

Mr. Manager CLAYTON. Mr. President, the articles of impeachment, which have been adopted by the House of Representatives and which the managers on the part of the House have been directed to present to the Senate, are in the words and figures following:

[Sixty-second Congress, second session.]

CONGRESS OF THE UNITED STATES,
IN THE HOUSE OF REPRESENTATIVES,
July 11, 1912.

Resolved, That Robert W. Archbald, additional circuit judge of the United States for the third judicial circuit, appointed pursuant to the act of June 18, 1910 (U. S. Stat. L., vol. 36, 540), and having duly qualified and having been duly commissioned and designated on the 31st day of January, 1911, to serve for four years in the Commerce Court, be impeached for misbehavior and for high crimes and misdemeanors; and that the evidence heretofore taken by the Committee on the Judiciary, under House resolution 524, sustains 13 articles of impeachment which are hereinafter set out; and that said articles be, and they are hereby, adopted by the House of Representatives, and that the same shall be exhibited to the Senate in the following words and figures, to wit:

Articles of impeachment of the House of Representatives of the United States of America, in the name of themselves and of all of the people of the United States of America, against Robert W. Archbald, additional circuit judge of the United States for the third judicial circuit, appointed pursuant to the act of June 18, 1910 (U. S. Stat. L., vol. 36, 540), and having duly qualified and having been duly commissioned and designated on the 31st day of January, 1911, to serve for four years in the Commerce Court.

ARTICLE 1

That the said Robert W. Archbald, at Scranton, in the State of Pennsylvania, being a United States circuit judge, and having been duly designated as one of the judges of the United States Commerce Court, and being then and there a judge of the said court, on March 31, 1911, entered into an agreement with one Edward J. Williams whereby the said Robert W. Archbald and the said Edward J. Williams agreed to become partners in the purchase of a certain culm dump, commonly known as the **Katydid culm dump, near Moosic, Pa.**, owned by the Hillside Coal & Iron Co., a corporation, and one John M. Robertson, for the purpose of disposing of said property at a profit. That pursuant to said agreement, and in furtherance thereof, the said Robert W. Archbald, on the 31st day of March, 1911, and at divers other times and at different places, did undertake by correspondence, by personal conferences, and otherwise, to induce and influence, and did induce and influence, the officers of the said Hillside Coal & Iron Co., and of the Erie Railroad Co., a corporation, which owned all of the stock of said coal company, to enter into an agreement with the said Robert W. Archbald and the said Edward J. Williams to sell the interest of the said Hillside Coal & Iron Co. in the Katydid culm dump for a consideration of \$4,500. That during the period covering the several negotiations and transactions leading up to the aforesaid agreement the said Robert W. Archbald was a judge of the United States Commerce Court, duly designated and acting as such judge; and at the time aforesaid and during the time the aforesaid negotiations were in progress the said Erie Railroad Co. was a common carrier engaged in interstate commerce and was a party litigant in certain suits, to wit, the Baltimore & Ohio Railroad Co. et al. v. The Interstate Commerce Commission, No. 38, and the Baltimore & Ohio Railroad Co. et al. v. The Interstate Commerce Commission, No. 39, then pending in the United States Commerce Court; and the said Robert W. Archbald, judge as aforesaid, well knowing these facts, willfully, unlawfully, and corruptly took advantage of his official position as such judge to induce and influence the officials of the said Erie Railroad Co. and the said Hillside Coal & Iron Co., a subsidiary corporation thereof, to enter into a contract with him and the said Edward J. Williams, as aforesaid, for profit to themselves, and that the said Robert W. Archbald then and there, through the influence exerted by reason of his position as such judge, willfully, unlawfully, and corruptly did induce the officers of said Erie Railroad Co. and of the said Hillside Coal & Iron Co. to enter into said contract for the consideration aforesaid.

Wherefore the said Robert W. Archbald was and is guilty of misbehavior as such judge and of a high crime and misdemeanor in office.

The Secretary read as follows:

[In the Senate of the United States sitting as a court of impeachment for the trial of Robert Wodrow Archbald, a circuit judge of the United States.]

ANSWER OF THE SAID ROBERT WODROW ARCHBALD TO THE ARTICLES OF IMPEACHMENT EXHIBITED AGAINST HIM BY THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES.

ANSWER TO ARTICLE I.

For answer to the first article the respondent says:

1. That the said first article does not set forth anything which, if true, constitutes an impeachable offense or a high crime or misdemeanor as defined in the Constitution of the United States, and that therefore the Senate, sitting as a Court of Impeachment, should not further entertain the charge contained in said first article.

