**Journal of the Senate of Minnesota, sitting as a high court [of] impeachment, for the trial of Hon. Sherman Page, judge of the Tenth Judicial District. -.**

Page, Sherman, defendant.
Saint Paul : Ramaley & Cunningham, [1878]

TWENTIETH SESSION,—1878.

# JOURNAL

OF THE

# SENATE OF MINNESOTA,

SITTING AS A

# HIGH COURT OF IMPEACHMENT,

FOR THE TRIAL OF

# HON. SHERMAN PAGE,

*Judge of the Tenth Judicial District.*

## VOLUME III.

PRINTED BY AUTHORITY.

RAMALEY & CUNNINGHAM,
SAINT PAUL.

## MANAGERS ON THE PART OF THE HOUSE OF REPRESENTATIVES.



HON. S. L. CAMPBELL,
HON. C. A. GILMAN,
HON. W. H. MEAD,
HON. J. P. WEST,
HON. F. L. MORSE,
HON. HENRY HINDS,
HON. W. H. FELLER.

COUNSEL WITH MANAGERS—W. P. CLOUGH, ESQ.

## ATTORNEYS FOR RESPONDENT.

HON. C. K. DAVIS, St. Paul,
HON. J. W. LOSEY, La Crosse, Wis.,
J. A. LOVELY, ESQ., Albert Lea.

## OFFICERS OF THE COURT.

*President*—HON. J. B. WAKEFIELD,
*Clerk*—CHAS. W. JOHNSON,
*Sergeant-at-Arms*—M. ANDERSON,
*Assistant Sergeant-at-Arms*—G. M. TOUSLEY.
*Stenographic Reporters*—G. N. HILMAN,
JAY STONE.

# VOL. 3.

# JOURNAL OF THE SENATE.

## IN COURT OF IMPEACHMENT.

### STATE OF MINNESOTA *versus* SHERMAN PAGE

### THIRTIETH DAY.

ST. PAUL, THURSDAY, JUNE 20, 1878.

The Senate was called to order by the President.

The roll being called, the following Senators answered to their names:

Messrs. Ahrens, Armstrong, Bailey, Bonniwell, Clough, Deuel, Doran, Edwards, Finseth, Gilfillan C. D. Hall, Hersey, Houlton Lienau, Macdonald, McHench, McNelly, Mealey, Morehouse, Nelson, Rice, Shaleen, Smith, Swanstrom, Waite, Waldron and Wheat.

The Senate, sitting for the trial of Sherman Page, Judge of the District Court for the Tenth Judicial District, upon articles of impeachment exhibited against him by the House of Representatives.

The sergeant-at-arms having made proclamation,

The managers appointed by the House of Representatives to conduct the trial, to-wit: Hon. S. L. Campbell, Hon. C. A. Gilman, Hon. W. H. Mead, Hon. J. P. West Hon. Henry Hinds and Hon. W. H. Feller, entered the Senate Chamber, and took the seats assigned them.

Sherman Page, accompanied by his counsel, appeared at the bar of the Senate, and they took the seats assigned them.

The journals of proceedings of the Senate, sitting for the trial of Sherman Page upon articles of impeachment, for Thursday June 13th, and Friday June 14th, were read and aproved.

The PRESIDENT. Is the Hon. Manager ready to proceed with the argument in the case.

Mr. Manager GILMAN. Mr. President and Senators, you must all be aware that in appearing before you upon a case of so much importance as this, I must do so with great diffidence, never having appeared before

any court of law, and I will say that I would not presume to appear before you upon this occasion, were this not outside of the classes of cases usually tried in courts.

This is a case brought here, on the part of the people, to try an officer of the people for offenses partly political and partly judicial.

As you are aware, there has been a very large amount of testimony taken in this case, (I think, in all, 1500 pages, including the arguments and documents published up to this time), and it has been utterly impossible since the commencement of this trial, to examine, and to make notes from this great mass of testimony: and not having been engaged from the start as counsel in this case, nor in any manner participating in it prior to this trial, I proceed to the discussion of the subject under considerable additional disadvantage to that first mentioned in my remarks.

As you are well aware, the people of the vicinity most in interest who have come here with their grievances, have had in their employ a lawyer of this city,—a gentleman who will follow me in this discussion, and who knows all the points and all the minutia of the case; and they, having at an early period entrusted him with the case, there has less devolved upon the managers selected by the House in arrangement of details, of which they are less informed than they otherwise would have been.

So, in view of these causes, and in view of my inexperience in this matter, I shall be compelled to ask your indulgence not only in the transgressions which I may make, in perhaps alluding to matters outside of the testimony, but also in omitting many matters which are relevant, and which have been received in testimony.

You are well aware that the subject under consideration has been one of great notoriety, not only since the power of impeachment was invoked, but for some years previous.

There has been a great deal said about it in the newspapers. There has been a great deal of talk in regard to the matter, about these halls. So that it may be quite difficult to distinguish, in discussing this case, between what has been said outside relative to the matter and that which actually appears in the testimony. It will be difficult, I say, to draw a precise line beyond which, in saying what I deem it necessary to say, I should not go.

A long time has been spent in examining witnesses, and an immense amount of testimony has been taken, in listening to which your patience has been severely tested. We have now reached a point in the consideration of this case where it is necessary to review the ground over which we have passed, and to determine from the result of that review whether all the proceedings are to culminate in a conviction or an acquittal of the respondent, Sherman Page, judge of the tenth judicial district.

As one of the managers on the part of the State, it may not be inappropriate to say, that those upon whom the task of prosecuting devolves, are not so engaged by reason of any act or desire of their own. None of them have any interest or feeling in this matter that inclines them to prosecute. As representatives of a co-ordinate branch of the Legislature and of the people, they are here to maintain the rights and interests of the people and the House, and to prosecute this cause in honor—not vindictively nor unreasonably—but honestly and fairly and with such ability as they may.

As the h[illegible]rable gentleman who opened the case for the respondent saw fit, (though perhaps without design), in discussing article one, to intimate that the motives of the managers were not what they should be, or they would take a different course, I take this occasion to disclaim on the part of the managers the remotest disposition to take any undue advantage, to go beyond the proper limit in any direction, or to be possessed of an intent to exceed their professional duty in any respect.

It cannot be expected that no zeal nor warmth of interest and of action is to be manifested in a case like this—a matter which, in its various phases, has for years agitated the public, and scandalized Mower county and the tenth judicial district, to such a degree that the matter has irresistibly forced its way, by the high and constitutional process of impeachment, into the presence of this tribunal, and of the whole people.

It is to be regretted that the judge of that district, in addition to his legal attainments, his great will power, and his general ability, had not possessed the other characteristics so requisite to a man whose imperative duty it is to live at peace, and to promote harmony.

This matter was brought before the House of Representatives at the last session, and much of the time of that body was spent in giving a hearing to both parties. The result you well know was a vote of more than two-thirds of that body in favor of impeachment, immediately after which the articles now under consideration were presented to your honorable body.

It is not an agreeable task to show that this respondent has violated the sanctity of his office—has done those things he ought not to have done, left undone those things he ought to have done, and that he is unfit for the office of judge.

But the acceptance of this responsibility by us involves labors we cannot evade. If this respondent has invoked the discretionary powers of his office to aid him in paving his way to power and dominion and to the gratification of his ambition, until his people have become exasperated beyond endurance, it is not the fault of the House of Representatives who impeached him, nor of this honorable Senate which is to try him. Both these bodies are but the agents of the people to whom this power is given, or rather by whom it is retained, and upon both rest duties and responsibilities of the most weighty character.

This respondent does not come before you altogether a stranger. The wranglings and warfare of the Page and anti-Page factions of Mower county for years past, not only before but since his election as judge, have made the name of Judge Page familiar to the people of the State. While from this fact no presumption of guilt follows, such *judicial notoriety* as he brings must at least weaken the natural and legal presumption of innocence on the side of the accused, and Mr. Manager Campbell was fully justified in saying in his opening remarks that, "we start out with presumptions in our favor."

No cause of an ordinary character can properly invoke the power of this tribunal. In connection with what offenses it may be invoked, and what are its powers, we will discuss very briefly.

It is, I think, well settled, that the Senate sitting as a High Court of Impeachment, is a politico-judicial body, vested with the powers of a court and of a Senate, but not hampered with, or bound by the technical rules of the former.

Had it been the design that it should be strictly a judicial body, it would doubtless have been composed of the highest judicial officers of the State, instead of men elected by the people without regard to legal attainments, and liable to be without such attainments, which, however, is far from being the case upon this occasion.

And it logically follows that the rigid rules and technicalities of the law were not expected nor designed to be applied to courts of impeachment. It was evidently designed that the Senate, elected in the main for other purposes, and selected by the people as men of a high order of integrity, ability and discretion, should act upon and determine all questions of impeachment upon common sense (which is common law,) principles, keeping of course within the limits of our constitutional law.

As applicable to this case, the gist of the common law and of common sense (so to speak) may be found in precedents established in analogous cases, and upon questions similar to these, in connection with any cases.

Beyond the constitutional and moral obligation of your honorable body to act within the purview of these rules, you are undoubtedly "a law unto yourselves," and answerable only to the general public and to your consciences.

We will not admonish you, as did the honorable counsel in opening the case for the respondent, that if you "are honest" you will act in a certain direction, but we say that we have the fullest confidence that you will decide honestly and righteously, and that we shall be satisfied with that decision, whatever it may be. You are the judges; we are only counsel.

Regarding the process of impeachment, our constitution, in article 4, section 14, says:

"The House of Representatives shall have the sole power of impeachment, through a concurrence of a majority of all the members elected to seats therein. All impeachments shall be tried by the Senate; and when sitting for that purpose, shall be upon oath or affirmation, to do justice according to law and evidence. No person shall be convicted without a concurrence of two-thirds of the members present."

In article 13, section one, it is provided that certain officers, including judges of the district courts, "may be impeached for corrupt conduct in office, or for crimes and misdemeanors; but judgment in such case shall not extend further than to removal from office and disqualification to hold and enjoy any office of trust or profit in this State. The party convicted thereof shall nevertheless be liable and subject to indictment, trial, judgment and punishment according to law."

Section three of said article provides that "no officer shall exercise the duties of his office after he shall have been impeached and before his acquittal;" and section five provides that "no person shall be tried on impeachment before he shall have been served with a copy thereof, at least twenty days previous to the day set for trial."

These, I believe, are the only laws of our State bearing directly upon the impeachment of a judge.

Regarding the position of a judge, and what are his proper relations to the people, and his duty to them and to the office, there is hardly a diversity of opinion.

Through all the ages of civilization the office has been a most honorable one, and its incumbents have always been revered.

The symbol of justice is a woman blindfolded, sitting on the throne of justice; blindfolded, with the scales in her hand, that while dealing out justice she may not see the suitors at her court, and thereby incline through fear, favor, affection or interest, to turn the scales with partial hand.

Justice demands strict impartiality, and freedom from all bias.

Every person is liable to appear before this judicial throne for justice.

Has Judge Page avoided turmoils and dissentions so as to be free from bias?

Has he closed his eyes before all suitors and held the scales of justice with delicate touch?

Do the people revere him for his high judicial qualities?

Mr. President and Senators, no favorable response can be made to these questions.

The testimony shows him in controversies and broils all the time. It shows his eyes flashing defiance at his enemies, and the scales of justice unbalanced by malice and oppression; not peace, but a hurricane in his breast.

## TESTIMONY OF THE PARTY TO THE RECORD.

Without dwelling at this time upon the manifest design of the respondent in parading himself and his testimony upon all the articles before his witnesses for their edification, in advance of their testifying, we will consider briefly the value usually placed upon the testimony of a party to the record.

Greenleaf, volume 1, sections 329 and 330, as to parties to the record, says:

"Section 329. And *first*, in regard to *parties*, the general rule of the common law is, that a *party to the record*, in a civil suit, *cannot be a witness* either for himself, or for a co-suitor in the cause."

The rule of the Roman law was the same:

"Omnibus in re propria dicendi testimonii facultatem jura submoverunt."

"This rule of the common law is founded, not solely in the consideration of interest, but partly also in the general expediency of avoiding the multiplication of temptations to perjury. In some cases at law, and generally by the course of proceedings in equity, one party may appeal to the conscience of the other, by calling him to answer interrogatories upon oath. But this act of the adversary may be regarded as an emphatic admission, that, in that instance, the party is worthy of credit, and that his known integrity is a sufficient guaranty against the danger of falsehood. But where the party would volunteer his own oath, or a co-suitor, identified in interest with him, would offer it, this reason for the admission of the evidence totally fails; "and it is not to be presumed that a man, who complains without cause, or defends without justice, should have honesty enough to confess it."

"Section 330. Same subject. The rule of the common law goes still further in regard *to parties to the record* in *not compelling* them, in trials by jury, to give evidence for the opposite party, against themselves, either in civil or criminal cases. Whatever may be said by theorists, as to the policy of the maxium, *nemo tenetur seipsum prodere*, no inconvenience has been felt in its practical application. On the contrary, after centuries of experience, it is still applauded by judges, a 'rule

founded in good sense and sound policy;' and it certainly preserves a party from temptation to perjury. This rule extends to all the actual and real parties to the suit, whether they are named on the record as such or not."

I also read at the bottom of 391 of 1st Greenleaf, on evidence, a note from Gilbert:

"For where a man who is interested in the matter in question, would also prove it, it rather is a ground for distrust than any just cause of belief; for men are generally so short sighted, as to look to their own private benefit, which is near to them, rather than to the good of the world, which, though on the sum of things really are best for the individual, is more remote; therefore, from the nature of human passions and actions, there is more reason to distrust such a biased testimony than to believe it. It is also easy for persons, who are prejudiced and prepossessed, to put false and unequal glosses upon what they give in evidence; and therefore the law removes them from testimony, to prevent their *sliding into perjury*; and it can be no injury to truth to remove those from the jury, whose testimony may hurt themselves, and can never induce any rational belief."

1 Gilb., Evidence by Lofft, p. 223.

I submit to the court, that the high authorities above cited could hardly have been more appropriately worded to apply to this case. It might be thought by some that the words "slide into perjury" were peculiarly applicable here, but a commonplace interpretation of sliding suggests descending by natural gravitation, on a down grade. In this case it is questionable whether the involutions of vicious intrigue, "the wiring in and wiring out," as the honorable and able counsel would express it, of this respondent, for long years, has placed him upon any moral eminence from which to slide.

NEGATIVE TESTIMONY.

I quote from 17th Wallace, page 384:

"Ordinarily, a witness who testifies to an affirmation is entitled to credit, in preference to one who testifies to a negative, because the latter may have forgotten what actually occurred, while it is impossible to remember what never existed."

Perhaps the theory of the insufficiency of negative testimony is having one of its clearest illustrations in this case.

Witnesses for the prosecution, of good character, and of undoubted veracity, testify to the use of certain language by the respondent on various occasions when they were participating in the transactions, and had peculiar reason to observe and remember what was said and done.

The witnesses testify that the defendent said so and so. They don't remember everything said, but certain things they do remember. Now, what does it signify, that another lot of men step up and say that the respondent did not say those things. Why, it simply means that they either did not hear him use the language, or that they don't remember it, or, that they don't wish to remember it.

These three openings are sufficient to let out a multitude of facts, from a present knowledge of a commonplace matters that occurred long ago. For example, what Senator can remember the particular language used or not used by a judge, whom they may have heard charge a grand jury more than a year ago, in any case in which they had no particular interest?

If half a dozen men say that they recollect the use of certain words, the failure of a hundred men to recollect the use of those words does not disprove their use.

The respondent in this case is so unfortunate as to be compelled to deny and disprove a great deal of language, proved by good witnesses to have been used by him.

The Senators are the judges of the weight to which this negative testimony is entitled; and in so judging, will of course weigh conflicting statements in the light of the knowledge they have as to the general conduct of the respondent.

## IMPEACHABLE OFFENSES.

It has been announced by counsel for respondent, in opening the case upon that side, that they claim that no offenses are impeachable except those that are indictable. Now, gentlemen, while it has been frequently claimed that such was the case, by counsel defending accused persons, through all the long years since impeachments were invoked, that rule attempted to be enforced, has been overruled, I believe, without exception.

If you were requested to specify just what particular acts are good and commendable, and just what are bad and reprehensible, you could as easily perform the task, as to define what is impeachable and what is not.

The learned counsel who opened the defense for the respondent upon the 19th day of the session, said: "We claim that no offense is impeachable that is not indictable." It cost but little effort to make that claim, and precedents were not wanting, for it has been common for respondents in like causes to make the claim, but it has been equally common for the courts of impeachments to deny it.

A few authorities may be properly cited upon this point.

Judge Story in his treatise upon the constitution, says:

"Again, there are many offenses, purely political, which have been held to be within the reach of parliamentary impeachments, not one of which, is, in the slightest manner, alluded to in our statute books. And, indeed, political offenses are of so various and complex a character, so utterly incapable of being defined, or classified, that the task of positive legislation would be impracticable, if it were not almost absurd to attempt it. What, for instance, could positive legislation do in cases of impeachment like the charges against Warren Hastings, in 1788? Resort, then, must be had either to parliamentary practice, and the common law, in order to ascertain what are high crimes and misdemeanors; or the whole subject must be left to the arbitrary discretion of the Senate, for the time being. The latter is so incompatible with the genius of our institutions, that no lawyer or statesman would be inclined to countenance so absolute a disposition of opinion and practice, which might make that a crime at one time, or in one person, which would be deemed innocent at another, or in another person. The only safe guide

in such cases must be the common law; which is the guardian at once of private rights and public liberties. And however much it may fall in with the political theories of certain statesmen and jurists, to deny the existence of a common law belonging to, and applicable to the nation in ordinary cases, no one has as yet been bold enough to assert, the power that impeachment is limited to offenses positively defined in the statute book of the Union, as impeachable high crimes and misdemeanors."

Story on Constitution, pp. 799 and 800, 1st vol., says:

"Congress have unhesitatingly adopted the conclusion, that no previous statute is necessary to authorize an impeachment for any official misconduct; and the rules of proceeding, and the rules of evidence as well as the principles of decision, have been uniformly regulated by the known doctrines of the common law and parliamentry usage. In the few cases of impeachment, which have heretofore been tried, no one of the charges has rested upon any statutable misdemeanors. It seems, then, to be the settled doctrine of the High Court of Impeachment, that though the common law cannot be a foundation of a jurisdiction not given by the constitution or laws, that jurisdiction, when given, attaches, and is to be exercised according to the rules of the common law; and that, what are, and what are not, high crimes and misdemeanors, is to be ascertained by a recurrence to that great basis of American jurisprudence. The reasoning by which the power of the House of Representatives to punish for contempt, (which are breaches of privilege, and offenses not defined by any positive laws,) has been upheld by the Supreme Court, stands upon similar grounds; for if the House had no jurisdiction to punish for contempts, until the acts had been previously defined and ascertained by positive law, it is clear that the process of arrest would be illegal.

