Beards, Ky. 4/1/U6

Swigert Taylor, Esq.,

Frankfort, Ky.

Dear Sir;-

Enclosed find copy of original list of members of Virginia Society of the Cincinnati; also "Rules for admission of Members". If it be impossible to establish your farther as the legal descendant of Col. Richard Taylor in the So., we may be able to find the right in him through some the female branches, i, e, the Gibsons; or, through a "waiver." Perhaps the Society would permit me to "waive" one of the two rights to which I am entitled in his favor.

As to putting me to work, I hope that you and the Colonel will strain a point and take time to take this matter up. I feel sure than I can make good and you will have no cause to regret it. Dont think me too importunate, but I have been idle now nearly three months, and I MUST get to work if only as a laborer.

As you suggested any day, or rather afternoon next week, I shall take the liberty of coming Thursday afternoon.

Yours truly,

G. D. Ripley

(Two enclosures)

Beards, Ky. 4/10/06

Swigert Taylor, Esq.,
Frankfort, Ky.

Dear Sir;-

I had a long letter from Mr. Lorton yesterday in which among matter he says-" I have written the descendants of Robert and Eugence Crittenden and have had no reply to my letters, nor have they been returned as undelivered, I will therefore try in the Collateral branches." I therefore take the liberty of enclosing you the Official "Application blank", together with the "Rules of Admission", as you indicated a wish to have Mrs. Taylor's brother have the membership in case Burnley and his brothers did not care for it; I would suggest that as the Virginia Society is making strenous efforts to get their membership on a good footing that you have no time to loose in putting the matter before "John J.", meanwhile getting a letter from each of Mrs. Robert's sons saying they do not care for the right and waive it; this would put the legal right in your brother-in-law, and I would like for this application should go forward quickly.

Kindly advise me of your wishes in this matter promptly. I have had no reply to my request conserning your copy of the Taylor Genealogy apropos of getting the Colonel through.

Yours truly,

G. W. Ripley

THE SOCIETY OF THE CINCINNATI

IN THE STATE OF VIRGINIA.

OCTOBER 6TH, 1783.

RULES FOR ADMISSION OF MEMBERS.

BY-LAWS ADOPTED DECEMBER 15TH, 1905.

ARTICLE XIII.

ADMISSION OF MEMBERS.

SECTION 1. All applications for admission shall be in writing in the form and manner prescribed by the Society, addressed to the Standing Committee which may require any proof which it may deem proper in support of such application or any testimonial with respect to the character and standing of the applicant. The Standing Committee shall consider and report in writing upon each application to the Society at its annual meeting, with all facts in each case. No application after adverse decision by the Standing Committee, shall be allowed to be withdrawn. No person shall be admitted as a member unless he shall be twenty-one years of age, nor unless his claim and application for admission shall have been before the Standing Committee at least two months prior to the annual meeting, at which he may be voted for as a member.

SECTION 2. No person shall be admitted a member of the Society (whatever may be his relation to an original or other member of the Society), unless he be of good moral character and reputation and be (as required by the Institution) "judged worthy of becoming its supporter and member."

SECTION 3. This Society will "judge of the qualifications of the members who may be proposed" according to the qualifications prescribed by the Institution, as follows, under the English law of primogeniture.

(*a*) The eldest male lineal descendant of "all officers of the American Army, as well as those who have resigned with honor after three years' service in the capacity of officers, or who have been deranged by resolution of Congress upon the several reforms of the Army, as those who shall have continued to the end of the War" who "subscribed one month's pay and signed their names to the general rules," "those who are present with the Army immediately, and others within six months after the Army shall be disbanded, extraordinary cases excepted," and "such officers as have died in the service."

(*b*) With respect to "officers who resigned with honor after three years' service in the capacity of officers," when all or a portion of such service was performed as a Commissioned Officer in any of the Virginia troops specially raised for considerable periods of service, and taken on the Continental Establishment, such portion of service is construed as intended to be embraced in the designated period. (See opinion of General Meeting, 13th May, 1784.)

(*c*) With respect to the dates referred to in "Sec. 3," paragraph "*a*," the following are accepted by this Society as the official dates for the purposes of these By-Laws:

"American War of Independence" ran from April 19, 1775, to December 3, 1783, which latter date was final evacuation of Atlantic ports, when Governor's Island, New York Harbor, was formally relinquished. "End of War" officially declarel to be on April 19, 1783, per General Orders dated Army Headquarters, Newburgh, April 18, 1783. Institution of the Society of the Cincinnati, adopted May 10 and 13 and June 19, 1783. American Army finally disbanded June 20, 1784.

(*d*) With respect to the words "extraordinary cases excepted," embodied in the Original Institution in connection with the rules for admission of members, the same are hereby accepted by this Society to apply only (in the true meaning and intent of the Founders of the Order) to certain isolated and special cases that may come up from time to time, and which are to be judged separately in each case on their particular merits alone; and the words "extraordinary cases excepted" are in no sense to be construed, under the Original Institution, as applying, or as intended to apply, to *all* the officers of the entire Revolutionary Army regardless of the fact whether or not those officers became members of the Society of the Cincinnati.

(*e*) The eldest male lineal descendent of "those officers who are foreigners, not resident in any of the States, are to be considered as members in the Societies of any of the States in which they may happen to reside."

(*f*) In failure of the eldest male lineal posterity of original members as above, or of "such officers as have died in the service," the collateral branches shall inherit membership in the Society in the order of the eldest male line according to the English law of primogeniture "who may be judged worthy of becoming its supporters and members."

(*g*) In all cases of representation or succession through females the eldest branch shall be preferred to the younger.

(*h*) When a right of membership, derived from an original member or other officer, shall descend in succession to one already a member in another and a different right, the one next after him in the order of descent from the first-named right may be admitted to membership in the Society if "judged worthy of becoming its supporter and member."

(*i*) The eldest male descendant of full age, if residing in the State of Virginia, of an original member of any State Society, may be admitted into this Society (if judged worthy) upon the payment of such assessment as the Society or the Standing Committee may determine, but such sum shall not be less than $150, and shall be applied to the Permanent Fund.

(*j*) Any member of the Society of the Cincinnati, from another State Society not acting with the same, removing to, and residing within the State of Virginia, may be admitted to membership in this State Society on application and election as provided in these By-Laws and on payment into the treasury for the Permanent Fund of such assessment as the Society or the Standing Committee may determine, but such sum shall not be less than $150, and provided his own State Society is first notified in writing of the intended transfer and no reasonable objection is made thereto.

(*k*) Whenever any person shall be admitted to the right to become a member of the Society, it shall be the duty of the Secretary forthwith to give him notice thereof, and the person thus admitted must immediately thereupon subscribe the roll and pay whatever may be required by the rules and regulations, By-Laws, order of the Society or the Standing Committee, and make in writing, the following "Declaration," viz.:

MEMBER'S DECLARATION.

I , of
a member elect of the Society of the Cincinnati, do declare that I am the
of whose full rank and command (or in case of honorary members,
military or civil services are to be here stated) in the War of the Revolution was ,
and I do hereby assume the obligations of the Society of the Cincinnati, and do bind myself to

observe and be governed by its principles and to conform to the Rules and Regulations of the Society of the Cincinnati in the State of Virginia for the performance whereof I do pledge my sacred honor.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name at this the day of , in the year of our Lord one [SEAL.] thousand nine hundred and , and in the one hundred and year of the Independence of the United States.

.....

And in case he neglect so to do for the space of one year from the date of the vote or election admitting him to the right to become a member, such vote or election shall be, and be deemed and held to be, revoked, annulled, inoperative, and entirely void, and he shall not thereafter be entitled to subscribe the roll, or be considered in any way as a member of the Society or entitled to become such, unless upon a new application for admission, he shall again be admitted to such right, or unless by a vote of a majority of the members present at the annual meeting of the Society, the time be extended before or at the time it would otherwise expire.

(*l*) Waivers shall be accepted when they are in favor of the heir apparent, but never in favor of the heir presumptive.

ARTICLE XIV.

HONORARY MEMBERS.

Honorary members may be admitted to the Society for their own lives only, and provided always that the number of honorary members of the Society shall not exceed a ratio of one to four of the hereditary members thereof.

* * * * * * * * *

"Men who are eminent lineal descendants or representatives of those who were distinguished by high military or civil virtues and services in the Revolutionary War." Such honorary members shall pay into the treasury of the Society for the permanent fund, under the rules prescribed in Article XV., a sum to be fixed by the Society or Standing Committee, but in no case to be less than $150, and shall be entitled to vote and hold office in the Society under the provisions of these By-Laws.

ARTICLE XV.

ASSESSMENTS FOR PERMANENT FUND.

SECTION 1. Each person upon being notified by the Secretary of his election to hereditary or honorary (Art. XIV., Sec. 2, par. *b*) membership, shall pay into the treasury of the Society, for the Permanent Fund, within six months after such notification is mailed, a sum equal at least, to an average of one month's pay of the commissioned officers of the Revolutionary Army, which sum is hereby fixed at $150. This amount shall not be less than $150, but may be increased for new members from time to time by the Society at any annual or stated meeting.

