fact I remember but very few of the persons that were brought in. I had
no connection at that time with the marshal's office, and no business in it. I made a special
trip at one time, too. I got a special writ for a man that stole my mare (Graham) and brought
him back here.


Thompson was Willard's posse at one time. I knew Thompson. I was not well
acquainted with him. I don't know in what particular case he rode with Joe Willard. It
seems to me like Willard introduced me to Thompson at Willard's house, in the Choctaw
Nation. That was in 1872, in the latter part of August, I think.

United States vs. Samuel Duke.—Martin Johnson, posse.

I remember Martin Johnson was riding for Ross. I was acquainted with Johnson. I
saw him with Ross, and it was my understanding that he was Ross's posse. Johnson took
his meals at my house. He went to the penitentiary finally. It was during Britton's ad-
ministration that he rode with Ross. I think it was in 1872. I do not know Samuel
Duke.

By Colonel DUVAL:

Question. When was it you knew Samuel Galloway?—Answer. It seems to me like I got
acquainted with him in the fall of 1872.

Q. With whom did he ride as posse?—A. It seems to me like he rode with more than one.
I don't remember any particular one, I don't believe.

Q. Can you say positively that he rode with any?—A. I can't say positively that he rode
with any; it was my understanding.

Q. Do you know anything of this case of Brown and Brown and Danzby?—A. I do not.

Q. Whom did Thompson ride with?—A. I don't know. I don't know of any certain case
that any of these rode with. It was my understanding that they were posses. I knew Martin Johnson in 1872. I am not positive what time in 1872; it was probably in the fall. I know he was sent to the penitentiary. It was after Sarber had taken charge there. Johnson is said to have lived in the Choctaw Nation.

Q. Was he a posse for more than one trip with Ross?—A. Yes. I have seen him more than one trip, I believe. He was said to be Ross's posse. Ross lived in the Choctaw Nation at the time, at Boggy depot; or at least he stated there a good deal. I never heard of Martin Johnson living at Fort Smith. He was a Choctaw Indian. I believe he was put in the penitentiary for retailing whisky. I am pretty certain of it. I did not know T. Polk.

By Mr. MARCUM:
I kept a boarding-house. A great many strangers who were said to be posses rode there. I am not familiar with the workings of the marshal's office, in 1872. The men who boarded at my house would talk about it. Johnson rode with Ross. I am positive of that, because they came in here together. I couldn't swear positively that he ever went a trip with him; but it was my understanding that he was Ross's posse.

FRANK O'BRIEN, deputy marshal, sworn and examined.

Case vs. Dennis Finn and John Hamlin.

In the matter of the account of John Pierce, for services as posse from September 3 to October 4, 1872, 36 days, $108.

Question. Is that your genuine signature to the posse account of John Pierce as above stated?—Answer. Yes. The services were actually rendered as charged in the voucher. John Pierce was actually out with me 36 days in this case.

By MARCUM, attorney for National Bank Western Arkansas.

Same case. In the matter of the account of James Chambers, for like services as above, $108. My signature to James Chambers's account in this case is genuine. The services as charged are correct and were actually performed.

Case vs. Emily Foreman.

I only went out as far as Minerva's in this case, twenty-five miles from Fort Smith. My posse went on and made the arrest and met me on their return at Minerva's. I do not know John Hardy, who is alleged to have ridden as posse with me. Chambers was my posse in this case and made the arrest of defendant. I cannot say whether I signed the certificate to the posse account of John Hardy or not.

P. K. POLLEY sworn and examined.

I have resided the last four years in the Chickasaw Nation. I am now residing in Cherokee town, Chickasaw Nation. I was with Jo. Tinker, deputy marshal, on the Missouri, Kansas and Texas Railroad. Met him at Atoka. I informed Tinker that Martin and Orke were at Cherokee town and suggested to Tinker that he go over and arrest them. Tinker proposed to me to take a writ and go after the party myself, which I did next day or about November 28, 1872. I was not an officer of the United States. I saw no more of Jo. Tinker until my arrival at Fort Smith. I had no posse or guards with me. I delivered two prisoners to Jo. Tinker at Fort Smith. I paid all expenses myself, $12.50 being all that I paid out, having started with supplies from home. The distance from Fort Smith to place of arrest is two hundred and ten miles. I made the arrest, brought the prisoners to Fort Smith, paid all the expenses and never received one cent by way of remuneration or otherwise for my services or expenses in this case. Joseph Martin, one of the defendants, resides at Cherokee town, and is at present a wood contractor at Fort Sill. I was six or seven days at
I was security on the bond of one Jack Gaddis, and as his bail arrested him without process, and took him to Atoka, where I met Jo. Tinker, Lee McLemore, Robert Donnelly, and John Scott. I delivered Gaddis to Jo. Tinker, who appeared to be the leader of the party. Gaddis had formerly been in jail at Fort Smith for retailing liquor without license, and was a Cherokee. After delivering Gaddis to Tinker, I was informed by Lee McLemore that I would be allowed a posse account in that case, and McLemore suggested that if I would remain at Atoka, and assist John Scott (who was sick at the time) in the Seminole case I would be allowed a posse in that case also. Seminole and Much-a-ah were then in Tishemingo jail, having been arrested by the Indian authorities, who were holding them until the proper United States writs should be presented for their arrest. At the request of John Scott I came alone to Fort Smith, and McLemore gave me the writs, when I returned with them to Tishemingo. Some forty or fifty miles from Fort Smith I met John Scott returning home sick, to whom I turned over the writs and I then proceeded home. Five or six days afterwards Jo. Tinker came to my house in Cherokee town with the aforesaid writs in his possession. Lee McLemore did not to my knowledge ever have the defendants (Seminole and Much-a-ah) in his custody, nor did I ever serve as a posse in this case. The $60 posse account in my name in above case was all I ever received for my services in all the cases above stated. This posse account was turned over to a Mr. Hare to whom I was indebted for borrowed money. Jo. Tinker afterwards told me that $72 had been allowed me as posse which Robert A. Donnelly had collected.

(Witness was here shown a posse-account in his name for $108 for services from September 21 to October 26, 1872, R. A. Donnelly, deputy marshal; case vs. John Knowles, purporting to have been sworn to before J. C. Pritchard, deputy clerk United States district court, November 4, 1872.)

I state that my name signed to the account above mentioned is not my genuine signature; that it is a forgery; that I never traveled with R. A. Donnelly at any time, either with or without prisoners. I never saw this account before. I never received one cent from Donnelly or any other person on this account. I do not know Samuel Ames who is returned as posse in this case. The distance from Fort Smith to Tishemingo is about 195 miles. The account referred to as a forgery is marked "A," and I have indorsed it with my original signature.

Q. Where did you get Jack Gaddis?-A. At Wichita agency, about 300 miles from Fort Smith. When I turned over Jack Gaddis, the deputies had John Knowles, Reuben Williams, and one other, is all I remember.

SEPTEMBER 17, 1874.

Witness: W. H. Nessle.

FORT SMITH, ARK., August 24, 1874.

In the matter of the posse-account of William Vannoy in the case of United States vs. Ransom Woodall for 34 days' services, September 25 to October 27, 1872, at $3—$102; said account belonging to Samuel McLoud.

Testimony of JOSEPH G. PEEVEY.

Sworn. Examined by Mr. Duval:

I was employed as deputy marshal, under Britton, on the 25th September, 1872, and prior to that time. I employed William Vannoy as posse here; he was here at the time; he had come in on a trip with me and went back with me. I have looked at the account; it is correct, and the services charged were actually rendered. Vannoy's home was near Elgin, Kans. The arrest was made about 75 miles due west of Elgin, and about 8 miles south of Arkansas City, on a creek called Sharkey. He went from here in his wagon. We got a writ here for the man and went right back and staid, I suppose, five or six days. Vannoy came back here with me; he is now dead; died on his way home from that trip, at Parker, Kans.

Q. Have you any information as to how McLoud got this account?-A. Yes, sir; I expect I know all about it; we had no money—any of us—and we couldn't get any. He let McLoud have this account for his board and his team, and I think, though I may be mistaken, he got some money to go home on. I know he was trying to get some money from me, but I had none and couldn't get any. I remember Mack's promising to let him have some money if he could raise it for him. I think he got some from McLoud. How much he got I don't know, but when he started home he told me he had got some money to go home on. I think he had Joe Vannoy both got some money. Joe Vannoy was riding with me at the time; I think he was a deputy marshal. The signatures of myself and Vannoy on that account are genuine.

Q. Here is the indorsement on this account: "J. G. Peevey was sent out of Fort Smith, so that I could not see him. I could not find the posse."—L. B. W."—A. That is partially
the fact. My going had no connection with this; it was to keep from being interviewed by Whitney. I made an explanation of the reason why I left when I testified before the Judiciary Committee of the House of Representatives at Washington.

__FORT SMITH, August 26, 1874__

Testimony of JOSEPH G. PEEVEY, as to posse-account in favor of Sut Beck in the case of United States vs. Thos. Cook.

Sworn. Examined by Mr. DUVAL:

This is a genuine account. There was no other made out in that case. I know that rendered that service. I saw him there and came most of the way home with him, with the same crowd. I think Cook was arrested west of Elgin, near a creek called the Big Beaver or the Little Beaver. I knew that Vannoy had about this time a prisoner named Cook, and Sut Beck was along with him as guard. I do not know that I would know Beck's signature. My impression is that he can write; I don't know.

(NOTE.—Mr. Freeman, a former witness, being present, says that he knew that Sut Beck was a posse with Jo. Vannoy, and that he saw Vannoy and Sut Beck together after the arrest of Cook.)

__FORT SMITH, ARK., October 17, 1874__

JOSEPH G. PEEVEY sworn and examined.

[Report 36,492, under Roots.]

__Case against John Childers."

I was posse for R. C. Lamson. I made the arrest of Childers, about 325 miles from here. J. W. Vannoy and David Urquehart were with me at the time. I do not know James French who is alleged to have made the arrest. He was not with me. J. W. Vannoy went out from here, and was a posse. A. J. Stout was coming down to Fort Smith as a witness in the Craig case. I don’t think he was a posse. He was a cripple, and I know he done no service as a posse on the way down.

__Case vs. Robert Hutchinson and James Ferguson."

I arrested these defendants, as the posse of R. C. Lamson, about 325 miles from here. J. W. Vannoy and David Urquehart were along as posse. On this same trip we arrested one White, Joseph Caldwell, one J. P. Boulder, Skein, I think—perhaps the latter may have been a witness—C. and G. Gokey, seven in all. S. S. Tracy, who is alleged to have been the deputy in the above case, left here with Lamson and I, but at Fort Gibson, Tracey, or Tracey rather, took sick and we left him at that point, and that is all he ever done in the case. We had writs for these defendants. John Dyer came down with us, but he done no service. He did not go out from here with us. John Crawford was not a posse. His account for such service is fraudulent. I never heard of such a person. I am positive he was not along.

__Case against John White."

I arrested defendant under the same circumstances and about the same place as in case above. J. W. Vannoy and David Urquehart were the posse. Martin Lawrence was along with us. I am positive about this. His account for such service is fraudulent.

__Case against Joseph Caldwell and J. P. Boulder."

I arrested these defendants at the same time, place, and under the same circumstances as in foregoing cases. J. W. Vannoy was a posse in this case, but Wm. Cross and Samuel Horn were not with us. These accounts are wholly fraudulent.
In the foregoing cases, R. C. Lamson was the deputy marshal, and no other deputy was with us on the trip.

Case against Isaac Keys.

I arrested defendant and one Simmons on the line between the Osages and Cherokees, about 250 miles from here. I brought Keys and Simmons to Fort Smith myself. Had no posse or guard. David Urquehart and Daniel McCorrister were not with me. I never heard of such a person as McCorrister.

Case vs. John Simmons.

I arrested defendant near to where Keys was arrested. I brought him down at the same time I did Keys. Edward Cross and A. T. Clowry who are returned as posses were not with me. I do not know such persons. I never heard of such a person as G. S. Munroe, the deputy marshal, before.

Case vs. Henry Parris.

I arrested defendant as stated in the account, about 300 or 350 miles from here. At the same time or on the same trip I arrested John Childers and Daniel Craig and brought them here at the same time. I do not know any such a man as James French, the alleged deputy in this case. Myself, Urquehart, and Vannoy were posses in these three cases. No other persons were along as posses.

(See forward for Childers' case.)

J. G. PEEVEY.

FORT SMITH, ARK., October 5, 1874.

C. W. PIERCE sworn and examined:

The accounts, as presented by Dr. Pierce, are for the months of January, February, and March, 1874, entire, and one account from May 11 to June 10, 1874, and one other from June 11 to 30, 1874, all charged at the rate of $100 per month, making in the aggregate the sum of $466.50.

Question. Were you employed here as the regular physician for the jail?—Answer. Yes, sir: first by Britton, then by Roots.

Q. When was it that you commenced making out your account as a salary?—A. In January, 1874; before that time by visits.

Q. Are you willing to accept the amount at the rate of $100 per month on the unpaid account in the comptroller's office, or do you continue to ask the full amount claimed by you?—A. I can't answer, because Britton has a claim on this. He paid me at one time $500, and as he has an interest in it, I cannot speak for him. The unpaid account amounts to somewhere near $1,400, on which Britton has paid me $500, which is the interest he has in the account. I gave no receipt to Britton for this money. After Sarber came into office I still continued to make out my accounts at two dollars per visit, prescription and medicine, in pursuance with contract made with Sarber. Sarber paid me at this rate up to January, 1874, and he yet has in his hands $13 of the above accounts which I have no voucher for, which ought to come in with these accounts.

Q. Did Sarber always pay you on your accounts the full amount you receipted him for in all cases?—A. Sarber has retained the $113 to protect him against any disallowances that may be made against him. Otherwise I think I have received all I receipted for.

Q. Did you ever complain to any one at Sarber retaining the $113, on the ground that he was keeping it for his own use?—A. Yes, sir; to T. G. Scott, but at that time I had no settlement with Sarber.

Q. Was there any agreement, either express or implied, between you and Marshal Sarber, by which he was to receive any portion or percentage upon your medical account?—A. There was not.

Q. State whether you have ever demanded payment of the $113 from Sarber since surrendering the accounts to him, upon which it was retained. Also state the amount of the accounts or account surrendered, the amount paid by Sarber, and when the transaction took place.—A. I have said to him several times that I would like a settlement, and he put me off from time to time. I don't know the amount of the account rendered or surrendered; the transaction took place some time in November or December; I expect, perhaps in January or February. Since referring to memoranda in my possession I find that the transaction took place November 22, 1873.

Q. Did you at any time, while you were acting as physician for the jail, make any pur-
chases, or contracts for the purchase of clothing or other supplies for the prisoners?—A. By contracts. I was ordered by Britton to see that the prisoners were supplied with clothing. I would get the prisoners into line, ask them what clothing they had, take a list of what each one needed, send the order for the same sometimes to Ed. Hunt, and afterwards to Wolf & Loeb.

Q. Have not made any purchases of clothing or hospital supplies for the prisoners under Sarber?—A. No, sir; really I could not swear that the prisoners ever got any clothing under Sarber.

Q. Did you have anything to do with certifying to the correctness of the clothing accounts?—A. I think I did. Mr. Wolf, of the firm of Wolf & Loeb, sometimes went with me. The prisoners would be drawn up in line, and as each one would tell me what he needed, I would put it down on my book, as would also Mr. Wolf on his book. When through, Mr. Wolf would furnish the goods, on my order, from the memoranda on his own book. I don't know that we ever compared books.

Q. When Wolf & Loeb made out their bill against the United States for clothing furnished, did you compare the same with your book before certifying the account?—A. No, sir; I simply certified it, thinking they were honorable men. At one time I was at the jail when the clothing came, and at times I would ask the prisoners if they had received what they ordered, and they would say they had.

C. W. PIERCE

FORT SMITH, ARK., September 3, 1874.

Testimony of HENRY REUTZEL as to the claims of Bocquin and Reutzel, abstract filed herewith.