"In examining the parliamentary history of impeachments, it will be found, that many offenses, not easily definable by law, and many of a purely political character, have been deemed high crimes and misdemeanors worthy of this extraordinary remedy. Thus, lord chancellors and judges, and other magistrates, have not only been impeached for bribery, and acting grossly contrary to the duties of their office, but for misleading their sovereign by unconstitutional opinions, or for attempt to subvert the fundamental laws, and introduce arbitrary power."

Rawle says:

"The involutions and varieties of vice are too many and too artful to be anticipated by positive law, and sometimes too subtle and mysterious to be fully detected in the limited period of ordinary investigation. As progress is made in the inquiry, new facts are discovered which may be properly connected with others already known, but would not form sufficient subjects of separate prosecution. On these accounts a peculiar tribunal seems both useful and necessary. A tribunal of liberal and comprehensive character, confined as little as possible to strict forms, enabled to continue its session as long as the nature of the case may require, qualified to view the charge in all its bearings and dependencies, and to appreciate on sound principles of public policy the defense of the accused, the propriety of such a separate tribunal seems to be plain," &c.

Wooddeson in his 2d vol., page 596, declared that impeachments extended to cases of which the ordinary courts had no jurisdiction. He says:

"Magistrates and officers may abuse their delegated powers to the extensive detriment of the community, and at the same time in a manner not *properly cognizable before the ordinary tribunals.*"

And he proceeds to say the remedy is by impeachment.

"Christian, who is supposed to have understood the British constitution when he wrote, says:

"When the words high crimes and misdemeanors are used in prosecutions by impeachment, the words high crimes have no definite signification, but are used merely to give greater solemnity to the charge."

That is in a note to 4th Blackstone, page 5.

"If an act to be impeachable must be indictable, then it might be urged that every act which is indictable must be impeachable. But this has never been pretended. As the Senate must, therefore, decide what acts are impeachable, it cannot be governed by their indictable character."

The oaths of office of judges are a part of the public laws defining duties, and a violation of them is impeachable offense:—

Judge Blackstone, 4th vol., p. 5, says:

"A crime or misdemeanor is an act committed or omitted in violation of a public law, either forbidding or commanding it."

These general views are in accordance with those advanced by the framers of the United States constitution, both in convention and in their writings.

In the trial of Judge Chase, Mr. Manager Randolph says:

"It has been contended that an offense to be impeachable must be indictable. *For what then, I pray you, was it that this provision found its way into the constitution?* * * * If the constitution did not contemplate a distinction between an impeachable and an indictable offense, whence this cumbrous and expensive process, which has cost us so much labor and so much anxiety to the nation? Whence this idle parade—this wanton waste of time and treasure—when the ready intervention of a court and jury alone was wanting to rectify the evil?"

(Annals of Congress, 1804-'5, page 642.)

Mr. Madison, in the Federalist, No. 65, says, in speaking of impeachments:

"The subjects of its jurisdiction are those offenses which proceed from the *misconduct of public* men, or in other words, from the abuse or violation of some public trust. They are of a nature which may, with peculiar propriety, be denominated political, as they chiefly relate to injuries done immediately to society itself."

As to unfitness, see page 357, vol. 3, of the trial of A. Johnson, which reads as follows:

"I charge him with an arbitrary and despotic abuse of the veto power, to gratify his personal and political resentment, with such evident marks of inconsistency and duplicity as to leave no room to doubt his total disregard of the interests of the people, and of his duty to the country.

"I charge him with pursuing such a course of vacillation, weakness and folly, as must, if he is permitted to remain longer at the head of the government, bring the country into dishonor and disgrace abroad, and force the people into a state of abject misery and distress at home.

"I charge him with being utterly unworthy and unfit to have the destinies of this nation in his hands as chief magistrate, and with having brought upon the representatives of the people the imperious necessity of exercising the constitutional prerogative of impeachment."

Congressional Globe, vol. 12, p. 144, third session, 27th Congress.

Story, in his Commentaries, says:

"In examining the parliamentary history of impeachments, it will be found that many offenses not easily definable by law, and many of a purely political character, have been deemed high crimes and misdemeanors worthy of this extraordinary remedy."

Curtis, in his history of the constitution, says:

"Although an impeachment may involve an enquiry, whether a crime against any positive law has been committed, *yet it is not necessarily a trial for crime*, nor is there any necessity, in the case of crimes committed by public officers, for the institution of any special proceeding for the infliction of the punishment prescribed by the laws, since they, like all other persons, are amenable to the ordinary jurisdiction of the courts of justice, in respect of offenses against positive law. *The purposes of an impeachment lie wholly beyond the penalties of the statute or the customary law. The object of the proceeding is to ascertain whether cause exists for removing a public officer from office.* Such a cause may be found in the fact, that either in the discharge of his office, or aside from its functions, he has violated a law, or committed what is technically denominated a crime. But a cause for removal from office may exist where no offense against positive law has been committed; as where the individual has from *immorality, or imbecility, or mal-administration, become unfit to exercise the office.* The rules by which an impeachment is to be determined are therefore peculiar, and are not fully embraced by those principles or provisions of law which courts of ordinary jurisdiction are required to administer."

That was Mr. Curtis on the constitution, and it is conceived, I believe, that Mr. Curtis, who is one of the modern writers upon that subject, is second to none in authority, and he lays stress upon the words "because unfit to exercise the office." It seems, in the opinion of Judge Curtis, that not only is it unnecessary that crimes under statutory provisions be committed, but an officer, who for any reason has become unfit to perform the duties of his office, is properly a subject for impeachment. The page and section is not referred to, but it is found on page 104, vol. 3, of the Johnson impeachment trial:

In the trial of Queen Caroline, in 1820, volume 1, page 22—of that trial Lord Brougham says:

"Impeachment was a remedy for cases not cognizable by the ordinary jurisdiction. The House of Commons might impeach for whatever was indictable, but they also might impeach in cases where no indictment could be found. He submitted, therefore, that some satisfactory reason ought to be stated why impeachment was not resorted to in this instance." (Vol. 1, p. 22.)

Again he says:

"The learned attorney general had held that no impeachment could lie unless some law was violated; but the opinion was contrary to the doctrine laid down by the greatest writers on the law of impeachment. Lord Coke did not so limit the power of Parliament. He regarded this power as most extensive, and in describing it quoted this remarkable expression. "That it was so large and capacious that he could not place bounds to it, either in space or time." In short, this maxim has been laid down as irrefragable, that whatever mischief is done and no remedy could otherwise be obtained, it is competent for parliament to impeach. * * * * * * * * * * * * * * * * * * * * * Why was impeachment competent in the case of a misdemeanor of a public functionary? Expressly because no remedy was to be found by any other means; because an act had been committed which justice required should be punished, but which could only be reached by Parliament. * * * * * *" It happened that the very first impeachment which occurred in the history of Parliament was one which neither related to a public officer, nor to any offense known to the law. It was the case of Richard Lyons and others, who were complained of for removing the staple of wool to Paris, for lending money to the King on usurious contracts. The statute against usury had not then been passed, and there were various other charges against the parties, which formed no legal offense. The case was one in which merchants were, among other things, charged with compounding duties with the King for a small percentage."

Again we find Lord Brougham stating:

"That the House would exercise the right of impeachment, not because the offense was liable to a five-pounds penalty—not because it was indictable, but because some evil had been committed which the ordinary courts of law could not reach. *This he conceived was the only conditional principle upon which impeachment rested.* The case of Mr. Hastings illustrates his argument, for of the articles of impeachment preferred against him, four out of five were for offenses of a nature of which no court of law could take cognizance. (Vol. 1, p. 62 and 63.)"

In impeachment trials this and many other questions have been raised for the sole purpose of beclouding the case in doubts of some kind; to raise up in the minds of some Senator a doubt, perhaps a welcome one, as to the legal right to try or to convict. Where results so momentous are impending, the respondent, in averting a dreaded result, may well resort to numerous expedients, however desperate, to gain a slight advantage, for a slight advantage gained, may determine the case.

It is seldom that the process of impeachment has been invoked where the alleged offense was indictable, and almost invariably this same point

has been raised; that is, that the offense must be indictable to be impeachable; and just as often has it been decided that it was mainly in the matter of alleged offenses *not indictable*, that the impeaching process was designed to be invoked.

So well settled is this question, that no respondent can again raise it in good faith, but only as a possible means of affording some one, predisposed to a doubt, the shadow of a technical point, to join with such doubt in laying the foundation for an excuse for an unreasonable vote.

The thousands of indescribable offenses that may be committed outside the purview of all statutes, and the well-established fact that impeachment has always been resorted to in that class of cases, renders it a matter of curiosity, why the learned counsel for the respondent placed himself upon such untenable ground in making that "claim."

The constitution of this State provides that certain officers, and among them judges, may be impeached for corrupt conduct in office, and for crimes and misdemeanors. The "corrupt conduct" must be "in office;" but the "crimes and misdemeanors," need not necessarily be in office, although no question upon that proposition will perhaps arise in this case.

As corrupt conduct and misdemeanors, in connection with the matter of impeachment, are impliedly criminal, it is only essential that we arrive at a proper understanding as to what is corrupt conduct, and what is misdemeanor as those terms are commonly used in connection with impeachments; for upon a clear and proper understanding as to the meaning of those terms, the result of this trial to a great extent depends.

That the term "corrupt" has not necesarily any connection with, or relation to any money or property transaction, it is, fortunately, not necessary to argue to this tribunal.

There are certain actions which may be said to constitute good conduct, and there are many actions always recognized as constituting bad conduct, or corrupt conduct, but a full and concise definition of the term "corrupt conduct," is simply impossible, in whatever sense the term may be used; but, for the purposes of this or any other impeachment trials, a sufficiently clear understanding of the term may easily be had. An honest and discriminating judgment, with the fair understanding of human nature possessed by the members of this tribunal, will interpret to each one the reasonings and conclusions cited and advanced by us; and a reasonable and common sense view of the case is all we ask.

"Misdemeanors" and "corrupt conduct," being terms so nearly synonymous, we will take no trouble to consider them separately.

On Chase's trial, the defense conceded that "To misbehave, or to misdemean, is precisely the same."

2 Chase's trial, 145.

It is stated by able commentators that "demeanor is conduct * * a misdemeanor, is misconduct."

1 Danes Abridgement, 7th volume, 365, says: "The term 'misdemeanor' covers every act of misbehavior, in the popular sense."

2nd Bissell, page 984, section 8, reads:

"Section 8. *Wilful neglect to perform official duty, is a misdemeanor.* Where any duty is enjoined by law, upon any public officer, or upon any person holding any public trust or employment, every wilful neg-

lect to perform such duty, and every misbehavior in office where no special provision is made for the punishment of such delinquency or malfeasance, is a misdemeanor punishable by fine and imprisonment."

Blackstone and other good authorities, have shown that in connection with impeachment, the terms "high crimes," have not their ordinary technical significance, but are used to give greater solemnity to the charge; and so also the term "misdemeanor," is not limited in its bearings to the narrow scope indicated in the common statute law.

When the people of the State are forced by the conduct of any officer, to resort to this high tribunal for redress, no technical rules not necessary to the ends of justice are to be adopted—neither any illiberal construction of the law. The people's representatives in this matter, will not place shackles upon themselves. If they find in the respondent an unfitness for the position, they will use the fullest constitutional power to convict him. The object is to reach, within the law, whatever result is conducive to the public interests.

And upon this theory, if you find the respondent to be a good officer, of suitable temperament and acquirements for the position, though technically at fault, you will be justified in stretching your legal authority to the fullest extent to do justice to him. In short, I hold that if he is a good judge he shall be maintained, and if through any misconduct in office, he is not a good judge, he should be removed, and that that is the object of all this proceeding, and to that end the constitution and precedents, confer upon you full power.

It is for you to say what is corrupt conduct, and what is misdemeanor in a judge. But a consideration of all the precedents, and an application of common sense rules, brings us, in my humble judgment, to the conclusion that *wrongful or unlawful acts done willfully or maliciously by a judge, constitute corrupt conduct. The bad intent makes it corrupt. When willful or malicious, there is a bad purpose. There is some quid pro quo that inspires the act, and it matters not whether it be money, or something that gratifies feelings of pride, hatred or revenge; a desire for power and dominion, to reward friends, or punish enemies.*

When a judge is influenced in the discharge of his official duties by any other motive than to do full justice according to the law and the evidence, and fails to act with strict impartiality and without bias, then he is corrupt.

I have cited authorities, Mr. President and gentlemen of the Senate, upon those questions, as to what is impeachable and what is corrupt conduct for the reason that they have a very important bearing upon the trial of the case. If there should be one Senator here who labors under a misapprehension as to whether this tribunal has power to try a judge for offenses, outside of the statutory provisions, that doubt in his mind might determine the result in this case; also if there be a difference of opinion as to what is impeachable, and that opinion leads anyone to believe that wilful and malicious conduct, oppression of officers and others, in a manner not laid down in the statutes is not impeachable, then that misapprehension also might determine the result in the case, and it is for these reasons that I have quoted at length regarding that matter. I will now proceed to the articles that we have under consideration.

There is charged upon this respondent corrupt conduct in office, and misdemeanors in office. The foundation of these charges is alleged to

be continuous acts of oppression—continuous abuse of his powers as judge in willfully, maliciously and arbitrarily oppressing and misusing such officers and other persons as incurred his displeasure; that he wrongfully used his powers as judge to gratify personal malice and spite; and in substance that he attempted to control the action of the grand jury of Mower county so as to ensure the disgrace and punishment of his enemies, who will be shown to be too numerous and of too high standing to leave a doubt in your minds as to the question of Judge Pages's further usefulness there as a judge, or as to his fitness for the office. And his usefulness passed, his unfitness is certain.

First in order is the article No. 1, relating to the case of Mr. Mollison. You are doubtless familiar with the article, and I will not read it at length. However, I will state, before starting in upon the examination of these articles that I shall not attempt to follow them closely—shall not attempt to touch upon all points. I am to be followed in this matter upon the side of the State by two able counsel, both practitioners in the courts and accustomed to such matters, and one of them, as I said before, wholly familiar with all the details.

Judge Page had been placed in position not for his own honor or agrandisement, but for the benefit of the public, and if a condition of things has been brought about, and especially by his own misconduct, whereby public interest will not be promoted, but seriously injured by his continuance in office, then no reasonable objection can exist to his retirement to private life by operation of law designed for that purpose.

It appears by article 1, that, at a general term of court in the county of Mower—Sept. term of 1873—an indictment was found against Mr. Mollison, for an alleged libel against this respondent. He was arrested and brought into court and arraigned before Judge Page, and he plead "not guilty." There is no evidence, I believe, that before pleading, he was informed by the judge that he was entitled to counsel, before proceeding further. It is proper that the judge should have so informed him. However, after the charge was read, he plead "not guilty."

It seems that right there at the very commencement of this case, we see cropping out the malice and the arbitrary conduct that is charged here upon this judge. Brought there for an offence or an alleged offence, in which the name of this judge had been coupled; indicted by a grand jury before which had doubtless appeared the county attorney, a former partner (if not still a partner) of the respondent in this case, there is reason I believe, to claim, in connection with subsequent events which transpired, that the judge was not wholly free and clear from bias; the whole circumstances of the case, as we will show, indicate clearly that there was malice.

It seems that after the prisoner plead and went to take his seat, that he rose up and asked to say something; made an attempt to make a few remarks to the court. It is stated by the defense that he wanted "to make a stump speech."

Now, gentlemen, was it strange that a respectable man there like Mr. Mollison, arraigned upon an indictment of that kind should, in his ignorance of the law, and the custom of courts, get up and make some remarks? I think not, and it seems to me that under the circumstances, if the judge did not see fit to allow him to speak, he at least should have treated him civilly, but instead of that the judge spoke up in an insulting and abusive tone, and said, "sit down; sit down, sir." Of course he did sit down. And then in the matter of the bail, he put upon him, what

we claim to be an extraordinary amount under the circumstance,—$1,500—a disproportionate amount to what is usually required in similar cases.

Now, Mr. Mollison was not a transient man, nor a disreputable character, who was likely to leave the country. He was a farmer, and a permanent resident with a family there; and as the only legitimate purpose of bail is to secure the appearance of the party bound, the sum of $500 would have been ample for that purpose.

Mollison was required to give $1500,—more than forgers and horse thieves,—and you see that he was already coming in for the first instalment of the malice that was bottled up for his benefit.

But it is not of that I wish to speak. The main point which is made in this case, is, that under the law, Mr. Mollison was entitled to a speedy trial, and it is claimed that the judge, in the performance of his duty, did not accord to him a speedy trial. The judge, on the other hand, alleges in his answer, that he did give him as speedy a trial as was possible; that is, he attempted to give him a speedy trial. Now, I apprehend it will occur to this tribunal, when they consider that this party was before that court, from the fall of 1873 to the spring of 1878, that there was not a proper effort made there to procure another judge to sit in the case, if the sitting of another judge were necessary. The respondent claims that he used due diligence. He has brought judges here to prove that he did use due diligence, in bringing this man to trial, but what are the facts that he brings out. He brings Judge Dickenson here from the Mankato District, and I discover no point in his testimony. He simply states that he went there in response to the letters of invitation for that purpose, and held a court, to try causes in which Judge Page "had been interested as attorney." It is shown that there was no jury at that time, by Judge Dickenson's testimony, to be found on page 44 of June 7th. Afterwards he had Judge Mitchell there.

MR. DAVIS. That is an error; he had Judge Mitchell there first.

MR. GILMAN. Very good, that is not material to the case who was there first. At any rate Judge Mitchell was there in July, 1874. Let us see what he testifies to. His testimony will be found in the proceedings of the 20th day, pages 63 to 69.

The judge states that he went there in response to invitations; (and they were not very urgent ones as the letter produced shows;) but upon cross-examination, on page 68, in answer to the question,

"Q. Do you remember anything that was said by the county attorney, or any other attorney, in respect to the causes of the continuance in the case against Mr. Mollison."

He says.

"A. I do not."

"Q. I will refresh your recollection. Don't you remember that it was stated by the county attorney, that there would be no occasion to try the case of the State vs. Mollison, because the indictment was the same, as in the case of the State against Davidson and Bassford, until the demurrers in these cases were determined."