SECTION 2. In its discretion and for satisfactory reasons the Society or the Standing Committee may extend the time for paying the above assessment to the Permanent Fund.

SECTION 3. After the prescribed assessment to the Permanent Fund has been paid by a member, there shall be no further assessments against him or his successors.

OBJECT OF PERMANENT FUND

The Treasurer shall so far as possible separate and preserve distinct so much of the funds of the Society as represent the amount assessed against each member, representing the one month's pay delivered to the Treasurer of the State Society by the original members, together with all donations made to this fund "for the express purpose of forming permanent funds for the use of the State Society," from that portion received from other sources. These funds shall remain inviolate forever, "the interest only of which, if necessary, to be appropriated to the relief of the unfortunate" members of the Society and their surviving families, by direction of the Society or the Standing Committee. If appropriations for relief do not demand the full amount of the annual interest, so much of the remainder as is needed may be used for the general expenses of the Society, after which any balance still remaining shall be disposed of as the Society or the Standing Committee may deem proper.

MEMBERSHIP COMMITTEE.

HETH LORTON, CHAIRMAN,
DR. PHILIP T. SOUTHALL,
WILLIAM WELDON BENTLEY.

APPLICATION FOR MEMBERSHIP

IN THE

Society of the Cincinnati in the State of Virginia.

OCTOBER 6TH, 1783

_____ 19____
(Place) (Date)

To the Standing Committee of the
Society of the Cincinnati in the State of Virginia.

GENTLEMEN:

I,_____, have the honor to make application for_____(1) membership in the Society of the Cincinnati in the State of Virginia, by right of descent from_____ who was_____(2) of the Virginia Continental Line, and_____(3) member of the said State Society, and in support of this application append hereto an affidavit of my descent from the said _____

I declare upon honor, if admitted an_____(1) member of the Society, I will endeavor to promote the purposes of the Institution, and conform to the Rules and Regulations of the Society of the Cincinnati in the State of Virginia.

Name in Full, _____

Profession or Occupation, _____

Address, _____

Enclosed herewith are letters of endorsement from the following gentlemen: (4)

(Full Name) (Address)

_____

_____

_____

The Undersigned, a member of the Society of the Cincinnati in the State of_____approves and recommends the above applicant for membership.(4)

Name. _____

Address. _____

(1) State here whether Hereditary or Honorary Membership.
(2) State here rank and command of ancestor.
(3) State whether your ancestor was an "Original Member," or "Died in the Service."
(4) The applicant must have the endorsement of at least two gentlemen of prominence, as well as the endorsement of one member of the Society of the Cincinnati.

National Number _____ State Number _____

The KENTUCKY Society

OF THE

SONS OF THE AMERICAN REVOLUTION

SUPPLEMENTAL APPLICATION

Of EDMUND HAYNES TAYLOR, JR., descendant of Captain Lydall Bacon

Examined and approved _____ 19 | Forwarded to Registrar General _____ 19

_____ *State Registrar.* | Approved by Registrar General _____ 19

I, EDMUND HAYNES TAYLOR, JR., am a lineal descendant of CAPTAIN LYDALL BACON, who was born in New Kent Co. Virginia. on the ~ day of about 1740, and died in New Kent Co. ", on the ~ day of about 1805, and who assisted in establishing American Independence.

I was born on the Thirtieth day of November 1886.

(1) I am the son of Jacob Swigert Taylor born 1853, died living and his wife Sadie Bacon Crittenden born 1859, died living married 1880

(2) grandson of Eugene Wilkinson Crittenden born 1832, died 1871/1874 and his wife Laura Bacon born 1833, died 1898, married 1855

(3) great-grandson of Williamson Bacon born 1804, died 1845, and his wife Ann Noel born 1805, died , married 1824

(4) great-great-grandson of John Bacon born 1767, died 1817, and his wife Elizabeth (Betsy) Ware born , died 1849, married 1799

(5) great-great-great-grandson of Captain Lydall Bacon, born , died , and his wife Ann Epperson born , died , married 1765

(6) great-great-great-great-grandson of _____ born , died , and his wife _____ born , died , married

The services of my ancestor, Captain Lydall Bacon (No. 5), during the War of the Revolution were as follows:

Captain New Kent County, Militia

Captain Lydall Bacon, married 1st. Anne Apperson, and had:

I. John, b. March 10, 1767 D. May 19, 1817
II. Lyddall, b. August 24, 1775
III. Langston, b. Aug. 26, 1777
IV. Edmund, B. Aug. 26, 1780

Lyddall

John Bacon, son of Lydall and Anne (Appersen) Bacon, born March 10,1767; died May 9, 1817; Married 1st. Anne Patterson; Married 2nd. May 31, 1799, Elizabeth Ware, b. _____ d. July 30, 1849, daughter of William and Sarah (Samuel) Ware. Elizabeth was under age at time of marriage, and her father gave his consent. Children of John and Elizabeth (Ware) Bacon:

I. Anne Appersen, b. March 28, 1800; D. 1888; M. May 1, 1821, Rev. Philip Slater Fall, A.M.b. 1793 d. 1891

II. Sarah Ware, b. March 24, 1802; d.

III. Williamson Ware, b. March 7, 1804; d. _____ M. Nov. 3, 1824, ANN NOEL, daughter of SILAS M. NOELL

IV. James Ware, B/ March 23, 1807; D._____; M. March 24, 1836, Alice Riggs

V. Richard Appersen, b. July 2, 1809; d. _____ m. April 15,1830, Elizabeth Ellen Terrell

VI. John Mosby, b. Oct. 31,1811; d. _____; M. March 29, 1835, Sarah Jane Haggin

~~VII.~~ [illegible]

VII. Elizabeth P. ,b. May 7, 1814.d. Oct. 15, 1850; m. Dec. 31, 1839, B. T. C. Bryan

VIII. Albert Gallatin, b. Dec. 8, 1816, Captain U.S. Volunteers; Killed in action at Sacramento,Ky. Dec. 28,1861

WILLIAMSON WARE BACON, son of John and Elizabeth (Ware) Bacon, born, March 7, 1804; died March 17, 1845; M. Nov. 3, Ann Noel, daughter of Silas M. Noel, and had:

I. Maria H., b. April 11, 1826; m. John Adair Monroe

II. Anne Caroline, b. May 1, 1828; d. 1913; M. Cal. 1.Lewis

III. Sarah C.; M. Frank Pryor

IV. LAURA, b. Sep. 14, 1833; died Aug. 1,1898; M.Sep. 13,1855 EUGENE WILKINSON CRITTENDEN, b. July 3, 1832; D. Aug. 1,1874.

V. Alice, b. Aug. 12, 1836.

VI. Williamson Ware, b. Feb.3, 1844; m. Elizabeth Glass

The following are references to the authorities for the above statements :

1. "Council Journals," Miscellaneous Volumes, beginning with 1176 and continuing to end of War, Vol.7,page 139; War, 23
2. Governor's Letter Book, (MS.) 1782, page 218.
3. Auditors Account Book, Va.,1779, page 168
4. Auditors Account, Va. Vol. VIII., page 82, 213
5. Bounty Warrants of Virginia.
6. Revolutionary Soldiers of Virginia, 1912, page 27.

(Signature of applicant) _____
(Name in full.)

[The following form of acknowledgment is required.]

STATE OF _____ }
COUNTY OF _____ } ss: _____ I _____

Personally appeared _____

_____

signer of the above and foregoing application and statement, and made oath before me that the statements therein contained are true to the best of his knowledge and belief.

Official Signature,

_____

[L. S.] _____

PROOF OF DESCENT OF MRS.CHAS.W.HAY(Mary Belle Taylor)

1. MARY BELLE(TAYLOR)HAY was the daughter of -

JACOB SWIGART TAYLOR,B.Frankfort,Ky.Sept.30,1853;d."scotland",Franklin Co.Ky.1928;m.Frank
Nov.24,1880-
SALLIE BACON CRITTENDEN,b.Frankfort,Aug.27,1859; d.

MAJOR EUGENE CRITTENDEN,b.Frankfort,Ky.July 3,1832;appointed Military Academy;rose to Major,
m-Sept.30,1855- died at Camp Grant ,Arizona,Aug.1,1874;buried at
LAURA BACON, Presidio,San Francisco,Cal.

HON.JOHN JORDAN CRITTENDEN,b.Woodford Co,Ky.Sept.10.1787;d.July 26,1863,Kentucky.Graduated at
m.2"Nov.15,1826 Wm& Mary,Va.1807;Atty.Gen'l for Arkansas,1809-11;
Mrs.MARIA KNOX(INNIS)TODD. On staff of Gov.Shelby in War 1812;ten times member
Was 10 times elected to Ky.Legislature,4 times
MAJ. speaker of that House;Secretary of State of Ky.;
five times U.S.Senator,& twice Atty-Gen'l.U.S.
under two Presidents;elected Gov.Ky.1848.In the
Senate,he was the advocate of measures looking to
the adjustment of difficulties between the St &
Buried in the State Cemetery at Frankfort,Ky.