Sworn. Examined by Colonel DUVAL:

Question. State whether there was any arrangement between you and Sarber, by which you were to accept any orders that he might draw.—Answer. The arrangement that marshals have had with us heretofore—and Sarber among them—was that they should give orders to the deputies and charge them to the deputies, and when the money arrived they would pay us. The orders were drawn direct to the firm to "pay deputy marshal so and so," a given amount.

Q. Do you know whether those orders were drawn upon amounts or balances due the deputies for services rendered, or in anticipation?—A. For actual services rendered. It was understood that we held the marshal accountable, and they were drawn in such a way that we held the marshal responsible.

(The order referred to is in this form:

"OFFICE UNITED STATES MARSHAL,
"Messrs. Bocquin & Reutzel:
"Let R. J. Coughlin have merchandise to amount of $15, and charge the same to this office.
"This order to be returned with bill.

"J. N. SARBER,
"United States Marshal.
"By ED. MAIN, Deputy.")

Witness. Some orders were signed by the marshal himself.

Q. These amounts contained in this schedule of orders, amounting to $606.29, were all drawn directly on you?—A. Yes, sir.

Q. This amount of $606.29 is for goods furnished to deputies on the orders of the marshal drawn upon you and upon the faith of that amount being reserved out of whatever might be due to those marshals for their services then rendered?—A. It was the understanding between us that in case the deputies had nothing coming to them we would hold the marshal responsible for the amounts. We had nothing to do with the deputies themselves, except to furnish the amount of goods and charge the account to the marshals.

Q. I understand you to say that there was an arrangement by which orders drawn by the deputies upon the marshal and accepted by him, to furnish them goods; he was also to pay you out of such funds as might be due?—A. Yes, sir; that was the understanding, also—orders accepted by him.

(These last-mentioned orders were in the following form:

"JOHN N. SARBER, United States Marshal:
"Please pay to the order of Bocquin & Reutzel the sum of $100, and place the same to my account.")

(Written across the face: J. N. Sarber, United States marshal.)
WITNESS. Most of these acceptances were accepted by Sarber personally.

Q. Had you been in the habit of dealing with previous marshals in the same way? - A. Yes, sir; we done the same thing with Roots. At one time we had a very large amount of the same acceptances and orders of Roots; had about $3,500 of Roots's at one time, at the time he claimed he was out of funds; and also with Britton. Britton's orders were different. He just gave a due-bill, "due bearer" so much, while Sarber worded his different. He gave a direct order; that was the only difference between the orders.

Q. This amount of $1,068 of acceptances and $606.29 of orders remain unpaid, do they? - A. Yes, sir; they are unpaid.

Q. Have you made any effort to collect them from Sarber? - A. Yes, sir; I have repeatedly made efforts, and before he went to Washington this last time he told me positively that he would pay the whole amount out of the first funds he received. When he returned he claimed that he had received no funds since February last. Since that time we have found out that he has received over $11,000 from the department. He says now he won't pay them till he makes a settlement with the department. He can't deny any longer receiving that money.

(Two receipts for posse-comitatits accounts presented to witness.)

One of these we turned over to him ourselves, and the other was turned over by Argyle Cushenberry. I took them to him in order to get the vouchers from him again. He says he has sent them to Washington and has not heard from them yet, but I find that he has received credit for them at Washington. I understand that he claims now that he has never received any money on those abstracts. As soon as he gets the money, he says he will pay them.

FORT SMITH, August 27, 1874.

Testimony of Eli Roof as to his account for services as bailiff of the United States court from 6th November to 28th November, 1872, twenty days, at $2, $40.

Sworn. Examined by Mr. Duval:

I was notified by Mr. William H. Johnson, the crier of the court, to serve as bailiff in the Childers trial. My duties were, principally, attending to the door—keeping it shut; it was in that cold weather. I was not sworn in as bailiff. I continued in service from the commencement of the Childers trial up to the 28th of November. I have never been paid for that service. At the end of the term I went to the judge to get my discharge. He refused to give me a discharge, saying that he had more bailiffs than the law allowed, and that he could not allow me anything for it. The judge knew that I was serving all that time as bailiff. I only served as bailiff during the Childers trial; after that I was a witness. After I had seen Judge Story I went to Marshal Britton and told him I wanted something to show for my services—some voucher, and he said he had not time to give it to me then. He said if Story wouldn't allow it, it would be useless for him to give me a voucher, and that he could not pay me for my services. I think there were five or six bailiffs on duty there at that time; might have been more. I think there were about six on duty when I commenced. I was also bailiff one time under Marshal Roots. I do not recollect the term of the court. I think it was the spring time. It was the term before this one. I don't know how long I served that time. The court was probably half through when I began. Roots himself did not employ me; it was his deputy; but Roots was there. It was through his orders. He told me he would allow me $1.50 a day. I don't believe I signed any voucher for that. Roots gave me his check for $1.50 a day. I don't remember that I signed any receipt for that. I don't think I did, though. I was in the marshal's office when he gave me the check. I don't remember how much the check amounted to. I know it was that time when he had the money and he gave me the check. I went and cashed at B. Baer's at 20 per cent. discount.

ELI ROOF.

FORT SMITH, August 31, 1874.

Testimony of Charles F. Robinson as to the posse account of A. M. Riggs, in the case of Solomon Lewis, for twenty-eight days' service from September 30 to October 27, now in possession of Samuel McLoud.

Sworn. Examined by Colonel Duval:

I reside at Fort Smith. I was a deputy marshal under Britton in September and October, 1872. Riggs was not a deputy himself. I sent him out in my place to attend to this case. He made the trip and arrested Lewis. I made out the account just the same as if I had served
it myself. That was according to the rules of the office at that time. I have not received any money on it yet. I turned in the accounts to the office. I do not know that any other posse was allowed in the case. There are two or three other cases returned by me in the same way, where I did not render the service myself. I don't remember what cases those were. In all those cases the vouchers were signed by me and placed in their hands. I think there were some of them which I received checks, and some I did not. I think I did not in this case. I had any money in this case. I have transferred them. According to my account, Britton owed me somewhere in the neighborhood of $3,000. I have never had any settlement with him.

Q. Did you ever make any returns for other persons on writs that you did not serve yourself, except in these cases where the writs were in your hands and you employed someone to make the arrest for you?—A. No, I never attended to any business but my own, the I recolected of now. This man Riggs got half; we just cut the whole thing in two. He has had half of all that was allowed as posse and deputy marshal.

Q. Do you know how McLoud got this account?—A. The party sold it to him, I suppose. I have no interest in the account, that I know of. I just gave the posse the half of this if.

The amount of the other account was $146.50. Two-thirds of that was coming to me.

Q. That was quite a common practice, was it not, at that time, for men who had writs to employ others to go and serve the writs, and then the deputies made the returns, which were recognized by the marshal as being valid?—A. Yes, that was my understanding of it; at least they accepted those returns the same as if we had made the trip ourselves. Of course, as I was city marshal at the time, they would know whether I had been out on the trip.

Q. Do you know whether the principal marshal understood that?—A. I don't know whether he was here at that time. I suppose he did; of course he did.

Q. Was that the custom under Roots as well as Britton?—A. I don't know; I did not do much business under Roots.

Q. Do you know whether Judge Story had any knowledge of this practice?—A. No. I never had any business with him at all. I never presented my accounts to him; it was not customary. There was no concealment of the fact that I had not rendered the service. I signed the papers outside of the desk, publicly. They understood it at the office. I gave them my time, distance, &c., just the same as if I had been myself, and they made up the accounts in the office. I don't remember that there was any other posse-account in this case, but this one. The posse-accounts were always filled up. I believe, in the body of the account and then signed. I don't think I was present when this account was sworn to before Brooks.

Q. Do you know whether Brooks or any of the commissioners were in the habit of certifying accounts as having been sworn to before the men actually signed and swore to them? Did you ever see it?—A. I never saw anything of the kind.

Q. When you signed these certificates did you always examine the voucher, or did you take and sign it without looking at it particularly?—A. I signed it without any particular notice. I never doubted but what it was all right. I have never heard of any persons who were engaged in making returns for others who had actually done the service on the writ.

Q. Were you ever asked by any of these traveling deputies to make returns for them?—A. No, sir; I believe not.

Q. Do you know a man by the name of J. H. Lamar, a deputy marshal in 1872?—A. I recollect him very well. He was working at Keron's stable, I believe. He was a hodster, and drove a carriage sometimes, I believe. He was there two or three years, I think. I don't know anything about the case of Short, Anthony, Pickett, and Barker, charged with assault with intent to kill. If Lamar was a deputy marshal, I did not know it. Whenever I saw him he was about the stable cleaning horses and driving carriages. He might have been gone from town some time without me knowing it. I don't know where Lamar is now.

Testimony of W. C. Ross as to his own accounts as deputy marshal under Sarber.

Sworn. Examined by Colonel Duval:

I was a deputy marshal under Marshal Sarber. I received all these vouchers to the office. The marshal gave me his receipt for them. He has paid me some money. I don't know how much. He has not paid all of any of them. He gave me a paper like this:

"FORT SMITH, June 1874."

"Received of --- ---, his marshal account in the case of A B v. C D, and also the case of C D v. E F, amounting to $310. This writ is not negotiable."
The only difference between that and mine was that on mine there was nothing said about its negotiability. I traded my paper off for clothing and one stuff and another. I couldn’t get any money, and I thought I had better have clothing than nothing. I got for the paper what they called dollar for dollar, but I noticed that a man who went there with money could buy a great deal cheaper than I could. There is still a balance unpaid. I have asked for it repeatedly. I asked no later than to-day. I asked pay on every voucher. I was also a deputy under Britton, and a short time under Roots. When the marshals took up our accounts they took one-third of the whole thing; and then after deducting the one-third they took out ten per cent. of the balance until, they said, their statement of allowances came on. I have never got that ten per cent. repaid to me under any marshal. That was the practice under Roots, Britton, and Sarber. I have repeatedly demanded that ten per cent. from Roots and from Sarber. I didn’t from Britton because he didn’t have anything, and I couldn’t get anything from him anyway, and just let it go.

Q. In dividing the compensation into three parts, one part to go to the office, were you in the habit of footing up the account just as it is here, the service, mileage, per diem, returning prisoners, feed and transportation, and of dividing all that? — A. Ye, sir; and one-third taken off of that.

Q. Was not feeding an expenditure on your part? — A. Of course; the same as my board-bills would be.

Q. Was not the $2.25 allowance more than the ordinary cost of feeding prisoners? — A. It would cost that much for feeding and transportation; every cent of it. From my experience as a deputy during the last three years, I think that allowance of $2.25 would generally and on an average just about cover the cost of feed and transportation. The marshal deducted one-third of what was due me of my own money expended for feeding prisoners, just because there was nothing said about it. If you examine every deputy, they will say the same thing if they know anything about it. There was a regulation of the office (but no law) that 25 miles should be a day’s traveling-allowance. Deputies often travel in a wagon; that is the only way they can make anything. A wagon can travel 25 miles a day unless in bad weather.

Account in the case of the United States vs. Pickens Benge.

Bull Creek is in the Creek Nation, away up in the northwestern portion. It is not near any public and well-known place. It is northwest of Okmulkee.

Q. How did you estimate this distance at 200 miles? — A. Well, I came just as near to it as I could from where I traveled. I should judge it was 125 or 130 miles from Fort Gibson. I came through Gibson coming back. That is just as nigh as any other road. The prisoner waived examination and gave bond.

Q. Who made out this account? — A. I forget whether it was Main or Allnutt. It was made out in the marshal’s office. No portion of this has ever been paid me. Joe Bowers was with me as posse. He was the only posse I had.

Q. Have you demanded payment of this? — A. I have. I presented it last week, I think once, and I asked him again to-day. He told me to get your approval and then he would talk about it.

SEPTEMBER 22, 1874.

W. C. Ross, deputy marshal, sworn and examined:

SERVICES UNDER ROOTS.

vs. One Pilkington and Joe Morrow.—Jack Foster and Peter Jackson are charged as posses in this case; two hundred miles, Chickasaw Nation. Did not have Jack Foster or Peter Jackson with me as posses in the case; don’t know such men. The posse-accounts are for $60 each. My signature to posse accounts is forged.

vs. C. M. Jemison and N. Coleman.—E. C. Rankin, Alfred Lewis, and Charles Cross are charged as posses in this case. I had E. C. Rankin with me, and I think I had Charles Cross. Don’t remember such a person as Alfred Lewis being with me; I only had two men, I know. My signature to the posse-account of A. Lewis appears to be genuine. The posse-accounts in many cases were put before me to sign, and I signed them in blank frequently. If I had more than one posse, I would sign four blank posse-vouchers. They would then fill them up in the office, and perhaps in a day or two the posse would come to me and say that I had not signed his posse-account. I would then sign his account, and in this way I account for my name being signed to fraudulent posse-accounts.

vs. George O’Neil and James Thompson — Four hundred miles charged to Chickasaw Nation, where service was made. Three hundred and fifty miles is as far as you can get in the Chickasaw Nation. The mileage is in excess about fifty miles. My posse in this case was John W. Carter. E. S. Murphy and J. P. Warder were not with me; I don’t know them; never heard of them.
vs. Robert Jordon, William Nickles, and Baldin Ashley.—I had J. F. Carter and H. Freeney as posses in this case. I think four hundred miles to serve in Cherokee Nation is correct.

vs. Joseph Heart, internal revenue.—I can't remember whether I had or did not have this defendant in arrest.

vs. Joseph Childers, Walter Agnew, William Pinckney.—This case is made up in the account as though service was made at the same time and on same trip as in case vs. Heart. I had Martin Johnson, and, I think, H. G. Lawrence on this trip. The posse returned on this trip, as appears in the account, is John F. Baxter, S. M. Sawyer, Thomas B. Collins, and J. P. McCrae.

( NOTE.—I find accounts here for T. P. Collins, S. M. Sawyer, and John F. Baxter. The account of McCrae is not with this account.—Nessle.)

The accounts of T. P. Collins, S. M. Sawyer, John Baxter, and J. P. McCrae for services as posses in this case, are fraudulent. I did not have any such men with me,

WILLIAM C. ROSS.

Witness : W. H. NESSLE.

SEPTEMBER 22, 1874.

UNDER BRITTON.

vs. Emily Grayson.—Four hundred miles; served in Cherokee Nation; served writ west of Osages; mileage is correct; states that 300 miles was the distance in his affidavit before Whitney. I say now that I stated to Whitney that the distance was 400 miles. The posses, as returned in the account, are T. G. Carter and Henry Samuels. I state that their accounts, for services as posses in this case, are correct. (Samuels' account was sworn to November 1, before Pritchard, and Carter's before Brooks, on November 20.) Don't know a thing about whether Samuels received his money or not. I got pay a year ago last winter for my services in this case. I bought Carter's account. Jeff Carter was the name of the posse who was with me.

Q. How does it come that you have a memorandum of your case, under Britton, made out by J. W. Donnelly?—A. I was drawing off all my business under all the marshals from the fee-book in the marshal's office. I got through with Roots and commenced on Britton's business when Brizallari came in and took the books away from me and locked them up, remarking to me that his action was by order of General Fagan. I then went to J. W. Donnelly and asked him to get me a statement of my cases, which he did.

Q. State who Brizallari is.—A. He told me he was Fagan's chief deputy.

Q. Why did you ask, and what were your reasons for going to, J. W. Donnelly for this statement?—A. Because I saw that Donnelly was acquainted with Fagan's men and I was a stranger to them.