"A. Such a remark might have been made; I have no recollection of it."

Now it appears from the testimony of Mr. Cameron, corroborated by the testimony of Mr. Wheeler, that at that term of court, which was nearly a year after Mr. Mollison was arraigned, there were still pending indictments against two other parties, in connection with the same matter with which Mollison was charged—indictments against Davidson and Bassford, and it is stated by Mr. Cameron, corroborated by Mr. Wheeler (former partner of Judge Page, and the attorney for the State at that time) that that case was passed over at that time for the reason that demurrers upon the indictments similar to this Mollison indictment were pending, and that while there was not a demurrer pending in the Mollison case, he still had the right, at any time, to make a motion to quash the indictment, and that motion would be based upon the very same grounds that the demurrers in the Bassford and Davidson cases were based upon, so that a decision in the cases of Davidson and Bassford would be equivalent to a decision in the other; and for the reason that those demurrers were not argued, but would soon be argued, it was passed over and not for any other reason. It seems that shortly after that term, those demurrers were argued and overruled, and the cases were pending in court for a long time, and still no trial was brought on.

Now, we hold that it was not the duty of this defendant to force himself into court. While he had the right, at any time to demand a trial, it was the duty of the officers of the court—the judge and the county attorney,—in the interest of the State, and in the interest of justice to bring this case to trial.

If Mr. Mollison was innocent, it was the duty of Judge Page to give him an opportunity to prove that fact, in order that he might place himself right, before the community in which he lived; if guilty, then it certainly was the *clear* and *imperative duty* of this model judge, to bring Mollison to trial, that violated law, and an outraged public sentiment might be vindicated, by the speedy and certain punishment of the offender.

Mr. Losey, in his argument, holds differently.

He says, on page 33, of the journal of June 5th:

"Securing Judge Mitchell at the earliest practicable moment after the indictment was found, secured to Mollison all of his constitutional rights, or, in other, words, a "*speedy trial.*" He voluntarily waived this right at that term, and thus released respondent from any further obligation or duty, until he came forward and indicated his readiness and demanded a trial, which he never did. Had he done so, and a reasonably speedy trial had not been secured to him, then he might have moved the dismissal of the case, and would have been entitled to have the motion granted. He has slept upon his rights—has waived them, and is in no situation to complain."

Now, it strikes me, gentlemen, that is a very peculiar and unreasonable doctrine to advance to this court, that he voluntarily waived his right to trial at that term, and thus released the respondent from all obligation or duty.

I have shown why the cause went over; they consented to a continuance, and he says that having consented to such continuance, all obligations, on the part of the court, were at an end.

Is that the case, gentlemen of the Senate, with men who are under arrest, as criminals? Because at some term of court, when they could

have had a trial, for some reason they have waived their trial and consented to a continuance, did they thereby put themselves beyond the further operation of the law? I don't understand that the operation of law in this case is reasonably different from what it would be in the case of a man accused of any other crime—of robbery, or of murder.

Suppose a man were before a court under arrest for murder, and by some arrangement between the counsel, at some particular term of court, the case should be put over. If the counsel, upon the part of the accused, should consent to a postponement to some time in the future, and, as the counsel for the respondent here says, "thereby waive his right to a speedy trial," does it necessarily follow, that the court is thereby released from any further obligation or duty? In the courts of this State, when a man is accused of murder, can he, through stipulations of counsel, for a continuance at one term, become forever exempt from prosecution? If, for some reason, the counsel in this case before you to-day, had stipulated on the day set for trial that this respondent should not then come to trial, that it should be put over to some future day, and afterwards said respondent did not come forward and demand a trial, would it be proper, under the circumstances, to let the matter rest and never bring him to trial? Public interests, if none other, and an observance of law, demand that all such cases be promptly disposed of. Why, the idea is absurd. The obligation of that court to bring that man to trial, was just as great after that continuance in July, 1874, as it was before, and gentlemen, when the respondent in this case comes before you and puts in a plea so frivolous, so unfounded and so unreasonable as that is, what is the inference to be drawn? He says, on the same page, that had he (Mollison) demanded a trial, and a reasonably speedy trial had not been secured to him, then he might have moved a dismissal of the case—arrested under the authority of the State, this prisoner has "slept upon his rights."

I apprehend no man who gets in a "bad fix," to use a common expression, will object to escaping trial and "sleeping on his rights," under those circumstances.

Now, after that July term of 1874, up to the spring term of 1878, nearly four years elapsing, did this respondent ever make an attempt to bring Mollison to trial? Did he ever attempt *bona fide* to get a judge there to try that case?

He says that he did; he says that he has been diligent in doing that. Are the judges of this State, gentlemen, so unaccommodating to one another, that for four years a judge cannot be had upon invitation to go into the district of another judge and transact business of that kind? Probably each of you know what the practice is in these district courts; you know how common a thing it is for judges to go from one district to another and hold courts. You know how frequently you see in your own district, a judge from some other district sitting upon cases under like circumstances.

Now what is the testimony of the respondent in this case?

The respondent comes into this court, saying that he used due diligence in trying to get another judge. What does Judge Mitchell testify to in that matter? On the 20th day Judge Mitchell testified, after answering several questions in relation to correspondence between himself and Judge Page:

"Q. State whether Judge Page has ever, since you held the term in July, 1874, requested you to sit for him in the trial of causes in Mower county?

"A. I think not. I have no recollection of any subsequent request of that kind

"Q. There are three counties in your judicial district, are there not?

"A. There are.

"Q. What part of the year, since the year 1874, has the performance of the judicial duties, in your district, required of you—what part of the time has it occupied?

"A. On an average, perhaps, about four months in the year."

Gentlemen, in those questions and answers is the most conclusive evidence regarding the attempts of Judge Page to try this case that can be mentioned here. There is where all this talk about getting another judge culminates.

It seemed that Judge Mitchell would accommodate him when he could, and when he was asked to do it. But here, in an adjoining district, was that judge—Judge Mitchell, for the space of nearly four years,—his time occupied but four months in the year, (as he states here under oath), in the transaction of his own business, the balance of the time undoubtedly at liberty, and ready to respond to the call of any brother judge. He was undoubtedly ready, I say, all of that time to go and try this or any other case, which might be pending in the respondent's court. And still during all that time he was not called upon. Now, if this respondent comes into this court making that plea, as he does here, and you find upon investigation of this testimony—of his own witness—of a man whose word will be taken by every person in the State—testimony beyond all question,—that he could have had a judge during that period to have brought that man to trial, and didn't do it, I say what are you to think of his testimony? and, gentlemen, I will say here at the commencement, that if you find the testimony of this respondent to be crooked, prevaricating, uncertain or false in any particular here, you have good cause to apply the old and well known maxim: *Falsus in uno falsus in omnibus.*

I make these remarks at this time, because throughout this entire case, from this time henceforth until it closes, or until this discussion before your honorable body closes, you will be reminded of seeing this respondent here putting himself under oath in this case, in utter and complete contradiction with nearly all the leading witnesses on the part of the prosecution; in direct antagonism with Mr. French, the county attorney of Mower county; with Mr. Hall, the sheriff of that county, a gentleman in whom everybody in that county and elsewhere, who hears him testify will believe—a gentleman who is so modest that when you speak to him he will blush, on the stand, or elsewhere—a gentleman who has been rigidly and scrupulously careful, in every statement he has made, to keep within the strict bounds of truth, and testify to everything propounded to him according to the facts; to tell all things as they occurred, sometimes gratifying the respondent, and frequently failing to come up to what was expected of him by the other side, from what they supposed to be his knowledge of the facts, regarding which he was testifying; Mr. Kimball, also, was flatly contradicted; the clerk of the county of Mower, a gentleman whose appearance upon the stand here has been such, as to commend itself to all who have seen him, to all who have heard him testify; a gentleman who enjoys, undoubtedly, the

confidence and respect of the people among whom he lives. The same language may be applied to county treasurer Ingmundson, who has been before you; to Mr. Kinsman, an attorney in high standing in that part of the State; a man against whose word a doubt was never raised, until sneered at in this court by the respondent Mr. Cameron, a gentleman who carries the indellible stamp of integrity upon his face, handsome, though he may not be, but honest and convincing in every act; a man who, though belonging to a party in Mower county, which has hardly life enough in it tokeep up its organization, has been honored continuously over strong and well supported men of the dominant party—a man who has been elected to positions of trust and responsibility; and that man, Mr. President and gentlemen of the Senate, is also flatly contradicted here by the respondent; and you may continue this list, and include the county auditor, ex-sheriff Baird, and many others, for I need not mention these individual cases; you may take the whole list of witnesses on the side of the prosecution, and you must admit that they are witnesses, the superior of whom, in respect to truthful appearance, and good demeanor upon the stand, you have never seen in any court.

All those witnesses stand confronted here by this respondent. This respondent who has been the file leader on the part of the defence. He has come here with a host of witnesses, it is true, and men from whose appearance I will not detract, nor attempt to do so, but men who have evidently been under the influence of that powerful will of his; a will which has had the power to impress itself upon everybody within his reach, at some period during his sojourn in that country. Those men, I say, have come here with the respondent himself, the party in interest; the party regarding whom I have cited authorities, showing that his testimony is to be taken with great allowance. This respondent comes into this court and those witnesses, like a trembling vassalage following him; he places himself boldly here before you; he tells his story; the witnesses all hear it; he states it with an unction never surpassed. That calm and dignified demeanor, that pleasant and benign face smiled upon you, as it has not smiled upon the people of his town, for lo! these many years. Such a halo of glory was cast upon his countenance as he sat facing you, that his counsel, the good man from Wisconsin, was inspired, gentlemen, to compare this respondent here, before this assemblage, with the great Redeemer—with Jesus Christ; and to flatter him, this respondent, in the comparison! Is not that a fact? Did he not speak here words which prove my assertion? He didn't start in on quite so high a scale as that, but commenced down with the Apostle Paul and worked up. He said something about the Apostle Paul impressing upon his fellow citizens that it was their duty, in the cases of conflict, and turbulance and wrangles, they had in those days, that "when they were struck upon the one cheek to turn the other." Perhaps I have got the quotation wrong end foremost. "*If possible*" he said, (whatever the injunction was,) they must, "*If possible*" do so, and so. Gentlemen, I am profoundly regretful to be beaten by a Wisconsin man in quoting scripture, and I am forced to admit that I don't consider myself a good representative in that business, and I want it understood moreover, by the people of Wisconsin, if any of them happen to be present, or if any Wisconsin man should ever cast his eye over this argument, that the State of Minnesota is not to be reckoned second to any State, in Christian principles and in a knowledge of the Holy Scriptures. But gentlemen, my early Bible education has not,

I fear, been followed by such subsequent study and application as to fasten upon my memory the lessons of my youth; but I shall hold no malice, because my good Wisconsin friend is more fortunate.

Mr. Losey said that the Apostle Paul told them, under circumstances very trying, to turn the other cheek, or to act in a meek and humble way, under those circumstances, "if possible." He didn't enjoin upon them to do it under any and all circumstances; and if it was not enjoined upon the Apostle Paul to do it, why should this respondent, living in this wicked world, surrounded by those "desperate devils of Mower county" be expected to do as well or better than the Apostle Paul was expected to do?

I would like to find, if I could without too much delay, where this respondent is placed in such favorable comparison with the Savior of mankind, but I am afraid that I won't find it here; but the comparison was made.

Senator MACDONALD. On the 39th page of the journal of the 19th day.

Mr. GILMAN. Thank you.

"*Live at peace with all mankind if it be possible,*" said St. Paul.

The inference of counsel Losey was, of course, that in Mower county *it was not possible*, and when it is pretty hard to draw the line between what is possible and what is convenient, why they need not do it, and so it follows from his quotation, that when it was not convenient for this respondent to live at peace down there in Mower county, there was no injunction of a divine character resting upon him, and the statutes of the State are silent on that subject.

"I know," says Mr. Losey, "it is an injunction of scripture, and it is laid down in the New Testament: 'If thine enemy smite thee on thy right cheek turn to him the other also.' But what did Christ himself do? When an officer struck Jesus with the palm of his hand, we find Jesus rebuking him with becoming indignation,' just as the respondent here rebuked the county attorney, Mr. French, before the board of commissioners, 'with becoming indignation.' 'He didn't turn the other cheek, God as he was, but saith, 'if I have spoke evil bear witness of the evil, but if well, why smitest thou me.' There was no cheek turning there."

Gentlemen, if there was not any cheek turning there, I will take the liberty to say that it required a good deal of cheek on the part of the gentleman to make this comparison in court, to me it sounded very much like blasphemy.

Here the counsel compares the conduct of this judge with that of the Savior, and makes the comparison favorable to his client. It may be that this respondent here is possessed of some of those divine attributes which surrounded Him who is alluded to.

Gentlemen, there is one respect in which I will admit a similarity. It has been said of the Savior that "he spake as never man spake," and I will admit that this judge, on several occasions, "spake as never man spake" when situated under like circumstances. Situated on that judicial throne, where justice is represented as a woman blindfold, with the scales of justice in her hand; blindfold, that she may not see the suitors who approach her court; that she may not incline through fear, favor, affection or interest, to favor the one or the other—I say that when this respondent used the language he did use situated upon that

throne which should have been the throne of justice,—using such language as he used to Mr. Mollison, such language as he used to the grand jury, whom he sought to make instrumental in punishing an enemy who had *dared* to withdraw from the support of this "head purifier" in running the machine of that county—it is uncontrovertible, I say, that he did speak, as never man spake, under like circumstances.

Now, about this Mollison case. We don't care to discuss whether Mr. Mollison was guilty of an offense when he charged the Judge with "heifer plowing with the railroad company," and with robbing the county while hypocritically deceiving the people. That is outside of the testimony, I know, though appearing in the indictment (Exhibit "A," page 29, 13th day,) and the acts referred to, were, I believe, to quite an extent outside the Judge's judicial term. I say we don't care about that; but there, gentlemen, is where the animus originated in this case; there is where that citizen of Mower county had seen things transpiring which didn't meet with his approbation, and he wrote an article in the newspaper, and when he did that, gentlemen, "he put his foot into it;" but I have known many men to do the same thing; he put his foot into it badly; he put himself in antagonism with a man who did not brook any opposition; who evidently had come to that country with the purpose to gratify his disposition, to tyrannize, to dictate and dominate over that people; to control them, to make them subservient to his will, as did Cortez when he crossed the ocean and entered that southern climeamong the defenseless natives, and brought them, by arbitrary power, by force of arms, into utter and hopeless subjection.

It appears by reasonable deductions from the testimony in this case (which the people of Mower county realize to their sorrow), that this respondent was possessed of an intense desire for arbitrary power, which he freely exercised, and as we shall show, unlawfully. From the nature of the subject matter of this first article, and the remote period of its inception, the allegations of that article are less clearly sustained than is the case with the other articles, and the showing may only be valuable in supporting other articles, especially the tenth.

I claim that the evidence must leave the impression on your minds that Judge Page, through county attorney Wheeler, caused Mollison to be indicted for writing a newspaper article, which any judge of proper judicial temper and discretion would have passed by silently; that after he allowed Mollison to plead before him, he should have allowed him to retract his plea and file a demurrer, which might have been argued before another judge; that the bail was disproportionate; that the judge tacitly consented to a quashing of the indictment, as shown by Gen. Cole's testimony; that from July, 1874, he made no *bona fide* attempt to get another judge; that Mollison was ready after the Davidson demurrer was decided, as shown by going to trial before Judge Brill, at the term last spring, at which, his prompt acquittal shows that Mollison either was not guilty of libel, or that hostility of the people to Judge Page found vent through the jury. The animus of the respondent's action is found in Mollison's newspaper article, and whether or not Judge Page is technically guilty; whether he has gone so far in that case as to bring himself within the scope of impeachment, so that you can justly bring in a verdict of guilty here, I will not insist. I will give no opinion on that point, but leave it for you to determine. I will not trouble you longer with the consideration of that case, but I say here is the first evidence of those acts of oppression, of malignity,

which has characterized him for these long years, only a part of which included within the scope of the articles upon which we are acting; I now leave that article. There might be much said, gentlemen, about it, but I don't wish to trespass upon the time of the Senate. I recollect that I asked your indulgence, to permit, contrary to the rules that had been established, another one of the counsel, in this case to occupy a part of your time, and I recollect well that I said then, that it would not take longer for three persons to discuss the facts before you than it would for two; that if this indulgence was granted we would limit ourselves; and, gentlemen, I will endeavor not to trespass upon your time unreasonably. Aside from the citations of authorities at the commencement of my argument, it is my purpose to leave, so far as possible, the discussion of the legal propositions involved in the case to the able and learned counsel who will follow me. It is my design to dwell more upon the facts, and the circumstances which we claim prove malice on the part of the respondent, as alleged, and upon which we hold that his testimony is so evasive, contradictory, inconsistent and impeachable as to operate against himself.

I will now consider the second article, known as the Riley article, the commencement of which reads as follows:

"At the general term of the district court for the county of Mower, held in the month of September, A. D. 1874, the grand jury for said county presented to the said court indictments for alleged criminal offenses against John Beisecker, John Walsh and C. N. Beisecker, which indictments remained pending in said court and undetermined until some time in the month of August, A. D. 1875, when judgments thereon were rendered in favor of the said defendants therein."

The article then proceeds to recite that while certain indictments remained undetermined, the defendant procured subpœnas to be issued for witnesses, and they were duly issued by the clerk of the court in and for that county, compelling the attendance of witnesses at the term to be holden in the month of March, 1875, on behalf of the defendants in the matter of those indictments.

