

United States
Circuit Court of Appeals
For the Ninth Circuit.

W. H. LAWRENCE,

Plaintiff in Error,

vs.

JUSTUS S. WARDELL, as United States Col-
lector of Internal Revenue for the First Dis-
trict of California,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the Southern Division of
the United States District Court of the
Northern District of California,
Second Division.

FILED
JAN 5 - 1921
F. D. MONCKTON,
CLERK

United States
Circuit Court of Appeals
For the Ninth Circuit.

W. H. LAWRENCE,

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the Southern Division of the District Court of
the United States, Northern District of Cali-
fornia, Second Division.

No. 16,373.

W. H. LAWRENCE,

Plaintiff,

vs.

JUSTUS S. WARDELL, United States Collector
of Internal Revenue for the First District of
California,

Defendant.

**Complaint for Recovery of Income Tax Illegally
Assessed and Collected.**

W. H. Lawrence, plaintiff herein, for his cause
of action against defendant alleges:

I.

That plaintiff is, and since the twenty-sixth day
of March, 1919, has been, a resident of the City
and County of San Francisco in the State of Cali-
fornia.

II.

That defendant herein, Justus S. Wardell, is
now, and since the year 1917 has been, the United
States Collector of Internal Revenue for the First
District of California, with his residence and office
in the City and County of San Francisco, in the
State of California.

III.

That plaintiff is, and from birth has been, a citi-
zen of the United States of America, and was

throughout [1*] the year 1918, and thereafter until the twenty-sixth day of March, 1919, a resident of the Philippine Islands.

IV.

That plaintiff's net income for the calendar year 1918, determined in accordance with the provisions of Title II of the United States Revenue Act of 1918, was Nineteen Thousand Six Hundred Eighty Dollars and Eighty-one Cents (\$19,680.81), of which Four Hundred Dollars (\$400.00) consisted of dividends on stock of corporations organized and doing business in the United States, and the remainder, to wit, Nineteen Thousand Two Hundred Eighty Dollars and Eighty-one Cents (\$19,280.81) was from sources within the Philippine Islands; that plaintiff throughout said year 1918 was a married man living with his wife, who had no separate income, and had wholly dependent upon him for their support his three children under eighteen years of age.

V.

That in accordance with the provisions of the United States Revenue Act of 1916 as amended by the United States Revenue Act of 1917, then and there in force, plaintiff in January, 1919, at the City of Manila in the Philippine Islands, made return of his income for the year 1918 to the Collector of Internal Revenue of the Philippine Islands, the appropriate internal revenue officer of the Philippine government within the meaning of

*Page-number appearing at foot of page of original certified Transcript Of Record.

section 23 of the United States Revenue Act of 1916, and paid to said Collector the sum of Two Hundred Eighty-one Dollars and Forty-three Cents (\$281.43) as income tax on and in respect of the said income of plaintiff for 1918 and in accordance with the said return and the said United States Revenue Acts. [2]

VI.

That the legislature of the Philippine Islands has neither amended, altered, modified, nor repealed, with respect to income of 1918, the income tax laws of the United States Revenue Acts of 1916 and 1917 in force in the Philippine Islands.

VII.

That, notwithstanding the premises, the defendant, Justus S. Wardell, as such Collector, prior to the second day of July, 1919, required of plaintiff that plaintiff make return of, and pay income tax upon, his aforesaid income for the year 1918, under and in accordance with the provisions of Part II of Title II of the United States Revenue Act of 1918. to defendant as such Collector, defendant asserting that a tax of Two Thousand One Hundred Sixty-four Dollars and Seventy-three Cents (\$2,164.73) and interest thereon in the sum of Ten Dollars and Eighty-five Cents were due from plaintiff under and pursuant to said Part II of Title II of the United States Revenue Act of 1918, and defendant threatened that in default of such return and payment by plaintiff the payment of said asserted tax and interest, to wit, the sum of Two

Thousand One Hundred Seventy-five Dollars and Fifty-eight Cents (\$2,175.58), would be enforced with penalties by the seizure of plaintiff's property and by other means of compulsion provided in the statutes of the United States.