Q. How long since you got this statement from Donnelly?—A. About six weeks or more ago. I did not pay Donnelly anything.

Q. What was your object in getting this statement?—A. To see what was coming to me in the way of 10 per cent.

Q. In making your answers to questions under Britton do you make them from your recollection of the facts or from the statement furnished you by Donnelly?—A. From my recollection.

vs. Trantham and Mexican Joe.—Arrested defendants in Chickasaw Nation. The return on the writ states Choctaw Nation; 260 miles is correct. My posses in this case, I think, were Martin Johnson and Jeff Carter. I don't know about Robert Casey, who is charged as a posse in this case. I don't know whether I had Robert Casey or not. I don't remember. If I had him I have forgotten it. I had a writ on these defendants when I arrested them.

vs. H. M. Duke.—Three hundred and fifty miles to arrest in Chickasaw Nation is correct. I had Martin Johnson and T. G. Carter with me as posses in this case. I did not have Robert Casey as a posse in this case. His account in this case is fraudulent. I don't remember such a man as Robert Casey in any of the cases; don't think I ever signed my name to Casey's posse-vouchers.

WITNESS: W. H. NESSLE.

SEPTEMBER 22, 1874.

FORT SMITH, ARK., August 27, 1874.

Testimony of William C. Ross, as to posse-account of John Marr's in the case of the United States vs. Stanley and Reed, from August 11 to September 8; said account being in possession of Samuel McCloud.

Sworn. Examined by Mr. Duval:

Marr rode with Hudspeth at that time. The reason I know it is because I saw him riding with him. He was with me part of the time on that very trip. I saw him near what was now
In the Choctaw Nation, there was no Caddo there then. I saw Hudspeth and Marrs together. Then I saw them at Boggy Depot when they returned with the prisoners. I had been sick and was just able to sit up; they came there and took dinner. I was well acquainted with both of them. The last I knew of Marrs, he went down on the Missouri, Kansas and Texas Railroad. He came from the railroad here. He came here first as a witness. I cannot remember the case; it was before Brooks, the commissioner, I believe. I won't be positive. Marrs was a red-headed and red-complexioned man; a low, heavy-set man. He was of Irish descent. You could detect the Irish brogue on his tongue. I cannot identify Hudspeth's signature; that looks like his handwriting. I expect that his signature is right.

W. C. ROSS.

HELENA, ARK., October 22, 1874.
Statement by E. L. Stephenson, clerk United States district court.
Case against Henry Burnett et al.—Fees as charged in the account are correct, except as to service of subpoena on Andrew Weaver; that is incorrect. The mileage (16 0 miles) is by the river, the usual traveled route.
Case against William Butler, case against Andrew Weaver, case against John Scoopul.
These writs were all issued out of the court, on orders issued from the bench. These writs were all served at or near the same place and the mileage as charged is the actual distance traveled by the usual traveled route.
Case against George Wright.—Court writ $2 for service of writ, and 100 miles to serve, is correct. Defendant gave bond where arrested.
The sum total of above services amounts to $53, for which I have received from William A. Britton $33.95, leaving due me $5.80. At present I am clerk of the United States district court here. My immediate predecessor was W. A. E. Tisdale, who held the office from the time the court was established here until the 15th of October, 1874. I am acquainted with Alvin Tisdale. He is W. A. E. Tisdale, who was the clerk of the United States district court here. I suppose his second name is Alvin. I am acquainted with his handwriting. An account amounting to $77.64 in cases United States vs. Mart A. Mull, vs. Simon Mason, and vs. Warner Milton, for services rendered as deputy marshal in 1873, was here shown to witness, who states that the signature to the account or voucher is in the handwriting of W. A. E. Tisdale, the former clerk of the United States district court here. This account was among some papers left with me by deputy marshal J. G. Wygant, who was in charge of the office here under Britton, for a portion of Britton's administration. Tisdale has gone out in company with deputy marshals as commissioner, and as arrests were made on process issued by him, he would hold court and commit or discharge defendants as the case might be. Some cases were frivolous, others were good. During the time Tisdale held the office of clerk and commissioner, his residence was at Duvall's Bluff, outside of the western district of Arkansas. I think Judge Story was acquainted with the fact of Tisdale riding about the country as commissioner, and I know that Judge Story knew about him (Tisdale) riding as deputy marshal, as be spoke to me about the matter. In nearly all the cases tried or examined by Tisdale on his trips, the defendants were released on bond at the place of examination.

Witness: W. H. N.
Sworn and subscribed before me this 23d day of October, 1874.
[Seal.]
D. W. ELLISON,
Clerk of Phillips Circuit Court.

FORT SMITH, ARK., September 1, 1874.
Testimony of CHARLES B. SISKER, (colored), as to posse-account of Tid Cooper, in United States vs. one Plowman, 5 days, August 26 to 30. H. C. Donaldson, deputy marshal.

Sworn. Examined by Mr. MARCUM, attorney for National Bank of Western Arkansas:
# I know Tid Cooper; he lived in Fort Smith. I know H. C. Donaldson; he used to be a barber here. He was a deputy marshal at one time. Tid Cooper used to go out with him as posse. I don't remember exactly what year that was in.
By Colonel Duval:

Question. How long ago was it?—Answer. I can't tell, in fact.
Q. Did he go out more than once?—A. I don't know. He was away two or three times.
I know he was out once, riding a little mule.

By Mr. Marcum:

Q. Who was the head marshal at that time?—A. I don't know whether Sarber was or not. The marshal's office was over in the garrison.
Q. Are you certain that the marshal's office was in the garrison at that time?—A. I believe it; I think it was over there.

By Colonel Duval:

Q. Where is Tid Cooper now?—A. He is in Paris, Texas. He is trying to make a kind of a crop there, I believe.
Q. What did Tid Cooper do in town when he was not riding?—A. He did not do much of anything. He was knocking around when he was not out.
refused payment, I would hold him (Mr. Whitney) responsible. All this occurred on Mr. Whitney’s first trip here, which was in December, 1872.

About August 26, 1873, Mr. Whitney called on me, and I stated that I had held these checks quite long enough, and I thought they ought to be paid. He took them to the clerk’s office to ascertain in what cases the services accrued, holding out the idea that he intended to pay me the amount of the checks; but, instead of paying the same, or returning the checks, he sent me the receipt herewith by mail, which I received after Whitney left town.

Question. What was the face of the draft taken by you to Little Rock?—Answer.

$20,000.

Q. How much of this amount did you bring with you to Fort Smith?—A. I think about $12,300.

Q. Did you turn this over to Donnely?—A. Yes, sir; I turned it all over and made a settlement with the office, which was owing me about $10,000, thereby turning over a net sum of about $2,300.

Q. What did that indebtedness consist of?—A. Principally cash loaned to the office. At one time Britton borrowed of me $1,000, and deposited vouchers to that amount as collateral. I had purchased vouchers to the amount of about $3,000. The balance of $3,000 I had lent without collateral security to Britton in sums of $1,000, or thereabouts, at different times.

Q. State how you came into possession of this draft of $20,000?—A. Mr. Britton’s, owing me to the above amount of $10,000, and knowing he was not conducting his office properly, and wanting my money, I was told by Mr. Britton that I should be paid out of the first money received, and that a draft would be received soon. I was postmaster at the time. Mr. Britton told Mr. J. W. Donnelly, in my presence, that when the draft came it should be delivered to me for the purpose of taking it to Little Rock to get it cashed. The letter enclosing draft was received and opened by Donnelly, and the draft taken out and delivered to me.

Q. Did you ever before that time have in your possession any of Britton’s money, as marshal?—A. No, sir; nor since that time.

Q. Was the balance of $2,300 turned over to Donnelly at one time, or was it paid on his checks?—A. I paid on Donnelly’s draft about $800 to Colonel Fuller, as jailer, and perhaps to jail guards. The money was all drawn out by next day.

Q. Did you buy any of Donnelly’s money to General Gage?—A. I don’t remember whether I did or not. If I did, it was on Donnelly’s order.

Q. You know Gage got some of this money?—A. Yes; at least he told me so.

Q. Was there any arrangement between you and Britton, as marshal, or Donnelly, by which you would jointly receive the benefits of the purchase of vouchers?—A. No, sir.

Q. How do you stand with Britton now?—A. He owes me about $2,000, borrowed money.

Q. Did you buy any checks or vouchers of Britton’s after you had made the arrangements about getting the draft, or before it came?—A. No, sir; I did not. I had plenty of opportunities at twenty cents on the dollar.

Q. Was there any money belonging to the United States marshal’s office in your safe at the time the lock was broken or injured?—A. There was not at that time, or any other time; but I had a private safe in which there was some of the marshal’s money at one time—some $2,000, about twenty-four hours.

Q. Did Britton ever draw a check in your favor on Lanigan?—A. Yes, sir; one for $1,000, borrowed money.

Q. What amount of vouchers and checks, under Britton’s administrations, did you purchase?—A. Perhaps $12,000.

Q. What amount of this sum is unpaid?—A. What I present here, and what are on file in Washington.

FORT SMITH, September 2, 1874.

WITNESS: W. H. NESSLE.

Testimony of FREDERICK STOPPLEMAN as to the account of Henry Stoppleman for furnishing fuel to the United States jail.

Sworn. Examined by Colonel Duval:

I live about 3½ miles from Fort Smith, on the Texas road. I am a farmer.

Question. Here is an account for six cords of wood furnished for the use of the United States jail at Fort Smith, at $3 per cord. What do you know about that?—Answer. It was delivered there. I drew it there myself last winter; it was in March.
Q. Who made out this account? — A. Sarber did, I think.

Q. Was there any contract for any particular price at which it was to be delivered? — Yes, sir; at $3 a cord. They never told us how many cords we should haul; told us to haul so and so many, and whenever we hauled it they would give us a voucher.

Q. Was wood worth $3 a cord here in town at that time? — A. Yes, sir. We never went any less; we hauled right smart around town, too. We furnished the whole of the cords ourselves.

Q. Did you sign any other voucher for wood delivered there that you did not deliver that the only voucher you signed for wood? — A. I don't know anything about the vouchers. My pa had the vouchers made out, but I hauled the wood there.

Q. This seven and a half cords, who hauled that? — A. I don't know; my pa was hauling at that time.

Q. Do you know whether your father delivered wood to the jail? — A. Yes; I know brought it there; I am certain of that.

Q. As much as seven and a half cords? — A. Yes, sir.

J. H. Smith, deputy marshal, sworn and examined.

UNDER BRITTON.

Case vs. Levi Perry. — I arrested defendant about 25 miles south of Armstrong Academy, which is 225 miles from Fort Smith. Mileage is charged in the account at 250 miles. I have no recollection of any such person as William B. Farmer ever riding with me as posse in this case. Thomas Blackard was my posse, and his account is correct.

Case vs. Bul Thompson. — Clay Freeney was my posse in this case, and his account charged is correct. I have no recollection of any such person as Bayliss Jackson being a posse in this case.

vs. Mobile Boyd. — I arrested defendant on Red River, about 200 miles from Fort Smith without process; was in the country where crime was committed. I brought in the prisoners at the same time. According to the established rule of the office, we allowed one day's subsistence for prisoners for every 20 miles of travel made.

vs. William Beams. — I arrested defendant at mouth of Allen Bayou, near Red River 200 miles from Fort Smith. William R. Smith was my posse in this case. George Holland was not a posse in this case. My signature to the posse-account of Holland looks like my genuine signature. I do not know any person by the name of George Holland. I know a man by the name of George Harland, a blacksmith, living near Carriage Point.

vs. George Kemp, vs. Robert Causette. — Two cases. Clay Freeney, Scott Pointer, a man called Joseph Fisher, (sometimes Joseph Graham,) and Joe Anders, were all the posse employed in the case. Scott Pointer lived at Fort Smith. Fmey lived at Boggy Depot. Anders lived on Red River, and Fisher lived at Mountain Station, Choctaw Nation. All were employed at Boggy Depot; don't know anything about Charles Masson. I lived at Boggy Depot, and at the time I arrested above parties was not a deputy marshal or officer of the United States; I was a butcher at Boggy Depot, and E. A. Kline, who edited a newspaper at Boggy, came to Fort Smith and was commissioned a deputy marshal by Britton. When Kline came back he proposed to me to assist him in hunting up business, and that he would "go halves" with me; at the same time delivering to witness his (Kline's) commission and two or three writs which he had. The first person arrested under the arrangement by me was one Gilbert, who was taken without a writ. I turned this prisoner over to E. A. Kline. Gilbert was charged with a violation of the internal-revenue laws, or, rather, the intercourse laws. The next trip was in pursuit of the parties who had robbed old man Thompson, and on that trip I arrested G. Kemp and Robert Causette. Before returning to Boggy I arrested one other person, whose name I do not recollect. At Boggy I gave Kline his commission and Kline went to Denison, Tex., to arrest the robbers of old man Thompson. He took Clay Freeney and Buckskin Bill with him as possees. On this trip Clay Freeney arrested a person charged with stealing one Pendle's mare. I don't remember his name. All came back to Boggy, at which point there were five prisoners in all. At Boggy, Kline endeavored to take the prisoners from me, but I declined to give him all, but gave him two and I kept the other three. We all started for Fort Smith in separate wagons, and upon arrival there E. A. Kline, who had arrived in advance of me, endeavored to take my prisoners from me, but failed in the attempt. I, not being a deputy marshal, I first went to Hugh McGuire, then to C. F. Robinson, and finally to C. D. Messler, to get assistance. The prisoners were examined by Churchill. The return is made by J. H. Smith, and I think the signature on the writ is my genuine signature. I do know whether myself or C. D. Messler got Britton's check out of the office in payment of my fees, but checks were given.

vs. John and J. W. Ross. — I arrested defendants in Texas, six miles from Bonham; had a
WITNESS: W. H. NELSSIE.

FORT SMITH, August 26, 1874.

Testimony of J. H. Smith, as to his deputy marshal's account, in the case of John Lewis; and J. H. Louderback's posse-account, in the case of John Frazier.

Sworn. Examined by Mr. Duval.

I was deputy marshal, and arrested John Lewis for stealing a horse. I had Mr. Carroll employed with me as posse. We arrested him near Red River Station, I think. It has been so long ago, and I have brought in so many cases, that I almost forget the place. I had a warrant for Lewis before I arrested him. I had a warrant for John Lewis and Stephen Anderson, for stealing A. D. Erwin's horse. Mr. Erwin got the warrant, and I brought John Lewis here, and he was tried and put in jail, I think. Red River Station is about three hundred miles from here. It is not a station on the railroad. I suppose it is about one hundred miles above the railroad-crossing. There is a few houses there on the Texas side of the river. We arrested him on this side of the river. I never go on trips without I have more than one posse. I had another man with me on this trip besides Mr. Carroll. I forget whether it was Mr. Randolph or who. I had Carroll with me on five different trips. I employed him at Fort Smith. I got acquainted with him here. I did not arrest Lewis at his place of residence; he was away on a scout. I think we arrested four or five prisoners on that trip. I think we got three Riches.

Louderback's posse-account in the case of John Frazier.

I took Mr. Louderback with me as posse on this trip. He went out with me about the first of the spring, I think. Frazier was arrested near Fort Sill, at the crossing of the Beaver; I suppose three hundred miles from here, in the Kiowa Nation, right on the line. I don't know which nation it is in; it is right about the line of the Chickasaw Nation, where the west survey is made. I had Mr. Carroll, Mr. Louderback, and Mr. Stewart with me, as posse. Mr. Louderback and Mr. Stewart were returned in this case, I believe. I had three posses with me and brought in five prisoners. I did not return any other posse on that trip except those three.

Question. Did you, in any of your trips, ever return more than three persons as posse, when you had more than three prisoners?—A. I don't know. I don't recollect now.

Q. Do you know whether it was customary for a deputy to return more than three persons as posse in one trip?—A. I can't answer the question now. I don't know whether I ever returned four or not; but I have generally brought in a good many prisoners at a trip. I don't know but what I have brought in as many as four; my memory is not very good.

Q. What I am trying to get at is, what the construction of the marshal's office or the judge was as to the law; whether the deputy marshal was entitled in any event, under any circumstances, to have more than three persons as posse on a trip?—A. I don't think I ever had any instructions concerning that. I was instructed by Judge Story at one time, I think when I first started out under Sarber, to take but one posse; but some one went to him and told him that I generally went a good ways and got several prisoners, and that I could not do anything with one posse, and afterward he told me to take another posse. I don't recollect whether I have ever read the law upon that subject or not.