MAJ.JOHN CRITTENDEN,b.in Virginia;d.Woodford Co.Ky.,where he settled in 1793;He was ap
m. as an original member of the Society of
JUDITH[6]HARRIS Cincinnati.He represented Fayette Co.Ky.in
Legislature.(Woodford Co.Court Order Book,p.
divides the estate naming ... JUDITH.son,JOHN
J.Crittenden & others.) See Heitman' Reg.of of
of the Continental Army, Saffells,p258.415,5

of"Norwood"b.1732; 19 Nov.
MAJOR JOHN[5]HARRIS,b.Va.;Will proved Powhatan Co.Va. 1800;Member of Cumberland Co.Committee of
m.1754,24 Aug. Safety 1775-76;Had 7 children.
OBEDIENCE TURPIN (Thos&Mary Jefferson Turpin)b.Goochland Co.Va.

JOHN[4]HARRIS will proved in Cumberland Co-Va. 1751;He was b.1687.
Ursula JORDAN

THOMAS[3]HARRIS,b.1654-5;dMay 1730,will provedHenrico Co.Va.,June 1730;
m. They had 13 children- Jan.?
MARY____

[2]
* MAJ.WILLIAM HARRIS, Will proven in Henrico Co.Va.February 1,1678/9.
m. Justice for Henrico & Burgess for same Co.
LUCY 1652,1653,1656,1657-8.Maj.Chas.City Co.Va.
(Colonial Va.Reg.69,71,72 73;
CAPT.JOHN[1]THOMAS HARRIS,came to Virginia 1611;had grants,1635 & 1638;m1" Adria;
m.2" 1620, Burgess for Shirley Hundred,1623-4;1639-47.
ANN_____? Also,Captain of a Company of men fighting Indians.
Va.Mag.&.p.247-248; Col.Va. Reg.p.53,60,67.

... ...

[6]
JUDITH HARRIS who m.Maj.John Crittenden was daughter of-OBEDIANCE TURPIN,dau.of-

THOMAS TURPIN,b.Henrico Co.Va.9 May,1708;d.Powhatan Co.Va.20 June 1790;Will,Powhatan,B.L.180.
m.in Va. Lt.Col.of Cumberland Co.Militia,Aug.31,1758;
MARY JEFFERSON Wm& M-25,p.110;Wm & M-10.p,25,48 ,111.

... ...

MARY JEFFERSON ,b. daughter of-

[2]
THOMAS JEFFERSON,b.cir.1679;d.Henrico Co.Will made 25 March,1725;proven first Monday in
m.Henrico Co 20 Oct.1697 April.1731,in which he names daughter MARY .
MARY FIELD,b Feb.3,1680;d.Va.1715;

* MAJOR FIELD,,b. d.New Kent Co.Va.prior to 1709
m.21 1678 in Va. He was Burgess ,Henrico Co.Va.1688,1692-3;
JUDITH b.Va.1646.d.Va. Appointed Major in Henrico Militia,1699.
(Va.Mag.10.p.215;Wm&M-qt.24,p-268;Rich.Times
Dispatch7/6,1890.Col.Va.Reg.86 &88.

... ...

JUDITH SOANE,dau. of -

* HENRY SOANE, burgess ... Co.Va.165[illegible]-3-4-7-8-9-60:Military & Civil office h

Va. Mag. 23, p. 173-
Richmond Times Dispatch 7/6 1890

Episcopal High School of Virginia.

CERTIFICATE OF DISTINCTION.

Mr. Edmund N. Taylor, J.

having been distinguished by attaining to the First Division

in the 2D *Class of* French

in this School at the December & March *Examinations for the*

Session ending this day, has been granted this Certificate *thereof*

this 14th June, 1905.

L. M. Blackford, L.L.D.
Principal.

Angus McD. Crawford
Instructor.

EPISCOPAL HIGH SCHOOL OF VIRGINIA
ESTABLISHED 1839
PRINCIPAL'S
L.M. BLACKFORD M.A.
1870.
ALEXANDRIA.

1127

Episcopal High School of Virginia.

Certificate of Proficiency.

Mr. Edmund Haynes Taylor, Jr., of Kentucky,

having been distinguished at the **Intermediate and Final Examinations** in the

1st Class of English in this School for the

Session of 1904-05, has been granted this Certificate of Proficiency in the course

therein pursued, this 14th day of June, 1905.

L. M. Blackford, M. A., L. L. D.,
Principal.

Willoughby Reade, M. Ed.
Instructor.

Episcopal High School of Virginia.

Certificate of Proficiency.

Mr. Edmund Haynes Taylor, Jr., of Kentucky,

having been distinguished at the **Intermediate and Final Examinations** in the 1 Class of Politics, Government and Evidences in this School for the Session of 1904-05, has been granted this Certificate of Proficiency in the course therein pursued, this 14th day of June, 1905.

L. M. Magruder, L. L. D.
Instructor.

L. M. Magruder, L. L. D.
Principal.

Dont send this letter out of your possession. unless it go only to Taylor in case he is not at home.

THE PORTLAND · PORTLAND OREGON

H.C. BOWERS
MANAGER.

July 11th 1905

Messrs Ed. Taylor Jr Pres
Frankfort Ky.

Gentlemen:

We have the fight for existence on here. The standards I suspected have materialized. They have been actually printed by the Revision Committee on Standards for the States Collectively and the .25 % basal limit is there: also other things a sleigh unfavorable as if Hough himself had written them. I have hardly had an hours sleep in the last two nights. I came out here to stop, if prevent action, but it was taken silently

and I found things were to be slipped through, and no attention attracted.

The Standard Committee reports tomorrow finally.

I had an open breach with Meggs today and charged him to his face with being employed by Hough.

The President McConnell sought me out tonight and suggested that no rumpus be raised, but it is a fight for life for us, and I have gone [illegible] with blood in my [illegible] as Mark Antony did so you will see from the inclosed newspaper.

I am trying to get a copy of the Standard set up. I have given to every member of the Committee and argued against them. The Committee is in session again as I write.

Cordially Edward H.

E REQUESTED TO FAVOR THE COMPANY BY CRITICISM AND SUGGESTION CONCERNING ITS SERVICE 1201-S

WESTERN UNION

NEWCOMB CARLTON, PRESIDENT J. C. WILLEVER, FIRST VICE-PRESIDENT

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JUDGE C W HAY=

WIRE ME EARLY AS POSSIBLE TONIGHT IF YOU CAN YES OR NO ABOUT THE FOURTH TWO FIFTEEN EAST CHESTNUT STREET KINDEST REGARDS=

CHESTER MUSSON..

THE QUICKEST, SUREST AND SAFEST WAY TO SEND MONEY IS BY TELEGRAPH OR CABLE

A Lyske of ye Musick to be ſung & played at ye

CONCERTE

in ye Publick Hall on ye ſeventh day of ye month of Febr.

in ye yeare of our Lord, 1905

Josephus McNamara will open ye doore at half paſt ſeven. Ye ſinging will begin at eight o'clock,

GREATE CON

TIMEIST: Ruleff von S

ORGANER: Annabel Hezekian

HARPSICHORD: Hepzibah S

Ye WOMEN SINGERS: Mrs. Deliverance Higgins (fee that were a Todd), and Otherf.

Ye MEN SINGERS: Hezikian Prandy, Interpid Doowell, Joshua Billings, Timot

Ye Firfte Parte

1. Auld Lang Syne—
   All ye men and women in ye audience Blest with goode lungs are desired to stand and singe this.
2. My love's lyke a red red Rose - - - - - - - - All ye men and women singers
3. One parte songe - - - - - Love Sparks
4. Speakinge, - - - Mayflower Fairchield
5. Songes, - - - Intrepid Doowell
6. Spinning Songe—from ye Flying Dutchman, - - - - - All ye women singers

MINUETTE

Ye which will be stepped by some of ye beaux and Belles of Frankfort towne.

N. B.—Forafmuche as ye younge women who singe are shamefafaf, ye young menne are defired to loke awaie from them whenne thai singe.

N. B.—Any olde ladyes whofe foot stoves need frefh coals, can nowe have them sente in from Naber Fleming hys kitchen, as hys women folk will keep up a big fire on purpofe.