The officer by whom those subpœnas were served, was Mr. Thomas Riley, a deputy sheriff, whom Sheriff Hall had appointed in disregard of the violent opposition of Judge Page, as appears in evidence. He was very bitterly opposed to Riley who, it seems, was a pretty independent man, and such as his Honor could not control; and, whenever you find a Mower county man whom the judge can not control, you are pretty sure to find that the judge and that man are not friends. Now, regarding this article, I claim that those subpœnas were placed in Deputy Sheriff Riley's hands by the clerk of court, who was the proper person; that they were not only *prima facie* good but were lawfully issued, and that he was bound to serve them as directed; that he would have been guilty of an offense to have refused or neglected to have served them; that he did serve them according to law, and that having done so he thereby became entitled to his pay, from the county, as provided by law. He performed that service prior to the time when the judge *pretends* to have spoken to Elder, the clerk of court, to the effect that those subpœnas should not be paid by the county, which conversation (if ever had) did not amount to an order while unwritten and not of record. I further hold that Judge Page, through vindictiveness, growing out of previous occurrences, and with intent to injure and oppress Riley, went before the board of county commissioners when Riley's bill, amounting

to some forty-three dollars, was being informally considered, and by his earnest efforts maliciously exerted, he caused the disallowance of that bill; that he admitted in presence of the board that no order prohibiting payment by the county had been made; that he substantially dared Riley to sue the county, intimating interentially, a defeat before his court; that he thus prejudged a case liable to be tried before him; that he violently and disgracefully demeaned himself on that occasion, and that he then quarreled with, and insulted County Attorney French and Sheriff Hall; that he afterwards falsely made an order as to paying for service of said subpœnas; that he mutilated stipulations of attorneys on appeal of said case from a justice court to his district court, and finally decided the case against Riley, as he had impliedly intimated he would do, when he was previously arguing the matter before the board of commissioners. When Judge Page was testifying regarding this matter, (page 56, 20th day, June 7th) he says: "I stated to him (meaning Mr. Kimball) that I had not made a written order and filed it, but that I might do so at any time, or, that an order might be entered at any time, if it was necessary; but that I did not consider it was necessary to do that in a case of this character."

This significant and forced admission, mind you, was regarding the conversation had before the board of commissioners in presence of sheriff Hall, attorney French, Kimball and others. Afterward he strikes out a stipulation that such order had not been made, etc., and expects you, Mr. President and gentlemen, to justify him in holding that the alleged *conversation* with clerk of court Elder, amounted to an order. As Riley's attorney, Mr. Kinsman, before beginning the suit, examined the records, and could find no such order, you will see the danger of countenancing such a pretext; you will find the judge's action most reprehensible throughout this whole Riley matter. Now there has been a question raised as to when respondent went before that board and discussed that bill. The witnesses on the part of the prosecution state that it was at the March session of the board in 1875; they state positively, most of them, and give reasons why they know that it was at that time; one or two of them recollect with equal distinctness what transpired at the time of the consideration of that bill, and the language that was used on that occasion, but they don't recollect with equal distinctness just when the session was held. Sheriff Hall, you remember, was slightly in doubt as to the time, and his omission to testify positively on that point confirms in your minds the belief that he states nothing that he does not know absolutely.

The witnesses for the respondent—some of them positively—under the lead of the respondent himself, and some of them qualifiedly, state that it was at some subsequent time; the subsequent time testified to by the respondent and some others, was the January term of 1876.

It does not occur to me just now that there was any real point in wrangling over the precise time at which that was presented, except perhaps to discredit the witnesses, who stated that it was at the March term of 1875, and by thus discrediting their testimony on that point, to also discredit their testimony regarding the whole matter. In that they utterly fail to sustain *themselves*, for while they, the respondent's witnesses, attempt to show that this Riley bill was not before the board prior to January 1876, their own records show it before them in June, 1875.

In the journal of the fourteenth day of our action here, and upon the 19th page of the journal of that day, will be found the commencement of the testimony in this case.

Mr. Riley testified in regard to the manner in which he received the subpœnas, to which I will allude hereafter. Then Mr. Kinsman follows as a witness. He testified as to what transpired before the board of county commissioners. *His* testimony however, relates mainly to the January term of 1876, and to the matter of false finding by the judge when the case went up on appeal and under stipulations which it is alleged the judge violated.

Hear what Mr. Richards says; he was county commissioner. On page 31, of the journal of May 29th, speaking of the March session of 1875, he says he was there.

"Q. Well, sir, commence and give us a history of that bill, and what was said and done when the judge was present.

"A. I believe that the bill was first presented, if I am not mistaken, in the March session of 1875.

"Q. Go on and state what disposition was made."

Now, I will read the answer at length given by this witness, because he is the first one I believe on the side of the State that testifies substantially in the case; he was a county commissioner and testifies with distinctness regarding the matter.

"A. We had some talk over the bill and done but very little with it, and some way it laid over until an evening session. Judge Page came in, and that bill was up before the board and the county attorney, Lafayette French, and the judge and the whole county board were talking over that bill, and the judge claimed that the bill was not a legal bill, that we had no right to allow it, for some reason, that there were some points of law to be decided on it, some demurrer or something, I couldn't say exactly what, and in that conversation they got disagreeing about something, and the judge and Lafayette got to talking pretty loud. The judge accused Lafayette of "selling out the party," or something, "with a promise of appointment for that contemptible Irishman, the depnty sheriff, provided he done so and so to help to elect certain parties," and called Mr. French corrupt, and I think Mr. French called it back to him, and conversation went on so loud that I called the attention of the chairman of the board two or three times to call order, and finally he called order.

"Then Judge Page excused himself to the county board, and Mr. French, I believe, also. Mr. Page says he wished to be excused; wasn't really aware that it was in session; thought they had some sort of recess; "but did not take back anything that he said to that young upstart," by that meaning Lafayette French."

Here is one of the board, honest and unimpeachable, stating that certain expressions were indulged in. It needs considerable negative testimony to disprove it. Mr. Richards speaks very positively.

That is his testimony regarding the events of that session, and he is fully corroborated by commissioner James Grant and county attorney French, and as to a portion of the by statement, Sheriff Hall and Mr. Kinsman—all good witnesses.

Now, you see the judge comes in at the outset; those subpœnas, you recollect, had been issued by the court, by his own officer, the clerk of the court, on the request of the defendants, who were indicted under an accusation of having participated in the "whiskey riots," the foun-

dation of which and the particulars of which were very distasteful to the judge, and in which these men, Beisicker and others, had made themselves offensive to the respondent. The matter of their indictment, I believe, is fully set forth in documents on file here in this case; at any rate the subpœnas were issued in that case as before stated. This Riley was the deputy that served them.

Now, the judge takes the stand and gives his version of the case here before his witnesses and for their information. This is the character of his testifying to all the articles at once, in opposition to the rule which had been adopted of taking up one article and going through with it and then another, and with all the witnesses—his testimony, I say, being paraded here right on the stand before all his witnesses in regard to this matter. The judge states in his answer to article 2 to the effect that he didn't know whether this man Riley was a deputy or not, and in his testimony, page 61, 20th day, that he had no acquaintance with Riley—knew him by sight. Now, gentlemen, before proceeding further with this case, I want you just to think of that. I want you to conceive, if you can, by applying all your ingenuity to bear upon your best judgment, what is the probability of this district judge of the court in Mower county not knowing who the officers of his court were; not knowing who the sheriff had appointed as a deputy; of not knowing that this Mr. Hall, sheriff, had appointed Mr. Riley, and not knowing that such appointment had taken place in opposition to himself, as expressed in the conversation which he had had with the sheriff.

You recollect, gentlemen, he had said regarding the appointment of Mr. Riley as a deputy sheriff, "Do you mean to appoint Tom Riley deputy sheriff, that low fellow!" I don't know whether he said "contemptible Irishman" at that time or not, but he characterized him in some unfavorable way, according to the evidence. "Do you dare to appoint that Tom Riley deputy sheriff!" What did Mr. Hall answer him when he made the conversation so emphatic and tried to impress it on his mind? Now Mr. Hall, as I said before, was a man of great modesty; a man that was mild in his manner, and it was a terrible strain upon him to come up and face this judge and give him such an answer as he ought to have given him, because he was not accustomed to it; his disposition was to reverence the judge as we all reverence a judge, but Judge Page was interfering in his business, as he *did* interfere from time to time with his business and with the duties of his office; and when he says to him, "Do you dare to appoint that Tom Riley?" Hall says to him, "Yes, I dare to appoint him and I will appoint him if I live long enough," or "when the time comes," or words to that effect.

Now, Mr. President, and gentlemen of the Senate, I want you to consider fully in this matter, which of itself is small, but which has a bearing on this case of no small importance; it has a bearing upon the question of veracity of this respondent. I want you to consider whether this respondent is telling you truthfully the facts when he indicates to you in his own way that he didn't know this man Riley; "he was not acquainted with him; he knew him perhaps by sight, but *he didn't know that he was deputy sheriff*; his acquaintance then with him was limited. A little while before he was appointed he knew all about him, and talked very emphatically and knowingly about him; he knew that he was not one of his fellows down there, that he was not one of the chaps that marched up when there was a fight between the Page and anti-Page men, and work to be done in the county such as the judge

was in the habit of doing there. He wanted another fellow for deputy, and there was one by the name of Allen there who was a man after his own heart; you have seen him here; Allen just suited him.

Gentlemen, you must believe that he knew Thomas Riley. It is in evidence here that Mr. Riley was well known in the city of Austin. He was no low-lived, inferior man, not to mention the other appellation that was given him; he was well known there; it is in evidence that he was a man who was respected in that community; he was the chief of police there; kept in position six years; and occupies that position now, regardless of the opinion in which he is held by this respondent; well known to citizens of that community, and to the merchants who intrusted to this man the duty of guarding their premises during the night and during the day; of protecting their property. By his representations to the board it appeared that he knew what Riley's political affiliations were. That is where he knew him as he didn't like to know him; he was not his tool and he didn't want him appointed. But, gentlemen, what does he mean? Does not he mean to impose upon your credulity when he says here that his acquaintance with Mr. Thos. Riley was very slight.

But to go back to the point of digression; by virtue of the service of those subpœnas for witnesses in regard to transactions in a riot, or a tumultuous gathering, concerning which the respondent says in his answer to article five "that several hundred persons had assembled—great excitement prevailed—danger of violence was imminent," &c., &c.; he (Riley) thereby became entitled to pay; he comes before that board of county commissioners among whom this respondent had some men who were ready to do his bidding; ready to give him notice "which way the wind was blowing;" ready to point out to him any game at which he might level his piece; this respondent was there, gentlemen, on the ground when this came up before the board; he came in there just in the nick of time; this other judge who has been here—this judicial Mr. Felch whom you have heard testify—Felch, I think it was, called at his house and perhaps said, "Judge, we would like your opinion before our board in regard to a matter pending there," and perhaps he said, "Judge, you have got a chance to get a whack at Riley if you come in after supper;" at any rate, whatever he said to him, the judge was promptly on hand, and he pitched into that bill without delay; he depicted it only as a judge could, he set forth the enormities of the bill; he told that board how a lot of these fellows, "of these desperate devils down there," as the respondent's counsel designated them, "had confederated together" (as the judge says in his answer)—had worked up a conspiracy against the treasury of the county, against which "his back had been planted" for years, with wonderfully beneficial effects to the treasury, as the people down there doubtless well know; as you would know if you could go there. He had already much experience with that treasury. There is the case of the late ex-treasurer Smith, who was persecuted and maltreated and disgraced, so far as it was possible for malignity and persistent effort to disgrace him, until shortly after his case was brought to a termination, honorable to him and completely vindicating him, he passed away into the silent grave, to which his footsteps had long been tending; and in that connection, gentlemen, if persecution of that kind can continue as it has progressed during these recent years, another treasurer will not be far behind him; you have seen the indications before you.

But, as I said before, he went in and interfered in that case; there was a conspiracy he alleges, against the county, which he had protected; Thomas Riley confederated with these defendants, Beisicker, Welsh and Benson—and I think he included Sheriff Hall,—they confederated there together, gentlemen, and through their chicanery conspired to divest that county treasury of the sum of $43.00, or thereabouts. Gentlemen, why should not a judge, whose office his counsel say it is, to protect the treasury of that county, walk in there and interfere to prevent that enormous and unqualified outrage. He did do it. He was not the judge to let any such duty as that be unattended to. No, gentlemen, that was not what he was elected for, to neglect so obvious and imperative a duty as that, so he went to that board and he told them: "Gentlemen, those things are illegal; all this action that those fellows are imposing upon you; they are pressing these accounts upon you here for the purpose of plundering your county; those subpœnas which he served were not legal; they were not properly issued; the officer of my court, Mr. Elder, he had issued them and given them to this officer to be served, but he ought not to have done it; it wasn't legal; I don't know much about that Riley, I don't know whether he is an officer of my court or not—that Tom Riley, whom I told sheriff Hall not to appoint, but if he served those subpœnas, he did it illegally; and, gentlemen, you must not pay the bill; I come here as a tax-payer and a citizen:"

At the same time he laid down the law like a judge, and referred to his action in court as to that, and similar cases It don't make any difference to us for our purposes, whether he claimed that he went there as a citizen and a tax-payer, or as a high expounder of the law, but he told them they should not pay that bill. He was told that if Riley was not paid he would sue.

Mr. Kinsman gave notice that he would sue, as attorney for Riley; it is in evidence by several that the commissioners were notified that a suit would be the result. They said that the county attorney had decided that the bill was legal; the attorney general of the State had been consulted in the matter, and advised payment; the circumstances of the case had been set forth to him, and he said the bill was legal, and that the county would have to pay it, and the county commissioner "wanted to do the right thing," to use their own language; they doubtless looked inquiringly to the judge to see if those reasons which they had stated to him, and those authorities would not modify his views somewhat; but no, he said he "didn't care for the opinion of large men with small brains, nor small men with no brains"; at least he so complimented those officers, if our witnesses tell the truth, but it may all be a fabrication on their part, and the judge alone talking with conscientious precision from a clean heart There are numerous contradictions.

You doubtless remember that the judge, in making his decision in which he overruled the justice's decision giving judgment to Riley, made the following as a part of his decision, which may be found on page 60 of the journal of the 20th day, June 7th :

"That the judge of said court at general term held in March, A. D 1875, before this action was commenced, in open court made an order and directed that none of the fees for issuing or serving said subpœnas be paid by said county. That the clerk failed to enter said order in his minutes and the same had not been entered when this action was commenced."

Under all the circumstances, that was a remarkable order, and I merely refer to it at this time to illustrate how the judge's unfortunate propensities drove him to all these extremities to complete his designs. This finding contradicts his answer to the board as to the order, just as he on the stand contradicts his remark about "brains," and contradicts nearly all the testimony which is seriously against him.

As to this contradiction, perhaps the question of brains and the merits of the county attorney's opinion, and of the attorney general of the State were not talked of; but, in regard to that remark, there is a question of veracity between the judge and some three or four good citizens of Mower county. Again, he told them "if Riley wanted to sue, to let him sue." Well, that might not appear to amount to much; there are plenty of men who say that on occasions of controversy; but, gentlemen, what did it imply, coming from a judge of the district court, to which that suit naturally would go? Why, gentlemen, it is as clear as daylight that it implied to all intents and purposes, that if Mr. Riley was foolish enough to go into litigation, he would run against a snag about the time he got around before Judge Page, where those scales of justice were dangling in his delicate fingers, and his eyes closed with determined impartiality; that they might come just as fast as they pleased; and as he said, gentlemen, "let them sue," he thus not only prejudged the cause, but he did it deliberately and maliciously.

It appears to me that for a judge before whom, that case when it was once entered upon in law, was in all probability bound to be brought, he was going a little out of his way in making a remark of that kind. Doesn't it so appear to you, Mr. President and gentlemen? The result should furnish the answer.

But it went on further. He got into a row with Lafayette French, the county attorney. Now, Mr. French, up to this time, had been a friend, and was altogether satisfactory to the judge; they had been great friends; the young man came there and the judge made a great deal of him; liked him; he had been a co-laborer in the vineyard, and he was all right—as a great many other men there were—as all of them, in fact, were originally, until they transgressed and committed the unpardonable sin of declining to obey his dictates. In the course of this controversy before the county commissioners, the judge goes on to state, as they say in evidence, that this Tom Riley had managed by corruption to be a deputy sheriff, at least that the sheriff appointed him corruptly, and that Lafayette French was a party to the corrupt transaction. That during the canvass previously, which resulted in the election of this sheriff, there had been some manipulations between them by which this Thomas Riley—this man who had influence with the democratic party there, little as it was—had brought his influence to bear in Hall's favor, and that he was entitled to a reward, and he was getting his reward in this appointment, and it was corrupt, etc.

Now, gentlemen, right there, let me say again regarding his knowledge of Mr. Riley; if Mr. Riley's influence in political matters there was of sufficient consequence to this sheriff or to Judge Page, or to anybody, to be worth having, Judge Page, who had been undertaking to run that political machine there for years and knew all the ins and outs of it, from the top to the lowest bottom— knew that man Riley all through and through.

If there were any political points about him (which it developes there were,) do you suppose Judge Page did not know better what his capac-

ity was than Riley did himself? What was there in Mower county that he did not know? What point was there in connection with this case that the judge did not know? Is not he able to sit by the side of his counsel and to inspire and suggest as to the remotest details regarding all matters in Mower county, having a bearing on this case, and to round off and polish, and to embellish every point, and did he not know this man Thomas Riley who controls votes? He claims that there was a corrupt arrangement there, and he was going to effect a purification, and one of the first movements he would make, would be to choke off that enormous steal, in which Riley was the main party in interest. So in his zeal he got into a quarrel with Lafayette French about it; his old friend and stand-by—a man that he was bringing up there "in the way he should go," and thought he was fitted, undoubtedly, for anything—a minister, should that ever happen to be in his line; undoubtedly for a successor to his own position in case of his promotion to the supreme bench, or some other place. Lafayette was all right up to that period but here, because he saw fit to differ with him, because he would not be ridden by him any longer—because he would not be his subservient steed to carry whenever the judge chose to ride, he upbraided, he applied the lash. How did it work? Figuratively, taking the testimony of the commissioners, "Lafayette" *bucked;* he was not the pony that was going to be ridden under that kind of lash any longer. He jumped into the air swift and strong, and he came down stiff-legged and he bucked this respondent into the mud then and there, never to mount and ride again! [Laughter.]

There was an issue right there, and from that time, henceforth and forever, Layfayette French was a marked man; he could not participate in anything wherein this respondent could put his hand, without interference. In all the relations of life, gentlemen, he has been harrassed—he had to surmount judicial obstacles before he could get a wife, but no one judge could stop him—sought to be disbarred! A young man growing up with the country; everything he had in the world invested in his professional skill; it was his capital—all he had was in it, and was right there. His acquaintance and his practice was there.

Gentlemen (refraining from comment on the matrimonial difficulties), you, perhaps, know how serious a thing it is for a young attorney who has settled in a community—has grown up with it—has extended his acquaintance with it and built up a practice, to be crushed out. You know, gentlemen, that nothing more serious could happen. Do you wonder, gentlemen, that that witness, Mr. French, has sat here in this court and taken an interest? Well may the defendants point at him of scorn; well may they indicate, as they have have indicated, and as they doubtless will indicate hereafter, that he is too ready a witness—too willing a witness. He *is* interested, undoubtedly, in seeing that this judge, who thus seeks, unlawfully, to crush him to the earth, meets with justice and a proper disposal at your hands; justice, nothing more. Gentlemen, it is not for you to infer that that gentleman is testifying here other than truthfully. He could have no motive (if he were not honorable as he is) to incite him to perjury, and his testimony has been consistent and well supported, and it is far less positively clear against the respondent than that of others who had no difficulty with the judge.