Q. I see that in your affidavits, in both of these accounts, you state that the country through which you passed was infested with outlaws.—A. Yes, sir; and any person traveling through there now would come to the same conclusion about Washita and farther on up to Red River Station.

I have made out my accounts and furnished them to the marshal's office, in these two cases, as deputy marshal. I am not able to say where they are, unless they are in the office.

Q. Was there a writ in this case of Frazier's?—A. Yes, sir. Charley Leflore gave me the information, and I swore it out myself. Frazier was arrested, and is now under bond. He is charged with murder; think he had his examination before Judge Swift; I won't be certain; he was admitted to bail. I judge the writs are in the clerk's office. I generally hand them to the deputy clerk.

J. H. SMITH.
Fort Smith, August 27, 1874.

Testimony of J. H. Smith as to posse-account of Clay Freeney in the case of United States vs. Bub Thompson, from October 1 to 20.

Sworn. Examined by Colonel Duval:

I was deputy marshal under Britton at that time. Clay Freeney lived in the Choctaw Nation. He had been riding with me some time; when I first got him I got him at Boggy Depot. He rode with me some six or seven months; maybe more. We were living within a mile of one another at the time I first employed him. I had a writ for Thompson for selling whisky. I arrested him down at old man Perry's; he was living at the salt-works near Boggy Depot. We caught him near Allen Boyon, near Red River, I suppose about 200 miles from here. I suppose it is about 155 miles to where he lived, but he was not home when I arrested him. He was brought here and tried afterward. Freeney traveled with me on that trip, and rendered that service of twenty days. I had a writ for Thompson when I started to make his arrest. I did not return any other posse in that case. I had Bill Smith and Clay Freeney with me on that trip. It has been so long ago I don't recollect whether I had any other posses with me. I generally carry three posses with me, though I generally bring in four or five prisoners. It may be that I had another one, but if I did I don't recollect who.

Q. Do you know a man named Charles Western?—A. No.
Q. Do you know a man called 'Curly'?—A. I don't know that I do. I know a man they call Curly Moore; he was in jail for a while.

J. H. Smith.

Fort Smith, August 27, 1874.

Testimony of James M. Scovil as to the posse-account of Charles Lawson in the case of United States vs. Wm. Grosswell and John Johnson; services from August 21 to September 25, 1872; said account being in possession of Samuel McLoud.

Examined by Colonel Duval:

Lawson served 42 days. I don't know where he is now. I have not seen him since the time Charley James was down here as a prisoner. He was here as a witness for the Government; that was over a year ago. Grosswell and Johnson were arrested 4 miles thistle of Antelope Hill, outside of any nation line, or of any civilized nation, away north of the Cheyenne agency. Whitney has it wrong in the affidavit he wrote for me. I told him to put it in the Cheyenne and Arapahoe country. I left Fort Smith on the 14th August. Charley Lawson, Bill Spence, Dick Hood, Jim Wilkerson, and Silas Putnam were with me. The last I heard of Bill Spence he was at the Washita agency. I don't exactly know where Silas Putnam is. Washita agency is up on the Washita River, between the Cheyenne agency and Fort Sill. Silas Putnam lived here at that time, but moved away. He had a family; his wife was dead; but he had a child and some small sisters and brothers. He was keeping house. Charles Lawson was in here on and off; he did not live here. Bill Spence came in here with Jim Wilkerson as posse, and went out again on the Dave Ballon case. I was not present when Grosswell and Johnson were arrested. I was with the wagon guarding other prisoners. I was between the Washita agency and Fort Sill. Silas Putnam lived here at that time, but moved away. He joined me at Canadian on the 17th August. Charles Lawson, Bill Spence, and Silas Putnam left here with me.

Q. Had Lawson been employed by you or any one of these deputies to go with you before you left here?—A. Yes, sir; I had writs for David Ballon, and others. We got Ballon on the head of Little River. Wilkerson left Fort Smith on the same day we did; but after we got out we split up and he went by himself. He joined me at Canadian on the 17th August. Charles Lawson, Bill Spence, and Silas Putnam left here with me.

Q. In what manner he has been employed by you or any one of these deputies to go with you before you left here?—A. Yes, sir; with Wilkerson.
Q. How was it you returned Lawson as your posse?—A. Because the returns were all made out together, and I returned them two fellows, and he was on those two writs. He done more service than there was on them writs. We left here on the 14th August, and got in on the 25th September.
Q. How did it happen that in making out Lawson's posse-account it was made from the 21st August instead of the 14th?—A. They are all made the same way.
Q. Why were they curtailed?—A. I have no idea whatever, in the least. I asked John-
The reason and he said they wouldn't allow the time. I had nothing more to say, because I didn't know nothing about the time that was to be allowed.

Q. I see you state in this printed affidavit that Van Horn and Henry Harrison were not with you?—A. There it is down there. It is just as it is there in that affidavit. I don't know whether any of those posses have been paid. I think Tom Scott got all the accounts except the one Johnson had, and Major Lannigan got one of Henry Harrison. Harrison was a darkey. I don't know where he is now. I have never seen him since that term of court. He lived at Smith's Paul Valley.

Q. Who is Nute Martin?—A. He was a white man who lived in Fort Smith. I believe he lives here now. This Nute Martin account is just as it is down there. I never seen it until when we made out the accounts and swore to them. He came down there and asked me the reason I didn't put it in. I told him I hadn't anything to do with it.

Q. Here it says Martin's account was allowed and paid.—A. Mr. Whitney put that down himself. I never told him to put it down. I think he sold his account to Tom Scott.

Q. Did you ever receive any portion of the proceeds of this posse-account of Charles Lawson's?—A. No; I lost $23 on it. I advanced him $23.

Q. Do you know how McLoud got the account?—A. Yes; for board and horse-feed. He was here from the 25th September till the first Sunday in December. I think it was when he left. It was on McLoud's register-book when we left. He let McLoud have that posse-account a few days before we left that time. I could not swear to Lawson's signature. That is his posse-account, and he signed it right down in the marshal's office, in the old building that was burned. That is my signature there.

Q. Did you have any general acquaintance with the deputies that were riding at that time under Roots and Britton?—A. I was in the nation off and on, driving here and freighting out in the nation all the time.

Q. Did you know the deputy by the name of A. Holt?—A. I don't know him.

Q. Did you know Charles Western?—A. No.

Q. Do you know who arrested Sandy Walker in the summer of 1872?—A. I know Sandy Walker; I don't know who arrested him. I remember the time he came in.

Q. Where were those accounts of Van Horn, Harrison, and Nute Martin made out?—A. I can't tell you where they were made out no more than that dog. I never seen them till they were made out. My eyes were then in as bad a fix as they are now. I had to keep in at the time. Wilkerson was sick, and Dick Hood has no education and couldn't make out his account, and the boys got me to go and get Johnson to make out the accounts.

Q. How did you find out that Nute Martin's account had been made out and allowed him?—A. When we went in to swear to the accounts it was not there. I never seen it until I saw it in his hands. I found it out by this John Wilson here. I asked Martin about it and he said he did, and had sold it for so much money. Then I says, "Now I want half of it." That is just what I told him, and he gave me $25, and said that Johnson claimed a share and he would have to give him $15. He told me so between Goss's and Davis's doors in town here.

Q. Do you know in whose handwriting this account of Lawson's is?—A. No, sir; I wouldn't know Johnson's or any one's handwriting. After the accounts were all made out he came down to my house, and Jim Wilkerson was sick in bed, and there was me and Wilson and Dick Hood and all of us, and he said he had the accounts all fixed up. As for my getting half, they all get the same, except that $25. I certified that account right in the marshal's office. There was Brooks and Churchill swore them. Some swore to Churchill and some to Brooks. I think Brooks swore me to my account, and I think Brooks swore Lawson too. Nute Martin was not in there then and didn't come in there. Henry Harrison and Van Horn were not in. Robert Hargrove was in there.

Q. Who else was in the office at that time?—A. I think this little fellow Gilbert Margers and some other fellow—I forget his name—I think it was Anderson, but won't be positive. If Donnelly was there. I don't recollect; he might have been there; he had that back room I don't think Britton was here at that time, but am not positive. I did not continue as deputy after that time; that trip done me; that was the only trip I made.

Q. You the deputies agreed to make a common trip together?—A. Yes, sir, all together; we left here with that intention. Lawson left a day or two before I left and joined me, and Spence and Putnam went with us. These three men accompanied me and remained with me until we returned.

Testimony of James M. Scovil as to posse-account of John Marrs in the case of United States vs. Edwin Stanley and John Reed, from August 11 to September 8, said account being in possession of Samuel McLoud.

Examined by Mr. Duval:

I live in Fort Smith; have lived here for five years; my occupation at that time was driving. I know John Marrs. He was staying here at Fort Smith at that time. I don't
know whether he was a married man or not. He was riding as posse with Hudspeth, deputy marshal. I couldn’t tell where Marrs lived; he lived in Fort Smith somewhere. I have not known him for a long time. I have seen him before the 11th August, 1872, and after that I saw him in September and again in October of that year. He was about twenty-five years of age.

Q. What do you know about his having acted as posse in that case?—A. In that month he hired a mule of me to ride. I afterward met him that month in the Washita Valley at Tom Cole’s store, Smith’s Paul Valley, Chickasaw Nation. I met Marrs and Hudspeth there. They had some men in a wagon coming down the valley. I talked about taking the mule then, as I needed it at that time. They told me not to take it, as they needed it for their prisoners. I was a deputy marshal and was out on a trip myself. I would not know John Marr’s signature. I never saw him write. I would not know Hudspeth’s signature either. I do not know how long they were out on that trip. The hire of the mule came to $25 at six bits a day. They got in along between the 8th and 12th September some time. I was not here when they came in.

FORT SMITH, September 3, 1874.

Testimony of J. M. SCOVIL.

Sworn. Examined by Mr. DUVAL:

Question. I want to ask you in reference to a trip made by you, Richard Hood, and James C. Wilkerson as deputy marshals in August and September, 1872. You have already made an affidavit before Mr. Whitney, setting forth the parties who were with you on that trip, and the arrests you made. I find in addition to the names of posses you gave on that occasion, the writ in the case of Goodrich and Jno. A. Painter, returned by Richard Hood; the posse in that case were F. W. Van Horn, and R. P. Wilson. In the case of Charles Davis, returned by R. D. Hargrove, the posse were N. E. Martin and Frank Thomas. In the case of David Ballon returned by J. C. Wilkerson, the posse were William Spencer and Jonas Schaub. The writ returned by you in the case of John Johnson and William Grosnel, was Charles Lawson and Silas Putnam. I find amongst the accounts returned by William A. Britton, in his report or account No. 39328, two accounts of yours: one for the arrest of George Johnson, and the other for the arrest of John Johnson and Grosnel. In the George Johnson case, Hardy Harris was returned as posse. Now state which of these posses which I have read over are fraudulent.—Answer. I can tell you the genuine, and the balance are fraudulent, and were never on the trip in the world.

Q. Did you, in making your returns in the marshal’s office, sign these fraudulent posse accounts, in blank or otherwise?—A. I didn’t sign no posse accounts only Silas Putnam’s and Charles Lawson’s.

Q. You knew each one of these false posse accounts, did you not?—A. Henry Harrison, I knew that at that time was put in; he was a colored man, and lived in the Chickasaw Nation at Smith’s Paul Valley.

Q. What did he get for being false posse?—A. $108. He got the whole of that.

Q. How did it happen that you gave him that much?—A. He came down here as a witness, and the prisoner got away from us.

Q. You knew Newt Martin and Van Horn?—A. I knew Van Horn, but Newt Martin was not the same day we made out our returns. He told me that he got his the next day, and never swore to it, nor signed it.

Q. How much did he get?—A. $108; he did not get the full amount; when I found it out I made him give me $25 and reserve $15 to give to Johnson; he said he gave it to Johnson; I don’t know whether he did or not.

Q. I want to know when you first heard that Frank Thomas, R. P. Wilson, and Jonas Schaub were returned on your writs as posses.—A. I have found it out this morning; Jim Wilson and I put it on the court docket, but could not make out the names in the Dave Ballon case; he never found out anything else.

Q. He found out there was a false account?—A. Yes, sir; and was telling me about it this spring, in at Messer’s, and asked me if I knew anything about it. I told him I did not, and he said he had seen the court docket, but could not make out the name; so far as those three are concerned I never heard of them until this morning, except what Wilkerson told me; Richard Hood knows nothing about it, because he can’t neither read nor write.

Q. Of the nine posses returned in those cases six are fraudulent?—A. Yes, sir; it is down there in the other affidavit.

Q. You received your pay from the office in what was called Britton’s checks?—A. Vouchers; we got them split up into checks afterward; I sold mine to Thomas Lanigan.

The first one Thomas Lanigan paid me eighty-five per cent for, I think, in trade at the store.
the next one I took to him he just told me he didn’t want it at all, but in a few minutes he says, “Hold on half an hour and I will give you an answer.” Afterward I walked out the front door and toward the marshal’s office; I met Lanigan coming out of the marshal’s door, and he gave me eighty cents on the dollar for my check, $4 in cash and the balance in the store.

Q. Was he in the habit of dealing in this paper?—A. He was at that time, because he bought Henry Harrison’s, and I know of him buying a good many; he bought Harrison’s posse account and gave him $15 and the balance in trade. That was after he bought mine. It was bought next day after the account was made out.

Q. How did you come to go to Thomas Lanigan to sell your paper? Did anybody suggest his name?—A. Yes, sir; I forget who it was; it was on the streets here “To go to Lanigan and he would buy them.”

Q. Was any intimation given to you at the marshal’s office that he would buy them?—A. I cannot say that there was, but he had to go to the marshal’s office that morning before he could pay mine.

Q. Are you acquainted with James Wilkerson’s signature?—A. Yes, sir.

Q. Did you make any other trip before this?—A. No, sir.

Q. If there are any other cases made out in your name under Britton they are fabricated, are they?—A. Yes, sir; there is no other case under Britton. I served one subpoena under Britton afterward, and that is all.

Q. Did you make an arrest of some man out in the neighborhood here under Britton?—A. No, sir.

Q. Did any other parties buy Britton’s checks besides Lanigan?—A. I think so. Tom Scott, I think, did. B. Baer, I bought in the fall. He bought witnesses’ accounts, and they signed the roll just the same as you sign it for the Government. I sold him my witness account at 40 cents on the dollar; was compelled to do it. He had the roll in his office. I tried to get Whitney to take that up and look into it, and I could not account for it at all that he would not do it, and was going to write to the Department to see about it, but was afraid to undertake it the way things stood here.

Q. When you sold your accounts Baer had the witness roll in his office?—A. Yes, sir, on his desk; and I signed it there and got the 40 cents on the dollar, and he gave me a check on the bank. I think the amount of my witness’s pay was some sixty-odd dollars. It was in the case of Emily Foreman—a whisky case. I asked Mr. Whitney what right Baer had to have a Government roll. Jake Baer had it also. He used it in the marshal’s office. I noticed it for four or five days and tried to get some on my account. I tried Jake and tried B. Baer, but could not get it, and I was compelled to sacrifice my paper.

Q. Do you know of anything of Scott’s dealing in checks?—A. I went to Tom Scott myself. I have seen him buy, but I never sold to him myself. He said he would give so much on the dollar, and I just walked off.

Q. Do you know whether Britton kept his money in Scott’s safe or not?—A. I heard that he did, but could not swear to it. I do not know anything about it.

FORT SMITH, ARK., September 5, 1874.

Testimony of FRA~K R. TAYLOR as to sundry accounts in possession of the National Bank of Western Arkansas.

Sworn. Examined by Mr. MARCUM, attorney for the bank:

**Posse account of Frank Taylor for $63 in case of United States vs. Richard Clark, October 10 to 20, 1872.**

At that time I was a resident of Fort Smith. [Account exhibited.] That is my signature. I performed the service therein stated. I arrested Richard Clark on the line of the Cherokee Nation; I don’t know how far from Fort Smith; I never was there before or since. It is the upper line of the Cherokee Nation, next to where the Shawnee settlement
is. It lacks about 15 miles of being the farthest point. Clark was charged with stealing horses from John Gray-eyes, or his brother-in-law. I have seen that account before.