2. The respondent admits that some time early in the spring of 1911 and prior to the 31st day of March of that year Edward J. Williams informed respondent that John M. Robertson owned an interest in the Katydid culm dump near Moostic, Pa., and that he, Williams, could get an option on Robertson's interest in said culm dump, and suggested to the respondent that if a similar option could be obtained from the Hillside Coal & Iron Co. for its interest in said Katydid culm dump the dump could be sold to advantage. At the same time said Williams suggested to the respondent that if both of said interests in the said dump should thus be acquired by respondent and himself a profit of two or three thousand dollars each to said Williams and the respondent could be made by a resale of said dump. At the same time said Williams suggested to respondent that he, the respondent, should communicate with Capt. William A. May, the superintendent of said Hillside Coal & Iron Co., to ascertain whether said company would sell its interest in said culm dump, and if so, on what terms.

The respondent thereupon, by telephone, inquired of Capt. May whether it would be possible to secure an option upon the dump in question from the Hillside Coal & Iron Co. Over the telephone said Capt. May informed the respondent, in substance, that it had been the ordinary policy of said company to keep its culm dumps, but that the circumstances relating to the Katydid culm dump was peculiar, and if the respondent would write a letter to him on the subject he would submit it to the Hillside Coal & Iron Co. Accordingly, on the 31st day of March, 1911, the respondent wrote and handed to said Williams, to be by him delivered to Capt. May, a letter, of which the following is a copy:

W. A. MAY, Esq.,
Superintendent Hillside Coal & Iron Co.

DEAR SIR: I write to inquire whether your company will dispose of your interest in the Katydid culm dump, belonging to the old Robertson & Law operations, at Brownsville; and if so, will you kindly put a price upon it?

Yours, very truly,

R. W. ARCHBALD.

Several weeks thereafter, nothing having been heard by the respondent from Capt. May in response to said letter, and said Williams in the meantime having frequently called upon the respondent in reference to the matter, the respondent again, by telephone, inquired of Capt. May what had been done. Capt. May replied that Mr. G. A. Richardson, one of the vice presidents of the Hillside Coal & Iron Co., was to be in Scranton in a few days, and that he, May, would go over the matter with said Richardson, and would let the respondent know the result. During the greater part of the month of July the respondent was holding a circuit court of the United States in New York City, and spent the whole of that month in that city, except that he went home to Scranton at the end of each week. Up to this time there had been no reply received from Capt. May in regard to said proposed option, and said Robertson, the owner of the other interest, was not disposed to allow the verbal option, which he had given to Williams, to remain open indefinitely. Upon being informed of this by said Williams, the respondent, on the 4th day of August, 1911, while in New York in performance of his duties as circuit judge, as above stated, called on George F. Brownell, at his office in New York City, said Brownell being then the general counsel of both the Erie Railroad Co. and of the Hillside

Coal & Iron Co., the latter company being a subsidiary of the former company. The respondent called upon said Brownell, because he had been informed—by said Williams, as the respondent recollects—that the question of said Robertson's claim to an interest in the Katydid culm dump had been submitted to said Brownell. On that occasion the respondent informed said Brownell that he had called upon him because he understood that he, Brownell, had considered the question of Robertson's interest in the Katydid culm dump, and further told him that he, Robertson, had promised that he would sell his interest in said dump, and that if he, the respondent, could acquire the interest of the Hillside Coal & Iron Co. in said dump the conflict of interests which had theretofore interfered with any sale of said dump would be ended. Said Brownell thereupon took the respondent to the office of said Richardson in the same building, informing the respondent that said Richardson was the proper officer of the company to pass upon the matter. Said Brownell introduced the respondent to said Richardson. Respondent then stated to said Richardson that he, respondent, was there simply for the purpose of getting an early answer one way or the other from the Hillside Coal & Iron Co. to the request which had been made of that company for an option on its interest in the Katydid culm dump. Said Richardson then informed the respondent that he would communicate with Capt. May upon the subject. The respondent heard nothing further until on or about August 29, 1911, when he casually met said Capt. May on the street in Scranton, and was then informed by Capt. May that the Hillside Coal & Iron Co. had decided to sell its interest in that culm dump and requested respondent to tell Williams to come and see him, May. The respondent immediately notified said Williams of this conversation with Capt. May, and on the following day, as the respondent is informed and believes, said Williams received from Capt. May a letter, in the words and figures following:

[Pennsylvania Coal Co.; Hillside Coal & Iron Co., New York; Susquehanna & Western Coal Co.; Northwestern Mining & Exchange Co.; Blossburg Coal Co. Office of the general manager.]