1. On
2. Tw
3. Tw
4. A
5. So
6. Di

N. B
goode
ftand
N. B
in and
wearie

Printed by Coyle ye Printer Man at ye Cross Roads of Maine and High in ye Frankfort towne

GREATE CONCERTE

TIMEIST: Ruleff von Schlitz Stratton

ORGANER: Annabel Hezekian Brown

HARPSICHORD: Hepzibah Simmons

Mrs. Deliverance Higgins (fee that were a Todd), Jerufha A. Billingf, Experience Pranty, Love Sparks, and Otherf.

ian Prandy, Interpid Doowell, Joshua Billings, Timothy Sprague, Si Perkins, Gen. Ephram Sparks & Otherf

te Parte

n in ye audience Blest with
ed to stand and singe this.
Rose - - - -
ye men and women singers
- - - Love Sparks
- Mayflower Fairchield
- Intrepid Doowell
ye Flying Dutchman, -
All ye women singers

ETTE

some of ye beaux and Belles
fort towne.

younge women who singe
menne are defired to loke
ai singe.

whofe foot stoves need frefh
ente in from Naber Fleming
folk will keep up a

Comin' thro' the Rye - -
- Blossom Sprague and ye Timeist

Ye Seconde Parte

1. One Parte Songe—John Anderson My Jo John,
- Deliverance Higgins (She that was a Todd)
2. Two Parte Songe—Dost thou love me Sister Ruth,
- - Prudence Slimmons and Ichabod Doty
3. Two Songes, Jarutha Cooper (See that was a Berry)
4. A piece fer ye violin and Harpischorde, - -
- - - - - Darl Dittesdorf Oehler
5. Songe—When ye swallows homeward fly, -
- - - - Rosemary Goodspeed
6. Dickory Dickory Dock, - - - -
- - - All ye men and women singers

N. B.—All thofe who are so much bleffed as to have goode lunges and religious training, are expected to ftand up and help singe ye laft hymne.

N. B.—Women with younge children may as well go in and sit at Nabor Fleming fyre, if so bee thai grow wearie—close bye ye Publick Hall.

Cross Roads of Maine and High in ye Frankfort towne

I Know you were a man of genius
It's just now dawning on me that
you know what's!

You're the best looker in
the house - You and the
other Henderson

So much for Franklin
association with the Franklin
County

Court of Appeals of Kentucky

E. H. TAYLOR, JR., & SONS - - - *Appellants*

vs.

MARION E. TAYLOR, Etc. - - - *Appellees*

PETITION OF APPELLANTS FOR MODIFICATION AND EXTENSION OF OPINION.

WM. LINDSAY,
J. H. HAZELRIG,
Of Counsel.

WM. McKEE DUNCAN,
Attorney for Appellants.

COURIER JOURNAL JOB PRINT, LOUISVILLE

Court of Appeals of Kentucky.

E. H. TAYLOR, JR., & SONS, *Appellants*,

v.

MARION E. TAYLOR, ETC., *Appellees*.

} Petition for Modification and Extension of Opinion.

May it Please the Court:

The appellants petition the Court to modify and extend the opinion herein rendered on March 17, 1905, in the following respects and to decide:

1st. That appellants have the exclusive right of trade mark in the words "Taylor" and "Old Taylor" applied to whisky.

2d. That appellants have not abandoned their trade mark in "Taylor" and "Old Taylor" by their application to the Patent Office to register their script signature trade mark nor otherwise.

3d. Appellants are entitled to an order of reference to ascertain profits of appellee on account of his unfair competition, whether he has infringed the technical mark of appellant or has fraudulently represented and sold his whisky as the whisky of appellants.

The following is a summary of the principles of the Law of Trade Mark and Unfair Competition applicable to this case.

(1) Unfair competition is the generic term for the wrongful commercial interference by one party with and appropriation of the business and trade of another.

(2) The piracy and infringement of trade marks is a branch of the law of unfair competition. In all cases of such piracy and infringement of a trade mark the unfair competition is the salient fact and basic principle upon which relief is granted.

(3) Technical trade marks are of two kinds and of equal dignity, symbols and words or names.

"It must constantly be borne in mind that there are two kinds of trade marks, one of the peculiar pictures, labels and symbols, and the other in the use of a name." (Fairbanks v. Luckel, 102 F. 330.)

(4) The office of the trade mark is to be applied to manufactured articles by the maker to designate and proclaim to the public interested in purchasing, (1) the maker of the goods, (2) the original owner and seller, (3) the place of manufacture, and (4) incidentally the quality of the goods.

(5) If the unfair competition be the infringement of a technical trade mark, a fraudulent intention is not necessary to be proven, it is implied against the infringer.

In all other cases of unfair competition a fraudulent intention on the part of the wrongdoer is essential to be proven.

(7) The relief granted by a court of equity in each case is the same, i. e., an injunction and reference to the commissioner to ascertain profits.

(8) In either instance a party can waive his equitable remedy of injunction and reference and proceed to recover damages at common law.

(9) Apart from the infringement of a technical trade mark, any act, use of words, device, signs, sounds, symbols, form of package or any representation whatever by which a party enables the retailer to sell his goods as the goods of another, or renders it probable that the unsuspecting consumer may buy the goods as the goods of another, is unfair competition and the guilty party will be enjoined by a court of equity.

These propositions we submit are practically axiomatic in the law of unfair competition and trade mark, and apply directly to the propositions contended for herein.

ARGUMENT.

I.

Appellants have the exclusive right to the trade mark in "Taylor" and "Old Taylor" applied to whisky.

The claim to these words dates back through E. H. Taylor, Jr., the senior member of the E. H. Taylor, Jr., & Sons, applied to whisky of his manufacture to 1867. In 1872 it was sufficiently well recognized throughout the United States as to be the subject of a special correspondence to the New York World, in which the name "Old Taylor" or "Taylor" was applied to whisky manufactured by the said E. H. Taylor, Jr., and continuously on, the whisky was designated "Taylor." "Taylor, O. F. C." and "O. F. C. Taylor," until January 1, 1887, when the partnership of E. H. Taylor, Jr., & Sons was formed it was adopted as its technical trade mark and as the name of its distillery in Woodford county. And continuously since it has been claimed and used as the exclusive right and property of that firm and its successor, the present appellants, without break, abandonment or a moment's cessation of claim or use.

As evidence of the exclusive and continuous claim to these trade marks, besides witnesses who testify in the case, we have the original suit of E. H. Taylor, Jr., & Sons v. Geo. T. Stagg Co., filed October 16, 1886, asserting exclusive claim to these trade marks. The Franklin Circuit Court, in its decision, April 9, 1891, confirmed and sustained these claims and this court in June, 1894, on appeal of Stagg Co. affirmed the lower court in case of Stagg v. Taylor, 65 Ky. 665.

This court, in enumerating the points to be decided, in that case states one of the points in this language: "And have the appellant's in connection with E. H. Taylor, Jr., or otherwise, so appropriated the name 'Old Taylor' for the whiskies theretofore made at the 'O. F. C.' and 'Carlisle' distilleries as to preclude the appellee, E. H. Taylor, Jr., & Sons from such use as a trade mark." And then on page

668 this court decides "Nor do we think the appellant can justly complain of the use of the trade mark 'Old Taylor.'" And again on page 669, "The judgment is also to be approved in denying to the appellant the use of the words 'Taylor' and 'Old Taylor' as a brand of their whisky, and in confirming such use to the appellee, and in dismissing the counter claim of the appellant."

This opinion therefore clearly shows and decides that from January 1, 1887 (when the partnership was formed), continuing on and embracing October 16, 1889 (when the original Stagg suit was filed in the Franklin Circuit Court), and continuing on up to at least April 9, 1891 (when the case was decided by the Franklin Circuit Court, from which the appeal in 95 Ky. was taken), the appellant had and claimed exclusive trade marks in the words "Taylor" and "Old Taylor" with continuous use.

In the suit by E. H. Taylor, Jr., & Sons (Corporation) v. Geo. T. Stagg Co., filed in the Franklin Circuit Court Dec. 27, 1897, the present appellant, as plaintiff, again asserted their exclusive right to the trade marks "Taylor" and "Old Taylor."

This court on appeal in Stagg v. Taylor, 68 S. W. p. 862, reversing the decision of the lower court, bases its opinion upon the fact principally that E. H. Taylor, Jr. Co. was not defunct, as decided by 95 Ky., and had never been dissolved or forfeited its right to continue business. Upon this one point alone it overruled the 95 Ky. case and the remainder of the case stands as authority. This court cites it as authority in its present opinion. If it is authority for the appellant on the point cited by this court it should also be authority for appellant in sustaining their exclusive claim to the trade marks "Taylor" and "Old Taylor."

The decision of the court on the validity of title to real estate is binding as to any future litigation on the same title.

For the same reason the decision on the title to these trade marks up to April 9, 1891 (decision of the Franklin Circuit Court) is binding as to all future controversy over the same trade mark from January 1, 1887, to April 9, 1891.

In this case filed June 9, 1896, less than two years after the decision in 95 Ky., appellants assert exclusive right and title to the trade marks "Taylor" and "Old Taylor" and assert and show continuous use of them on their whisky, and it continues to assert the claim to these words all the time as its chief and most distinguishing trade marks.

Thus, from January 1, 1887, to the present time, by the court records it is shown that their exclusive right to these trade marks has been constantly asserted and their use of them as trade marks on their whisky has been continuous, without a break. The testimony of witnesses in this case give abundant confirmation of these court records.