Question. Was it signed in blank by you, or was it filled up?—Answer. It was made in the way it is now when I signed it.

Q. Did you bring Clark here and deliver him up to the jailer?—A. Yes, sir; he was bound over before Churchill.

United States vs. William Silsbee. Z. T. Taylor posse.

I know Z. T. Taylor; he rode as posse with Twyman. I do not know William Silsbee. Taylor lives up here on the Verdigris. I don’t know where he claimed his home at that time. I know he was riding here when I was.


I am acquainted with William Galloway. I know he came in here and claimed to be Baer’s posse. I have seen him with Jacob Baer, and he came in with him from the Indian country. Baer had been out that way on a trip. He boarded at the same place where I did, at the St. Charles. I do not know Brown that he arrested. I do not know anything about the case.


I know the time they came in with Bob French as a prisoner, because I came in the same trip. I know Bob French. I know that Perry Duval arrested French and brought him here. I was with him when he made the arrest. He was charged with introducing liquor, I think. I do not know anything about the time occupied on the trip. R. F. Shoemaker was along. I think he was arrested near Parker, Kans. I do not know the distance from Parker to Fort Smith. It might be under 200 miles or a little over.


I am acquainted with Charles House; he lives near Kansas City, Mo. I know of his riding as a posse under Hugh Maguire. House claimed to live here at that time; he was here nearly a year. I know that he rode under Maguire. I do not know anything about the case of William Richards.

United States vs. Emily Foreman. James Chambers, posse.

I am acquainted with James Chambers; he lives now in Texas. I know of his having rode as posse under Frank O’Brien; that was in the fall of 1872 or spring of 1873, I think. Britton was marshal at that time, I think. Chambers claimed to reside here at that time; he was here when he was not out on the road. I don’t know how long he stayed here. I know Emily Foreman. I know him and O’Brien brought her here. She was charged with selling whisky, I believe. I don’t know where she was arrested.

United States vs. Wilson Colbert. Peter McNamee, posse.

I know Peter McNamee. I do not know of his having rode as posse under Robert Thompson. I do not know of his having rode as posse at all. I knew him. He lived here in 1872, I think.

United States vs. Pigg Carr. Samuel Turner, posse.

I know Samuel Turner; he lives on the Verdigris, about 40 miles above Fort Gibson.

Q. Do you know of his riding as posse under John Kemp?—A. He came down on that trip. Kemp was known as Jack O’Lane. I know Pigg Carr. I think he was charged with horse-stealing. I do not know where he was arrested. Samuel Turner resided at that time on the Verdigris; he always has lived there. I don’t know how often I have seen him here; several times.

Q. Do you know whether he claimed Fort Smith as his residence, either temporary or permanent?—A. I do not. I think Carr was arrested up about Gibson somewhere; he lived there.

United States vs. one Corley. Andrew Collins, posse.

I know Andrew Collins; he lived out here somewhere near Scullville. I don’t know where he lives now; he claims that as his home. I know John Engle. Collins came
I know John Maxie. I don't know where he lives. I do not know Aaron West.

Q. Do you know of John Maxie ever having rode as posse?—A. He claimed to; he boarded up at Mershon's in Fort Smith. I don't know of Maxie ever having arrested any one. I don't know how long he staid here; he was here when I came off of my trip. I think that was in the fall of 1872, or spring of 1873. I could not say exactly.


I know Martin Johnson. I know he rode as posse with Ross. I don't know where he lives now. I don't know where he lived then. It was in the spring of 1873 that he rode with Ross, I think; I would not be certain.

Examined by Mr. Duval:

I know Z. T. Taylor; he is no relation of mine; he resides on the Verdigris; he is an Indian. I first became acquainted with him about seven or eight years ago on the Neosho River in the Ottawa Nation. He belongs to the Cherokee tribe.

Q. Do you know whether he is able to write his name?—A. I do not. I don't know that I ever saw him write.

Q. Do you know anything of his acting as posse in any particular case?—A. Yes, sir; I know he came in here as posse. I would know if I heard the case, but there have been so many names in my head I have forgotten. I am not certain whether Silsby is the name or not.

Q. Do you know whom he came in with?—A. I know if I could think of his name.

Q. When was it that he rode as posse?—A. I think it was in 1872.

Q. How long was he engaged here as posse?—A. I don't know, I am sure. I know he came in here and was around the commissioners' office with prisoners, and pretended to be a posse.

Q. Did you ever meet him in the Indian country acting as posse for anybody?—A. I met him once at Tahlequah; he was by himself at that time. He was sent to subpoena witnesses, I believe. He said he had some subpoenas to serve.

Q. Was his name Y. T. Taylor or Z. T. Taylor?—A. I don't know.

Q. Are you prepared to state upon your oath that he acted as posse in the Silsby case?—A. I could not swear that he did.

Q. What was the name of the man you were testifying about?—A. Zeke Taylor.

Q. Is he a half breed Indian?—A. About a quarter, I think.

Q. How long since you saw him?—A. I haven't saw him for nearly a year.

Q. Was he a man of family when you first knew him?—A. No, he was single and is single yet.

Q. You stated that you knew Perry Duval in his lifetime?—A. I did.

Q. You stated that you were present when Robert French was arrested?—A. I was with him on that trip. I did not say I was present when he was arrested.

Q. Do you know how many times Robert French has been arrested?—A. I don't think he has been brought down here but ones.

Q. He was brought down the time you spoke of?—A. Yes, for introducing liquor.

Q. Do you know when Perry Duval was sick at the St. Charles Hotel?—A. Yes, sir. I don't remember what time that was.

Q. Was not that last winter a year ago?—A. I couldn't say what time it was.

Q. This account is from the 5th of January to 3d February, 1873. Are you positive that Perry Duval was with Shoemaker when he arrested the prisoner?—A. I know they were in town together, and Perry Duval was guarding Bob French.

Q. Did you see him guarding him, or with him anywhere else but in Fort Smith?—A. I saw him with Shoemaker both here and Miverva's; that was just about the time that French was arrested.

Q. Did you see French with Shoemaker at Miverva's?—A. No, I did not.

Q. The extent of your knowledge is that you saw him guarding French here in town after he was held to bail by the commissioners?—A. Yes, sir; that is all I know about it.

Q. You stated that you made the arrest of Richard Clark yourself?—A. I did.

Q. Where was Bowers at that time?—A. He was looking for him too; he was scouting. He went one road and I went the other, and I met Clark first. That arrest was up in the upper corner of the Cherokee Nation.

Q. Did Bowers have a writ for Clark?—A. Yes, sir.

Q. Did he take it when he started from here?—A. I suppose he did; he had it then.

Q. Do you remember how many days you were on that trip?—A. I do not.
Q. Where do you say Pigg Carr lives?—A. His parents live at Fort Gibson; he lives right across the river from there now.
Q. Where did he usually stay?—A. No telling.
Q. Did you see him while he was under arrest?—A. I did.
Q. Who was it that had him?—A. Jim Chambers and Kemp, I think; but there was so many of them I get the names mixed up.
Q. Did you ever see him in the custody of Jim Chambers and Frank O'Brien?—A. No, I don't know that I ever did.
Q. Where were they when you saw him?—A. I saw him at Fort Gibson.
Q. Was he arrested at Fort Gibson or near there?—A. I don't know where he was arrested.
Q. What did they say about it at that time?—A. I don't know that they told me; if they did I have forgotten.
Q. You say you know Samuel Turner?—A. Yes, sir.
Q. How far is the Osage Nation from Fort Gibson?—A. I don't know; I have been there, but it was a long while ago.
Q. How long have you known Samuel Turner?—A. I suppose it has been three or four years since I first saw him.
Q. Do you know his signature?—A. No, I do not.
Q. Where does he live now?—A. About forty miles above Fort Gibson. He is a half-breed Indian.
Q. Do you know whether he is educated enough to sign his name?—A. I don't know; he is a pretty smart sort of a fellow, I should judge, from his talk. I should think that he could write. He is a farmer by occupation.
Q. Did you see him after they arrived here with Pigg Carr?—A. Yes, sir.
Q. Did you come down with them?—A. No, sir; I saw them on the road, and I saw them here. I went on Pigg Carr's bond; Samuel Turner was guarding him at the time in Brooks's office.
Q. Do you know whether Samuel Turner ever lived at Fort Smith?—A. I do not.
Q. Where did Martin Johnson reside?—A. I don't know exactly where he did live. Sometimes he was out in the nation, sometimes here, and sometimes below here.
Q. Was he a white man?—A. No, sir; I believe he claims to be part Choctaw; he is light complexioned.
Q. When he lived "below here" did he live in the penitentiary?—A. No, sir; I don't know anything about his ever being in the penitentiary. The Martin Johnson that I know was never sent to the penitentiary so far as I know.
Q. Do you know his handwriting?—A. I do not. He was around here for some time, but I don't know whether he claimed Fort Smith as his home or not.
Q. Do you know of his being arrested here as a prisoner?—A. I believe he was.
Q. Did you ever see him around here except when he was under charge?—A. Yes, sir; I saw him as a posse or guard, or whatever you call it, with William C. Ross; I don't know what prisoner they had.
Q. You have been in the habit of attending the United States court pretty regularly here?—A. Yes, sir; I have been posse and deputy marshal, I suppose, about three years.
Q. What marshals did you ride with as posse?—A. I rode with Joe Bowers, with Hugh Maguire, Eugene Bracken, and Seal Vandegriff.
Q. Where is Aaron West?—A. I could not tell you; I don't know anything about him.
Q. Did you ever hear of him as a deputy marshal?—A. Yes, sir.
Q. You say you knew John Maxie?—A. Yes, sir.
Q. Where did you know him?—A. I knew him here.
Q. Was he a white man?—A. I suppose he was; he looks like it. I could not tell you where he is now.
Q. Did you have much acquaintance with him?—A. No more than just boarding-house acquaintance, as you might call it. I saw him and talked with him several times.
Q. Where did he come from?—A. I could not tell you that.
Q. You are sure you knew him?—A. What makes me so positive I knew him is, that he used to wear buckskin clothes and long hair.
Q. Did he go here by any other name than John Maxie?—A. Not that I know of.
Q. Do you know about William Voles and Julia Mitchell?—A. I do not.
Q. Do you know anything about any such case as that?—A. I do not.
Q. You do not know Maxie's signature?—A. No, sir; I do not.
Q. Did you know C. F. Maginnis?—A. No, sir.
Q. Did you know T. Maxwell?—A. No, sir.
Q. Do you know how long Perry Duval was sick here at the Saint Charles?—A. I do not.
Q. Was it more than a week?—A. I could not say what length of time.

By Mr. MARCUS:
Q. How do you know that Z. T. Taylor was a quarter Indian?—A. I know his whole family—him, and Fox, and Jim, and Joe, and Ed.
Q. Would you take him to be an Indian unless you had known his family?—A. No,
sir; he is as light complected as I am; he is lighter than I am; he would be taken for a
white man.
Q. Do you know B. F. Shoemaker?—A. Yes, sir.
Q. You stated that at the same time you and Perry Duval were together Robert French
was arrested.—A. I was not on the trip, but I was up there.
Q. You saw Shoemaker and Duval together?—A. I saw them together at Gibson, and
again at Minerva's.
Q. It was on that trip that Robert French was arrested?—A. I got in ahead of them.
When they got in here I know Perry was guarding Bob French. That was soon after I
saw them at Gibson; I would not be certain as to the time.
Q. Do you know where Shoemaker is now?—A. I do not.
Q. How long did you know him?—A. I suppose I knew him about two years.
Q. Where did he live then?—A. He was living at Gibson; his wife and children were
there. I hear that he is in Missouri now; I don't know.
Q. You say that Samuel Turner rode under John Kemp?—A. Yes, sir.

By Mr. Duval:
Q. You say you saw Perry Duval and Shoemaker together at Fort Gibson the time Robert
French was arrested?—A. I said before, I saw him on that trip when he was brought in.
Q. Did you see Shoemaker bring him in here?—A. I did not. I saw him in here with
Perry Duval.
Q. Do you know of your own knowledge that Shoemaker ever arrested him anywhere?—
A. No, I do not know it.
Q. Do you know that he ever had him in custody anywhere, except in Fort Smith?—A.
No, sir, I do not.
Q. You never saw Perry Duval in charge of him anywhere, except in the town of Fort
Smith?—A. No, sir.
Q. Then you cannot state that you saw him on the same trip that he arrested him?—A.
It was the same trip that Shoemaker came in off of. I saw Shoemaker at Fort Gibson. I
don't know whether he did have him then or not.
Q. Did you see him out at Minerva's or Foreman's?—A. I don't know.
Q. Did you stay all night together?—A. We did. That was when we were going up
Q. You cannot state whether Perry Duval was with him or not when he was arrested?—
A. No, sir, I cannot.
Q. Or whether he arrested him at all, of your own knowledge?—A. No, sir; I could not
state.

By Mr. Marcum:
Q. You say you all went up together into the Indian country on the trip?—A. No, sir. I
was staying at Minerva's at the time, and Duval and Shoemaker and some other man passed
there; I wouldn't be certain, either, whether it was there they passed or at Foreman's. I
saw them again at Fort Gibson, and again down here.
Q. Did Shoemaker tell you that Duval was his posse?—A. No.
Q. Did Duval say he was his posse?—A. No, he didn't say. I judged it from the way
they were together.
Q. You saw them in Fort Gibson?—A. I did.
Q. And soon after that you saw them in Fort Smith, and saw Perry Duval guarding Bob
French?—A. Yes, sir.

By Mr. Duval:
Q. How long afterwards?—A. I don't know. I disremember how long I was gone from
here.

By Mr. Marcum:
Q. Shoemaker was here in town at the same time?—A. Yes, sir.

FORT SMITH, ARK., October 3, 1874.

JO. TINKER, deputy marshal, sworn and examined.

ROOTS.

Case vs. Aleck Neal.—Selling liquor to Indians.

By Nessle:
Do you know anything about this case?—Yes, sir; I brought him down.
Where did you arrest this defendant?—Somewhere in the Choctaw Nation. I don't
remember where.
Did you have any posse with you in this case?—Yes, sir, one; Charles Sanders. I see
his account and it is correct, as near as I can remember.
There is one other posse returned in this case. Did you have such a person as Norton with you on this trip?—No, sir. I had no person by this name. I do not know any such a man. Sometimes, after I had made out my returns, the clerks in the marshal's office would say that they had made a mistake in making out the accounts, and would hand me blank posse accounts to sign, which I would sign and hand back to them.

Was it as much as 325 miles from here to where you arrested defendant?—Yes, sir. I think the mileage is correct, as well as the balance of the fees as charged.

Did you have a writ for this defendant?—Yes, sir.

Did you take Sanders with you as posse when you left here?—Yes, sir.

vs. Sam. Love.—Assault.

By Nessle:

[Items as charged in the account were here read to witness, who states that the mileage is overcharged.] Where did you arrest defendant?—In Chickasaw Nation, about 300 miles from here.

How many posses did you have with you?—Fitz Henry, Sharpe, and myself started out together. Fitz Henry was a deputy and was not employed by me as a posse. E. Sharpe was employed as a posse in this case. Fitz Henry had a writ for Frank and George Lowe, but I think, but did not arrest them; and the instructions from the marshal's office were that both Sharpe and Fitz Henry should be returned as posses to cover their expenses.

The posse account of Fitz Henry is signed "Reuben Fitz Henry." Is that his name?—I couldn't say. I never seen his name signed in full; but I think it is Robert. I have heard him called that. Two hundred and twenty-five miles on subpoena is about correct.

vs. McKinney Coble.

By Duval:

What do you know about this case?—John Porter and myself started out and arrested defendant at Mud Creek, Chickasaw, about 340 miles from here and 60 miles west of Fort Arbuckle. The witnesses were subpoenaed this side of Arbuckle, on the old Sill road.

vs. S. Thompson.