SCRANTON, PA., August 30, 1911.

Mr. E. J. WILLIAMS,

626 South Blakely Street, Dunmore, Pa.

DEAR SIR: As stated to you to-day verbally, I shall recommend the sale of whatever interest the Hillside Coal & Iron Co. has in what is known as the Katydid culm dump, made by Messrs. Robertson & Law in the operation of the Katydid breaker, for \$4,500.

In order that it may not be lost sight of, I will mention that any coal above the size of pea coal will be subject to a royalty to the owners of lot 46, upon the surface of which the bank is located.

It is also understood that the bank will not be conveyed to anyone else without the consent of the H. C. & I. Co., and that if the offer is accepted articles of agreement will be drawn to cover the transaction.

Yours, very truly,

W. A. MAY, *General Manager.*

The respondent admits that during the whole period covered by the negotiations and transactions hereinabove referred to he was a judge of the United States Commerce Court, duly designated and acting as such judge; that during the same period the Erie Railroad Co. was a common carrier engaged in interstate commerce and was a party litigant in certain suits, to wit, the Baltimore & Ohio Railroad Co. et al. v. The Interstate Commerce Commission, Nos. 38 and 39, in the United States Commerce Court; that said suit No. 38 was commenced by petition filed in said court April 12, 1911, and was heard by said court on May 17, 1911, on motion of the petitioners for a temporary injunction; that on May 22, 1911, a temporary injunction was granted by said court in said case No. 38; that on June 13, 1911, the Interstate Commerce Commission appealed from the order granting said injunction to the Supreme Court of the United States; and that on June 16, 1911, the United States also appealed to the Supreme Court from said order; that the said suit No. 39 was begun by petition filed in the United States Commerce Court April 27, 1911; that a preliminary injunction was granted by said court on May 29, 1911; that on June 6, 1911, the Interstate Commerce Commission appealed from the order granting said injunction to the Supreme Court of the United States; and that on June 16, 1911, the United States also appealed to the Supreme Court from said order.

Respondent denies, except as hereinabove admitted, that he at any time or at any place, by correspondence or by personal conferences or otherwise, undertook to induce or influence or did induce or influence the officers of said Hillside Coal & Iron Co. or the officers of the Erie Railroad Co. to enter into any agreement to sell the interest of the Hillside Coal & Iron Co. in the Katydid culm dump. He denies that he willfully or unlawfully, or corruptly or otherwise, took any advantage of his official position as such judge to induce or influence the officials of the said Erie Railroad Co., or of said Hillside Coal & Iron Co., to enter into any contract with him and the said Williams, or either of them. He denies that at the times and places stated in said first article, or at any other time or place, through the influence exerted by reason of his position as such judge, he willfully or unlawfully, or corruptly or otherwise, induced the officials of said Erie Railroad Co., or any of them, or the officials of the Hillside Coal & Iron Co., or any of them, to enter into any contract with him and the said Williams, or either of them.

Wherefore the said Robert W. Archbald denies that he is guilty of misbehavior as such judge, or of any crime or misbehavior as charged in said first article.

ANSWER TO ARTICLE 2.

For answer to the second article the respondent says:

1. That the said second article does not set forth anything which, if true, constitutes an impeachable offense or a high crime or misdemeanor as defined in the Constitution of the United States, and that the Senate, sitting as a Court of Impeachment, should not further entertain the charge contained in said second article.