VIII.

That plaintiff thereupon, to wit, on the second day of July, 1919, involuntarily and under compulsion, and for the purpose of avoiding the penalties, seizure and other proceedings [3] threatened as aforesaid, made to defendant the return required as aforesaid, and paid to defendant for the said asserted tax and interest the sum of Two Thousand One Hundred Seventy-five Dollars and Fifty-eight Cents (\$2,175.58), and at the same time plaintiff protested to defendant against the said requirement and notified defendant that plaintiff made the said return and payment involuntarily and would claim the refund of said payment for the reasons set out in the claim for refund then and there delivered to defendant in writing, of which a true copy is Exhibit "A" of this complaint.

IX.

That thereafter plaintiff duly presented to the Commissioner of Internal Revenue of the United States his claim in writing for the refund of the said sum of Two Thousand One Hundred Seventy-five Dollars and Fifty-eight Cents (\$2,175.58); that a true copy of said claim for refund is annexed hereto, and referred to, and marked Exhibit "A."

X.

That thereafter, to wit, on the eleventh day of February, 1920, the Commissioner of Internal Revenue of the United States acted upon said claim for refund and denied and rejected the same in whole; and that said sum of Two Thousand One Hundred Seventy-five Dollars and Fifty-eight Cents (\$2,175.58) is still retained by defendant.

WHEREFORE, plaintiff prays for judgment against defendant for the recovery of the sum of Two Thousand One Hundred Seventy-five Dollars and Fifty-eight Cents (\$2,175.58), together with interest thereon from the second day of July, 1919, and for his costs of suit herein incurred. [4]

W. H. LAWRENCE,
Plaintiff,

563 Mills Building, San Francisco, California.

State of California,

City and County of San Francisco,—ss.

W. H. Lawrence, being duly sworn, deposes and says, that he is the plaintiff in the above-entitled action; that he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on information or belief and as to those matters that he believes it to be true.

W. H. LAWRENCE.

Subscribed and sworn to before me this 15th day of April, 1920.

[Notarial Seal] EUGENE W. LEVY,
Notary Public in and for the City and County of
San Francisco, State of California. [5]

Exhibit "A."**CLAIM FOR REFUND TAXES ERRONEOUSLY OR ILLEGALLY COLLECTED.**

State of California,

County of San Francisco,—ss.

WILLIAM HAMILTON LAWRENCE (Name of claimant).

3633 Jackson Street, San Francisco, California
(Address of claimant; give street and number as well as city or town and State).

This deponent, being duly sworn according to law, deposes and says that this claim is made on behalf of the claimant named above, and that the facts stated below with reference to the claim are true and complete.

1. Business engaged in by claimant—lawyer.
2. Character of assessment or tax—Income tax on 1918 income.
3. Amount of assessment or stamps—\$2175.58.
4. Amount now asked to be refunded (or such greater amount as is legally refundable)—\$2175.58.
5. Date of payment of assessment or purchase of stamps—July 2, 1919.

Deponent verily believes that the amount stated in item 4 should be refunded and claimant now asks and demands refund of said amount for the following reasons:

Claimant throughout 1918 was a citizen of the United States and a resident of the Philippine Is-

lands. In January, 1919, claimant made return and paid income tax on his whole net income of 1918 to the Collector of Internal Revenue of the Philippine Islands at Manila in accordance with the provisions [6] of the United States Revenue Act of 1916 as amended by the Revenue Act of 1917, then and there in force. On March 26th, 1919, claimant arrived in San Francisco, California, from the Philippine Islands and became a resident of San Francisco. The Collector of Internal Revenue at San Francisco, with notice of the facts above set out, has required claimant to make return and pay income tax on his whole net income of 1918 in accordance with sections 210 and 211 of the Revenue Act of 1918, with credit for the aforesaid payment in Manila, plus interest. Said payment in San Francisco, amounting to \$2,175.56, was made by claimant on July 2d, 1919, involuntarily, under protest, and under duress of the penalties prescribed by law.