[Items of fees, &c., were here read over to witness.] Defendant was arrested between Spring and Mud Creeks, Chickasaw Nation, about 320 miles from here. We would tell them in the office where we arrested parties and the road we went, and they would compute the mileage. Defendant was arrested about thirty or forty miles west of Fort Arbuckle. (Note.—Fort Arbuckle is 235 miles from Fort Smith.—Nessle.)

Were you fifteen days endeavoring to arrest the defendant?—Yes, sir.

Now the posses have been read over to you, do you say that Sanders is correct?—Yes, sir.

Did you have any other posse in this case?—No, sir. I know nothing about Thomas Moody, whose posse-account is presented to me, nor do I know H. V. Carr, who witnessed Moody's cross-mark. I have no recollection of signing any posse-account for Moody. It was generally understood, and it was a rule of the office, that but one posse should be employed in a case, and I never, to my recollection, was allowed but one. Other deputie understood this rule. If more than one posse in a case was returned to me, it was without my knowledge.

vs. Robert D. Burton.

Do you remember this case, and where you arrested defendant?—Yes, sir. I arrested him in the Choctaw Nation, way up on the Canadian, about 300 miles from here. I could not tell near what point.

The posses returned are Daniel Woods and William Castile. Did you have these men?—I had Woods, but I did not have Castile. I never heard of Castile before. My name to his account appears to be genuine. I account for this in being called upon at times to sign blank accounts. (See explanation, case vs. Neal.)

vs. John Martinez.

Where did you arrest defendant?—The other side of Rush Springs about fifteen or twenty miles. (Rush Springs is 280 miles from Fort Smith, Nebr., by Churchill's table of distance.)

Who was your posse in this case?—I forget whether it was Ben Baker or Frank O'Brien. Was L. H. Jefferson with you?—No, sir; I do not know any such a man.

He is returned as being with you on this trip.—Well, he was not along. (Mileage on subpoena is correct.)
Westervi Judicial District of Arkansas.

Vs. Babe Mahardy and Henry Hawkins.

Larceny. Writ alleged to have been returned non est. I know nothing about this case.

I never had Jake Malehood as a posse in any case. J. T. Weihe and John O'Brien are the posses charged in the account. I know Weihe; I do not know John O'Brien.

Vs. Albert Alexander.

Where was defendant arrested?—I believe I arrested him at Fort Sill. I arrested on same trip James Carter, Alex. Martley, Alexander Cheatham, and Stewart Dacres. All four writs were served at the same time and place. I had four separate writs.

In the Albert Alexander case Wm. Morris and J. P. Corbett are returned as posses. Did you have either of these persons with you as posses?—I had Morris, but I did not have Corbett. I don't know him.

In the James Carter case Albert Lawrence and A. J. Morgan are returned as posses. Did you have either of these persons along with you on this trip?—No, sir; I don't know A. J. Morgan, and did not have them along. I know an A. Lawrence, a black man, but he never rode in my employ as a posse, and I don't think he can write.

In the Alex. Martley case James Collins and William Bradley are returned as posses. What do you say to these?—James Collins was with me, but Bradley was not. I don't think I know any such a person.

In the Cheatham and Dacres case T. Mayers and Frank O'Brien are returned as posses. Are they correct?—Yes, sir. I had those people along.

By Nessle. How did you bring these prisoners down from Sill?—In a wagon.

A Government wagon?—No, sir.

Did any soldiers come with you as guard?—No, sir.

Vs. Joe California, Emmanuel Ortego, one Martin.

I arrested Ortego and one Martin in the Chickasaw Nation, near Cherokee Town. They agreed that if I would not put them under guard they would come to Fort Smith alone, in their own conveyance, which they did. I parted with them at Cherokee Town, and the defendants came together to this place. I did not furnish the prisoners anything to pay their expenses. They paid their own way. John Hall, Thos. Wilson, and William Bailey are charged as posses in this case. I had no other prisoners on this trip. Thos. Wilson started out from here with me as a posse. John Hall I am not certain about, but I do not think I returned him. I am certain I did not have William Bailey. I am not certain whether the clerk in the marshal's office understood that these defendants came down by themselves, but I had some difficulty in getting the account allowed, and I think it was for the reason that the parties came in together, and not in my custody or that of the posse.

Vs. Forbas Jones.

By Nessle. Where did you arrest this defendant?—In the Chickasaw Nation, near Beaver Creek, 9 miles east of Fort Sill. It might have been in the reservation that he was arrested. I had a writ for defendant's arrest. (335 miles is the distance to Sill, by Churchill's table of distance.—Nessle.)

By Duval. Who were your posses?—Charles Choate.

How about John Shumway?—I did not have him. I never heard of such a man. The witnesses at 95 miles is correct.

Under Britton.

Case vs. F. M. Callahan.

Warrant issued 13th and served on the 13th February, 1870; 200 miles charged returning prisoner, &c.; 19 days' feeding prisoner en route. I don't remember anything about the large number of days charged for feeding prisoner. I was not acquainted with the marshal's business then; the guards as returned are Cummings Force and Wm. Jameson. I don't remember anything about them. I don't recollect whether I had guards or not.

Vs. J. M. McGill.

The items as charged in the account were here read over to witness. John Kennedy and Henry Williams were not with me as guards. I don't remember anything about such persons. I came most of the way with prisoner.
A. C. Lovett.

Name of guards Chas. Sands and M. Wallace; they were not with me as guards. I don't know anything about them. Balance of the fees are correct as charged.

vs. John R. Henderson.

Names of guards, John Hare and T. Quigley. I did not have any guards. Do not know any such men. Balance of fees as charged correct.

vs. Moses Holt.

Guards, Robert Wilson, Jno. Johnson and Bill Siffer. I did not have these men as guards. I had Swimmer and his deputy as guards.

vs. W. Wallace.

(Items as charged in the account were here read.) I think I had a guard in this case; I think only one guard went with me. The names of the guards are not given, and I cannot remember who the person was, who was along, but I only had one guard. I never received but very little money for my services under Britton, not enough scarcely to pay my board and incidental expenses.

vs. Buck Rogers.

I arrested defendant in Creek Nation, near Honey Springs, about 125 miles by the nearest route. I went by way of Gibson, which is some farther. Posse, Chas. Saunders and M. Wallace. I did not have either of these men. Excess on subpoenas of 60 miles.

vs. One Maley.

I recollect him. I did not arrest him; 30 days endeavoring to arrest; non est. I never was allowed anything in this case and do not know anything about the account.

vs. Thos. Johnson.

Non est. Same testimony as in case first above.

vs. Gideon Gardner.

Where was defendant arrested?—West of Glass Creek, Chickasaw Nation, about 20 miles northwest of Colbert's Ferry, 200 miles from here. My posse was Chas. Stevenson. Edward Huntley was not along with me. My name to the deputy marshal's voucher is a forgery.

vs. Bernard Lantry.

I arrested defendant at Cheyenne and Arapahoe reservation, near Cheyenne agency, about 400 miles from here.

Who was your posse in this case?—Lawrence Morris.
Did you have Charles Latham as a posse in this case?—No, sir. I don't know such a person.

Grand-jury subpoena, on George Corbey. Service as charged is correct.

ADDITIONAL UNDER ROOTS.

Case vs. J. Gates.

I was after him (the defendant) for a long time, at different times. At last I heard he was up on the reservation, beside the Wichita agency. I came up with him there, and he said he was on his way home, and he would meet us on the road in the valley. He did not meet me. I next heard of him being with his wife, in South Boggy. P. K. Polly, who was on defendant's bond, came to me and volunteered to go and catch him that night, or bring him to me. Polly delivered defendant to me that night or next morning at Atoka, and I brought him to Fort Smith. Charley Anderson was my posse in this case. I had no other posse. Walter Merrill was not with me. I had a court writ for defendant, but I did not take prisoner into custody, as I considered him my prisoner, and he agreed to meet me in a short time on the road.
By Nessle. Do you remember this case?—A. Yes, sir.
Where did you arrest this party?—In the Choctaw Nation, in the Spring settlement, near Shawneetown.
Did you have a warrant for the arrest of Merriman?—No, sir. I had a warrant sent to me at Atoka or Boggy Depot—I forget which.
Who were your guards?—William Jones and Tom Wilson.
Where were the witnesses in this subpoenaed at?—All of them at Boggy Depot, about 150 miles from here.

vs. Mrs. Louis McCurtain and Daniel Webster.—Contempt.
Do you remember this case?—Yes, sir.
Where did you arrest these defendants?—In the Choctaw Nation, opposite Roland, Tex., 20 miles below Shawneetown.
Did you have a writ for their arrest?—Yes, sir. I was 12 days returning with the prisoners. Richard Harkins was my posse in this case. He left here with me.

vs. Jack Gilstrap.
I arrested defendant in the Chickasaw Nation, near Gaines's, on the Red River, south of Red River Station.
Did you have a writ for defendant's arrest?
Was you 33 days in actual pursuit of this man before you arrested him?—Yes, sir, I expect I was. I had two guards with me on this trip—Alexander Mitchell and James S. Scofield. The witnesses were subpoenaed 15 or 20 miles below Shawneetown.

vs. One Sweeney.—Contempt.
I arrested defendant in the wood-camp above Fort Sill, only a short distance from the fort.
How does it come that you were 15 days in coming in?—It was in the winter-time, and the roads were very bad. In ordinary weather it usually takes 12 days to make the trip.
Did you have any guards on this trip?—Yes, sir; George Packard and James Harris. I was as much as 15 days endeavoring to arrest this party.

JO. TINKER.

FORT SMITH, September 4, 1874.

Testimony of T. A. Twyman, as to posse-account of Z. T. Taylor, for twenty-nine days' service, from October 6 to November 5, 1872, in case of United States v. Wm. Silsby; also other cases. (See below)

Sworn. Examined by Colonel MARCOM, attorney for National Bank of Western Arkansas.

I am acquainted with Z. T. Taylor. I was deputy marshal in October and November, 1872. Taylor rode as posse under me. (Voucher exhibited.) That is my signature on the back. I made the arrest in the Chickasaw Nation. I don't recollect the exact distance from Fort Smith; three hundred and fifty to four hundred miles, I suppose. I brought Silsby here. I don't remember whether he was charged with larceny or whisky.

Question. Did you examine the account before you certified it?—Answer. I did.
Q. Did you examine all the accounts of your posse before certifying?—A. I did.
Q. I will ask you if you knew where Z. D. Taylor lived at that time, or where he claimed his home to be?—A. I don't know whether he was a Missourian or Texan. He was here at the time he started with me. He had been driving cattle from Texas to Missouri. He came here from Missouri. I was here during the years 1871 and 1872.
Q. Were there not a great many transient men at that time, posses, deputy marshals, and special deputies?—A. There were a great many. There were a great many transient men here during those years than when I came here, which was in the fall of 1869, or than there has been since.
Q. How long did you ride as deputy marshal?—A. I don't remember exactly when I commenced. It was about the time, or a little before, when Roots went out of office, and from that time until recently, when we were all discharged.
Q. I will ask you if there were not a great many posses, who rode under different deputies from different nations of the Indian country?—A. Yes, sir; there were from other places too; from Texas and Missouri. There were a great many transient men passing through and some even from this State.

Q. I will ask you if a great many men did not ride as posses under deputies and deputies during the time you were on the marshal's force who are not residing here now?—A. Yes, sir, there were. I guess the population of this town was as large then as it is now. A great many were there who probably came to stay a while and then left. The dull times drove them off, I suppose.

United States v. James Crump, posse-account of S. E. Hunter.

I knew S. E. Hunter. (Certificate exhibited to witness.) That is my signature. Crump was arrested in the Chickasaw Nation. He was brought here by me and Hunter. Hunter was my posse. That is a correct account.


[Certificate on this account exhibited.] That is my signature, and that account is correct. The arrest was made in the Chickasaw Nation. These three arrests I have spoken of were all made on the same trip. I do not know where French is now. He lived at that time in Texas. He and Taylor had both been driving cattle, and were here together.

Examined by Colonel Duval:

Question. Where does Taylor live now?—Answer. I don't know. I saw him here about this time after this trip, probably a month or six weeks.

Q. What did he do while he was here?—A. I do not know that he did anything at all.

Q. Do you know in whose handwriting that signature of Taylor's is?—A. It is his own; I think I saw him sign it. I think the body of it is Clarence White's writing.

Q. Can you explain why it is this signature is sworn to be before Patterson, the clerk of Bastian County?—A. I do not know that I can explain it, any more than sometimes the other parties were not in the place. Sometimes they were sworn to before Churchill, and sometimes before Brooks.

Q. Do you know that they were not in the place on that day?—A. I do not remember now. I suppose from that, that they were not.

Q. How does it happen that so many transient persons and strangers were employed as posses?—A. I can get men now that I would not have thought of for such a thing then. I could go now where I would not have thought of going a year ago.

Q. Do you say you do not know where this man lived in town?—A. I don't remember positively, but I think he boarded at Mershon's. I don't know how long he had been here before I employed him to make this trip, but I think he had not been here long. I believe this is the only trip he ever made with me; I don't remember now. I was riding almost constantly for two or three years, and it is hard to remember distinctly everything about each trip.

Q. You remember seeing him make this signature?—A. I remember that. He signed it over here in town; I don't remember whether in Brooks's office, but in some office in this place.

Q. If he had signed it in Brooks's office, he would have been apt to swear to it before Brooks, would he not?—A. Brooks's office was frequently open when he was not in it. He had other parties rooming with him. I don't remember what room it was, but it was in some of the rooms here in this (Fishback) block.

Q. Do you state that, in all instances where you certified, these posse accounts were filled up before you made your certificate?—A. Yes, sir. I would not certify to a paper that was blank.

Q. Did you make out the returns on your writs, or were they made out in the office?—A. I don't know. I frequently made them out myself.

Q. When you made them out yourself did you charge up the fees?—A. I sometimes did that. Whenever I made out my returns I charged up the fee-bill. I know what the fees are.

Q. In every instance where you made them out yourself you made out the fee-bill?—A. I think I did. If I made out the account myself, I did. Sometimes, when I did not make out the accounts, if there was some one in the office who had time to do it, I would give them a memorandum of the account for them to make it out in the case—the data, and so on.

Q. Do you remember in what part of the Chickasaw Nation you arrested this man?—A. In the western part. I think it is nearly a west course, or probably north of west, from Fort Arbuckle, as well as I can remember. I think it is in the neighborhood of three hundred miles from here to Fort Arbuckle; I don't remember exactly.
Q. Did you have a writ for Silsby before you arrested him?—A. I did. The information was filed before the writ was issued.

Q. What other persons as posse did you have on that trip for Silsby?—A. I had several.

Q. Do you remember any other that was with you on that trip besides Taylor?—A. There was French and Hunter.

Q. That makes three. Were there any others?—A. Yes, sir; I had some others. I don't remember now their names.

Q. How many writs did you have?—A. I suppose forty or fifty. I never had less than forty or fifty at any one time.

Q. Were you in the habit of taking more than three persons as posse when you went into the nation?—A. Yes. I have frequently done so.

Q. Was that by direction of the marshal?—A. I suppose it was. It was understood that when we wanted posses to make an arrest we had a right to summon them to go and do it. I don't remember whether we were limited or not. I never read the law on the subject.

Q. On this trip, can you say whether you had more than these three for a posse?—A. I think I did. That is my recollection.

Q. How many prisoners did you arrest on this trip?—A. I don't remember positively now about that. I think, though, that those three were the prisoners that I arrested on that trip.

Q. Did you have writs for all three of these prisoners?—A. I don't remember whether I had writs for all three of them; I think I did. I remember that when I first commenced riding, under the rulings that they were then working under they sometimes issued writs after the parties were arrested. It was always my understanding that it was Judge Caldwell's ruling that a writ could be issued after the arrest, and dated back to cover his service. That was sometimes done, but very frequently in my case. I most always had writs for the parties I arrested.