2. The respondent admits that on the 1st day of August, 1911, he was a United States circuit judge duly designated as one of the Judges of the United States Commerce Court, and that he was then a judge of said court. He further admits, on information and belief, that on said day the Marian Coal Co., a corporation, was the owner—as lessee—of a certain culm dump at Taylor, Pa., and was then and there engaged in the business of washing and shipping coal; that prior to that time the said Marian Coal Co. had filed before the Interstate Commerce Commission a complaint against the Delaware, Lackawanna & Western Railroad Co. and five other railroad companies as defendants, charging them, the said defendants, with discrimination in rates and with excessive charges for the transportation of coal shipped by the Marian Coal Co. over their respective lines of road; that all of the said defendant companies were common carriers engaged in interstate commerce; and that the decision of said case by the Interstate Commerce Commission was subject to review at the instance of any party defendant thereto by the United States Commerce Court. The respondent further avers that at the same time there was pending before the Interstate Commerce Commission another case in which the Marian Coal Co. was complainant and the Delaware, Lackawanna & Western Railroad Co. alone was defendant. He further admits, on information and belief, that one Christopher G. Boland and one William P. Boland and their brother, one James M. Boland, were the owners of two-thirds of the stock in the said Marian Coal Co., and as to the operation of said company had all the powers which a control of the majority of the stock might legally give them, and that said Christopher G. Boland and said William P. Boland engaged one George M. Watson, an attorney at law, to endeavor to settle said cases then pending as aforesaid before the Interstate Commerce Commission, and certain other litigation in which the Marian Coal Co. was then involved, by selling to said Delaware, Lackawanna & Western Railroad Co. all the stock of the said Marian Coal Co. owned by the said Christopher G. Boland, William P. Boland, and James M. Boland. As to the averment in said article 2 contained that at the time aforesaid there was pending in the Commerce Court a certain suit entitled "Baltimore & Ohio Railroad Co. et al. v. Interstate Commerce Commission, No. 38," to which suit the Delaware, Lackawanna & Western Railroad Co. was a litigant, the facts are as follows: The said suit was commenced by petition filed April 12, 1911, was heard by said court on May 17, 1911, on motion of the petitioners for a temporary injunction, and on May 22, 1911, a temporary injunction was granted by the said court. On June 13, 1911, the Interstate Commerce Commission took an appeal from the order granting said injunction to the Supreme Court of the United States; and on June 16, 1911, the United States took an appeal from the said order to the Supreme Court.

The PRESIDING OFFICER. The Senator from Pennsylvania withdraws the order submitted by him, and the three reports will be put into the record.

Mr. Manager STERLING. With the understanding that it does not apply to the first report which Mr. Saums made.

Mr. WORTHINGTON. That is already in evidence.

Mr. Manager STERLING. The report is not in evidence.

Mr. WORTHINGTON. His figures are.

Mr. Manager STERLING. He testified from it, but the report was not submitted as an exhibit.

Mr. WORTHINGTON. Very well. Now, may I have this blue print [exhibiting] marked as an exhibit?

The paper was handed to the Secretary and marked "U. S. S. Exhibit V."

Mr. WORTHINGTON. This map, Mr. President, contains what purport to be the outlines of the Katydid culm dump, with a number of figures which I will not read, and below is the inscription—

Katydid culm dump near Consol, BR. Avoca, Pa. April 15, 1911. Estimate 55,000 gross tons (available), exclusive of slush, rock, dirt, etc., of no value, as per Mr. Johnson, inspector.

[To Mr. Manager Sterling.] Do you want to see this?

Mr. Manager STERLING. I want it when I cross-examine.

Mr. Manager CLAYTON (to Mr. Worthington). Are you through with the witness?

Mr. WORTHINGTON. Yes; that is all.

Cross-examination by Mr. Manager STERLING:

Q. Mr. May, you testified before the Judiciary Committee that there were from 80,000 to 85,000 gross tons in this culm dump, did you not?—A. I stated that an engineer made an estimate of 80,000 tons.

Q. You meant Merriman?—A. No.

Q. You did understand, then, that an engineer had estimated it at 80,000 tons?—A. Yes, sir; that was based upon—

Q. What does that mean—80,000 gross tons?

Mr. WORTHINGTON. One moment, Mr. President. The witness was in the midst of answering the question when the manager interrupted him with another.

The PRESIDING OFFICER. The question was answered, and the witness went on as to another matter. The manager desires to interrogate him on that particular line. The witness will have an opportunity, before he gets through, to state fully anything he wishes.

Mr. WORTHINGTON. I did not think the manager knew the witness was still answering the question.

The PRESIDING OFFICER. No; the witness started on an explanation.

Q. (By Mr. Manager STERLING.) You read the notation on the bottom of this plat marked "Exhibit V," did you not?—A. I did.

Q. And it says, "Estimate 55,000 gross tons." By "gross tons" did you understand is meant all the material in the bank?—A. I did.

Q. Well, do you not think that has a different meaning here?—A. No; I do not think it has.

Q. All the material in the bank means the rock, the dirt, the slush, the coal, and the slate, does it not?—A. I think he referred to—

Q. I am not asking what he referred to, but in ordinary language, when you speak of gross tons it means everything in the culm dump, including dirt and everything else?—A. No, sir.