No person will be seriously meddled with in the future by this re-

spondent in Mower county, no matter how this results; this respondent, if he goes back there, briefly, to maintain his position, has crushed the last man there of good character, that he ever will crush; and Lafayette French has nothing more to fear.

Mr. French's testimony on this stand, has been too clear, too positively and unerringly clear, in the direction of truth, and too well supported by other witnesses in this case, to permit that he should rest under even a shadow of doubt. The statement that he presumed to charge that judge with being corrupt, except under the strongest provocation, is simply ridiculous. Is he a fool? Would he deliberately put his head in the mouth of a Royal Bengal tiger, to be crushed, knowing the disposition of the—of the judge as well as he did?

As I have said, he is now safe from the crushing process, and has no motive for perjury; it is for you to consider *who has the motive.*

Aside from the inclination of "a party to the record," especially in a desperate case, to "slide into perjury," as the authority I quoted puts it, who is so certain to be dishonest and hypocritical as the man who sets himself up as a reformer, or as a "purifier," as Mollison worded it, and is always trying to inspire a belief in his own integrity by assailing that of others. Did you ever know a man who was habitually prating about the dishonesty or the "irregularities" of other people, who was not as great a scoundrel as his opportunities and his abilities permitted.

You will please not forget that the testimony of this respondent, while magnifying his own virtues and deeds, is always receiving "information" of the "irregularties" of some enemy upon whom to practice his reformatory processes; but leaving out his own testimony, gentlemen, where is his case? Is his testimony reliable? Can it be held reliable, and leave Mower county any credit for veracity among her leading citizens?

Well, in the course of this conversation before the board of commissioners in which the judge said "let them sue," the question arose as to the legal status of the case as shown by the records of the court. It was asked this judge, whether any order had been issued in relation to these fees. It was considered at the time of the asking of that question, to have an important bearing upon the legality of the bill. The judge, according to his version of the matter, stated substantially in reply to that question, as to whether an order had been issued by him, in relation to the payment of those fees by the county, that an order had not been issued or made or filed, but perhaps would be made or filed. Witnesses for the State say that the judge answered that no order had been made in the matter.

I believe that the respondent's testimony is not precisely the same in regard to this matter all the way through, using the word "filed" either alone or in connection with the word "made." But the substance of his answer, as it was understood—to this question there at that time—was that no order had issued—no order had been made. They testify so. Now, the respondent alleges in regard to that matter, and seeks to substantiate it by some of his witnesses, that he said at that time that no order had been *filed*—did not say a word about "making"—whether it had been *made* or not—that no order had been *filed.*

Now, gentlemen, you will perceive there is cunning there—craft—the testimony that he said that no order had been made was so

positive and strong that it was doubtless by him deemed impolitic to throw himself in direct antagonism to that statement—a position of unqualified antagonism. But he does what he considers the next best thing, he tones it down a little. He states his language as being something in that direction, but a little different, and so as to have a different bearing upon the legal aspects of the case, and at the same time not apparently and fully contradict those witnesses who stated positively that he denied having made the order. You have got the testimony of all these parties before you here, and can weigh and judge of that yourselves. But, consider, gentlemen, what would be the effect; how does the case stand if his version as to his answer in that matter is correct? It amounts to this; they asked a direct question of him whether an order had been made. He gives an evasive and cunning and *sly-judicial* answer. What would be the difference so far as the merits of the case were concerned? That we will leave for you to determine.

He had gone there to enlighten them. Should he not have answered "yes" or "no," the same as he insisted that witnesses on this stand should answer on cross examination? If they happened to beat around a little, or failed to give a direct answer immediately, they are told "give us a direct answer, yes or no."

That was a question that admitted of a direct answer; if he had made that order, and his motives in that matter were right; if he was holding those scales with impartial hand without malice, inclining them neither to the one side nor the other, could he not have said "yes" or "no?" Certainly he could, but he did not do that thing; he gave, according to the present version of the case, the evasive answer, and as his subsequent action in that matter shows, for the purpose of oppressing Riley. Further along in the case, gentlemen, it has been difficult to prove exactly how it was about that order. There is something peculiar about it all the way through to the end. Whether the judge had issued an order, and kept it in his vest pocket, to use as the exigencies of the case required, is a matter of conjecture.

Now, there is considerable in the action of a judge that is optional—matter left to his discretion, and there appears to have been an uncertain, mysterious and unwarrantable exercise of judicial discretion in connection with that order of his; and not only that order, but other orders in connection with this case; the orders as to special deputies in the Mandeville case, for instance. Don't it look so?

It simply appears that the judge made some remark to Mr. Elder, his clerk, at that term of court, adverse to the service of more subpœnas by Riley, and, perhaps, regarding Riley's pay for those already served; but the subsequent interpolation of that conversation in the court records in the shape of a valid order, after what the judge had said to the commissioners, and after Mr. Kinsman's examination of the records, to which I will allude, renders the whole transaction extremely suspicious.

In the first place if such an order was made it should have been filed and recorded because the legal rights of parties depended on that order.

Next, Mr. Kinsman testifies, that prior to bringing this suit which he did bring, on the part of Mr. Riley, against the county, he went to the clerk's office and examined the records, and asked the clerk whether there was such an order in existence, and found none. To all appearances, so far as the record shows, there was none. They must throw a great deal of light upon that—more than has been thrown upon it, to clear up the mind of any reasoning man, as to that transaction.

Again; while that board was in session, and in connection with the matter of those subpœnas, there comes in another little matter that has a bearing on this, and it is hardly disputed. If it is disputed it is in such a qualified way, that it substantially remains admitted.

Sheriff Hall asked this respondent a question, which I will read. It is found on the proceedings of the 14th day, May 29th, page 36:

"Q. Well, go on and state what occurred at that session at that time?

"A. Judge Page dissented to their allowing the bill; said they had no business to allow the bill; it was a bill gotten up by some intrigue or other to make business for this man Riley, and in this connection, I thought he reflected upon myself, and I asked permission to speak, of the commissioners, and had some conversation.

"Q. Go on and state what it was?

"A. And I then says, in answer to something that the judge had said, I says: 'Judge Page, I would like to ask you this question, if a subpœna is placed in my hands and is fair on its face, have I any discretion in the matter but to serve the paper?' He straightened up and said: 'I'll answer you in court, sir.' That is the reply he made, that ended the conversation."

That was a question right in point in the Riley matter. A proper answer by the judge would have secured the allowance of Riley's bill, so a proper answer he would not give.

Now, that was a very plain question. There was not any insult about that; this sheriff, I take it, is a man who never insults anybody. It was a pertinent question; it had a bearing on the whole case; it was almost *the* case in a nutshell. And did not this judge know that? Gentlemen, nobody knew it better than he did. I will guarantee that, because he had been thinking about this matter.

Here was an officer of his court, a high officer in the county, Mr. Hall, a gentleman upon whom the people of that county had devolved the duty of officiating as sheriff. A sheriff of the county is entitled to a respectful answer when he asks the judge of his county a civil question regarding a matter of that kind, and wasn't he entitled to a fair, square and a civil answer at that time? What does he say? He sharply says, "I'll answer you in court, sir"! What kind of conduct is that for a judge in this century—in the year 1878!

If it had been two hundred years ago when Jeffries of England polluted the bench whereon he sat, perhaps it might have been tolerated, and perhaps not, for I believe that judge suffered the penalty for malicious, arbitrary and unreasonable conduct. If I mistake not he suffered a penalty more extreme than the constitution of this State permits you, gentlemen, to inflict in this case, and it is doubtful which of the two, was by nature, most unsuitable for judge.

But here is the spectacle—the humiliating spectacle of this judge going before that board of commissioners, discussing, arguing, wrangling, citing his own questionable action in a case arising in another county, as authority, quarrelling with one high officer of that county whom the people had seen fit, again and again, to honor with position—giving an unreasonable, an impudent and outrageous answer to this other officer, this high sheriff of that county; "I will answer you sir, in court," says he—at some other time, of course, when this matter is all past and gone.

I leave it for you, gentlemen, to say whether these are the proper actions for a judge, upon whose acts the constitution of this State has made you the judges, and before whom the people of his district come, asking protection from these and similar outrages.

This Riley case is a matter that involves but few dollars, which may also be said of the other cases; of itself it is of trifling importance, but as to the demeanor of the respondent at this court, it is weighty, gentlemen; it is of very serious import, because what does not this judge do to further his own schemes, to reward his friends, and to punish his enemies, and to gratify his inordinate ambition for dominion and power, and I might add, to protect himself from conviction here?

Who will make the answer, under these circumstances? He evidently meant dominion from the day he set foot in that county. He had had dominion there, indisputable almost for years; it was waning gradually, ominously to him. Deliberately he sought to extend his lease of control and arbitrary power there, where he could set foot upon those "miserable devils," for his gratification; where he could tread upon them and their rights like worms crawling in the dust; as *worms*, gentlemen.

Did he not look down with contempt, if not hatred, upon these people of Mower county, whom he knew, only when they could be made subservient to his will?

An old poet has said:

> "I would not enter on my list of friends,
> Though graced with polished manners and fine sense,
> Yet wanting sensibility, the man
> Who needlessly would crush a worm."

Gentlemen, the crushing of a worm, the crushing of an inferior—no matter what its status—whether the creature be low or only moderately so, but the crushing of those who happen to come within the grasp of power, is something that should be beneath the instincts of any human being, much more, of a judge exalted on a throne of justice to hold the scales of justice, waveringly balancing and with honest hand. How has it been, gentlemen, in the tenth judicial district? Considering all these animosities and dissensions between Judge Page and his people, and the various expedients you find him resorting to, have those scales been discretely or honestly held? Were they so held in this case?

Ah! gentlemen, you cannot give a favorable response. Were they not loaded down with malice and oppression?

It would seem that sufficient has been shown to prove that this respondent has not only behaved in a most ungentlemanly and indiscrete manner, wholly unbecoming a judge, but that he has been criminally unjust and oppressive in the discharge of his official duties.

Finding he could not control Sheriff Hall, as to whom should be appointed, he neglects his duty as to designating the number to be appointed. He refused without good cause to have Riley in court, and claimed the right to appoint court deputies. His authority under the statute, was limited to designating the number of court deputies, and fixing their pay.

Sec. 1, chap. 43, Gen. Laws, 1873.

These facts came out in various testimony, but I find them together on the 43d page of 14th day, May 29th, by Sheriff Hall while under examination. He says:

"Q. That we don't care about. I understand that this was the time when you state that the judge told you Riley was not fit to be appointed?

"A. Yes sir.

"Q. That he wouldn't have him around the court room. You mean to fix this as being the time when this conversation took place?

"A. No sir, not altogether because we had a talk afterwards.

"Q. Well they were mixed up; a dozen conversations here, or different conversations in relation to this matter?

"A. No sir, we had a conversation after that awhile, when he told me to look at the law and that it gave him the right to appoint court deputies."

That he did appoint them we have ample evidence. He arbitrarily, oppressively and unlawfully encroached upon the rights of the sheriff, and for the corrupt purpose of rewarding friends and oppressing the sheriff.

As to Judge Page's interference before the board of commissioners with bills of his enemies and no others; Mr. Richards, one of the commissioners, testified on page 33 of 14th day, May 29, as follows, viz:

"Q. State whether the judge was in the habit of appearing before the county commissioners for the purpose of giving counsel upon bills that were before the county commissioners?

"A. He has appeared there on several bills, that is, some bills; he has appeared there in George Baird's bill, and Tom Riley's bill twice

"Q. Did he ever appear on bills generally, that were up before the county commissioners?

"A. No."

Ex-sheriff Baird and Mr. Riley, remember, were not friends of the judge. And upon the same page, regarding other talk before the board, at the time the judge had the row and apologized to the board, the same witness, upon cross-examination, says:

"Q. Now, what was the expression used by Judge Page that you have used here in relation to some persons,—not Mr. French, but some deputy,—what expression do you say he used?

"A. I say that he charged Mr. French with selling out, or something to that effect, the party ——

"Q. That's not the point I ask. You stated that he made some statement in relation to a deputy——

"A. I am coming to that. That he charged Mr. French with selling out the party, or doing something by the party, by promising, or giving the appointment to some—to a contemptible Irishman deputy sheriff.

"Q. Now, who was present at that time?

"A. Judge Page was present.

"Q. You have sworn to that already.

"A. Lafayette French and the county commissioners.

"Q. Any other persons present?

"A. I am not certain, but I think that R. O. Hall was present.

"Q. Who were the county commissioners then?

"A. Judge Felch, Mr. Tanner, Mr. French (A. J.), and Mr. Grant and myself.

"Q. Was the subject of Riley's bill up for discussion then?

"A. Yes sir."

W. W. Engel, one of the respondent's best witnesses, referring to a conversation which took place in his store, at Austin, between Judge Page and Sheriff Hall, in which the latter was hauled over the coals, upon the matter of his election, says:

"Q. Then the objection you found to Mr. Hall's election was that people who were not temperance people, were voting for Mr. Hall?

"A. I was not finding any fault as to Mr. Hall's election.

"Q. It was Judge Page that was finding fault?

"A. He was speaking, and told me, and also Mr. Hall, that he had been informed that improper means had been used to obtain his election.

"Q. Now, what did he tell Mr. Hall had been the improper means?

"A. Well, he didn't say anything direct, only referred to the matter—perhaps our inference—I don't think he stated what the improper means were—only what we might infer from the conversation that passed between us.

"Q. What you inferred and what you understood the judge to mention was, that Mr. Hall had got men who were not temperance men, to vote for him for office?

"A. Yes sir."

This is but a slight indication of the practice of respondent in taking to task anybody whose ways or works didn't suit him. It was difficult to make the respondent's witnesses remember much outside the story they had committed, but enough appears to show an unwarrantable interference by the judge with other people's business—always meddling, and always in a row with some one.

Senator NELSON. Mr. President, with the leave of the honorable manager, if he has no objection I would move that the court take a recess till half past two o'clock, unless the counsel desires to proceed further now.

Mr. Manager GILMAN. It is very satisfactory to me to have a recess now.

The motion for a recess prevailed.

AFTERNOON SESSION.

The PRESIDENT. The Honorable Manager will resume his argument.

Mr. Manager GILMAN. Mr. President and Senators: I will not pursue the consideration of article two any further at this time, but take up article three, called the Mandeville article, and shall adhere mainly, as during the morning session, to questions of fact and to the more general aspects of the case. Those articles, whose determination must be in the main upon questions of law, will be argued by Mr. Clough and Manager Hinds, and I shall dwell mainly upon those features of the case in which such malice, and such willful misconduct can be shown as will bring this respondent within reach of the legal shafts with which my associates will perforate and overthrow his legal defenses.

"At an adjourned term of the district court for the county of Mower, held as heretofore, to-wit, in the month of January, A. D. 1876, for the trial of issues of fact by jury, one W. T. Mandeville attended at that term of court as a special deputy under appointment from Mr. Hall, the sheriff of that county." Mr Mandeville himself testifies—in which testimony he is also corroborated by Mr. Hall—that he was at that court house at the commencement of the term, and continued his attendance there, serving as special deputy throughout the term—was there every day. He alleges that he was there in good season on the first morning of the session; that in due time the judge came in. He was on the first morning presented to the judge, by the sheriff, as his court deputy; was shortly afterwards recognized by the judge, who ordered him to put up the windows; was recognized throughout the entire term by the judge as deputy; that at all times, at least upon all necessary occasions, doing whatever was to be done. Going for the mail, putting up and letting down the windows, sweeping the room and building the fires, going after prisoners, bringing them into the court room, preventing disturbance, and, at least upon one occasion, adjourned the court.

In this statement, he is not only corroborated by the sheriff, Mr Hall, but as to his service on those occasions, he is corroborated by Mr. Kimball, Mr. French, and various other witnesses, who testify to seeing him there performing duty. At the close of the term, as he alleges, after the business of the court was completed, at the suggestion of the sheriff, he goes up to the judge, who was in the farther part of the room, for his pay, and was accompanied by Mr. Allen and by Mr. Hall,—Mr. Allen in the meantime, as Mr. Mandeville testifies, having commenced work about the court house, during the afternoon of the second day of the session, and being there at intervals, but not continuously; having gone into the country with a venire for jurors, and performing various services away from the court house, leaving Mr. Mandeville there throughout the entire term officiating in capacity of court deputy.

Now, when they go up to the judge to procure an order for their pay, the judge in the first instance, (as Mr. Mandeville testifies) tells them that he is busy; to come again.

They had gone there, as I stated before, with Mr. Hall, the sheriff. Mr. Hall presented them to the judge, saying that they were his deputies, who were ready to receive orders for their pay, or words to that effect. It seems that on that occasion, the judge did not take exception to the statement involved in that act, to the effect that Mr. Mandeville was a deputy, but indicated that he was engaged, and would attend to them in the afternoon, or at some other time. In the afternoon they went up again. Then that remarkable question was asked by the judge, that is, the question that would be remarkable in any other judge than Judge Page: "Mandeville, what dirty political work have you been doing, that Hall should appoint you deputy?"

Now, there is a question of veracity, as to whether that language was used — the judge flatly contradicting it, supported in his contradiction by Mr. Allen—both denying that any such language was used; the judge also denying that he had recognized him as deputy at all during during the session, and telling him that if he had performed any service or earned any money, he must look to Mr. Hall for his pay, "that he wasn't going to sanction those little steals from the county."

The gentleman who opened the case for the respondent, Mr. Losey, in commenting upon that, makes some remarks which I will quote. He says:

"The law under which special deputies are appointed reads as follows:
"On or before the holding of any term of the district court, the judge thereof shall determine and fix by his order the number of deputies which shall be necessary for the sheriff to have in attendance at such term, and thereupon the sheriff shall designate and appoint such deputies. Such deputies appointed as aforesaid, shall be paid their per diem to be determined by the court, for attendance upon such court in the same manner as provided by law for the payment of grand and petit jurors."

This is the law under which the judge acted. General Laws of 1873, 162; Bis. Stat., 275, 6, sec. 34.

"This law confers two powers upon district judges. First, to determine the number of deputies required at any term of court; and, second, to determine and fix the per diem of such deputies."

Now, gentlemen, I wish that we could agree with the counsel for the respondent, in regard, to all of these matters, as well as we can upon his statements upon this point.