In addition to this, it is shown by the record and the other court records mentioned, that on January 1, 1887, E. H. Taylor, Jr., & Sons bought the distillery in Woodford county and named it "Old Taylor Distillery," and this same distillery, under the same name, has been owned by appellants and their predecessor of the same name continuously until the present time. Beginning with January 1, 1887, E. H. Taylor, Jr., & Sons branded the product of this "Old Taylor Distillery" with their trade mark, "Old Taylor," and continuously without break or cessation E. H. Taylor, Jr., & Sons, the partnership and the present appellants' successor to the partnership, have branded their whisky "Old Taylor", and *this whisky is known throughout the United States since January* 1, 1887, *to the present time as "Old Taylor" whisky* as its distinguishing name.

These records further show that appellants and their predecessors of same name have been the only parties who have ever owned in the United States an "Old Taylor Distillery", and also the only parties who have ever manufactured an "Old Taylor" whisky at an "Old Taylor Distillery" in the United States, and also the only parties in the United States who have ever branded whisky with the trade mark "Old Taylor" or asserted an exclusive right to use, and ownership of, the brand "Old Taylor."

These statements are demonstrated by the record.

"Exclusive claim" and "use" are the only means of

determining the validity of a trade mark, and as to appellant the test has been perfect as to these trade marks.

We assume that the court in deciding appellant abandoned its trade marks in "Taylor" and "Old Taylor" is of the opinion that the Taylor & Williams defense and the Bleeker defense can not interfere with appellants, and but for this abandonment its claim would stand.

The lack of exclusive claim on the part of Taylor & Williams, if no other reason existed, is sufficient to exclude it. In addition to that, it can not be pleaded in this case, on account of not being an exclusive claim. Parrett v. Guggenheimer, 10 Atlantic Rep. 81.

The falsehood expressed in the Bleekee claim: "Taylor Bourbon, Paris, Ky.," renders it void and unenforcible for any purpose. Raymond v. Royal Baking Powder, 85 F. 231; Uri v. Hirsch, 123 F. 565. See printed brief for appellant, filed in this case, for facts and authorities, pp. 82-86.

The "G. W. Taylor whisky" presents no obstacle.

We assert, as established, that the appellants have the exclusive right of trade mark in the words "Taylor" and "Old Taylor" unless abandoned by it on application to register the script signature.

II.

The appellant did not abandon their trade mark in "Taylor" and "Old Taylor" by their application to register the script signature trade mark.

The language of the application to register the script signature does not say in terms that appellant abandons their trade mark in "Old Taylor."

The words "Old Taylor" are mentioned only in describing how the trade mark has been generally arranged "in black script", "on a horizontal line", "within a circular border" "embracing the words 'Old Taylor' ". But *these* are non-essential—i. e. to the arrangement. It nowhere says it abandons "Old Taylor." It nowhere says the script signature has been used with "Old Taylor" as additions, but the additions used with the trade mark of the script signature are "Yours truly, Edmund H. Taylor, Jr., & Sons".

To say the least, the intention to abandon "Old Taylor" in the quotation of the court, is ambiguous, and the *intention* of the party using the ambiguous language becomes of vital importance in determining the meaning of the document.

The overwhelming weight of the facts and records in this case show absolutely no intention to abandon, but on the contrary, the most persistent open and aggressive claim to exclusive right and the most widespread and notorious use in advertisements and on packages, barrels and boxes and bottles containing the whisky from January 1, 1887, to the present time. If appellants have abandoned it, as the court seems to think, it is unfortunate, indeed, for them, for they have never conceived of such a thing and have spent no less than $200,000 to inform the people of the United States that they claim this trade mark; of which sum not less than $150,000 has been spent in giving notoriety to their claim to "Old Tavlor" since 1889.

There is no proof in this record that Marion E. Taylor at any time prior to this suit to enjoin his piracies ever knew of any such paper as the script signature application. There is absolutely no proof that he acted on it in any way or was induced to part with a dollar on the faith of that supposed abandonment, and in fact he never intimated in any of his testimony that the supposed abandonment was any part of his reason for adapting his "Old Taylor" in "Fine OLD Ky. TAYLOR."

THE COURT CAN NOT INFER ABANDONMENT.

Brown, Eng. Trade Mark, section 681, discusses abandonment: *"Abandonment itself is a fact, and not a conclusion of positive law, statutory or common, arising from any prescribed state of facts. The presumption is against it.* It must be set up in pleading to be availed of, *and upon him who thus sets it up rests the burden of clearly establishing by affirmative evidence a positive and actual abandonment or such laches as clearly indicate an intent to abandon."*

The Court, under the rule, can not presume abandonment from the language of the application quoted in the

opinion. "The presumption is against it"—abandonment. There can be no contention that appellee has *established by affirmative evidence a positive and actual abandonment* by appellants of the trade mark, because it is not only not true, but is contradicted by the express statements of the parties and every bit of testimony in the case. We challenge any one to show a word in appellee's testimony even remotely referring to an abandonment of this trade mark by appellants.

Every exhibit and every line of the testimony bearing on that question shows the use and claim to the exclusive right to this trade mark by appellant have been continuous since January 1, 1887, to this hour.

Again, "Abandonment may arise by *express declaration* or by conduct equally significant or by acquiescence."

No matter what latitude of construction is given to the language of the script signature application, it can not be said that it states in *express language* that appellants abandon "Old Taylor."

The Court arrives at its conclusion of abandonment clearly by construction and inference alone and this, according to that authority, can not be done legally.

Conceding as a fact that which does not exist, i. e., that there is a declaration of abandonment of "Old Taylor" in this script signature application this authority still says, "But a declaration of an intention to abandon does not always bind, for one is entitled to the *locus penitentiae*. There must *be something more than mere words. The intention must be manifested by acts,* and when so manifested it can not be recalled."

THE APPLICATION TO REGISTER THE SCRIPT SIGNATURE WAS AND IS A NULLITY.

This application was made in 1889.

The only act authorizing registration then in force was the Act March 3, 1881. (See U. S. Compiled Stats., Vol. 3, p. 3401.) The previous act of 1870 had been declared unconstitutional by the Supreme Court in the Trade Mark Cases reported in 100 U. S. Reports.

The first section of the Act of 1881 gave the right to register only such trade marks as were used in trade with foreign countries or Indian tribes.

The second section says the application of registry must, in order to create any right whatever, contain among other things a verified statement *"that such trade mark is used in commerce with foreign nations or Indian tribes."*

The third section again says, "But no alleged trade mark shall be registered unless the same appear to be lawfully used as such by the applicant in foreign commerce or commerce with the Indian tribes."

The court will see that this application contains nothing about the trade mark being used in foreign commerce or with the Indian tribes, and is therefore a nullity on its face, and could not be registered according to the third section of the Act of 1881.

Under the second section the application omitting these statements, the registry created no right whatever, not even a prima facie right in the registrant.

If the registry was void it has no standing as a legal record or for any purpose, neither to give title nor to take away title, nor to affect title in any way. Therefore, we submit that the rule stated by the Court, based upon the legality of the registry, that things disclaimed must be considered as abandoned, is not applicable in this case of void registry.

Will the Court say that because appellants have done a vain thing in this void registry that they should as a penalty be held to it as if it were valid? If no one has relied on this act of void registry, and by reason of its alleged representation have acted on it and changed their position, certainly appellants can not be estopped by it. The Court knows from the records that Marion E. Taylor did not rely upon any representations contained in this application, and consequently it can not be used for his benefit.

The rule laid down that things disclaimed, as part of a trade mark, are things abandoned, can not apply to this case.

As the Court says in the next sentence, on page 3, as

to the script signature, "It is not claimed that the defendant has infringed in any way this trade mark."

If this registry were valid and appellant had sued for infringement of his registered script signature trade mark and had shown only use of "Old Taylor" the Court could say with propriety, as it said that as appellant had relied on his registered trade mark, it could claim only what that registry showed was the trade mark.

In other words, if one relies on a registered trade mark he is bound by what the registry shows the trade mark to be. So far as Stagg is concerned this is all that the case of Stagg v. Taylor, 95 Ky., shows. In that case Stagg was relying on his registered trade mark and was claiming thereunder the right to use the name of E. H. Taylor, Jr., Distiller. He was attempting to expand his trade mark beyond his registered claim. His trade mark was registered as "O. F. C." and he desired to use as part of it the name of E. H. Taylor, Jr., Distiller.

In Richter v. Anchorage Co., 52 F. 455, relied on by appellee, the plaintiff had registered the red anchor as his trade mark, and then tried to claim anchors of every other color as his trade mark.

Both of these cases are far from sustaining the Court's rule as laid down by it to test the question of abandonment, i. e., that things disclaimed are abandoned.

STAGG v. TAYLOR, 95 KY., DOES NOT SUSTAIN THE RULE OF THE COURT.

So far as E. H. Taylor, Jr., & Sons are concerned the 95 Ky. case decides directly the opposite of the rule which the Court lays down, that things disclaimed are abandoned.