Q. What does it mean?—A. What he meant—

Q. I am not asking you what he meant.

The PRESIDING OFFICER. The witness ought to be permitted to answer.

Mr. Manager STERLING. I did not ask him that question. My question is, What does it ordinarily mean?—A. It ordinarily means a ton of 2,240 pounds.

Q. And the term "gross material in the bank" includes all of it, does it not?—A. It would include 55,000 tons of material of 2,240 pounds to the ton.

Q. Do you not think it has a different meaning here for this reason: The notation is, "Estimate 55,000 gross tons (available)."—A. No; I do not.

Q. He means that there are 55,000 gross tons of coal, does he not?—A. No; I do not think so.

Q. Then, let us add the next clause: "Exclusive of slush, rock, dirt, etc., of no value."—A. Well, he meant—

Q. Taking that in connection with the "55,000 gross tons (available)," it means that he thought that there were 55,000 gross tons of coal—do you not think so?—A. No, sir.

Q. When you exclude the "slush, rock, dirt, etc., of no value," what else is there left in the dump?—A. Culm.

Q. What is culm?—A. Culm is the material that is made from breaking down the coal.

Q. Well, do they not generally call that slush?—A. No, sir.

Q. So you think that includes everything, then, except what you call the culm? It is fine coal, is it not?—A. Fine coal.

Q. And it is used?—A. It is sized and marketed.

Q. And used and marketed, is it not?—A. Yes.

Q. So you think he means there 55,000 tons exclusive of everything in the dump, excepting the culm?—A. He means 55,000 tons of culm.

Q. How is that?—A. In my opinion he means 55,000 tons of culm; that is, before it is sized. It is the gross material.

Q. Not including rock?—A. No, sir; not including rock.

Q. Not including dirt?—A. Nor including dirt.

Q. It includes all the coal material?—A. All the coal material.

Mr. Manager STERLING. That is all.

Redirect examination by Mr. WORTHINGTON:

Q. Did you understand by that that there were 55,000 tons of coal there which could be utilized and sold?—A. Of culm before it was sized.

Q. What percentage of that would be waste; how does it run in these dumps?—A. It runs differently in different dumps. Mr. Johnson's test shows just how much slush there would be in it. They call it that; it is the material that would pass through a $\frac{3}{4}$ -inch mesh; that would be waste, and that was included in this.

Q. That was included?—A. Yes.

Q. Mr. Johnson has given us the figures as to what proportion of this 55,000 tons would be material that could be sold?—A. I think that is in evidence.

Q. I know it is. Now, did you talk with Mr. Merriman when he made this report to you?—A. Not particularly. I took his report because we always make our reports in gross—I mean taking the entire culm bank—and I took that as the quantity there.

Q. When you received that you understood it to mean 55,000 tons of culm?—A. I did.

Q. And not 55,000 tons of coal?

Mr. Manager STERLING. We object. The witness has just said that that meant all coal material in the culm.

Mr. WORTHINGTON. Yes; but I submit, Mr. President, that is not fair to the witness, because, while he says it means culm, he says a large part of that would be waste, which would not be available at all. That is what you say, is it not, Capt. May?

The WITNESS. Yes; that it is culm, but in that culm there would be material that would pass through a $\frac{3}{8}$ -inch mesh, which we could not market. That means the gross amount of culm. I can not make it plainer than that.

Recross-examination by Mr. Manager STERLING:

Q. But this report of your engineer says 55,000 tons are available. That is what you had before you when you made this offer, is it not—that 55,000 gross tons were available?—A. Of culm, not of marketable material.

Q. What does he mean by "available," Mr. May?—A. Well, I understood that he meant material that could be used.

Mr. Manager STERLING. That is all.

Mr. WORTHINGTON. That is all, Capt. May.

The WITNESS. May I be excused?

Mr. WORTHINGTON. So far as we are concerned, we will be very glad to have Capt. May finally discharged.

The PRESIDING OFFICER. Do the managers desire that the witness shall be detained further?

Mr. Manager CLAYTON. The witness may be discharged, Mr. President.

The PRESIDING OFFICER. The witness is finally discharged.

Mr. WORTHINGTON. Now we should like to have Mr. Saums recalled, if we may.

H. W. Saums, having been previously sworn, was recalled and testified as follows:

Q. (By Mr. WORTHINGTON.) Will you look at this letter dated February 12, 1909, purporting to bear your signature and addressed to Mr. Henry Belin, jr., president of the E. I. Du Pont Powder Co.? Is that your signature?—A. (After examining letter.) It is; yes, sir.