The grounds of protest and of this claim for refund are: that, by section 1400 of the Revenue Act of 1918, Title I of the Revenue Act of 1916 as amended by the Revenue Act of 1917 is left in force as to 1918 income of residents of the Philippine Islands; that by section 261 of the Revenue Act of 1918 claimant is required to pay in Manila the income tax of the Revenue Act of 1916 on his whole income of 1918, as claimant has done; that sections 210 and 211 of the Revenue Act of 1918 impose an income tax only "in lieu of" the corresponding taxes of the Revenue Acts of 1916 and 1917, and do

not apply in cases where the earlier acts stand unrepealed; that the legislature of the Philippine Islands has neither amended, altered, modified nor repealed the income tax provisions of the Revenue Acts of 1916 and 1917 as to income of the year 1918.

And this deponent further alleges that the said claimant is not indebted to the United States in any amount whatever, [7] and that no claim has heretofore been presented, except as stated herein, for the refunding of the whole or any part of the amount stated in item 3.

Signed: W. H. LAWRENCE.

Sworn to and subscribed before me this 2d day of July, 1919.

(Signed) THOS. F. FEENEY,
Deputy Collector of Internal Revenue.

[Endorsed]: Filed April 16, 1920. Walter B. Maling, Clerk. [8]

In the Southern Division of the District Court of
the United States, Northern District of Cali-
fornia, Second Division.

No. 16,373.

W. H. LAWRENCE,

Plaintiff,

vs.

JUSTUS S. WARDELL, United States Collector
of Internal Revenue for the First District of
California,

Defendant.

Demurrer.

Comes now defendant in the above-entitled action and demurs to plaintiff's complaint on file herein on the following ground:

I.

That said complaint does not state facts sufficient to constitute a cause of action against the said defendant.

WHEREFORE, defendant prays that said action be dismissed and that he go hence with his costs in this behalf expended.

ANNETTE ABBOTT ADAMS,
United States Attorney,
CHARLES W. THOMAS, Jr.,
Assistant U. S. Attorney.
Attorneys for Defendant.

Due service of the copy of the within demurrer is hereby admitted this 23d day of April, 1920.

W. H. LAWRENCE,
Attorney for Plaintiff.

[Endorsed]: Filed Apr. 24, 1920. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [9]

In the Southern Division of the District Court of the United States, Northern District of California, Second Division.

W. H. LAWRENCE,

Plaintiff,

vs.

JUSTUS S. WARDELL, Collector of Internal Revenue for the First District of California.
Defendant.

W. H. LAWRENCE, Esq., Attorney for Plaintiff.

FRANK M. SILVA, Esq., United States Attorney, WAYNE JOHNSON, Esq., Solicitor of Internal Revenue, and J. M. STERNHAGEN, Special Attorney, Bureau of Internal Revenue, Attorneys for Defendant.

Memorandum.

RUDKIN, District Judge.

The sole question presented by the demurrer in this case is this: Is a citizen of the United States who resided in the Philippine Islands during the entire year 1918 subject to the tax imposed by the Revenue Act of that year? Section 1 of the Act of 1916 imposed a tax upon the entire net income received by every individual "a citizen or resident of the United States," and upon the entire net income received by every individual "a nonresident alien" from all sources within the United States. This Act was amended in 1917, but the amendment is not deemed material to our present inquiry.

Section 210 of the Act of 1918 imposed upon the net income of every individual a normal tax in lieu of the taxes imposed by the Acts of 1916 and 1917. From these provisions it will be seen that the tax is imposed upon citizens of the United States regardless of their place of residence, on residents of the United States regardless of their citizenship, and upon the income of nonresident aliens from sources within the United States. Nothing is found in any other provision of the Act in conflict with this view. Thus section 260 of the [10] Act of 1918 refers to individuals who are citizens of any possession of the United States, but not otherwise citizens of the United States, and the following section provides that returns shall be made by individuals who are citizens or residents of Porto Rico and the Philippine Islands or derive income from sources therein, but makes no reference to citizens of the United States residing in the Islands. For these reasons I am of the opinion that the tax was properly imposed, and the demurrer is therefore sustained.

