

Photograph of the wreckage of the *USS Maine*, U.S. Nat'l Archives & Records Admin.



Remembering the *Maine*, One Customer at a Time

BY FRANK GIBBARD

Before 9/11, before Pearl Harbor, there was the *Maine*. The *Maine* was an American warship dispatched in 1898 to the Spanish colony of Cuba. Although the ship's mission was ostensibly peaceful, America's relations with Spain had become tense due to the Cuban War of Independence. Americans were sympathetic to the Cuban rebels and appalled by stories of Spanish atrocities on the island. There were also concerns about the safety of Americans in Cuba. Sending a warship seems to have served as a warning to Spain, or even an attempt at intimidation.

On February 15, 1898, the *Maine* exploded in

Havana Harbor. Hundreds of sailors and marines were killed in the explosion, or drowned. Though proof of Spanish involvement in the explosion was limited, the sinking and deaths inflamed an American public that soon became whipped into a frenzy by lurid journalism. Before long, the cry went up, repeated everywhere: "Remember the *Maine*; To hell with Spain!"¹

Memorabilia Hits the Market

The Manhattan Novelty Company (which was not actually located in Manhattan, but the Manhattan Building in Chicago)² found a way to profit from the tragedy.³ The year of the

explosion, Manhattan began publishing and selling an engraving titled "The War Congress of the United States of America." The "War Congress" it referred to was the Fifty-Fifth Congress, which sat from March 4, 1897 to March 4, 1899. On April 25, 1898, just over two months after the *Maine* explosion, that Congress had issued a declaration of war against the kingdom of Spain, which formally began the conflict known as the Spanish-American War.⁴

Manhattan's engraving purportedly included portraits of all the members of the House of Representatives of the Fifty-Fifth Congress, which had voted for war with Spain.⁵ It was ac-

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accompanied by a list of the Congressmen arranged by state and district. The engraving was inscribed with the words “They Remembered the *Maine*.”⁶

Manhattan’s sales agent, S. Rosenfield, exhibited a copy of the engraving to L. Ransohoff, manager of the Colorado Dry Goods Company of Denver. Ransohoff responded enthusiastically. On October 24, 1898, Colorado Dry placed an order for 5,000 copies at a wholesale price of four and three-quarter cents per copy.⁷ Colorado Dry obtained an exclusive right to distribute the engraving in the Denver area for a year.⁸ It also reserved the right to purchase additional copies in lots of 1,000.

On each copy, Manhattan agreed to print: “Compliments of the Colorado Dry Goods Company, Denver.”⁹ Colorado Dry planned

to distribute the engravings free of charge to its customers.

The engravings were scheduled to be delivered by November 15, 1898. On November 4, Manhattan assigned the contract to W.P. Dunn & Co. Dunn delivered the engravings to Colorado Dry as scheduled.

Errors in the Lineup

Soon after Colorado Dry began distributing the engravings, however, some of its sharp-eyed customers raised a quibble. They argued the engraving did not accurately represent the “War Congress” that had voted for war with Spain. Apparently, six of the Congressmen pictured in the engraving had been elected to the House of Representatives before the declaration of war, but had died before the declaration was actually made.¹⁰ (Interestingly, none of the deceased Congressmen appear to have repre-

sented the state of Colorado—meaning that the complaining customers knew enough about the shifting Congressional lineup in other states to spot the error, or at least took the time to figure it out.¹¹) Given this technically inaccurate lineup, Colorado Dry stopped distributing the engravings and refused to pay for them.

Dunn sued Colorado Dry for non-payment in Arapahoe County District Court. The court heard the case on an agreed statement of facts, together with affidavits from Rosenfield and Ransohoff. It granted judgment in favor of Dunn.

The Appeal

Colorado Dry appealed to the Colorado Court of Appeals. It argued that Dunn’s predecessor, Manhattan, had made a warranty and representation that “the portraits in the engraving represented all the members of the War Congress (that is, all the members of the House of

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According to Colorado Dry, Dunn breached the warranty by including Congressmen who hadn't voted on the declaration of war, but not including their successors, who had.

Representatives of the Fifty-Fifth Congress of the United States, which was in session immediately previous to and pending the recent war between the United States and the kingdom of Spain, and which passed the war resolutions. . . .”¹² According to Colorado Dry, Dunn breached the warranty by including Congressmen who hadn't voted on the declaration of war, but not including their successors, who had.