Q. Is that the letter which you sent to Mr. Belin at that time after you had made an investigation of the Katydid dump?—A. Yes, sir.

Q. I will show you another paper dated February 12, 1909, addressed "Dear Sir" only and purporting to be signed by you. Is that your signature and your report in this matter?—A. (After examining paper.) Yes, sir.

Q. I show you another paper without date which is entitled "Estimate of different sizes of coal and value of same contained in the

Katydid culm dump," purporting to have your signature. Is that your signature?—A. (After examining paper.) It is; yes, sir.

Q. Do these several papers contain the result of your investigations into the Katydid dump, or only the result of the first investigation and not the second?—A. This last [indicating] has reference to the second examination that I made, and this [indicating] has reference to the first.

Q. That is the letter to Mr. Belin of February 12, 1909, and the paper addressed "Dear Sir" of that date referred to the first investigation?—A. Yes, sir.

Mr. WORTHINGTON. Now, Mr. President, conforming to our understanding of a few moments ago, I first offer in evidence his report after the second examination, as to which we agreed.

Mr. Manager STERLING. That is included in the agreement. We do not object to that.

Mr. WORTHINGTON. Very well. Then, I will ask to have that marked and read now, and then we will see whether we can get the rest of it in.

The PRESIDING OFFICER. The Secretary will read as requested.

The Secretary read the paper marked "Exhibit W," as follows:

U. S. S. EXHIBIT W.

Estimate of the different sizes of coal and value of the same contained in the "Katydid" culm bank.

	Tons.
Number of gross tons in old bank, being 15 per cent of the total	13,500
Composed of—	Tons.
18.7 per cent slate	2,525
17 per cent culm	2,295
7 per cent coal larger than pea	945
0.6 per cent pea	81
21.2 per cent buck	2,862
21.5 per cent rice	2,902
14 per cent barley	1,890
	13,500
100	
Number of gross tons in new bank, being 85 per cent of the total	76,500
Composed of—	Tons.
15 per cent slate	11,475
28 per cent culm	21,420
2.9 per cent coal larger than pea	2,219
0.3 per cent pea	229
8.1 per cent buck	6,196½
23.5 per cent rice	17,977½
22.2 per cent barley	16,983
	76,500
100	
Total number tons of each size in both banks and value of same on the ground:	
Slate, 14,000 tons.	
Culm, 43,715 tons.	
Coal larger than pea, 3,164 tons, at \$1.80	\$5,695.20
Pea, 310 tons, at \$1.50	465.00
Buck, 9,058½ tons, at \$1.10	9,964.35
Rice, 20,879½ tons	14,615.65
Barley, 18,873 tons	5,661.90
	\$6,402.11
Total (90,000 tons)	\$6,402.11

H. W. SAUMS.

Q. (By Mr. WORTHINGTON.) Mr. Saums, from your investigation of this dump and your knowledge of the subject, what do you say as to whether or not that dump at the time you made that investigation which resulted in the report just read was one that would pay to put a washery to work?

Mr. Manager STERLING. We object. It is wholly immaterial.

Mr. WORTHINGTON. I suppose the question whether this dump was worth anything would depend, in the first place, upon the material in it and the value of that material, and then what it would cost to get it out.

The PRESIDING OFFICER. Upon that the witness would be justified in testifying as to what he thought was the value of the dump, and he could give as his reason the amount of material to be found there and the cost of extracting it. In other words, the Chair thinks the question of counsel asks him to testify to a conclusion. He ought to state the facts and let the Senate find the conclusion.

Mr. WORTHINGTON. I am asking him what would be the cost of a proper washery to take out that dump and wash the material in it.

Mr. Manager STERLING. We object.

The PRESIDING OFFICER. The Chair thinks that that is legitimate.

Q. (By Mr. WORTHINGTON.) Answer my question.—A. Shall I answer that question?

Q. Yes; the President rules that you may answer the question.—

A. May I ask whether you refer to the washery alone or the complete plant?

Q. I mean the complete plant.

The PRESIDING OFFICER. The witness will answer the question as asked.

Q. (By Mr. WORTHINGTON.) I mean whatever construction would be necessary to get the coal that is merchantable out of the material that was not merchantable, separate it and have it ready to sell.—A. In the neighborhood of \$35,000.