November 16, 1920.

[Endorsed]: Filed Nov. 16, 1920. Walter B. Maling, Clerk. [11]

In the Southern Division of the United States District Court for the Northern District of California, Second Division.

No. 16,373.

W. H. LAWRENCE,

Plaintiff,

vs.

JUSTUS S. WARDELL, United States Collector
of Internal Revenue for the First District of
California,

Defendant.

Judgment for Defendant.

On the 16th day of November, 1920, an order of the above-entitled court having been made, entered and filed sustaining a demurrer of the plaintiff herein and without specifying any time within which plaintiff might amend his complaint and a notice of the sustaining of said demurrer having been given to Bert F. Lum on the 26th day of November, 1920, as will more fully appear from the notice of sustaining of demurrer on file herein and the endorsement thereon of receipt of a copy of the same by said Burt F. Lum on the 26th day of November, 1920.

Now, on motion of E. M. Leonard, Assistant United States Attorney and as such attorney, one of the attorneys for the defendant,—

IT IS ORDERED AND ADJUDGED that the complaint herein be, and the same is hereby dismissed.

Dated this 18th day of December, 1920.

M. T. DOOLING,
United States District Judge.

[Endorsed]: Filed and entered Dec. 18, 1920.
Walter B. Maling, Clerk. [12]

In the Southern Division of the District Court of
the United States, Northern District of Cali-
fornia, Second Division.

W. H. LAWRENCE,

Plaintiff,

vs.

JUSTUS S. WARDELL, United States Collector
of Internal Revenue for the First District of
California,

Defendant.

Petition for Writ of Error.

Comes now the plaintiff, W. H. Lawrence, by his attorney, Burt F. Lum, and says that on the eighteenth day of December, 1920, this Court entered judgment herein in favor of the defendant and against the plaintiff, dismissing the complaint herein, in which judgment and proceedings had prior thereto in this cause certain errors were committed to the prejudice of this plaintiff, all of which will more in detail appear from the assignment of errors which this plaintiff files with this petition.

WHEREFORE, this plaintiff prays that a Writ of Error may be issued in this behalf out of the

United States Circuit Court of Appeals for the Ninth Circuit for the correction of errors so complained of, and that a transcript of the record, proceedings and papers in this case duly authenticated may be sent to said Circuit Court of Appeals for said Circuit.

BURT F. LUM,
Attorney for Plaintiff.

[Endorsed]: Filed Dec. 21, 1920. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [13]

In the Southern Division of the District Court of the United States, Northern District of California, Second Division.

W. H. LAWRENCE,

Plaintiff,

vs.

JUSTUS S. WARDELL, United States Collector of Internal Revenue for the First District of California,

Defendant.

Assignment of Errors.

W. H. Lawrence, plaintiff in this action, in connection with and as a part of his petition for a writ of error filed herein, makes the following assignment of errors, which he avers were committed by the Court in the proceedings and judgment against this plaintiff appearing on the record herein, that is to say:

I.

That the Court erred in holding and deciding that the complaint of the plaintiff herein does not state facts sufficient to constitute a cause of action against the defendant.

II.

That the Court erred in sustaining the demurrer of the defendant, herein filed, to the complaint of the plaintiff.

III.

That the Court erred in adjudging that the complaint of the plaintiff herein be dismissed. [14]

WHEREFORE, this plaintiff prays that the said judgment be reversed.

BURT F. LUM,
Attorney for Plaintiff.

[Endorsed]: Filed Dec. 21, 1920. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [15]

In the Southern Division of the District Court of
the United States, Northern District of Cali-
fornia, Second Division.

W. H. LAWRENCE,

Plaintiff,

vs.

JUSTUS S. WARDELL, United States Collector
of Internal Revenue for the First District of
California,

Defendant.

Order Allowing Writ of Error.