He also says, "The exercise of these powers is a duty;" that is clear; the law is specific on the subject in stating that the judge shall, on, or before the holding of any term, determine, and fix by his order, the number of deputies. He says it is a duty; "the failure to exercise the first, in any case, would be neglect of duty,"—just what we claim precisely—"the failure to exercise the second would be neglect in a case where the sheriff had made an appointment in pursuance of a proper order." That is, the failure to make an order fixing the amount of pay, would be a neglect of duty We are also agreed as to that.

He continues as follows: "The order fixing the number of deputies may be made at any time during a term, but will ordinarily be made at the opening, by a verbal instruction to the sheriff, and will be fixed at any time."

Now he is pretty careful here to ring in that conclusion of his as to the propriety of the judge making a verbal order; "but will ordinarily be made at the opening by a verbal instruction to the sheriff, and will be fixed at any time."

It seems that that was not the course pursued by the judge; that he did not ordinarily transact that business and perform that duty, by a verbal order, because we have his written orders on file in the matter.

"The same order which determines the number of deputies will ordinarily fix their per diem. This order should be filed with the clerk in order that he may know the amount to enter in his certificate. The appointment made by the sheriff, or a copy thereof, should also be filed with the clerk for the same purpose." There is no law requiring that, it is simply a matter of convenience.

He says, "the exercise of these powers is a duty, and a failure to exercise, a neglect of duty." Now, so far as the testimony in this case shows, the judge did fail to perform that duty. The sheriff here testifies that the judge gave him no order at all, verbal or otherwise, regarding the appointment of a deputy for that term. The sheriff proceeded, therefore, to supply the necessary deputy.

It is probable that Mr. Mandeville is considered as one of the "thieves" whom the judge "scourged from the halls of justice," though his sarcasm in this case was less violent and abusive in manner, than in the cases of Riley, Stimpson, Ingmundson, Hall, and others.

They also claim that Mr. Allen served as deputy during the whole term. Now, upon that point, as I stated before, there is a direct and square conflict of testimony. The misfortune of the claimant, Mr. Mandeville, which was apparent at the time these remarks were made, and the misfortune of the prosecution in this case was a peculiar one, and different, I think, from any which has occurred during the progress of the case. There was, apparently, a preponderance of testimony on the side of the respondent. Here was one man, Mr. Mandeville, a simple private citizen of Austin, who was precluded of the opportunity to receive that appointment, to earn his $2.50 a day, arrayed here in opposition to the respondent, the judge of the tenth judicial district, and in opposition to Mr. Allen, a favorite ally of that respondent.

Now, in these other cases, they had to pick their way along with great caution where the testimony conflicted as it did in almost every instance; they did not come out openly and squarely and denounce all these witnesses as consummate liars in plain terms in every case; they modified the statements that had been made, and toned them down, sometimes conflicting, but where it was necessary, met them in some other way; but here they had a chance to show their power, as they imagined, and they bore down heavily upon this witness, Mandeville.

Mr. Losey says:

"The proof here shows that when the judge called Mandeville from the rear of the room, and told him to come up there, and he came up there with Allen, in the presence of the clerk, that the judge wanted to know of Mandeville, 'what dirty work he had been doing for that man Hall, that he should have appointed him a deputy.'

"I want to say to you, gentlemen, right here, that it is a falsehood in its inception, and in every word of the sentence. Not a word as Mr. Allen will swear."

Please to take notice, gentlemen, they bring *him* in here as good and competent authority, to make Mr. Mandeville a perjurer.

"Not a word as Mr. Allen will swear, and as Judge Page will swear, and as Mr. Elder will swear, of that kind or character, or of that import, or its equivalent, or anything near its equivalent, was uttered by the judge at that time; nothing of the kind."

Now Mr. Allen did so swear, and Judge Page swore just as stated here. I am not aware that Mr. Elder swore to anything of that kind. Perhaps he testified regarding the order which was issued, and no doubt he did. He was a ready witness in regard to those orders—and prompt.

"Nothing of the kind" the gentleman goes on to say, "nothing that possibly be construed into a remark of that character. It is im- used into this case bodily, for the purpose of producing an effect up- by M minds of senators here, and to inject into this article malice that judge a ry to inject into it in order to sustain it before this tribunal. during sn whole and in part, and I brand it as such here and now, or earnes y fear of being contradicted hereafter by the evidence of this wasn't go

case, or without any fear that the managers in this case will be able to controvert my statement in any particular. It will be made so clear that they themselves won't dare to get up and argue to the contrary."

When he spoke of what the managers would not dare to do, our Wisconsin friend evidently thought that by this back-handed compliment to our modesty, we might be so agreeably flattered as to forget our duty and our right to overthrow this beautiful structure he has reared; but justice does not permit us to extend the courtesy.

Now, gentlemen, there is a lie upon somebody, square, unqualified; and where is it? There is no chance to explain away this conflict of testimony upon any other theory except that one of the parties to the conflict has committed absolute, wilful and unqualified perjury here.

"It is a lie in whole and in part," and he defies the managers, without fear, to contradict him.

Now, what is the appearance in this case? You will recollect that in addition to the support which Mr. Hall gave to Mr. Mandeville's testimony and which Mr. French gave as to his being there all the time, other witnesses corroborate that. The judge in the mean time indicated to this court under oath that he had *perhaps* noticed him around there, once in a while; that he hardly knew whether he did or not—it was really a question in his mind whether he was there on service or not.

Mr. Allen testified in an uncertain manner on that point, but said that *he* was there; *he* built the fires; *he* swept the room; *he* did those things—Mr. Mandeville did *not* do them.

Now, gentlemen, it has been developed in connection with this case, first, upon the testimony of Sheriff Hall, who ought to be a competent witness—whom I claim to be a gentleman of veracity and above impeachment. He ought to know, I say, whom he employed and who officiated as deputy there at that time.

I hold that his testimony on that point is better than that of any other man, or any other two men, or any number of men, unless you impeach his testimony; because somebody acted as his deputy—special deputy. He says that Mr. Mandeville was acting and that Mr. Allen did not so act. Although he admitted, I believe, in his early testimony, (having forgotten something in relation to it;) that Allen performed some duties there a part of the session, but this was afterward fully explained by him, as will be shown.

Now, it appears as we progress in that matter further, that this Mr. Allen, who claimed to have been a special deputy there from the very start and employed by Mr. Hall, previous to the sitting of that term of court, (of course a knowledge which would be in the possession of Mr. Hall); that Mr. Allen is shown here to have been drawn upon a jury—the venire having been made upon the second day of the session, by Mr. Sheriff Hall himself, to secure sufficient jurors to try that Jaynes case which was then pending.

Now, *that* is something that transpired when this controversy was not on hand; this conflict of testimony, and all this difficulty which has arisen was not in existence; *there* is a circumstantial fact—a piece of circumstantial evidence that to my mind, and I think, gentlemen, to your mind, points unequivocally and directly to the truth in this matter. If Mr. Hall had had an opportunity to have appointed that deputy when this case was called, to cover some of the difficulties in the case that existed, it might not be good evidence; but putting him upon that jury on the second day of the session, gentlemen, while it was not positive proof,

goes a great ways towards establishing the fact that he was not in the service of Mr. Hall in any capacity at that time.

Now, I submit, gentlemen, whether that is not a fair inference to draw—a fair conclusion to arrive at in connection with this matter. The sheriff would certainly not put one of his deputies on the venire and draw him for a juror. The records show that he was not only drawn, but he stood an examination; was examined by triers there; and he was challenged; the challange was met, I believe, and considered, and it was finally sustained.

Well, now what would Mr. Allen have done if he had been special deputy at that time? Would Mr. Allen have gone through that process of being examined to sit on that jury, which he all the time knew that he could not sit upon; of course he knew whether he was biased or not; he knew whether he had formed an opinion in the matter or not, and when, at the same time, he was getting better pay as special deputy, (if such he was), that fact of itself is evidence here. Besides, if he was a deputy, he was incompetent to be a juror. Those two facts taken together, gentlemen, were sufficiently strong circumstantial evidence, I apprehend, to determine that point in favor of the fact that Mr. Mandeville was a deputy, and Mr Allen was not a deputy; in favor of the fact that Mr. Mandeville came here and gave you honest testimony, as his appearance indicated, and as we honestly believe.

What interest has the gentleman to do otherwise? He has had no quarrel with Judge Page; he is not a willing witness in this case for the sake of impeaching Judge Page, at all. Would he come up here and perjure himself in this matter on account of disappointment in a little paltry sum of $15? Was he there at work during all that session, as you are satisfied he was, and as we are satisfied he was, without some authority? Was he throwing the time away, putting himself into the hands and at the mercy of some man for nothing, without any assurance, gentlemen?—the whole thing is improbable.

But that is not all. There is another feature in this case that Mr. Allen knowing, may be, did not reveal. Mr. Allen knew more about this matter than we did. He could have told all about this and saved this conflict of testimony, if he would. He could have come in here and testified that he was loafing around there, doing nothing on the first and second day of the session until afternoon, or thereabouts, and then more help being needed about the court, Judge Page having requested a performance of an act of some nature, sheriff Hall was unable to carry out for want of deputies, and having answered Judge Page that his deputies were busy, away in the country, and Judge Page having replied to him, "make more deputies, then," the sheriff did make more deputies and appointed Allen.

He had occasion to send a man off through the country somewhere with venires, and who does he pick up and put into that service but Mr. Allen! Sheriff Hall made him a general deputy, put him in office; put him in the office which the judge, in his testimony here, holds to be incompatible with the performance of duty as a *special deputy*. You know the judge went on at great length here to explain how he reached that conclusion, and all about it; what good reasons there were for not having general deputies officiate in the capacity of special deputies; Allen went out in the country with a venire, and when he was gone Mr.

Mandeville was performing the duties, and when he returned he assisted, no doubt, and had a jury in charge. Well, now, where does all this trouble come from about this matter? If the judge had done what his counsel here says was his duty, it would have been all right. If he had made an order at the commencement of the term to put himself squarely on the record there designating the number of deputies needed, there would have been nothing more to say about the matter. But he did not do that, gentlemen.

He did not take that action, and why didn't he? Well, gentlemen, I will try and explain why. At that period of the case, Mr. Hall had seen fit to perform the duties which pertained to his office without allowing Judge Page to dictate what he should do in every matter. It belonged to him to appoint his deputies, and he desired to do it. Judge Page had had a controversy with him once, on that subject and he asked him "if he dared" to do so and so, in the face of his advice to the contrary, and he had been met with the reply from the sheriff that he dared to do it; and he had learned that the sheriff did do it. So there was another citizen of that county added to the list of men who refused to be governed and controlled and dictated to; and so he knew at that time, that if he ordered in advance, the appointment of a deputy for that term, that Sheriff Hall would appoint one of his friends. This Mr. Allen, perhaps, would not get the position. Sheriff Hall appointed Mr. Mandeville, and he was entitled to his pay, though that fact has not yet availed him.

I think the circumstances of Mr. Allen having been put on the venire by Sheriff Hall, and afterward during the term, having been appointed by Mr. Hall, a general deputy, as the records undisputably show, must clearly indicate to you, gentlemen, who was Sheriff Hall's court deputy at that term. His own testimony should be conclusive.

Permit me also to suggest, Mr. President and Senators, that had Mr. Mandeville, whose truthful appearance you must have observed, come here to fasten the language in question as to the "dirty work, etc.," upon Judge Page, by perjuring himself, he would have acted on a more discreet plan. He would not have arranged the time for the alleged interview so that he, solitary and alone, would be confronted by Judge Page and his man Allen. And Sheriff Hall, also, whose testimony conflicts both with Judge Page and Mr. Allen, would, if untruthful, have testified to remaining with Mandeville and hearing the judge's question as to the "dirty political work."

But this circumstantial evidence, regarding Allen's ins and outs, have placed the burden of the falsehood where it belongs. Now, when they come up for their pay, at the end of the term, the judge refused this man who had worked there and earned his money—he refused him that little sum of $15; told him he must look to Mr. Hall—told him he had not "authority." He either states it in his testimony, or alleges it his answer, that he had no authority to give him an order. He was very particular at that time about what he did. At other times his "authority" was equal to the occasion, but this was an occasion when he was without authority in that direction, so he did not give him the order, but he *did* make an order which assumed more authority than all the judges in the State have. I will read it. It was introduced in testimony and is on page 60 of the 14th day of the session. It reads as follows:

"*District Court, Mower County, General Adjourned Term, Jan* 11, 1876.

The sheriff of said county is hereby authorized to appoint F. W. Allen as special deputy for said term, and having appointed and employed him, the said Allen is entitled as follows: Two dollars fifty cents per day for the period of six days.

SHERMAN PAGE,
Judge District Court."

This is dated on the 11th day of January, the first day of the session. Here he anticipates who was to be the deputy, and states how many days there are to be in the term, taking the order as it reads. They explain here in testimony, that this order was made at the close of the session. There is endorsed on the back:

"Order appointing F. W. Allen special deputy, Jan term, 1876. Filed January 19th, 1876.

F. A. ELDER, Clerk."

Also, a certificate of the clerk of court that it is a correct transcript.

Now there is a good deal indicated in this little order.

It shows, in the first place, that his clerk, Elder, who filed it, regarded it and filed it as "an order appointing F. W. Allen; next, that he neglected to take any action at all at the commencement of the term, but afterward ante-dated the order, and then made it to apply duly to Mr. Allen. It has been claimed here by the respondent's counsel, that because the law reads to the effect that the judge may designate the number of deputies to be appointed on, or before the session, that such may be done at any time during the session.

Now, gentlemen, how much reason is there in that? If the deputy may be appointed at any time during the session, how is he going to serve during the entire session? Their holding, upon that matter, would indicate that the deputy could be appointed on the first, second, third or last day of the session. Of course, the very statement refutes itself; it would be a paradoxical sort of a law.

Then the judge says here in this order, "The sheriff of said county is hereby authorized to appoint F. W. Allen deputy sheriff." Now the law confers upon the sheriff the power of appointing his own deputies. The sheriff did appoint his deputy; appointed Mr. Mandeville, as he swears, and he ought to be good evidence on that point. The judge, in his order, says he is authorized to appoint another man, no matter when the order was made—whether before the session or after. By it, he assumes to control the functions of the sheriff's office; assumes to dictate who the appointee shall be; insists on naming the man. I hold that the judge's order was, at best, only operative in authorizing the appointment of one deputy, and that sheriff Hall's appointment of Mandeville was ratified and legalized by whatever authority was embodied in that order; that in so far as it assumed to appoint or designate Allen, it was illegal and inoperative; that Allen not acting as court deputy under the proper appointing power, (the sheriff,) was not a court deputy and not entitled to pay as such. The sheriff says he did not appoint Mr. Allen, and did not want him for that position, because he had selected Mandeville. He does not indicate that he had anything against Mr. Allen; there is nothing in the testimony to show

that there was any ill-will at all—nothing but friendship. He did appoint him afterwards as general deputy, probably to please the judge.

Now what means in the world, had the sheriff to perform this duty and exercise the privileges conferred upon him by the law, under such an order as that? What is the meaning of that order? Why, gentlemen, it simply means this: that after this term had been gone through with, and Mandeville had served and earned his money, having been to Judge Page's knowledge, employed as court deputy, that Judge Page did not mean he should have his pay, and consequently made this order cutting him off absolutely; and when he came up for his pay, told him that he hadn't any authority to make an order for his pay; that he couldn't pay him; that he hadn't served; that another man had served; and falls right back on that order in direct violation of law as well as the rules of decency. You must draw, as to that, your own conclusions, gentlemen.

The judge, also, states in connection with this matter, as a reason for this, when Mr. Allen went for his pay, that there was but one deputy needed at that term of court. It is in testimony here, that there was a large number of people present at that term, and that one deputy, in addition to the services performed by the sheriff, was insufficient, the judge himself having occasion to call for more help, and advising the sheriff to appoint more deputies; "make more deputies, then," he says, and Mr. Hall did make another deputy; he appointed Mr. Allen general deputy. It is also in evidence that at the previous term there were three deputies in attendance upon the court, and there is an order in evidence here, setting forth that at a previous term, when the same class of business was on hand, there were three deputies appointed, the judge authorizing them and fixing their compensation.

Now what are we to infer from this whole matter? We can only infer that the entire refutation to the charge contained in the 3rd article is based on falshood—falshood proved absolutely. Here we have all this testimony corroborating Mr. Mandeville; Mr. Hall, the sheriff, Mr. French, Mr. Kimball, and various other witnesses, who testify they saw him acting there in court.

The facts regarding Mr. Allen's service at that term of court are so clearly given by Sheriff Hall, in his testimony, upon being re-called the 28th day, pages 33, 34 and 35, June 16th, that I will read his testimony in part, also the documentary evidence of Allen's appointment as a general deputy.

"Q. You may state whether you had, on or before the first day of the term, any conversation with Judge Page about the appointment of F. W. Allen as special deputy to attend that term.

"A. I did not.

"Q. I will ask you if you ever appointed F. W. Allen general deputy sheriff, and if so, when?

"A. I did, I appointed him on the second day of the term, about four o'clock in the afternoon.

"Q. For what purpose?

"A. To go out and serve a venire.

"Q. I will ask you if the first service he did that term was when he went out with that venire?

"A. That was the first thing he done whatever.

"Q. And that was by virtue of this general appointment?

"A. Yes sir.

"Q. I will ask you to look at this document [hands witness a paper].
"A. That is the appointment; a certified copy of it.
"Mr. Clough. I offer this in evidence.

SHERIFF MOWER CO., TO F. W. ALLEN. } Filed January 12, 1876, at 4 P. M.

Know all men by these presents, that I, the undersigned, sheriff of the county of Mower, do hereby appoint F. W. Allen of said county, deputy sheriff in and for said county.

Witness my hand and seal this 12th day of January, A. D. 1876.

[SEAL.] R. O. HALL, Sheriff.

*State of Minnesota, County of Mower,—ss.*

I do solemnly swear that I will support the constitution of the United States and the constitution of the State of Minnesota, and that I will faithfully discharge the duties of the office of deputy sheriff of the county of Mower to the best of my ability, so help me God.

F. W. ALLEN.

Subscribed and sworn to before me, this 12th day of January, A. D. 1876.

[REG'S SEAL.] WM. M. HOWE, Reg. of Deeds.

OFFICE OF REGISTER OF DEEDS, Mower County, Minn. } ss.

I hereby certify that the foregoing is a true copy of the original appointment of deputy sheriff on file in this office and recorded in book "A" of bonds, page 258, and that I have compared same with the original, and it is a true copy thereof.

Witness my hand and official seal this 6th day of June, 1878, at 2:30 P. M.

[SEAL.] WM. M. HOWE, Register of Deeds.