Q. Have you given any consideration to the question of a scraper line, to take that material—you have seen the Consolidated washery near the Katydid dump?—A. Yes.

Q. You know all about that situation, do you?—A. I am somewhat familiar with the location there; yes, sir.

Q. Have you made any calculation as to whether or not a scraper line from the Katydid dump could be utilized in connection with that Consolidated washery?—A. Oh, yes; it could be done. What would the cost of a conveyer line be from the Katydid bank to the Consolidated breaker?

Q. Yes; that is the first question.—A. About \$4.50 a foot. In other words, between \$8,000 and \$10,000.

Q. And that scraper line would be valuable for what when you got through with it?—A. Scrap, generally.

Q. Would you require anything but the mere track itself?—

A. Yes. The \$8,000 to \$10,000 would be exclusive of the pump and water pipes.

Q. Well, what would the whole thing cost? I mean to do whatever was necessary to get the culm from the Katydid dump to the Consolidated washery?—A. Between \$10,000 and \$11,000.

Q. Do you know whether or not when you get the coal there to the Consolidated washery it is equipped to get out the larger sizes of coal above pea?—A. I do not.

Q. You do not know?—A. No.

Q. In the calculation that you have made in the report which is in evidence—U. S. S. Exhibit W—what size mesh did you have in mind when you put the item "barley" at 18,873 tons?—A. Through three-sixteenths round and over one-sixteenth round.

Q. Is that the customary size of the mesh?—A. It is what we use, sir.

Q. There is another subject I wish to ask you about, Mr. Saums, and that is as to what extent, if at all, you can get out chestnut coal, coal of the chestnut size and above, in a dump like this, or in this particular dump?—A. You can get a certain per cent of chestnut, but not prepared so it will enter into competition with freshly mined chestnut.

Q. Why is that?—A. Owing to its appearance. The larger size—nut coal, for instance, made from the washery—is composed largely of different grades of bone, with some pure coal, of course, and it carries a much larger per cent of ash than the freshly mined coal. Therefore we have never found it practicable to prepare this coal clean enough to have it compete with freshly mined coal. We sell it for from 75 cents to \$1 a ton less than the circular price for freshly mined coal of that size.

Q. I notice in this report of yours, which is in evidence, you have put this "coal larger than pea, 3,164 tons," at \$1.80. Why do you put it at \$1.80 in view of what you have just said?—A. In making that report for Mr. Belin he gave me to understand that he did not wish to erect a washery there, but he wished to use this fuel for a power plant he proposed to locate back across the hill.

Q. Of the Du Pont Powder Co.?—A. Yes, sir. And he wanted to use this material—coal, slate, and culm, all mixed together—and he asked me to put a value on it. Therefore I had to classify it to a certain extent, you see.

Q. In reference to his use?—A. In reference to his use; yes.

Q. If you were computing it with reference to putting it on the market generally—A. (Interrupting.) I would have computed it as per my first report.

Q. And what would that be?—A. \$2.30, I believe, I used for nut coal.

Q. Suppose the scraper line to have been constructed as you have estimated, from the Katydid dump to the consolidated washery, what would be the cost of operation? You have told us, now, what would be the cost of the construction required to get the coal from the Katydid dump to the consolidated washery. What would be the cost of operation per ton?—A. I think 30 cents would be about right.

Q. According to your estimate, that would cost how much—30 cents a ton for how many tons? Let us see what the ultimate result would be.—A. (After calculation.) \$15,685.50.

Q. Does that estimate include the cost of operating the scraper line or the scraper line and washery both?—A. That includes all of the operating expense.

Q. Now, in reference to the map to which you referred yesterday, you see in the southwest corner of it, as it hangs on the wall, is a part called the conical dump. Do you see that?—A. Yes.

Q. Did you include that in your estimate?—A. Yes.

Q. As of the same average quality as the rest of it?—A. Yes, sir.

Q. You knew nothing, as a matter of fact, as to what was in the core of that conical dump?—A. No, sir; I did not. I assumed that everything that could be seen was coal.

Mr. WORTHINGTON. That is all.

Cross-examination by Mr. Manager STERLING:

Q. And if your assumption was correct, and according to the testimony in the case you think that your estimate of the amount of the coal in that conical dump is correct, do you not?—A. According to my test; yes, sir.

Q. You did not test the material that was down in the draw there, did you? The testimony is that they filled up a draw there. There was a fill there under the conical dump. You did not test anything down there?—A. No, sir.