E. H. Taylor, Jr., registered the O. F. C. trade mark and disclaimed E. H. Taylor, Jr., Distiller, and the script signature as part of that trade mark, but notwithstanding this disclaimer, this 95 Ky. case recognized the right of E. H. Taylor, Jr., in the partnership of E. H. Taylor, Jr., & Sons, to use these words and this script signature as their trade mark.

In registering "O. F. C." he didn't abandon the disclaimed script signature, but had the right to use it as his trade mark, and the Court, in the opinion on page 3, recognizes this (disclaimed and therefore abandoned), script signature as the trade mark of appellant.

It's a long call between the points actually decided in 95 Ky. and the rule which the Court deduces from it: "Where a trade mark is registered the registry must be "presumed to show what the trade mark is, and things "which are disclaimed as going to make up the trade mark, "must be considered as abandoned."

There is no decision, State or Federal, in which such a rule is recognized, as applied by the Court; both reason and authority frown upon it and we beg of the Court not to tie itself to the application made of this rule.

The purpose of differentiating the essential from the non-essential words of all trade marks is to aid the registrar to determine accurately whether the particular trade mark has been previously registered, and so far as the applicant is concerned its meaning is that as to that particular trade mark the words are non-essential, i. e., that the trade mark applied for can be used without these words. The trade mark E. H. Taylor, Jr., & Sons in script could be used on one character of goods and "Old Taylor" on another character of goods by the same party or different parties. There is no rule of law which prevents a man from having more than one trade mark. This Court has decided that he can have more than one. Metcalf v. Brand, 85 Ky. 351.

We therefore confidently assert that appellants have not abandoned "Old Taylor", and respectfully ask of the Court to withdraw and modify that part of its opinion and decide that appellants have a trade mark in "Old Taylor."

III.

The Court must concede from the proof in this case that appellants have constantly branded their whisky as "Old Taylor" from January 1, 1887, to the present time, and by that name appellant's whisky is known throughout the United States.

If, then, "Old Taylor" be not a technical trade mark but be only the words used by appellant to designate his whisky, he is entitled to an injunction against the fraudulent use of those words in whatever collocation they may be arranged. We have demonstrated, as we think, in former brief, pages 17-38, etc., that in any form appellee uses "Fine OLD Ky. TAYLOR" it is unfair competition and a fraud on appellants' rights, and should be enjoined. This Court's opinion clearly shows it believed there was unfair competition in this case and unfair competition of necessity in this case must consist in using the words "Fine OLD Ky. TAYLOR" on appellee's goods, advertising his whisky as "straight" when it was crooked, couldn't in and of itself be of any detriment unless he imitated plaintiff's whisky by using the word indicative of appellant's whisky. If, therefore, as the Court says, appellee was guilty of fraudulent conduct he could have been guilty of it only in the imitation of its (appellant's) brand and in representing under that brand his whisky as the same character of whisky as appellant's. If appellee hasn't the right to use the "Old Taylor" brand in Fine OLD Ky. TAYLOR on rectified whisky because it simulates appellant's whisky why should his right be different in the case of straight whisky? He would still deceive the public and steal appellant's trade. The crucial test of this fraud is the use by appellee of "Old Taylor" in "Fine OLD Ky. TAYLOR", and that is the respect wherein he has been guilty of unfair competition against appellant and should be enjoined.

Therefore, whether it be, as we contend it is, an infringement of appellant's technical trade mark "Old Taylor" or a fraudulent competition in branding his goods so as to simulate appellant's goods by the use of "Fine OLD Ky. TAYLOR", the injunction should go against the use of "Old Taylor" in "Fine OLD Ky. TAYLOR."

IV.

The appellant should have been given an order of reference to ascertain the profits, whether it be a violation of a technical trade mark or unfair competition that appellee is guilty of.

This Court, in Avery v. Meikle, 85 Ky. 435, has treated of the question of damages.

This case was one of unfair competition. The technical trade mark of "AVERY" was not infringed at all, but in all other respects the plows of the appellant were imitated by appellee so as to fraudulently sell his goods as those of appellants. The appellant brought suit for damages and profits, elected to take profits, and the Court holds, page 449, that the fact that they claimed damages did not preclude them from electing to take the profits.

The Court below refused to allow him to elect to take profits and held him to his damages, and this Court reversed the case, holding that he had elected to take the profits and was entitled to them, p. 451. The Court in this case (Avery v. Meikle), speaks of injury to appellant's interest in his trade mark, but the facts of the case show conclusively that it was a case of unfair competition entirely and no effort to infringe appellant's trade mark, and it is therefore exactly analogous to this case as viewed from the standpoint of unfair competition and binding authority in the present case.

The Federal Courts have often decided that the same right to profits exist in case of unfair competition as in case of infringement of a technical trade mark. And the rule has always been that where equity enjoins, an accounting for profits will be ordered, unless the party elect to take his damages at common law.

Walter Baker & Co. v. Stack, 130 F. 519, was a case of unfair competition, and upon the injunction being granted the appellant had chosen to take the profits the wrongdoer had made and the Court sustained it.

N. K. Fairbank Co. v. Windsor, 118 F. 96, is a case of unfair competition, and says the Court: "No error is apparent which will justify disturbing either the application of the rule by which the master ascertained the profits or any finding of fact or legal conclusion. I believe it to be established beyond dispute that cases arising out of unfair competition are recognized as analogous as those of violation of trade mark." . . . "In either case redress may be had at law to recover damages or in equity to

restrain infringement and to recover the gains and profits which accrued to the wrongdoer by his adoption of a garb for his goods to which another had a prior and better right."

In Paul on Trade Mark, sec. 326, "And profits recoverable in equity for unfair competition are governed by the same rules as in case for infringement of trade marks, and are not limited to such as accrue from sales in which it is shown that the customer is actually deceived, but include all made on the goods sold in the simulated dress or package in violation of the rights of the original proprietor."

We therefore ask that appellant's petition be granted, and that the Court modify its opinion in the particulars above indicated.

Respectfully submitted,

WM. MCKEE DUNCAN,
Atty. for Appellant.

April 15, 1905.

INCORPORATED 1896

National Wholesale Liquor Dealers Association of America

Office of the Secretary: ROOM 1601, ARROTT BUILDING, PITTSBURG, PA. Telephone: COURT 315

Pittsburg, January 28, 1905.

TO THE TRADE:

Recent prosecutions and convictions of liquor dealers under the pure food laws of Minnesota for selling bottled-in-bond whiskey have disclosed the fact that, of all the whiskey on the market, bottled-in-bond whiskey is most impure on account of the excessive quantities of fusel oil in it, and, therefore, it is the most deleterious to the health of the drinker.

The pending pure food bill is so worded as not to touch bottled-in-bond whiskey, or to require any label upon such bottles warning the public of its dangerous character and the large percentage of fusel oil which it contains. The bill, however, has a provision which is aimed at blended whiskies. Should the bill become a law in such a form, bottled-in-bond whiskies, the most dangerous to the health of the drinker, would be given a decided commercial advantage over blends, which is the least deleterious of the two.

For this reason the blenders of the country object to the pure food bill in its present form, and for the same

reason the interest exploiting bottled-in-bond whiskey (the Trust) is doing all it can to force the passage of the bill in its present form, in which efforts it is being ably seconded by the Chief of the Bureau of Chemistry, who will be given vast powers under the bill. This whiskey interest has also secured the personal services of the Secretary of the National Association of State Dairy and Food Departments for the purpose of advancing their interests under the bill and advertising bottled-in-bond whiskey, though it may be added that his use of his office in this direction is without authority of the Association or any of its executive officers.

The National Wholesale Liquor Dealers Association of America is a voluntary association of independent distillers and dealers having no connection with the whiskey trust, and organized solely for protection, and it has been opposing the efforts of the trust to obtain commercial advantage through legislation.

For these reasons this Association opposed the pure food bill in its present form and has opposed equally unfair bills in previous Congresses. If its efforts have contributed in any degree to preventing unfair and discriminating measures from becoming crystallized into law, they should meet the approval of all honest and fair minded men. This Association is on record as favoring the passage of laws, both state and federal, which will absolutely prohibit the sale of whiskies containing any poisonous or deleterious substances whatever, WHETHER ADDED OR OTHERWISE, and when it

asked the Pure Food Congress to adopt a similar resolution, the guiding hand of Dr. Wiley and the bottled-in-bond whiskey interest operated to prevent it. This was largely due to the fact that the resolution was presented too late to have the subject thoroughly ventilated.

However, the pending pure food bill should be judged by its merits and demerits alone, and not because certain interests are favoring or opposing it, and the preceding statement of facts is only made in view of the misrepresentations which are being made to confuse the real issue and the covert efforts of the bottled-in-bond whiskey people to stampede the Senate to pass the pure food bill by the cry of "whiskey." There no doubt is much need of a pure food bill, one which would be just to all interests as well as to the consumer, but the pending bill is not such a measure.