By HENRY N. WILLSON, Deputy.

"Q. He went into your service then, the second day of the term, and went out to serve this process, when?
"A. About four o'clock.
"Q. Before this had you had any conversation with Judge Page about Mr. Allen as a special deputy?
"A. Not any whatever.
"Q. Had Mr. Allen done any service before that time?
"A. Not any at all."

Upon the next page (35) is explained the urgency of the business, and the conversation with Judge Page, on the strength of which Allen was appointed general deputy. Perhaps a further reading of his testimony will be worth while as to that matter, and as to Allen's early version of the talk between Judge Page and Mandeville. First as to Allen's appointment:

"Q. Right in that same connection, state whether the appointment of Mr. Allen, as general deputy, did not come in?

"A. Certainly.

"Q. Well, you may state how that happened?

"A. I had two men out, each one with a venire, and he (the judge) wanted to know why they wan't coming around.

"Q. Who were they?

"A. Mr. C. L. West and Thomas Riley. I told him my deputies were all out. 'Well,' said he, 'make more then;' and I went and made Mr. Allen at that time.

"Q. A general deputy?

"A. Yes sir.

"Q. That is the occasion of your making Mr. Allen your deputy?

"A. Yes sir; I never thought of it until then.

"Q. State whether he performed any services as special deputy until after he came back with the venire?

"A. No sir, I don't think he did.

"Q. I will ask you if you ever revoked this appointment of Mr. Allen as general deputy?

"A. I am not positive.

"Q. Did you during that term of court?

"A. No sir, I think I never did; I think his term expired with my term of office.

"Q. I will ask you if you had any conversation with Mr. F. W. Allen, after that term, as to what occurred between Mr. Mandeville and Judge Page, when Mr. Mandeville went for his pay?

"A. I did. Before he went up to testify before the judiciary committee, he was in my office alone, and I says to him: 'Fred., you and Mr. Mandeville were alone when the conversation transpired, and I have his story and I would like to hear yours; did Judge Page use the words that Mandeville said he did?' 'No,' he says, 'he didn't exactly, he left out the word 'dirty,'—he didn't put in the word 'dirty;' but he laid back and kind of laughingly said 'what work have you done for Hall, that he should appoint you, or is it because you keep a livery stable?' That is the words that Fred. Allen stated to me in my office before he went up last winter."

Now, gentlemen, when the respondent opened his side of the case, Mr. Mandeville was boldly and definitely charged with being an out-an-out liar, and he stood confronted by Judge Page and by Allen, and while on general principles, as applied to existing circumstances, his testimony should outweigh both.

It might have been claimed by some of you that the burden of testimony was against him; but you must consider that "testimony" is not *proof*.

You have seen Mr. Allen thrice convicted of perjury by the records filed, and by evidence which stands undisputed, save by the respondent; for in addition to testimony already mentioned, Mr. Slider swears that last winter, after Mandeville testified before the judiciary committee, Mr. Allen admitted that Mandeville's testimony was true as to Judge Page's question about the "political dirty work," except as to the word "dirty," which Allen said was not used. He thus stands condemned by his own words. No amount of testimony could prove the facts alleged in the third article more clearly. The failure of the judge to designate

to Mr. Hall the number of deputies required, the crookedness of *his order appointing Allen*, the conviction, by witnesses, and the records, of his partner in the iniquity of attempting to fasten perjury upon Mr. Mandeville, the general appearance and circumstances of the case—all go to prove the truth of the charges in article three, beyond a reasonable doubt.

This is a small matter, but it goes far towards proving all the charges in the bill. It shows that he was willing to take any kind of action, and to make any kind of order, or to refrain from making an order when it was his duty to make it, to carry out his feelings in regard to the matter. And he did do that. I pass over this because so much remains to be considered, and I don't need to detain you upon this article.

The fourth article is termed the Stimpson article, and, as Mr. Manager Hinds, who conducted the examination of the witnesses in connection with that article, is to sum up this case on the part of the State, I will pass it over leaving it for him, and will take up the sixth and seventh articles, called the grand jury or

INGMUNDSON ARTICLES.

The sixth article charges Judge Page with malicious, insulting and unbecoming conduct towards Mr. Ingmundson, county treasurer; and the seventh article charges the respondent with having used insulting and abusive language with the intent to maliciously abuse and insult the grand jury, in connection with his attempt to coerce them to indict Mr. Ingmundson. The subject matter being closely allied, I will, for the purpose of saving time, treat them both in the same connection.

I need not remind the Senate that a great many witnesses were called, upon this one side or the other, to give evidence upon these two articles, thus showing the importance attached to them by both the managers and the counsel for the respondent. I therefore bespeak your attentive consideration while I review, somewhat briefly, the circumstances bearing upon them I will first, however, read so much of them as will enable you to understand the nature of the charges therein contained:

"ARTICLE VI.

"Heretofore, to-wit, from January 1st, A. D. 1874, continuously up to the present time, one I. Ingmundson has been county treasurer of the county of Mower, duly elected and qualified, and has acted as such county treasurer, and during all that period of time he has borne throughout said county the reputation of well and faithfully performing the duties of his said office, as the said Sherman Page, as such judge, and otherwise, has always well known.

"Heretofore, to-wit, at a general term of the district court for the county of Mower, holden in the said county in the month of September, A. D. 1876, the said Ingmundson then being and acting as county treasurer as aforesaid, and the said Page then being judge aforesaid, and presiding over the said court as such judge, he, the said Page, as such judge, stated to the grand jury of the county of Mower, then and there in attendance upon said court, that he had been informed, or that he understood that irregularities had occurred or existed in the office of the county treasurer of said county; and then and there, as such judge, instructed the said grand jury to inquire into and investigate such matter.

Whereupon, the said grand jury, at the same term of court, did fully investigate and inquire into the manner in which the business of the said county treasurer's office had been and was being carried on, and thereupon at the same term of court duly reported in writing to the said court to the effect that it, the said grand jury, had made such investigation and inquiry, but that it, the said grand jury, had not been able to discover any irregularities in the conducting of the business of said office."

The judge first called the attention of the grand jury to the treasurer's office, at the September term of 1876. The grand jury, after investigation of the matter to their satisfaction, reported that they were unable to find any irregularities in the treasurer's office.

The judge, however, not being satisfied to let the matter rest there, again brought it to their notice at the March term of 1877. Mr. Ingmundson still being county treasurer, was again given a foretaste of the judge's malignity, for at that term "he, the said Page, as such judge, maliciously, and without probable cause, and with the intent to injure and oppress him, the said Ingmundson, and to impair his good reputation and favor as such county treasurer with the people of said county of Mower, and to cause and procure him, the said Ingmundson, to be erroneously, and without cause, indicted or presented by the grand jury of said county for misconduct in office, at or about the first day of said term, in the course of a general charge to the grand jury of said county in attendance upon said term of court, instructed said grand jury to the effect that information had come to him, the said judge, as such judge, of certain irregularities in the office of the county treasurer of said county, that the said court had been informed that the county treasurer of said county had received a town order from the treasurer of the town of Clayton, in said county, that afterwards when the town treasurer of said town had demanded from the said county treasurer the money which he had collected for said town, he, the said treasurer, had refused to pay over such money in his hands unless the said town treasurer would receive the said town order as cash to the amount thereof, and that said grand jury should investigate such matter, and if it should find on such investigation the facts to be as he, the said judge, had so stated, it would be warranted in finding an indictment against said county treasurer, whereupon the said grand jury retired in order to proceed with the business before it."

Now it appears in connection with this case, that the jury, under the direction of the judge, went out and examined into the matter. There is some considerable conflict of testimony as to just what the judge charged the jury at that time; but I don't think it is worth while to take up time to argue that. It makes very little difference whether he stated what is alleged on the part of the State or what is admitted on the part of the respondent. It has no particular bearing except that it goes to show that they did not all remember it alike. It is not singular that they should not all remember alike. It is a matter that took place some time ago, and while at the time, it was regarded as a most remarkable and noteworthy charge, it is not to be wondered at that jurors disagree as to just what was said; though it is clear that the judge used language intended to direct the attention to the matter of the county treasurer Ingmundson paying over some money to the treasurer of the town of Clayton, and receiving and holding a town order of said town as a voucher therefor.

The jury went out and made investigation into the matter. They came back and made a report that they could find nothing serious against said Ingmundson; they were sent out again and again, and came back, and every time the judge indicated to them that they had not performed their duty. Every time he warms up on the subject and gets more earnest in the matter.

There is no doubt, gentlemen, from the conduct of the judge in regard to this matter, but what he was determined, at that time, that this county treasurer Ingmundson, should be indicted. It appears in evidence that some time prior to this term of court, and at a county convention, Mr. Ingmundson had made a speech in which he reflected somewhat upon the "one-man power" in Mower county, which remark was publicly understood as applying to Judge Page, and his testimony in the case, I think, bears me out in the assertion that Judge Page took offense thereat, and by reason of his malice and ill will towards Ingmundson, was determined that the grand jury should pursue Mr. Ingmundson, and should hunt up matters, of one kind, or another, on which to bring an indictment. So he sent them back time after time. They investigated matters, examined into them, and had a good deal of investigating of Ingmundson,s affairs, and some wrangling over the matter, and it is to be presumed they performed their duty. They were a body constituted under the law, with powers to do certain things, and they alone were responsible for the doing of those things. They received the law from the judge undoubtedly, and acted upon it as their discretion and judgment prompted. But the judge was not willing that their action should be based upon their own judgments and their own consciences. He assumed in that matter to dictate what they should do. He substantially told them when they came in and presented a statement of facts, (which he asked them to report if they could not report an indictment), "Gentlemen, if the facts are as you state them to be here, if you have evidence upon which to base the statement which you make to me, *you should indict that man.*" That was substantially his charge,—they must *indict* him. They went out again and went through the performance as they have testified here, for the fourth or fifth time, and they finally came back and reported to the judge that they had no further business,—which meant, of course, that in their opinion Mr. Ingmundson was all right in the performance of his duty, at least that there was no sufficient cause for an indictment.

The judge's conduct upon that occasion is the basis of one of the most serious charges in these articles. The seventh article is quite brief and to the point, and I will therefore read it:

"ARTICLE VII.

"At the said term of the district court holden in the month of March, A. D. 1877, as stated in the last preceding article herein, and on the said occasion during said term when the said grand jury was finally discharged from attendance upon said court, the said Page, as such judge, being greatly angered and excited because the said jury had omitted to comply with his wishes, that the same should either by indictment or presentment, accuse said Ingmundson of misconduct in office, in open court, and in the presence and hearing of a large number of persons in attendance upon such court, in a loud and angry tone of voice, insultingly reprimanded the said grand jury for having omitted to indict or

present the said Ingmundson for misconduct in office, and then and there in a loud and angry tone of voice, and in the presence and hearing of the said persons, and of the said grand jurors, declared to said grand jury, with the intent thereby to insult and abuse the grand jurors composing the same, that the facts presented to the court by the said grand jury, touching the conduct of said Ingmundson as county treasurer, constituted an indictable offense, and that in not finding an indictment against the said Ingmundson on such facts, the members of said grand jury had violated their oaths, or in language to that effect, he, the said Page, as such judge, then and there maliciously and wrongfully intending to publicly accuse the grand jurors composing such grand jury, of having committed perjury by violating the oaths which they had taken as such grand jurors.

"And the said Page, as such judge, then and there, further maliciously to abuse and insult the said grand jurors, angrily and in a loud tone of voice, declared to them, and in their hearing, that it was a good thing that there was a higher power than grand jurors, and that no man could stand between criminals and the execution of the law, or language to that effect, he, the said Page, as such judge, then and there maliciausly and wrongfully intending to publicly accuse the said grand jurors of having improperly attempted to protect the said Ingmundson from being punished for criminal offenses.

"By which acts on the part of said Sherman Page, as such judge, he, the said Page, became and was guilty of corrupt conduct in office and of misdemeanors in office."

There were a large number of witnesses here who testified upon one side that every time the grand jury came in, the judge appeared more earnest in the matter; that he finally appeared to be vexed—appeared to be mad; and when they came in the last time for their discharge, that he bore down on them tremendously, in fact, that he abused and insulted them.

As to his conduct on that occasion, you have the testimony of Mr. Jones, of Rochester. What does he say? Mr. Jones is a man standing high in the legal profession; a man, if there were a question of veracity about this, whose word would be taken as soon as that of any man in the State; and still his testimony is right in direct conflict with that of Judge Page and of some of Judge Page's witnesses on this occasion. He says that the only word that he knows to express the demeanor of Judge Page on that occasion was "*terrific.*" He says that Judge Page's action there upon that seat of judgment, where he should dispense justice, was *terrific*, and why? Simply because that grand jury, that body of citizens of Mower county, sworn, upon their oaths, to perform their duty, had failed to obey his dictation in that matter. Because, upon an examination into that treasurer's conduct, they found that there was nothing worthy of censure—nothing worthy of indictment.

That testimony is corroborated by other witnesses; corroborated by quite a number of the members of the grand jury. There are others who, under the all powerful will of the respondent, tone it down considerably, saying that he was very earnest in the matter. Mr. Stiles, I believe, one of that grand jury—you recollect the old gentleman who was here in the early part of this proceeding—he says substantially that the judge was very mad; says he acted badly; so do some dozen others who were there.

Quite a number testified here, perhaps a dozen of them in all, that his conduct was very abusive and insulting—very unbecoming in a judge.

Now, what was all this about? How does he explain all this? What was the occasion of this pursuing Mr. Ingmundson in this unjust manner? What was alleged against him? Why, it was alleged on the part of the respondent that "information came to him regarding irregularities in his (Ingmundson's) office."

Now, how many times during the progress of this trial, has this gentleman said to you that "information came to him," in regard to this matter or that matter? He seemed to have certain friends down there who were bringing information from time to time against various men, that it was convenient for him to punish and he *always* had a stock of information regarding "irregularities" on hand.

It was a convenient way he had to bring the case before the jury. Now, he says in regard to that town of Clayton, that there were orders issued there—that there was an order issued to a man by the name of Coleman, that this Mr. Coleman wanted the money on his order. It appeared that there was some money in the treasury belonging to that town. He did just as any other man would do, who wanted money and had a town order; he went to the town treasurer, asked him if he had any money to cash the order. The treasurer, Sever O'Quam, told him no; that he hadn't any money, but perhaps there was some money in the county treasury belonging to the town. He was satisfied, I believe, that there was some money in the treasury; at any rate he was so well satisfied that he advanced to Coleman some $20, and took his receipt for that amount until he gets the balance to meet the order. O'Quam then goes to Mr. Ingmundson and gets some money; he carries the money back and passes it over to Mr. Coleman; he gets the town order that Mr. Coleman held, and when he next went to Austin he gave it to the county treasurer, who held it as his voucher for money paid. Well, now, gentlemen, that is a very common transaction.

I apprehend there is not a member of this Senate who does not know of something of that kind on the part of the treasurer of his county. I know that it is common in my part of the State, and I presume it is everywhere. And I don't know that there is anything in the law to the contrary in regard to it. That town order was a demand upon that money; it was a certificate of indebtedness from that town to that amount, and taxes had been levied to meet it.

Mr. Ingmundson had money belonging to that town and paid the money over to the treasurer and took this voucher; he took that order and held it as a voucher, so that when the time for settlement came he could turn it in and get his credit for it. What was the wrong done either directly or indirectly? None whatever. But it seems that this man Coleman in the meantime, for some reason, carried this story into town and went to Mr. Page with it. He told the judge something in relation to the Clayton town order transaction, as the judge alleges, at any rate he comes in here and so testifies.

The judge thought that transaction was sufficient on which to charge, to urge and insist and brow-beat an indictment out of that grand jury against Mr. Ingmundson.

Now, if something transpired afterwards in relation to that treasury; if Mr. Sever O'Quam, who was the town treasurer, got into some difficulty and turned up a defaulter as has been claimed, that is not

Mr. Ingmundson's fault; he was not to blame for that. The county treasurers are not responsible for town treasurers' honesty and the practice of handling their funds. If he got more money than he accounted for, Mr. Ingmundson had nothing to do with it; any town treasurer may default, and no one else be blameable.

It has been claimed here that that town has paid this money twice? Now, I do not understand that to be the fact at all. I understand that when this man—this town treasurer left with a balance against him, that he left good bondsmen, and whatever deficit there was, was met by his bondsmen, and that any deficit was easily recoverable. This witness Coleman was a willing and flippant witness for the respondent, and might easily have told, and truthfully, that if the town of Clayton was charged with the money paid to Coleman, while the order in question was yet in Ingmundson's hands, it was so charged for the reason that he (Coleman) insisted and urged upon the supervisors that they so arrange the account. Sever O'Quam had not charged it.

Mr. DAVIS. Are you referring to any testimony now, Mr. Gilman, or are you deposing?

Mr. Manager GILMAN. Well, it is possible that I sometimes get out of the line of testimony, but I have not done so intentionally, and I am now of the impression that such fact has somewhere appeared during this trial. There are some 1500 pages of testimony here, I believe, and I don't claim to have it all in my mind; and, moreover, there are innumerable facts having a direct bearing on this case, which are of such public notoriety that the Senate will take judicial knowledge of them (for have they not in this particular the illustrious example of this model judge as a precedent!), even if they have not directly appeared in the evidence.

That is as I understand the case; the town officers there, when they went to Sever O'Quam for a settlement, did not find that he had charged that money at all. He had paid it to Mr. Coleman, and Mr. Coleman who was present, upon his own motion, insisted that they should give O'Quam credit, and charge the town with the payment of the order, and they did so, and thus paved the way for the charge of double payment.

Mr. DAVIS. Mr. Gilman, I beg pardon, I would not interrupt you willingly, but there is not a particle of testimony in this case of anything which you have been stating for the last two minutes.

Mr. Manager GILMAN. I beg pardon of the counsel, if I have gone outside of the testimony, which is possible, for reasons before stated, but I think I have not. It is my intention to observe a reasonable degree of caution in keeping within the proper limits. This digression, if such it be, may be counted as offset to one of the many transgressions of like character on the other side, and I promise the honorable counsel that I will take no exception to any digression by him, if he will keep as near the facts as I have endeavored to do. The substance of these articles is that there was an animus on the part of the judge, which was an unworthy one—that he had an unworthy motive; that the transaction in question was purely one of accomodation to this man Coleman, whose subsequent course showed him to be too mean to tell the truth, and suggests that a plan was laid and acted upon to draw Ingmundson into a position where the judge could exercise upon him the far-reaching

power of the judicial arm in the furtherance of his wish for Ingmundson's humiliation and disgrace.