Q. And you did not estimate for it, did you?—A. No, sir; because I knew nothing about it.

Q. You made this investigation for the Du Pont Powder Co.?—A. For Mr. Belin of the Du Pont Powder Co.; yes, sir.

Q. And at that time the Du Pont Powder Co. was a prospective purchaser?—A. I presumed so.

Q. And you estimated the value of this coal at what you thought it would be worth to them for their use?—A. I estimated what I thought it would be worth on the ground, the cost of picking it up.

Q. I understood you to say that this coal, which you estimated at \$1.80 a ton, would be worth \$2.30 on the market?—A. Yes, sir.

Q. It would be worth 50 cents more a ton, would it, on the market than your estimate here?—A. Allow me to explain, if I may.

Q. Answer my question first and then you may explain. Is that what I am to understand?—A. Not in that size, sir.

Q. The size that you have estimated at \$1.80, I understand you say, would be worth \$2.30 on the market; is that right?—A. That represents sizes from what we call broken—

Q. I am not asking you what sizes. But this coal, which in your report you estimated at \$1.80, for the Du Pont Powder Co. purposes, you would consider worth \$2.30 on the market?—A. If it was reduced to nut coal; yes, sir.

Q. Now, you may make any explanation you see fit about sizes.—A. Very well, sir. This coal larger than pea is composed of various sizes, from what we call steamer and broken size down to nut size. In washery practice all these sizes promiscuously are run through a set of rolls and reduced down to nut. We do not find it practicable to make any size larger than nut coal from a washery. In this process of grinding a great deal of it, of course, is reduced into small sizes and some goes off in dirt, in waste. That is why I made that difference of 50 cents, the difference between \$1.80 and \$2.30 a ton.

Q. And you say chestnut coal is not worth so much when you get it from a culm dump as when you get it from the mine?—A. No, sir.

Q. That it is worth 75 cents to a dollar less per ton on account of its appearance. Now, what was chestnut worth at that time in

Scranton, from the mine?—A. I can not answer that question. The circular price at that time was about \$3 a ton, I think.

Q. About \$3 a ton there?—A. At tide; I am speaking of tide.

Q. Mr. Saums, you have divided the culm dump into two parts. I wish you would add the percentages in both parts of everything except what you have marked as slate. That is, all the different kinds of coal; add the percentages in both parts. What is the percentage of coal in the old part, that which you have marked the old part of the culm; what is the total of the percentages of coal material in the old part of the dump according to your report?—A. I do not think I understood you right at first.

Q. Well, I will ask you to add the percentages.—A. The total percentage is 100 per cent.

Q. I said of the coal; I said excepting the slate?—A. Oh, I beg your pardon.

Q. Just deduct the slate from 100.—A. All right, sir.

Q. How much is the percentage in the old part?—A. Eighty-two and thirty one-hundredths per cent.

Q. What is the percentage in the new part?—A. Sixty-seven per cent.

Q. What is the total number of tons of coal in both parts according to your report? That is, of everything, of all the kinds of coal material in the dump?—A. Exclusive of the—

Q. Exclusive of the slate. That is the only thing you marked there as waste, I think. How many tons of coal are there in the dump according to your report?—A. In both dumps?

Q. In both of them together.—A. (After calculation.) Fifty-two thousand two hundred and eighty-five tons.

Redirect examination by Mr. WORTHINGTON:

Q. Does that mean coal or culm?—A. Coal.

Q. Can you tell us what proportion of that would be of a size under pea?—A. Seventy-six and a fraction per cent of that would be under pea size.

Mr. WORTHINGTON. That is all

Mr. Manager STERLING. That is all.

Mr. WORTHINGTON. This witness may be discharged, as far as we are concerned.

The PRESIDING OFFICER. The witness is discharged finally.

Mr. WORTHINGTON. Now, we will call Mr. Jennings.

Q. (By Mr. WORTHINGTON.) Since you were upon the stand have you obtained the original figures of the engineer who made the estimate upon which you based your figures?—A. Yes, sir; I have.

Q. Have you it with you?—A. I have the notebook.

Q. Whose figures are those—whose book?—A. That book was used by Mr. Merriman.

Q. Where did you get it?—A. I sent to Scranton and got it from the office.

Q. From the Hillside company's office, where you were employed?—A. Yes.

Q. From where he was employed?—A. Yes.

Q. I wish you would go on with the calculation you were making when you were on the stand and was stopped because we did not have the original document here. Have you gone over his figures?—A. I had that map.