Q. Did you see Hunter sign his name to this?—A. I don't remember now whether I did or not.

Q. Were you present when this signature of French was put there?—A. I don't remember.

Q. Hunter and Taylor, you said, came here together, did you not?—A. I believe it was Hunter and Taylor. I don't remember now. There was so many transient men here then that I can't distinguish between them now. Men rode with me on trips as posse that I might not know now if I was to see them.

Q. Were these parties all arrested on the same day?—A. I believe they were.

Q. I will ask you if it was not the custom in making returns upon writs where the deputy had made several arrests in different parts of the country, and on different days, and at different places, to return them all as served on the same day, and charge the mileage from the farthest place?—A. It was not customary, to my knowledge; we usually made it a point in making a trip, for instance, if I had thirty or forty writs, I would endeavor to make arrests where I could get them all as near together as possible, so that I would not be encumbered any longer than possible before I started in with them. They might not be in the same spot, but they might be on the same road.

Q. Did you make all the arrests there, and did you employ your posse in making the arrests?—A. I sometimes had a posse to make an arrest, and sometimes made it myself. For instance, if I was at one house and made an arrest, I might find it necessary to send a posse to another house near by to make an arrest there and bring the prisoner to me. The deputy marshal with a posse cannot always make all of his arrests himself without the assistance of any one; the marshal's instructions were usually that they should guard closely prisoners after arrest. For instance, if I had two posses with me and arrested a man at a certain point and there was a prisoner a mile or two off that I wanted to arrest, the marshal's instructions were that unless it was an extraordinary case the deputy ought to stay with the prisoner that had been arrested and see that he was kept safely, and send his posse to arrest the others that had not been arrested.

Q. Did all those three prisoners live in the same neighborhood?—A. I don't know whether they do or not; there are very few prisoners arrested in the Indian country that live there permanently; they are mainly white men and negroes.

Q. Can you state what Silsby was?—A. He was white.

Q. What was Crump?—A. White.

Q. What was Charley Hinds?—A. He was a negro.

Q. Were they arrested at home or were they on the scout?—A. They were on the scout; I don't know where they lived.

Q. Did you arrest them at houses?—A. I don't remember now; I believe I arrested one of them in a house, and the rest of them out on the road somewhere—going from one house to another, somewhere. I don't remember positively about that. Sometimes I would catch them on the run.

Q. How do you account for the uniform mileage on several of the writs where the parties were arrested in the same neighborhood and on the same day? I find in every instance that where there are writs returned as having been executed on the same day, precisely the same mileage is charged.—A. When the arrests were all made the same day it is not probable the

H. Ex. 175—10
mileage would be very material. Suppose I arrest a man 25 miles due west of here, I might find it necessary then to go 20 miles due north from that place, which would be at an angle from here, but about the same distance.

Q. I asked you a while ago if it was not customary to take the farthest mileage and make that the number to all the cases?—A. I do not know that it was customary. I arrested farther from this point than I got mileage for. I might have arrested one of those three parties a few miles nearer here than the mileage, and I might have arrested the second exactly the amount of mileage from here, and I might have arrested the other 25 miles farther. I know that on some occasions I have arrested parties a farther distance from here than I received pay for.

Q. Why did that happen?—A. Because I frequently rode farther than the exact distance from here.

Q. But I understand you to say you would charge less mileage than the actual distance?—A. What I mean by that is that I might have arrested one of those three parties three or four miles nearer here than the exact mileage, and the other three or four miles farther than that. Here is another thing: whenever we make an arrest, if it is not near any point to which I know the number of miles from this place, I put down what I understand to be the distance from here to the known point nearest which they were arrested. That is about the best explanation I can give you.

Q. You do not know where any of these posses are now?—A. I do not.
Q. Do you not know where French is?—A. I do not.
Q. He is another transient person?—A. Yes; a great many of them were.
Q. Were these two men men of education?—A. Sometimes they knew how to write their names and sometimes they did not.

Q. One of them signs his cross-mark. Hunter and Taylor write very well, and write very much alike.—A. That may be.
Q. Were those two men of that class that had a pretty good education?—A. I don't know. I never inquired into their education. They could read and write. What do you mean by an education—an ordinary English education?
Q. Yes,—A. That they were. They had an ordinary English education.
Q. Were they young men?—A. They were single men, at least purported to be.
Q. I see that French has made an affidavit before Pritchard on the same day that the others made theirs. Were you present when any of them were sworn?—A. Yes.
Q. I asked you a while ago if it was not customary to take the farthest mileage and not the actual number of miles at any point near the party, was it?—A. The party.
Q. Did you ever know an instance where an account for five or six posses was allowed?—A. None of mine were ever objected to that I know of.
Q. Do you know whether they got pay or not?—A. I don't remember positively exactly whether I ever had more than six or not. I have had more than three.
Q. And that fact was known at the marshal's office, that you had more than three on one trip?—A. Yes, sir.
Q. And they were allowed and paid?—A. They were allowed and paid. I never had a posse-account objected to that I remember of. I have had them ask me if I knew the posses and if they did the service.
Q. They were generally very particular in the office, were they, to know if they did the service?—A. I don't know. I suppose they were.

By Mr. MARCUM:

Q. Do you know the highest number of marshals at any one time under Britton?—A. Upwards of two hundred, to the best of my knowledge.
Q. Is it not true, that he had a great many special deputies? — A. Yes; he did. I heard him say so; I don’t know it of my own knowledge.

Q. It is not true, also, that deputies were frequently changing their posses? — A. Yes, sir; frequently the case. They would go two or three trips, and get tired and quit, and probably go off to Texas or Missouri, or quit the business.

Q. Did you ever have more than two posses at one time to guard one man? — A. I never had more than two posses to guard one prisoner in all my business.

By Colonel DUVAL:

Q. Do you know anything of a rule established by Roots, that there should be only one posse allowed in each case? — A. I do not.

Q. You rode as a regular deputy under Roots? — A. No, sir; I only had a special commission under Roots. I rode as a regular deputy under Britton and Sarber.

SEPTEMBER 22, 1874.

ROBERT J. TOPPING, deputy marshal, sworn and examined.

UNDER SARBER.

vs. Henry Powell.—I arrested defendant near Sandbois, about fifty miles from Fort Smith. This defendant had escaped from jail, and I arrested him on a bench-warrant. I had no guards with me in this case. Daniel Sullivan and George Blackburn were not guards. This is a fraudulent charge; I mean the charge for guards.

vs. Foster King and Emma King.—Arrested defendants in Choctaw Nation, about twenty miles from Fort Smith; account as charged is correct.

vs. Jno. R. Alley.—I arrested the defendant without process, about one hundred and fifty miles from Fort Smith; my guards in this case were McCartney and Boyd; defendant was 17 days in jail, from 11th to 28th February, 1874, before a final examination was had before Brooks. I paid for prisoner’s board while in jail pending a final examination, I think at the rate of seventy-five cents per day, to Captain C. E. Berry, who was feeding the prisoners at that time. I never charged anything for board of prisoner after my arrival in Fort Smith. Had no subpoenas in this case; obtained them in Fort Smith on my return.

vs. William Porter.—An escaped prisoner, arrested on a bench-warrant, forty-five miles from Fort Smith. I think defendant escaped while on duty outside the jail.

vs. A. Miller.—Arrested at Red River Station; my posse is Robert Hargrove. I had a writ for defendant; mileage at 300 miles is correct.

ROBT. J. TOPPING.

Witness:

W. H. NESSLE.

FORT SMITH, ARK., August 19, 1874.

Testimony of Squire D. Turner.

Sworn and examined by Mr. DUVAL:

I live in the Cherokee Nation, about five miles from Fort Smith. In November, 1872, I lived at Webber’s Falls, in the Indian Territory; that is about fifty miles from here.

Question. Do you recollect of there being a charge against you in 1872 of larceny? — Answer. Yes, sir. Mr. Johnson, a deputy marshal, came to Webber’s Falls and told me that he had a writ for me. I asked him would he show it to me, and he said he didn’t have it there, but that he just notified me he wanted me to attend; that he didn’t want to put me to no trouble. I came here and attended before Commissioner Brooks.

Q. Did you come here alone or with Johnson? — A. No, sir; I went from there to Texas and never did come with him at all. I went to Texas the first of May, 1872, and came back to Webber’s Falls the last of September, 1872. It was before I went to Texas that Johnson told me about this.

Q. When did you go to the Cheyenne and Arapahoe Nations? — A. I never was there in any of my life. I came before Brooks on the 8th day of January, 1873, after I came back from Texas. It was in 1872 when I went to Texas, and on the 8th of January, 1873, I came down to Mr. Foster, the marshal, and gave myself up, as I understood Mr. Johnson still had a charge against me. I turned myself over to Mr. Foster, and went before Brooks and gave bonds. Johnson never did arrest me, and I never was in the Arapahoe Nation in my life. I may have been there twenty years ago, but Johnson never had anything to do with me.
was not tried before Brooks. These witnesses that come down that had charges against me about taking up the mules, Johnson or them (one or the other) carried it to the grand jury, and they found a true bill, and I was tried before the court at that same term. I was tried before Brooks on the 8th January, 1873; the court had been in session before Christmas at it adjourned, and I came here on the 8th of January; that was the day the court was to sit. Any way, I turned myself over to Foster. I was tried by the court and acquitted. By "Foster," I mean Mr. Josiah Foster who lives in Crawford County, and was at that time a deputy marshal. He (Brooks) told me there was no charges before him, and referred me to the court. I gave bonds before the clerk of the court.

Q. Do you remember who the witnesses were against you?—A. Yes, sir; they were Porum Davis and Stand Gray, both Indians.

Q. Do you know H. C. West; was he a witness?—A. I don't think he was a witness. I don't know of any man by that name.

Q. Do you know where Davis and Gray now live?—A. About 75 miles from here. Gray is now sheriff of Canadian district.

Q. Do you know a man by the name of R. H. Downey?—A. No, sir; I don't.

Q. Were there any guards or posse that had charge of you when you were arrested?—A. No, sir; I never was arrested by no man at all. I voluntarily just got on my horse and came here; and when I got here I understood that this charge was against me and that Johnson was going to arrest me, and I turned myself over to Foster and was tried in court. I never was arrested at all by Johnson or any posse. In November, 1872, I was at Webber's Falls. I was there all winter, from the 1st day of November until about the 1st of May. I went to Red River in May, 1872, and came back to Webber's Falls in September, 1872. I am positive it was September, 1872. It has been two years ago.

Q. Are you acquainted with a man named Charles Western?—A. No, sir; I never was arrested by any deputy of that name for any offense.

Q. Were you ever arrested by any marshal or deputy marshal for any offense, except as you have stated here, when you surrendered yourself to Foster?—A. No, sir; I never was arrested by nobody.

Q. You do not know Western?—A. No, sir; I do not. When I came back from Texas in September, 1872, to Webber's Falls, I lived there until last summer.

Q. Had you been at Fort Smith from the time you returned from Texas until you delivered yourself to Foster, in January, 1873?—A. Yes, sir; half a dozen times, and at Van Buren, too.

Q. Did you come here under arrest?—A. I never was arrested by nobody at all, I tell you.

Q. You were never before Brooks, for trial, except at that time?—A. Just at that very time. I think it was the 8th of January—from the 8th to the 12th; I could not be positive. Josiah Foster and another gentleman, whose name I forget, went my security.

Q. Do you not know H. C. West at all?—A. No, sir; I don't know no such man. I never saw him. I do not recollect exactly the time I was tried, but it was somewhere along during that court.

Q. Here is a charge of expenses for sixteen days' feeding prisoner, S. D. Turner, from November 11 to November 26. You never were in custody that length of time?—A. I never was fed by no man. I never was in custody at all. No man ever arrested me or fed me a minute. Josiah Foster lives seven or eight miles from here, up above Van Buren; it is not exceeding ten miles around the river.

Q. You state positively that Charles Western never arrested you?—A. I tell you I never was arrested by no man, in that case or no other. I never was before the court before in my life.

Q. Do you state that Johnson never showed you any writ at all?—A. He told me he didn't have any. I told him I wouldn't go that way; that I wasn't no Indian. I asked him if he couldn't write one himself at Blackstone's store, and he said it was against the law. I then told him I didn't go with no man without he had a writ with the United States seal on it.

Q. What were you indicted for?—A. For larceny. Mr. Rutherford, who lives in this county, lost a pair of mules, and I found some mules, and Mr. Davis claimed them. Mr. Rutherford had given me a description of his mules, and had authorized me to take them up—me and a man by the name of Ed. Perry. I was hauling corn to the railroad. Davis met me on the prairie and claimed the mules. I just got down from the wagon and gave them up to him, and told him they were not mine, but belonged to Mr. Rutherford, at Fort Smith. I suppose in about a week or ten days Mr. Rutherford came and looked at the mules and said they were not his, and went on and found his mules. At least he told me he found them.
Testimony of Robert Thompson as to accounts of S. W. Butler, deputy marshal, and J. R. Butler, posse, in the United States vs. Dr. Herring.

Sworn. Examined by Mr. Duval:
I live in the neighborhood of Fort Smith. I was a deputy marshal under Britton, in September and October, 1872. I was acquainted with S. W. and J. R. Butler. I do not know where they are now. I arrested Dr. Herring myself, at Carriage Point, in the Choc-taw Nation, or near there. I think he was charged with introducing liquor into the Nation. I do not know whether he was ever arrested more than once. I understood that Jim Hodges arrested him afterward on a warrant. I paroled him when I arrested him, to make his appearance here at a given time.

Question. What do you know about this man acting as a posse on that trip?—Answer. I don't know anything about it, any more than I believe there was a posse with us on that trip. We had several prisoners on that trip. I had only two posses, I think. I expect Butler had the same. His brother was one, and another young man, I don't recollect his name.

Q. Who were your posses?—A. I think a man named Elijah Locket was one. I can't recollect the other, if it was not Jake Patterson. I think he was along on that trip, but would not be positive.

Q. Had Butler ever did arrest him?—A. I turned him over to Butler, and I took the prisoners that Butler arrested. I did not bring him in.

Q. And Butler did not, either?—A. I think not, for I paroled him at Carriage Point, and he appeared here before the commissioner, according to the time we agreed upon. He was riding as deputy marshal himself at the time, and he told me that he had a lot of prisoners that he had to attend to, and I didn't feel disposed to bring him down to prison when he had prisoners himself to attend to.

Q. According to your statement this posse-account must be a fraud?—A. I don't know.

Q. Do you know anything about how this posse-account came to be made out?—A. No, sir. I was sick at the time of the examination.

Q. Do you know whether Butler had a posse with him by the name of B. F. Howard?—A. I do not know. He had some young man, I don't recollect his name. I was here when this return was made, but did not come up town, as I was sick. I was taken sick coming home off of that trip. Butler and I came in together, as far as Scullyville, and I rode on home. Herring did not come with me. I do not know where Butler is. I know that Butler actually made the trip. The number of days is all correct.

WILL. W. WHEELER sworn and examined.

Case vs. Andy Sanders.

I arrested defendant way up on headwaters of Grand River, near the Kansas line. How far from Chetopa?—Not far; mileage may be charged from line. Certainly I did not bring prisoner 300 miles. I put that in to save myself. I traveled near 700 miles in making the arrest. It is about 200 miles from place of arrest to Fort Smith, or close on to it. Date of service, fifteen days' feeding, are both near correct. The witness, D. Hicks, was summoned at Fort Gibson, I think. O, the witness, Daniel Hicks, was summoned on Fourteen-Mile Creek, about 50 miles from Fort Gibson, and about 125 miles from here. The posse returned on that writ I think was William Watie; I got him at Fort Gibson. He was with me nearly all the time. Really, there may be over three days too much time on Watie's voucher. Watie was born and raised near Honey Springs. I can't tell you where he lived.

Case vs. Moses Downing—Ret. liq.