The petition of W. H. Lawrence, the above-named plaintiff, for a writ of error in the above-entitled action to the United States Circuit Court of Appeals for the Ninth Circuit coming on to be heard, the said plaintiff being represented by his attorney, Burt F. Lum, Esq., and it appearing to the Court that said petition should be granted and that a transcript of the record and proceedings in the above-entitled case upon the judgment herein rendered, duly authenticated, together with the original assignment of errors, writ of error and citation, should be sent to the United States Circuit Court of Appeals for the Ninth Circuit as prayed, in order that such proceedings may be had as may be just to correct any manifest errors;

NOW, THEREFORE, IT IS ORDERED that a writ of error be and the same is hereby allowed herein, and that the said writ of error issue out of and under the seal of the above-entitled [16] court by the clerk thereof upon bond being furnished by said W. H. Lawrence, conditioned according to law, in the sum of Three Hundred 00/100 Dollars (\$300.00); that a true copy of the record, proceedings and papers upon which the judgment herein was rendered, together with the assignment of errors, writ of error and citation, duly certified according to law, shall be transmitted to the United States Circuit Court of Appeals for the Ninth Circuit, in order that said Court may inspect the same and take such action thereon as it deems proper according to law and justice.

Dated Dec. 21, 1920.

W. H. HUNT,
Judge.

[Endorsed]: Filed Dec. 21, 1920. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [17]

(Title of Court and Cause.)

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS:
That we, W. H. Lawrence, of the City and County
of San Francisco, State of California, as principal
and the United States Fidelity and Guaranty, a
corporation, organized and existing under and by
virtue of the laws of the State of Maryland and
qualified to do business under the laws of the
United States as surety, are held and firmly bound
unto the above-named defendant, Justus S. War-
dell, in the sum of three hundred dollars (\$300.00),
to be paid to him, and for the payment of which,
well and truly to be made, we bind ourselves and
each of us, our and each of our heirs, executors and
administrators, successors and assigns, jointly and
severally, firmly by these presents.

Sealed with our seals and dated this twenty-first
(21) day of December, 1920.

WHEREAS, the above-named W. H. Lawrence,
as plaintiff in error, has sued out a writ of error to
the United States Circuit Court of Appeals for the
Ninth Circuit to reverse the judgment rendered in
the above-entitled action by the United States Dis-

trict Court for the Southern Division of the Northern District of California:

NOW, THEREFORE, the condition of this obligation is such that if the said W. H. Lawrence, plaintiff and plaintiff in error, shall prosecute his said writ of error to effect, and answer all costs and damages that may be adjudged if he shall fail to make good his plea, then this obligation to be void; otherwise to remain in full force [18] and virtue.

W. H. LAWRENCE. (Seal)

THE UNITED STATES FIDELITY AND
GUARANTY COMPANY.

By HENRY V. D. JOHNS, (Seal)

[Seal] By ERNEST W. SWIVGLEY, (Seal)

Attorneys in Fact.

(Premium charged for this bond is \$10.00 per annum.)

Approved.

WM. H. HUNT,
Judge.

[Endorsed]: Filed Dec. 22, 1920. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [19]

In the Southern Division of the United States District Court, in and for the Northern District of California, Second Division.

No. 16,373.

W. H. LAWRENCE,

Plaintiff,

vs.

JUSTUS S. WARDELL, United States Collector of Internal Revenue for the First District of California,

Defendant.

Certificate of Clerk U. S. District Court to Record on Writ of Error.

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify the foregoing nineteen (19) pages, numbered from 1 to 19, inclusive, to be full, true and correct copies of the record and proceedings in the above-entitled cause, as the same remain on file and of record in the office of the clerk of said court, and that the same constitute the return to the annexed writ of error.