All of the states already have good pure food laws and are doing well under them. A pure food law is a police regulation. Through the operation of the Wilson Act, passed in 1890, whiskey is already subject to the pure food laws of every state, even though introduced in original packages, and if the Wilson Act should be amended so as to include all foods and drugs, there would be no occasion for such a complex, disingenuous and nocuous measure as the pending bill.

By order of the Executive Committee. Secretary.

12/20/905.

RECAPITULATION OF STEUBEN ADVANCES.

PLAIN PAPER.

Item 13 on Sheet One showing total paper - - - - - -		-$99867 72
Now in RETIREMENT FUND - - - - -	$11977 12	
To be remitted for RETIREMENT FUND -	7689 24	
	$19666 36	
Real Estate Account - - - - - - - - -	3297 65	
Payment made on Account $20,000.	1410 85	
" " " Account #33 - - - - -	3151 61	
Account #35, 3-$1000 Bonds, and Coupon Interest to May 1, 1906 - -	6000 00	
Account #34, to be arranged from 1906 sales to Mr. Van Housen - - - - -	6000 00	$39525 87
		$60341 85

COLLATERAL PAPER.

6156 Barrels 1901s,02s,03s,04s,and 05s -	$99390 94	
6156 " Should sell at - - - - --	167479 03	$68088 09
Leaving Surplus of - - - - - - - -		$ 7746 24

December 20th, 1905.

STEUBEN COUNTY WINE CO.'S PLAIN PAPER OUTSTANDING DECEMBER 20TH, 1905 ON VARIOUS ACCOUNTS AS FOLLOWS:

(1) Account No.32.

Due	Dec.26th,	$2500 00
"	" 29th,	5000 00
"	" 31st,	2500 00
"	Jan. 2nd,	2500 00
"	" 24th,	5000 00
"	"31st,	5000 00
"	Mar.23rd,	2200 00
"	" 29th,	2300 00
"	Apl. 2nd,	3331 33
	Total -	$30331 33

(2) 1903 Account.

Due	Jan. 25th,	[illegible]
"	Mar. 1st,	3050 36
	Total -	$5730 02

(3) 1902 Account.

Due	Jan.28th,	[illegible]
"	Feb. 3rd,	[illegible]
	Total -	$2785 17

(4) $15,000 Account.

Due	Feb. 5th,	$5000 00 ✓
"	" 28th,	3000 00 ✓
"	Mar. 3rd,	2335 93 ✓
	Total -	$10335 93

(5) No.14 Account.

Due Dec.24th, $2058 59

(6) No.33 Account.

Due	Jan. 7th,	[illegible]
"	Feb. 9th,	[illegible]
	Total -	[illegible]
Less	Payments -	[illegible]
Leaving	Bal: -	[illegible]

(7) 1904 Account.

Due	Dec. 22nd,	$[illegible]
"	Jan. 11th,	2055 25
"	" 19th,	2400 00
"	Mar. 13th,	1797 40
	Total -	$ 7120 92

(8) Loan Account No.3

Due	Feb. 12th,	$4747 60
"	Mar. 18th,	4752 40
	Total -	$9500 00

(9) $20,000 Account.

Due	Feb. [illegible]	
	Paid [illegible]	
"	Feb.18th,	2250 00
"	" 23rd,	2594 00
"	Mar. 6th,	2031 00
"	" 8th,	2594 00
"	" 10th,	2031 00
"	" 25th,	2269 47
	Total	$ 14359 72

(10) No.35 Account.

Due	Mar.11th,	$2000 00
"	Apl. 9th,	2000 00
"	May 9th,	2000 00
	Total	$6000 00

(11) Real Estate Account.

Due Mar. 18th, $3297 65 ✓

(12) No.34 Account.

Due	May 5th,	$2250 00
"	" 7th,	2250 00
"	" 10th,	1500 00
	Total -	$6000 00

(13) RECAPITULATION.

Account	No.1,	$30331 33
"	" 2,	5730 02
"	" 3,	2785 17
"	" 4,	10335 93
"	" 5,	2058 59
"	" 6,	2348 39
"	" 7,	7120 92
"	" 8,	9500 00
"	" 9,	14359 72
"	"10,	6000 00
"	"11,	3297 65
"	"12,	6000 00
	Total	$99867 72

(14) RETIREMENT FUND.

Dec.20th, Balance in their hands - $11977 12

Sheet #2.

Collateral Paper of STEUBEN COUNTY WINE CO. and E.H.TAYLOR,JR. & SONS with 1901,'02,'03,'04 and '05 OLD TAYLOR Whiskey attached, and said Paper Being Under Discount with B.F.Straus & Co., Metropolitan Trust & Savings Bank and the Lexington City National Bank as follows:

1901			1902			1903		
Due	No.Bbls.	Amount	Due	No.Bbls.	Amount	Due	No.Bbls.	Amount
1906			1906			1906		
Apl.3rd,	80	$2300 00	Jan.5th,	105	$1795 43	Jan.26th	145	$2175 00
" 21st,	88	2640 00	Feb.28th	20	356 89	Feb.2nd	380	5775 00
	168	$4940 00	Mar 1st,	100	1803 87	Apl.21st	40	1060 00
			" 28th	140	2500 71	May 2nd	195	2900 00
			" 14th	130	2324 87		760	11910 00
			Apl.11th	50	900 00			
			May 13th	138	2461 89			
			" 15th	150	2710 22			
			" 18th	150	2686 08			
			" 23rd	150	2678 75			
			June 13th	155	2733 83			
			" 20th	175	3113 40			
				1463	$ 26065 94			

1904			1905		
Due	No. Bbls.	Amount	Due	No.Bbls.	Amount
1906			1906		
Dec.24	200	$3000 00	Dec. 24,	100	$1500 00
Feb. 4,	100	1500 00	Jan. 19,	50	750 00
" 8,	100	1500 00	" 24,	100	1500 00
" 7,	100	1500 00	" 28,	100	1500 00
" 14,	100	1500 00	Feb. 1,	100	1500 00
" 18,	100	1500 00	" 4,	100	1500 00
" 18,	135	2025 00	" 23,	125	1875 00
" 23,	100	1500 00	" 28,	100	1500 00
" 24,	100	1500 00	Mar. 2,	100	1500 00
Mar.28,	100	1500 00	" 15,	50	750 00
" 1,	190	2850 00	" 18,	100	1500 00
" 10,	200	3000 00	" 23,	100	1500 00
" 18,	200	3000 00	" 30,	100	1500 00
" 23,	100	1500 00	" 22,	25	375 00
" 27,	65	975 00	Apr. 5,	100	1500 00
June 4,	160	2400 00	June 7,	65	975 00
" 13,	200	3000 00	" 12,	100	1500 00
	2250	$ 33750 00		1515	$ 22725 00

005x27

Brought forward -		$7692 10
M. L. Ward & Co.,	Hopkinsville, Ky.	98 31
W. B. Jenkins,	Louisville, Ky.	56 50
A. L. Young,	Hot Springs, Ark.	40 00
Price M. Taylor,	St. Louis, Mo.	23 00
Pat O'Brien,	Frankfort, Ky.	55 00
Henry Oliver,	Fulton, Ky.	10 00
L.& N. R.R.Co.	Frankfort, Ky.	293 96
Esau Drug Co.	Milwaukee, Wis.	47 50
Capitol Hotel,	Frankfort, Ky.	270 25
J. & J. Bridges,	Frankfort, Ky.	23 00
Wm. L. Brown,	Gt. Barrington, Mass.	40 00
Keene McGinnis,	Midway, Ky.	71 00
Kimball House,	Atlanta, Ga.	190 12
John Driscoll,	Frankfort, Ky.	19 11
J. H. Sublett,	Salyersville, Ky.	10 00
H. B. Russell,	Midway,Ky.	14 50
Geo. McDonald,	Frankfort, Ky.	18 00
Arlund & Co.,	Frankfort, Ky.	52 75
Adam Allen,	Frankfort, Ky.	55 00
James Crotty,	Gt. Barrington, Mass.	24 00
J. N. Traywick,	Atlanta, Ga.	55 50
W. C. Kent	Minneapolis, Minn.	260 00
Hartz,& Bahnsen/	Rock Island, Ill.	47 50
S. R. Howser & Son,	Frankfort, Ky.	163 50
Paul Sawyer,	Frankfort, Ky.	8 00
Guthrie & Thompson,	Frankfort, Ky	40 50
E. M. Armfield,	High Point, N.C.	13 50
Chas. Humburg,	Denver, Colo.	133 01
Luke Bros.	Georgetown, Ky.	30 50
W. A. Rogers,	Georgetown, Ky.	9 00
Owen Moore,	Frankfort, Ky.	35 50
G. B. Selender,	Frankfort, Ky.	18 50
J. N. Strader,	Lexington,Ky.	51 75
W. W. Longmoor,	Frankfort, Ky.	8 00
Davis & Young,	Lynn, Mass.	89 75
R. M. Barker & Co.,	Carrollton, Ky.	46 25
Geo. H. Goodman Co.	Paducah, Ky.	70 65
F. H. Bishops,	Georgetown,Ky.	44 50
W. B. Jenkins,	Louisville, Ky.	16 00
Busam & Schneider,	Frankfort,Ky.	35 00
W. A. Barnes,	Bodneville, Ark.	8 00
		10.298.01
Due on #2 #32 -		1.189.89
Bal -		9.408.12
506 Acres land in Jessamine -		4.146.75
1765 M. Jones -		3.041.40
Total		$16.596.27

Sheet #1.