I don't know where he was arrested. Stephenson brought to me near Fort Gibson this man M. Downing. I had a writ for him and brought him to Fort Smith, distant about 60 or 65 miles from where Downing was turned over to me. I had gone from near Fort Gibson to the Canadian River, about 200 miles from here, and arrested one Daniel Fields, for whom Stephenson had a writ. When I returned to near Fort Gibson, where I had left two prisoners, I found Stephenson with Moses Downing. We then traded prisoners, I taking Downing, for whom I had a writ, at the same time giving Stephenson Daniel Fields, for whom he had a writ.
So far as Moses Downing is concerned, I did not arrest him. The item of feeding prisoner was intended to cover the expense incurred by Stephenson; all except four or five days. G. L. Gardner was my posse. Andy Sanders was sick and couldn't travel, and I got Gardner with him while I went after Daniel Fields.

vs. Larue.

Defendant was arrested above Fort Gibson, about 125 miles from here, I reckon, and was arrested maybe one or two days after Andy Sanders. My posse was T. Jones and George Bennett. Jones was a transient man. Bennett had no regular place of abode, but was around this part of the country frequently. Bennett was employed here. The other man got up at Muskogee. There is an excess of three days on Jones. On the subpoena there is an overcharge of 10 miles. I had a writ in this case.

vs. Ben Price.

Defendant was arrested away up on the headwaters of Bird Creek, Osage country, about 60 miles from Fort Smith. I think it is 350 miles by as straight a road as you can go. Stephenson was not with me on this trip. I think G. L. Gardner was my posse on this trip. Joseph Holmes is returned as my posse. If he was a posse of mine I don't know it. I can't say whether I signed Holmes's posse-voucher or not. I might have signed it sometime blank, but I don't know it. 17 days are charged for endeavoring to arrest, and 17 days feeding prisoner, which I think is correct. I traveled on horseback.

vs. Moses Downing, ret. liq. (2.)

Defendant was arrested in the upper edge of the Creek Country, I think. It was right on the line of the Cherokee Country about 300 miles from here. I traveled more than that, however. I had no other posse except G. L. Gardner on this trip. I cannot state where I arrested defendant. Stephenson was not with me on this trip.

I never received one cent in money for any service rendered under Britton, as deputy marshal. In cases against Andy Sanders, Moses Downing, and Sam Larue, the writs were issued by Commissioner Brooks, but he was absent when I came in, so I took the prisoner before Churchill for examination.

Sarber.

V. S. Clayton Dewitt.

I arrested defendant near Fort Sill. My posse was A. Cushenberry. I think I got him at Stonewall; maybe four or five days after I left here. The mileage is about right. I think I was paid ten dollars on this account by Sarber, and I gave Bocquin and Rentzel an order for the balance, and I think they were paid.

WILLIAM W. WHEELER.

In the matter of 3 posse-accounts as follows: W. C. Snider, 37 days, October 31 to December 6, 1872, $111; John Conns, 37 days, October 31 to December 6, 1872, $111; George Allen, 37 days, October 31 to December 6, 1872, $111; all for services in case of the United States against Joseph Williamson, Alfred Williamson, and Richard Williamson, C. R. Stephenson deputy marshal, the property of J. Gage.

All I know about these accounts is that when C. R. Stephenson and I split up, the write in above case were given to Stephenson. I bought the above posse-accounts from persons who represented themselves to be the persons who performed the service. I had seen Allen once or twice previous, but I could not swear to his name. The other two men I had never seen before. I bought the accounts at 60 cents on the dollar in front of Messler's saloon. I bought them because I knew the cases were genuine. I made the information against defendants. I do not know where the defendants live. I know nothing about the rendition of the services of the above-named posses.

From your information do you think the defendants (Williamsons) lived as far as 450 miles from here?—No, I couldn't say that they did.

WILLIAM W. WHEELER.

Witness: W. H. N. Nessle.
The account for the arrest, &c., of Tandy Walker, amounting to $135.25, was here shown witness, who swears positively that it is entirely fraudulent.

The accounts of G. S. Monck and John S. Wilson, for twenty-six days' service as posse comitatus in the arrest of Tandy Walker, and amounting to $78 each, were here shown to witness, who states that they are fraudulent; that he came in alone, and that he was never guarded by any one.

T. C. WALKER.

Witness: W. H. NESSLÉ.

Sworn to and subscribed before me this 1st day of December, A. D. 1874.

JAMES O. CHURCHILL,
Clerk United States District Court, Western District of Arkansas.

FORT SMITH, ARK., September 30, 1874.

SILAS A. WRIGHT, deputy marshal.

UNDER BRITTON.

United States vs. John McGhee.

I arrested defendant on Blue River, in the Chickasaw Nation, about forty miles from Stonewall. I do not know the distance from here to Stonewall. I was some fifteen or twenty days endeavoring to arrest. I had a writ for a defendant. This is the only trip I ever made in the Indian country. I had but one posse with me on this trip. His name is Charles Brodie, and his account is correct. The original writ is indorsed with the names of Andrew Grayson and T. H. Oliver also as posse with me in above case. I never had any such men with me. Don't know these persons. The only person I had was Chas. Brodie. I have never received any pay for my services in this case. The accounts of Andrew Grayson and T. H. Oliver as posses in this case are fraudulent. My name to T. H. Oliver's posse account is forged. I have not seen Grayson's account.

Question. Is there anything due Britton on this account of yours?—Answer. I don't know. Never had any settlement with him.

SILAS A. WRIGHT.
September 30, 1874.

Witness: W. H. N.
Testimony of THOMAS WALTERS, as to posse account of A. E. Stevens and William McNab, November 2 to November 15, 1872, $42 each, in the cases of United States vs. Geo. Low & Geo. Leflore.

Sworn. Examined by Colonel DUVAL:

I reside near Sulphur Springs. I resided, in the latter part of 1872, at Greenwood in Sebastian County, Arkansas. I was twenty-nine years old last October. I was a deputy marshal under Britton. I do not remember how long I was in the service; pretty well one summer. That was my last trip, as I could not get any money to pay expenses without I sold my accounts for almost nothing.

Question. Did you have writs in the cases of Low and Leflore before you started?—A. No. I got writs from Brooks after I came in with them. They were undated back to the time I made the arrest. Stevens and McNab went with me as a posse. McNab did not start with me, but he was with me before the time the writs were dated back to. We went to Texas on that trip, and were out thirty-five or forty days, but only got pay for fourteen days. I had a writ when I started from here for a man named Bowman who was charged with murder as well as I remember. He was not arrested; he could not be found.

Q. How did you come to arrest Low and Leflore without a writ?—A. The citizens in the Nation reported on them being thieves, stealing horses and stealing a lot of bacon, corn, and stuff. I had no other posse with me except Stevens and McNab.

Q. When you arrested these parties without a writ, did you summon witnesses with subpoenas?—A. Yes, sir, and brought them here. Subpoenas were issued for them after they came in and they were served here. I suppose they were served, of course, as they had been served where they started from. The witnesses against Low did not come here, though they promised to come in; so after holding him three or four days, Brooks released him. I reckon subpoenas were issued for those witnesses, but they were not served. Mr. Brooks made out my account for me. I sold it to someone, I don’t know who. I turned in the account to the office and got checks, and sold the checks.

Q. Did these men get any pay for the time they had been with you before the arrest?—A. No, sir; they were not allowed any for that time. I made no return on the writ. I turned the writ over to the office there, and it was turned over to another man. I think Hamp Willis got the writ; I am not sure. He said that he could catch the man. I don’t know whether Bowman was ever arrested or not. I think George Leflore was sentenced to jail, though I was not here, and don’t know. I think the commissioner bound him over. I know that he was sent to jail, but I don’t know whether it was after his trial. [Account presented to witness.] That is my signature.

Q. You say Mr. Brooks made out your return; were they not made out in the marshal’s office?—A. I suppose they were made out there. Of course the accounts were made out in the marshal’s office. I signed the accounts and got certificates, which I traded off. I believe I got 50 cents on the dollar for them. I can’t say whether I let McLoud or Captain Scott have them one of the two. I traded off others. I know I let Scott have some and I think I let McLoud have some. I got the money from Scott. I boarded at McLoud’s some. I always paid my board in advance, and did not let him have these accounts for board. I got money for the accounts.

Q. Do you know how McLoud came into possession of these accounts?—A. No; can’t say that I do. I think I heard Stevens mention that he had sold his to McLoud. I think Stevens and McNab boarded with McLoud and kept their horses in his stable. Stevens did, I know.

JOHN WILLIAMS, deputy marshal, sworn and examined.

UNDER SARBER.

vs. Richard Brown.

I arrested defendant in Choctaw Nation, 150 miles from Fort Smith. The arrest was made about 40 miles from Doakesville. George H. Brown was my posse in this case. Account as charged is correct.

vs. Ho-ta-mer and Tom Isaac.

I arrested defendants near Red River station, Chickasaw Nation, 300 miles from Fort Smith. Red River station is the crossing of Chisholm trail and Red River, or the trail for cattle-drivers from Texas to Aberdeen, Kansas. J. H. Willis and Albert Brown were my posse in this case, and their accounts are correct as charged.

vs. Jim Willis.

Arrested same time and same place as in case first above. John Ragdale was my posse in this case. I employed him near Red River station where I made the arrest. I allowed him a posse for twelve days. Account as charged is correct.
I arrested defendants between Red River station and Gaines's, about 300 miles from Fort Smith. My posse in this case was John Long. I served the subpoenas in this case between the mouth of Boggy and the mouth of Kiamishe, near Red River.

vs. Squire Allen.

I arrested him not far from Daniel Miller's, in the Choctaw Nation, about 230 miles from Fort Smith. George H. Brown was my posse in this case. Fees as charged are correct.

I never received but very little money for services under Sather, late marshal, mostly orders. The following is presented:

"Due John Williams on account of services rendered as United States deputy marshal, the sum of one hundred and sixty-seven dollars and fifty-three cents ($167.53,) payable upon approval and final settlement of his accounts by the Department at Washington.

(Signed) "JOHN N. SARBER, "Late United States Marshal."

JOHN WILLIAMS.

Witness to Williams's signature:

W. H. NESSLE.

SEPTEMBER 24, 1874.

FORT SMITH, ARK., September 3, 1874.

Testimony of JOHN WILLIAMS as to posse account of V. H. Bryant, in the case of United States vs. One Anderson; also the account of Joseph Everidge, in the case of United States vs. Jefferson Perkins; also account of William H. Thompson, in the case of United States vs. John Humphreys; also account of William H. Thompson, in the case of United States vs. John Humphreys; also account of Robert Scott, in case of United States vs. Rogers & Connolly.

Examined by Mr. MARCUM:

I live in Fort Smith; am thirty-seven years old. All I know about this man Bryant is that he was a posse with J. H. Willis, permanent with him all the time. He rode several trips with him. I have seen him come in several times with him.

Question. Do you know of Willis and Bryant bringing in a man by the name of Anderson?—Answer. I don't know the names of the prisoners they brought in.

United States vs. John Humphreys, account of W. H. Thompson.

I know Thompson. He is down on Red River. I could not be positive as to his ever having ridden as a posse. I knew him coming into town; I don't know in what capacity. I know of his coming in with the marshals, but I don't know in what capacity at all.

United States vs. Rogers and Connolly, Robert Scott, marshal.

I know William Allen. I think he lives in Crawford County, Arkansas, now.

Q. Do you know of his having been a posse?—A. Only what I heard him say. I heard him say he had been riding in the Indian country a good deal; he didn't say under whom.

By Colonel DUVAL:

Q. Do you know Robert Scott?—A. No, sir.

Q. Did you ever see such a deputy as Robert Scott?—A. I never have.

By Mr. MARCUM;

I never heard of him acting as a special deputy.


I know Everidge. He lives in Kiamische County, Choctaw Nation. He is the son of Joseph Everidge, supreme judge. I do not know John Thrasher; I do not know Jefferson Perkins. I have lived in Fort Smith a little over a year, but I have been here off and on for the last three years, during the courts, &c. I have been around the marshal's office. I was here while Britton was marshal. I do not know the number of deputy marshals under him at any one time. I cannot approximate to it; I have not the slightest idea. I have understood it was 160.

Q. I will ask you if there were not a great many transient men who rode under Britton as H. Ex. 175—11
special deputies and posses—men who claimed Fort Smith as their place of residence for the time being.—A. I have seen a great many men come in here during the three different times that I was here. They said they were deputies. I had only their words for it; they were strangers to me. I have been a deputy marshal since last July or August a year ago, I think.

Q. Is it not true that men from various portions of the Indian country rode as posses?—A. Since I have been riding there has.

Q. Were there not a great many men riding as marshal with whom you were not acquainted?—A. No, sir; not since I have been riding. I knew all the marshals appointed under Sarber; I did not know a third of them under Britton.

Q. Is it not a fact that many who rode as deputies and posses under Britton are gone from this place, who then bearded here and claimed this as their home for the time being?—A. There are very few here now that were here then. I didn’t know but about a dozen or two under Britton. I suppose there are a good many of them here in the neighborhood. They are not all here. I know some down on Red River, some in the Choctaw Nation, and some in the Chickasaw Nation who have been riding.

FORT SMITH, ARK., September 4, 1874.

Testimony of John Williams in regard to posse account of John A. Long, April 25 to May 22, 28 days, $84. Case of United States vs. Isaac Ransom.

Sworn. Examined by Colonel Duval:

I arrested Ransom. I had Long with me. I arrested Ransom near Fort Sill, in the Indian country. I had him bound over at Gibson and brought him here, and he is still in jail. I employed Long here in town; he is a brother-in-law of mine.

Question. This affidavit states that he was employed at North Fork.—Answer. It was at Fort Gibson. He went by Fort Gibson from here, and got the writ at Fort Gibson.

Q. Did you have any writ when you left here?—A. Yes, sir; I suppose we had 40 or 50. We were out 55 days altogether on the trip; we returned only 28 days.

Q. Why did you do that?—A. We came to Gibson and had the party bound over, and from the time we got to Gibson it was 23 days. There was no charge made from here to Gibson, nor for several days we were laid over between here and Gibson in coming down.

Q. Did you have any other prisoners with you on that trip?—A. Yes, sir. W.H. Johnson was another. I had no others.

Q. Did you have any other posse with you besides Long?—A. No, sir.

Q. You are sure that you certified to no other—A. I am.

Q. Where is Long now?—A. He is in town, Bob Topping was with him nearly all the time. I have not been paid for that trip yet.

Q. Do you know how Mr. Rentzel got this account?—A. I think I do. Mr. Long sold it to Mr. Marshon, and Mr. Marshon sold it to Mr. Rentzel.

Q. You never received any compensation for your services as deputy?—A. No, sir. Sarber gave me orders on Mr. Rentzel’s house; those orders were charged to me as paid by Sarber.

FORT SMITH, ARK., October 5, 1874.

Nathaniel Williams, colored, sworn and examined.

In the matter of the posse account of Nathaniel Williams, for his services as posse from October to July, 1874, in the case vs. George Johnson. F. Rounds, jr., deputy marshal.

The posse account was here shown witness, who says it is correct as to time.

By Nessle: Who employed you as posse?—F. Rounds, a deputy marshal.

Q. Was you employed as a posse in this particular case against George Johnson?—No, sir: I was employed to ride as a posse.

Q. Who did you start out with on this trip?—Nobody but myself and James Hodges went out: Hodges had Rounds’s commission.

Q. Where and by whom was Johnson arrested?—About 15 miles to the right of Boggy depot, Choctaw Nation, by James Hodges.

Did Hodges have a writ?—I am not certain, but I think not.

Q. Who was the posse in this case?—I was the only posse. Hodges and myself brought the prisoner to Fort Smith. Hodges is a colored man, and I think cannot sign his name.

Q. Was James Henry a posse in this case?—No, sir.

Q. Do you know such a person as James Henry?—No, sir. It is about 150 miles to where we made the arrest.

Q. Did Hodges get a posse account in this case?—My understanding was that he and Rounds were to divide fees, and I was to get the posse account.

NATHANIEL WILLIAMS.
# INDEX TO TESTIMONY.

<table>
<thead>
<tr>
<th>Name</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Allnutt, W. D.</td>
<td>34</td>
</tr>
<tr>
<td>Ayers, W. R.</td>
<td>37</td>
</tr>
<tr>
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