I further certify that the cost of the foregoing return to writ of error is \$7.70; that said amount was paid by the plaintiff, and that the original writ of error and citation issued in said cause are hereto annexed.

error, and Justus S. Wardell, United States Collector of Internal Revenue for the First District of California, defendant and defendant in error, a manifest error hath happened to the great damage of the said plaintiff in error, as by his complaint doth appear; and we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf do commend you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of [21] Appeals for the Ninth Circuit, together with this writ, so that you have the same at San Francisco, California, within thirty days from the date hereof, in the said Circuit Court of Appeals to be then and there held; that the record and proceedings aforesaid being then and there inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States of America should be done.

WITNESS the Honorable EDWARD DOUGLAS WHITE, Chief Justice of the Supreme Court of the United States, this 22d day of December, 1920.

[Seal]

WALTER B. MALING,

Clerk of the District Court of the United States for the Northern District of California.

By J. A. Schaertzer,
Deputy Clerk.

Allowed by.

WM. H. HUNT,
Judge.

Received a copy of the within writ of error this
22d day of December, A. D. 1920.

FRANK M. SILVA,
United States Attorney. [22]

[Endorsed]: No. 16,373. In the United States
Circuit Court of Appeals for the Ninth Circuit.
W. H. Lawrence, Plaintiff in Error, vs. Justus S.
Wardell, Collector, Defendant in Error. Writ of
Error. Filed Dec. 22, 1920. W. B. Maling, Clerk.
By J. A. Schaertzer, Deputy Clerk.

(Return to Writ of Error.)

The answer of the Judge of the District Court of
the United States, in and for the Northern District
of California, Second Division.

The record and all proceedings of the plaint
whereof mention is within made, with all things
touching the same, we certify under the seal of our
said court, to the United States Circuit Court of
Appeals for the Ninth Circuit, within mentioned,
at the day and place within contained, in a certain
schedule to this writ annexed as within we are com-
manded.

[Seal] WALTER B. MALING,
Clerk United States District Court for the Northern
District of California.

By J. A. Schaertzer,
Deputy Clerk. [23]

In the Southern Division of the District Court of
the United States, Northern District of Cali-
fornia, Second Division.

W. H. LAWRENCE,

Plaintiff,

vs.

JUSTUS S. WARDELL, United States Collector
of Internal Revenue for the First District of
California,

Defendant.

Citation on Writ of Error.

United States of America,—ss.

To Justus S. Wardell, Defendant Above Named and
Defendant in Error, GREETING:

You are hereby cited and admonished to be and
appear at a United States Circuit Court of Appeals
for the Ninth Circuit, to be holden at the City of
San Francisco, in the State of California, within
thirty days from the date hereof, pursuant to a
writ of error duly issued and now on file in the
clerk's office of the United States District Court for
the Southern Division of the Northern District of
California, Second Division, wherein W. H. Law-
rence is plaintiff in error and you, Justus S. War-
dell, are defendant in error, to show cause if any
there be, why the judgment rendered against the
said plaintiff in error, as in the said writ of error
mentioned, should not be corrected, and why speedy
justice should not be done to the parties in that
behalf. [24]

WITNESS the Honorable WILLIAM H. HUNT,
United States Circuit Judge for the Northern Dis-
trict of California, this 22d day of December, 1920.

W. H. HUNT,

United States Circuit Judge.

Received a copy of the within this 22d day of
December, A. D. 1920.

FRANK M. SILVA,

United States Attorney. [25]

[Endorsed]: No. 16,373. In the Southern Divi-
sion of the District Court of the United States,
Northern District of California, Second Division.
W. H. Lawrence, Plaintiff, vs. Justus S. Wardell,
Collector, Defendant. Citation on Writ of Error.
Filed Dec. 22, 1920. W. B. Maling, Clerk. By
J. A. Schaertzer, Deputy Clerk.

[Endorsed]: No. 3615. United States Circuit
Court of Appeals for the Ninth Circuit. W. H.
Lawrence, Plaintiff in Error, vs. Justus S. Wardell,
as United States Collector of Internal Revenue for
the First District of California, Defendant in Er-
ror. Transcript of Record. Upon Writ of Error
to the Southern Division of the United States Dis-
trict Court of the Northern District of California,
Second Division.

Filed December 28, 1920.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.