OPEN ACCOUNTS - DECEMBER 19TH, 1905.

W. A. Howard,	Frankfort, Ky.	$ 261 90
Coleman & McKeever,	-do-	586 75
Kiefer & Co.,	Los Angeles, Cal.	158 23
T. L. Sullivan,	Frankfort, Ky.	55 00
E. M. Armfield,	High Point, N.C.	26 00
E. L. Osborne & Co.,	Lexington, Ky.	9 25
Wyoming Drug Co.,	Rawlins, Wyo.	103 66
Jas. F. Gibbons,	Frankfort, Ky.	9 50
F. M. Moore,	Housatonic, Mass.	48 25
Hall & Evington,	Frankfort, Ky.	86 56
Seaboard Air Line,	Portsmouth, Va.	39 00
Chas. W. French,	Anaconda, Mont.	160 00
Truax, Greene & Co.,	Chicago, Ill.	48 00
W. O Ashurst,	Georgetown, Ky.	52 00
W. H. Moore,	Frankfort, Ky.,	99 00
Frankfort Chair Co.,	Frankfort, Ky.	51 25
Mooney & Klair,	Lexington, Ky.	32 00
M. Ellwanger,	Frankfort, Ky.	76 50
J. C. South,	Mountain Home, Ark.	57 35
R. J. Reynolds,	Winston, N.C.	16 00
Mott Ayers,	Frankfort, Ky.	20 00
Acker, Merrall & Condit	New York City	2899 71
S. V. Tingle,	Newcastle, Ky.	65 25
R. W. Dehoney,	Frankfort, Ky.	213 85
Chas. W. Saffell,	Frankfort, Ky.	413 11
Teuscher & Co.,	St. Louis, Mo.	39 00
Owen Moore,	Frankfort, Ky.	27 50
Lee Levy & Co.,	St. Louis, Mo.	116 25
Busam & Schneider	Frankfort, Ky.	42 00
Van Dyke Liquor C.	E.St. Louis, Ill.	19 50
Ed. Callahan,	Frankfort, Ky.	271 50
Guthrie Bros.	Frankfort, Ky.	68 00
Sam Winston,	New York City	32 00
Thos. Griffey,	Louisville, Ky.	20 00
Pell & Simon,	Paducah, Ky.	46 25
D. L. Kennedy,	Frankfort, Ky.	111 50
Guthrie & Thompson,	Frankfort, Ky.	40 50
W. J. Wilson,	Frankfort, Ky.	64 00
H. Grossman,	Cincinnati, O.	102 25
J. H. Hazelrigg,	Frankfort, Ky.	34 50
C. P. Chenault,	Frankfort, Ky.	66 50
R. S. Strader & Son,	Lexington, Ky.	49 50
W. S. Magill,	Pittsburg, Pa.	16 00
Martin J. Bligh,	Logansport, Ind.	40 00
H. T. Groom,	Groom, Texas.	101 00
Rhomberg & Son,	Dubuque, Iowa,	90 00
Lehigh Valley R.R.Co.	Easton, Pa.	75 00
C. L. Richardson,	Boston, Mass.	109 92
Alabama Gt. South. Ry.,	Cincinnati, Ohio	39 00
J. C. Mangan,	St. Paul, Minn	10 00
J. T. Scott,	Newcastle, Ky.	40 00
W. S. McChesney,	St. Louis, Mo.	16 00
J. N. Strader,	Lexington, Ky.	42 25
Louisville Times Co.	Louisville, Ky.	80 00
Rid Reed,	Frankfort, Ky.	26 85
S. B. Kelly & Co.,	Irvine, Ky.	18 75
Paschall Bros.	Fulton, Ky.	93 26
Larue & Thomas,	Smithland, Ky.	69 25
		$7692 10

Dec. 20, 1905 (Sheet #3)

6156 Barrels of Crops 1901, '02, '03, '04 and '05 Would Bring at Current Figures Approximately - - - - - - - - - - - -$167479 03

This Whiskey is Collateralized as Follows:

168	Bbls.	1901s,	at	54c.,	or	$29 40	per	Bbl.	$ 4940 00	
1463	"	1902s,	"	35.65	"	17 82	"	"	26065 94	
760	"	1903s,	"	~~35.11~~ 31.40	"	15 80	"	"	11910 00	
2250	"	1904s	"	30	"	15 00	"	"	33750 00	
1515	"	1905s	"	30	"	15 00	"	"	22725 00	99390 94

Leaving an Excess of - $68088 09

PLAIN PAPER OF STEUBEN COUNTY WINE CO. OUTSTANDING ON TWELVE DIFFERENT ACCOUNTS, AS PER SHEET #1.

Total Amount - $99867 72

6156 Bbls. should bring, after paying collateral paper - 68088 09
Leaving due on open paper - - - - - - - - - - - $31779 63

Against which are the following:

Retirement Fund - - - - - - - - - - - - - - - -	-$11977 12	
Real Estate Account - - - - - - - - - - - -	3297 65	
Payment on $20,000 Account - - - - - - - - -	1410 25	
" " #33 Account - - - - - - - - - - - -	3151 61	
Account #35, arranged for by three $1000 Bonds delivered, and the Coupon Account due May 1st, 1906 - - - - - - - - - - - - - -	6000 00	
Account #34, arranged through sale of 1906 crop to Mr. Van Housen - - - - - - - - - - - - -	6000 00	$31836 63

Excess of - $57 00

Add amount to be remitted 7689.24

7746.24

The $50,000 of Bonds held by the STEUBEN COUNTY WINE CO., on the above calculations would be without encumbrance.

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12/20/905.

STATEMENT SHOWING WHAT 6156 BBLS. OLD TAYLOR OF THE CROPS OF 1901, '02, '03, '04 and '05 WOULD BRING IF SOLD AT CURRENT PRICES.

168 Barrels 1901 "OLD TAYLOR" at 80 cents, -	-$6720 00		
Less S. & C. Taxes 42¢ - --	-270 56		
Less Storage, 57 months, - -	478 80	549 36	$6170 64
1463 Barrels 1902 "OLD TAYLOR" at 70 cents, -	-$51205 00		
Less S. & C. Taxes 32¢ - -	-$ 468 16		
Less Storage, 45 months, - -	3291 85 -	3760 01	$47444 99
760 Barrels 1903 "OLD TAYLOR" at 60 cents - -	$22800 00		
Less S. & C Taxes 23¢ - -	$ 179 80		
Less Storage, 33 months, -	1254 00	1433 80	$21366 20
2250 Barrels 1904 "OLD TAYLOR" at 55 cents - -	$61875 00		
Less S. & C. Tax 14¢ - - -	$ 315 00		
Less Storage, 21 months -	2362 50	2677 50	$59197 50
1515 Barrels 1905 "OLD TAYLOR" at 45 cents - -	$34087 50		
Less S. & C. Taxes 7¢ - -	$106 05		
Less Storage 9 months - -	681 75	787 80	$33299 70
6156 Barrels -			-$167479 03

STATEMENT SHOWING EXCESS ON 6156 BBLS. AFTER PAYING ADVANCES

168 Barrels 1901s. - - - - - - - - - - - - - - -	$6170 64	
Notes against same - - - - - - - - - - -	4940 00	$1230 64
1463 Barrels 1902s. - - - - - - - - - - - - - -	$47444 99	
Notes against same - - - - - - - - - -	26065 94	$21379 05
760 Barrels 1903s. - - - - - - - - - - - - - -	$21366 20	
Notes against same - - - - - - - - - -	11910 00	$ 9456 20
2250 Barrels 1904s. - - - - - - - - - - - - - -	$59197 50	
Notes against same - - - - - - - - - -	33750 00	$25447 50
1515 Barrels 1905s. - - - - - - - - - - - - - -	$33299 70	
Notes against same - - - - - - - - - -	22725 00	$10574 70
Profits -		$68088 09

STORAGE THAT WOULD BE DEDUCTED FROM INVOICING 6156 BBLS. AT THIS DATE AND WHICH AMOUNT - $8068 90 -WOULD GO INTO STORAGE ASSETS.

On 168 Barrels 1901s. - - - - - - - - -	-$ 478 80	
On 1463 " 1902s. - - - - - - - - -	3291 85	
On 760 " 1903s. - - - - - - - - -	1254 00	
On 2250 " 1904s. - - - - - - - - -	2362 50	
On 1515 " 1905s. - - - - - - - - -	681 75	$8068 90

005x20