The Court of Appeals found the evidence concerning the alleged warranty inconclusive. Generally, when live testimony is presented at a trial, deference is given to the district court's finding. However, the Court found this rule did not apply here, because all the evidence was in writing. Moreover, the contract itself did not contain any language creating a representation or a warranty, and the affidavits were equivocal: “One affidavit affirmed it, and the other denied it, so that it was left as if there had been no proof at all respecting it.”¹³

The Court dug deeper. Although the engraving was titled “The War Congress of the United States of America,” it reasoned, this was not an inaccurate representation merely because some members of Congress had died before the declaration of war was made. No showing had been made that any Congressman who actually

voted for the declaration of war was absent from the engraving. Its title was

entirely consistent with the agreed statement that every man who was a member of the House of Representatives at or immediately previous to the commencement of the war with Spain is represented in the picture. Six members had previously died, and, of necessity, they were not present when the war resolutions were passed. No dates connected with their death are given, and it is not said that their places had been filled. The statement that the picture did not contain the portraits of their successors is not a statement, nor equivalent to a statement, that they had successors. The Fifty-Fifth Congress was elected in 1896, and the terms of its members would expire on March 4, 1899. There could be no regular election of their successors until the fall of 1898—a considerable period after the passage of the war resolutions. If the time of their death was not too recent, it is possible the vacancies might have been filled by special election before the passage of the resolutions. But it is nowhere said that the vacancies had been filled, and, unless they had, the picture contained the portraits of all the members of the War Congress, and the representation was strictly true. That it contained also the portraits of members of the Fifty-Fifth Congress who had previously died, and who consequently did not participate in the passage of the resolutions, in no manner affected the character of the representation.¹⁴

The Court of Appeals affirmed the judgment for Dunn.

Aftermath

The Spanish–American War did not last long. It ended formally on December 10, 1898, with the Treaty of Paris. The terms of the treaty made the United States a colonial power. Almost immediately, a long and bloody insurrection began in the Philippines that would take years to quench. Just as the so-called “9/11 Wars” would consume large amounts of American time and treasure, the war that arose from the sinking of the *Maine* harnessed the United States to overseas commitments with long-lasting consequences.



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NOTES

1. See, e.g., Musicant, *Empire by Default: The Spanish-American War and the Dawn of the American Century* 144 (Henry Holt 1998); Weems, *The Fate of the Maine* 131 (Henry Holt 1958).
2. The Manhattan Building, which still stands at 431 S. Dearborn Street in Chicago, is a beautiful example of turn-of-the-century commercial architecture. See www.architecture.org/learn/resources/buildings-of-chicago/building/manhattan-building. The Manhattan Novelty Company manufactured photographic novelties, including picture frames with secret compartments. It also sold an “everlasting parlor ornament” containing pictures of loved ones, peddled to families on the installment plan. See Leonard, *News for All: America's Coming-of-Age with the Press* 59–60 (Oxford University Press 1995).
3. *Colo. Dry Goods Co. v. W.P. Dunn Co.*, 71 P. 887 (Colo.App. 1903).
4. See “An Act Declaring that war exists between the United States of America and the Kingdom of Spain,” 30 Stat. 364 (Apr. 25, 1898). The Act declares that the war began four days earlier, April 21, which is the date the Colorado Court of Appeals used in its decision. See *Colo. Dry Goods Co.*, 71 P. at 888.
5. *Colo. Dry Goods Co.*, 71 P. at 887.
6. *Id.*
7. *Id.*
8. *Id.*
9. *Id.*
10. *Id.* at 888.
11. Although the Supreme Court's decision does not identify the six decedent Congressmen, it appears that five Congressmen died after taking their seats in the 55th Congress, before the declaration of war was made: Seth L. Milliken of Maine; William S. Holman of Indiana; Edward D. Cooke of Illinois; Ashley B. Wright of Massachusetts; and John Simkins of Massachusetts. In addition, two Congressmen died before being seated: James J. Davidson of Pennsylvania, and Richard P. Giles of Missouri. See https://en.wikipedia.org/wiki/55th_United_States_Congress.
12. *Colo. Dry Goods*, 71 P. at 887–88.
13. *Id.* at 888.
14. *Id.*