He sought to inflict that disgrace upon him through the grand jury of the county; and, for the reason that the grand jury would not do his bidding and indict Mr. Ingmundson, he insulted and brow-beat the grand jury. At that term there was a continuous scene of abuse, of violence and oppression.

Now as to the judge's action, as I said before, there is a variety of testimony. It is in direct testimony by a portion of that jury, testifying for the State, that he used certain offensive and insulting language in that case.

Mr. Stiles and others here have testified—quite a large number of them—to the respondent's violence, and say that when that grand jury came in to be discharged, the judge showed great feeling and said to them that they, by their action, were standing between criminals and the law; that they had violated their oaths; that it was well that there was a higher power than grand jurors, and to give effect to his words and to make them more emphatic, and to impress more forcibly the application of his language and looks upon them, and the public, he said substantially, that he thought there had been a great outrage and a wrong, and a dishonest act committed by that man Ingmundson, and he turned around to the county attorney and ordered him forthwith to make out a complaint against Ingmundson and to bring him before him, which was done.

A part of the witnesses contradict this version somewhat. Now, how do they contradict it? They don't say that he did not say anything in relation to that matter, nor does the judge himself in his testimony so say, but they put a little different gloss upon it. They give it a different expression so it will bear more lightly upon the judge. And so, under the version which the judge gives it in his testimony, and gives in advance of, and in the presence of those witnesses, whose memory may have innocently failed them in this matter—who may have some inclination to have their memory refreshed—and who also lean a little to the side of the judge; and that they can get his version and be conscientiously prepared to support it, counsel would have you understand and believe that Judge Page said nothing to that grand jury to which they could properly take any exception. The counsel will ask you to believe, and by your verdict to find that Judge Page was as calm, as mild, as dignified in his language to, and in his demeanor towards that grand jury, as the goddess of justice herself. Now, his version of that matter is this: He said to that grand jury, "Gentlemen, *if the facts* which you had before you are so and so, *if the statement of facts* which you have made to me is true, you should have indicted that man, and in not doing it you have perjured yourselves. You have stood between criminals and the law"—*if the facts* were so and so.

Well what did he gain by that expensive manœuvre? If, in their minds, the facts were just as they had stated that they were, what does the practical difference in the two versions amount to? Why the matter is as broad as it is long; he might just as well have said, "gentlemen, you have violated your oaths (which he probably did say); you have protected criminals who should be punished;—go home in disgrace!" He might as well have said that, as to have said what he did. If you tell a man that he is a rascal, if he is doing a certain thing which you know he *is* doing, and which he admits he is doing, might you not just

as well tell him without that qualification, that he is a rascal. There is no question about that, gentlemen. He substantially told that grand jury that because they did not bear down upon Mr. Ingmundson as he directed them to, they were guilty of perjury. He substantially, but hypothetically, told them that they had violated their oaths. And by so telling them he became guilty of "corrupt conduct in office," which is charged in this article; that he was oppressive; that he was arbitrary; that he abused his position to oppress and misuse officers and other persons in that county, has clearly appeared in the evidence, and of these facts I am confident you must be convinced.

Now, I am unable to go into that at great length, but that is one of the main points in this case.

All this story about that town order was of little consequence, as I said before. The respondent has brought up an array of witnesses here, apparently to substantiate his version of the grand jury matter. Here is Mr. Knox for one. He testifies to the judge's version of the case. Well, now what do other witnesses testify to, regarding Mr. Knox's version of the case, immediately after the discharge of the grand jury? They state that immediately after he (Knox) went out from that grand jury room he went grumbling into a store, and being apparently in anger, told the men who were there that that grand jury had been insulted and abused by the judge; that the judge had treated them badly. That Knox so stated is proved clearly (and it has not and cannot be controverted) by Mr. Slider and several other witnesses, I don't now recollect their names—you heard them and have their testimony.

Now, if the judge can come here and contradict his own words spoken upon that occasion, and upon every occasion, and then, by that kind of testimony—testimony which is impeached in this court—attempt to sustain himself, gentlemen, his case must be very weak.

In connection with this, the matter of the sixth and seventh articles, there is sufficient upon which to devote an entire day in argument and comment, so much is there of a reprehensible character in the conduct of this respondent, in connection with the matter of those articles. I make bold to say that there appears to have been no earthly occasion for any action whatever by the judge in that matter, much less for the scandalous and malignant abuse resorted to by him. It has not been shown and probably cannot be shown, that the action of Mr. Ingmundson in paying that order, was not fully justified by law. It has not been pretended, that, in connection therewith, there was any intent on the part of Mr. Ingmundson to profit thereby, or that he did profit in any way.

No foundation is laid for the belief that Mr. Ingmundson was regarded otherwise than as a good and upright officer—never a suspicion of wrong against him. His conduct was good—he was good financially, and his bondsmen were good for all that appears to the contrary.

But through the good offices of Sever O'Quam this thing of a Coleman got his Clayton town order cashed—went to Judge Page and helped lay the foundation for a war on Ingmundson, and comes here and testifies like a pirate, and wasn't satisfied because he wasn't allowed to tell more. It must be apparent that this raid upon Mr. Ingmundson, was conceived in malice, because he had the good judgment and honesty to disapprove—in a public speech, of "the one man power," which it was notorious had existed in that county since Mr. Page went there and commenced to remodel the ways of the world by his purifying processes.

Mr. Ingmudson, doubtless, had noticed that the treasury was getting lean through the long and expensive litigation initiated by Judge Page, and that Judge Page was getting fat; hence his remarks about the one man power.

But beyond the matter of showing the origin of Judge Page's hostility to Mr. Ingmundson, conditions previous to the grand jury matter have no relevancy to these articles. It is pertinent, however, to consider whether you find any good cause for the extreme measures of the judge to procure the indictment of Ingmundson. If you find no cause for such action, then was not the judge malicious and oppressive?—was not he "corrupt in office," in thus attempting, *for his own gratification*, to disgrace a public officer? But what shall be said of his treatment of that grand jury, for refusing to be coerced into such an act of injustice as the judge had attempted.

I need not review his attempts to usurp the powers of that independent body—sworn to their duty—and of his scathing insults to them when he discharged them; but I wish to call attention to the subterfuge, behind which this judge seeks to hide, and through which he seeks to impose upon this court. Why, he denies that he told those jurymen they were perjurers, etc., as good men have sworn he told them; but in attempting to deny the charge, he says he told them that *if* certain conditions existed, which conditions they had shortly previous notified him *did* exist, why, "then they had perjured themselves—had stood between criminals and the law;" what twaddle!—"tweedledee and tweedledum!" His version, if true, makes the case worse than we put it, for it shows him perpetrating the outrageous insult upon these jurymen from behind an "if," which, in that connection and under those circumstances was wholly superfluous and is but a cowardly subterfuge.

In Judge Page's answer to the sixth article, he represents Mr. Ingmundson as having acted viciously toward citizens of the county, by reason of the investigation by the grand jury. I would briefly enquire, if such is the case, why did the people of that county elect him last fall for a third term, by a two-thirds vote, and why did every voter in the town of Clayton but *two*—Mr. Coleman and his hired man—vote for him? If the people of Mower county, of the town of Clayton, feel aggrieved at Ingmundson, they vote contrary to their feelings.

From all this evidence of Judge Page's severity, it must not be inferred that he was naturally so "positive," "dignified" and so "stern," as his witnesses have expressed themselves, that he couldn't unlimber that countenance of his and put on a good natured look, on suitable occasions. He made himself agreeable in some parts of his district; here in your presence, gentlemen, no one has been chilled by the repondent's excessive sternness; and from Allen's report to Sheriff Hall, of the celebrated interview with Mandeville, in which his Honor was anxious to know "what political work" Mandeville had done, etc., when he made the the enquiry, "he laid back kind of laughingly and said 'what work have you done for Hall that he should appoint you, or is it because you keep a livery stable?'"

Then he was, undoubtedly, "as mild a mannered man as ever scuttled a ship or cut a throat," besides relishing an elegant joke of his own manufacture.

He is doubtless full of humor, if he would only give it play, which makes severity to his enemies the more reprehensible.

As allusion has been made to Judge Page's omission to exercise dicta-

torial powers in the other counties of his district than Mower, that fact, if a fact it is, only shows that the judge has exercised some caution in attempting to avoid overtaxing his powers, and treats a portion of the people of his district so as to have a chance for some support in emergencies like the present.

The eighth and ninth articles contain charges of very serious offenses and which, in my mind, have been clearly proved, but I am unable to speak upon all the remaining articles and shall leave those named to be discussed by my associates, who will follow me, and I will, therefore, pass over them and say a few words in regard to the tenth article.

Can some gentleman inform me what day the specifications of that article were filed?

Mr. DAVIS. They were filed the 30th day of May.

Mr. Manager GILMAN. The tenth article is as follows:

"Throughout the term of office of the said Sherman Page as judge of the District Court in and for said county of Mower, to wit: since on or about January 1st, 1873, he, the said Sherman Page, as such Judge, has habitually demeaned himself toward the officers of said court and towards the other officers of said county of Mower, in a malicious, arbitrary and oppressive manner, and has habitually used the power vested in him as such judge to annoy, insult and oppress such officers, and all other persons who have chanced to incur the displeasure of him, the said Page.

"By which conduct on the part of him, the said Page, as such Judge, he has become guilty of misdemeanors in said office."

The specifications under that article are as follows: First,

"At the general term of the district court for Mower county, held in month of March, A. D. 1877, the respondent in said impeachment proceedings, for the purpose of insulting, humiliating and injuring Mr. McIntire, county auditor of said Mower county, falsely and maliciously instructed the grand jury of said county, in substance and to the effect that the said county auditor had permitted a band or company of musicians to practice in his office, and that such conduct on the part of said auditor, was highly improper and highly reprehensible, and amounted to misbehavior in office on the part of such auditor, within the penal statutes of this State."

Now, in this case, gentlemen, the judge sets forth that "it has come to his knowledge" (again) that there were meetings being held in the office of the county auditor; and that large numbers of people assembled there evenings for certain purposes.

It is charged that he said a company of musicians met there. On the part of the respondent it is claimed that he did not so charge, but that simply there were meetings being held there; it is not material whether it was one way or the other. It appears in the testimony that the offense was, that a band of musicians met there to practice, and the judge thought that needed looking after by the grand jury! Now, I don't propose to dwell upon this nor upon any other of these specifications, because it is getting late in the day, and this afternoon I am suffering with a very severe headache, so severe as to prevent reference, even, to my brief, and I assure you, gentlemen, that it is with very great difficulty that I discuss this matter at all, and I shall engage your attention but a short time longer.

It seems that the judge represented to them that these parties meeting

there were liable to do injury to the records. There had been an action some time prior thereto, in relation to a former county treasurer's accounts, and the judge apprehended there might be some of those papers disturbed or taken away during those meetings. The ex-treasurer in question was the one to whom I alluded this morning as having been persecuted nearly until his death.

The result of it was, that the grand jury examined into the matter—they consulted with the auditor. It appeared that he had authority from the county officers, from the board of commissioners, to permit just what was being done, but when the complaint was made, the auditor stated that he was perfectly willing to desist, and there the matter ended.

That is merely mentioned to show upon how small a pretext the judge was willing to invoke the power of the grand jury to annoy—to say nothing about oppressing or insulting not only these parties—but any one against whom he had a pique. It is in evidence that a short time before he had had some difficulty with this auditor in connection with the matter of the nomination and election of Mr. Irgens as Secretary of State, in which conversation Mr. McIntyre had refused to yield to the judge's dictation, and some sharp words passed between them. From that time afterwards the auditor was not recognized any more among the judge's friends.

The second specification charges the judge with having arbitrarily and unnecessarily appointed another attorney to take charge of a criminal case in court during the temporary absence of the county attorney.

Mr. French, the county attorney, having gone from the court room to consult with a witness, which is a very common thing for attorneys to do; a witness on the part of the prosecution in this identical criminal case. During the short time he was thus absent, the judge had very abruptly, and in a manner unbecoming a judge, called upon another attorney to take his place. In connection with this transaction it is alleged and sworn to by two witnesses, that the judge acted in a manner which was insulting and calculated to bring into disgrace this county attorney, Mr. French, toward whom the judge's animus has been manifest throughout all the proceedings.

The 3d specification is:

"Sometime during, or about the month of June, A. D. 1874, George Baird, then being and acting as sheriff of the said county of Mower, the respondent for the purpose of insulting and humiliating him, the said Baird, at or near the barnyard of said Baird, in the village of Austin, in said county of Mower, angrily and maliciously accused the said Baird of having neglected and failed to perform the duties of his office, and of being incompetent to perform such duties, and particularly of having improperly failed or refused to make the arrest of several persons present on an occasion a short time before, commonly known as the "Whiskey Riots," at said Austin, and as judge of said court, threatened to punish him, the said Baird, by fine, for such failure to make arrests."

On the 19th day, June 5th, page 2, ex-Sheriff Baird testified as follows. I will quote briefly as to the interview:

"Q. State whether or not you had an interview with Judge Page in regard to the arrest, or failure to arrest, certain parties in 1874?

"A. Yes, I had an interview with him.

"Q. When was it?

"A. It was on the 31st day of May, 1874.
"Q. Where did it take place?
"A. It was on the edge of the street, next to my barn.
"Q. Well, now you may state to the court what was said between Judge Page and yourself on that occasion?
"A. He says to me: 'Why didn't you obey my orders last night, and make arrests?' I told him that I thought there was no occasion to make arrests; that there was no riot. He says: 'Don't you tell me there was no riot again.' He says: 'That was a riot under our statutes.' I asked him if he thought it was because I was afraid to make arrests. He says: 'No, it was not because you wasn't afraid, but you didn't know how; you haven't any brains; you ought to have organized a posse.' He says: 'If I thought it was because you were afraid, that you intended to disobey my order, I would fine you; I'm a great mind to fine you anyhow.'
"Then he says: 'there had better have been a dozen men killed than to have such a disgrace on our city.' and afterwards he says to me: 'We are going to make some arrests, and I want to know whether you will do your duty.' I told him I had never refused to serve any papers placed in my hands. That was the substance of what was said there.
"Q. What was his manner of speaking?
"A. Very angry he shook his fist."

In the testimony under this specification, two points are worthy of attention. First, the respondent's abusive treatment of sheriff Baird for not making arrests at those "crusade" gatherings or "whisky riots," to which no one but the judge attached any importance, so far as appears.

The other point which I seek to make here in this case is, that upon the testimony here, he comes in direct conflict again with Mr. Baird and Mr. Baird's son in regard to this matter.

Mr. Baird testifies here, as quoted, and he was fully corroborated by his son, an honest and truthful looking young man, and he testified distinctly that the conversation was heard by him and by his mother, quite a distance from where it occurred. The conversation with the judge was loud, so loud on that occasion and so violent that they heard him away across the block at the house.

The judge comes here and testifies that nothing of that character occurred. That he did not use the language alleged (in part) by Baird and son, but that he and the gentlemen there had some very pleasant conversation, and his voice was just as pleasant as it was here; and if it was, I will admit there was nothing out of character as to his tone, and that the specification is not well grounded.

But this, gentlemen, is another instance where you see the testimony of this respondent right in direct antagonism with good, respectable witnesses. Now, there are too many of those conflicts. Those cases are too frequent here to be disregarded as to their effect in this matter of contradictory testimony. In that case there was nobody else, I believe, who testified. The judge stands there entirely unsupported and in antagonism with two witnesses.

The fourth specification I will not read at length, but it represents substantially that at the term of the district court held in Austin, in January, 1876, "a venire was issued to summon juries from a remote

part of the county, and for the service and return of which at least two days were absolutely necessary, as he, the respondent, well knew;" that after a few hours had elapsed, the respondent in this case called upon the sheriff to know if the duty had been performed or would be performed within a certain time, near at hand, at which time it would be a physical impossibility to perform that duty; to travel the number of miles and visit the places where those parties named in the venire resided, and make the return to the court, as the respondent well knew. It was wholly out of the question, and still he upbraids this sheriff in an arbitrary and an unjust and unreasonable manner, because he said he could not perform the duty within the time which the judge specified, and threatened to punish this sheriff for not performing an impossibility.

There is another case in which the judge denies, and Mr. Hall comes in direct antagonism with him on that—a direct conflict of testimony.

My impression is there was no testimony introduced under specifitation five.

In regard to specification six, I do not recollect as to what the testimony was. I will pass over that specification and refer to SPECIFCATION EIGHT. It was as follows:

"The respondent has habitually refused to permit the sheriff of said county to make his own selections of persons to be appointed and to act as special deputy sheriffs of said county for attendance upon the terms of the district court of said county; but he, the said Sherman Page, as such judge, has habitually insisted on himself designating and appointing the persons to be appointed such deputies."

Now, gentlemen, there is a case that did not need any verbal testimony in its support.

The records on file here show that that was the practice of the judge at times. An order that was read a short time ago in connection with the third article, in which the respondent assumed to appoint Mr. Allen a special deputy. His clerk, Elder, endorsed it, "Order appointing F. W. Allen special deputy," &c. The law specifies clearly that he shall designate the number of deputies to be appointed, and that the sheriff shall appoint. In that order referred to, which is on record here, he acted in direct opposition to, and in violation of the law.

The sheriff testifies upon that point, and sustains the charge in the specification, and it is not really a subject of discussion. He assumed to do those things which the law devolves upon the sheriff, and that is one of these specifications to help sustain Article X. Now, gentlemen, as to that Article X, I will say but little about it; I wish that I was physically able to treat it at length, but I am not. It specifies that the "judge has habitually demeaned himself towards the officers of said court, and toward the officers of said county, in a malicious, arbitrary and oppressive manner, and has habitually used the powers vested in him, as such judge, to annoy, insult and oppress such officers, and all other persons who have chanced to incur the displeasure of him, the said Page." You will bear in mind, that in support of this tenth article, is to be concentrated all the evidence adduced upon the other articles and which bears upon the offenses charged in the tenth article; everything in the

whole mass of evidence showing that the judge demeaned himself towards the officers of that county in a malicious, arbitrary and oppressive manner, and that he has used his powers as judge to annoy, insult and oppress officers and others whom he disliked. And evidence of this character is found throughout the entire case. I submit to you, in all candor, whether it is not proved by the testimony which has been adduced here, that the judge has oppressed those officers; whether he has not on frequent occasions when he could do so, insulted and abused them? Is not there abundant proof here before this court that he has come right in direct conflict with the sheriff; with the county attorney, with the county treasurer, with the county auditor, with the clerk of court, and with the ex-sheriff and ex-treasurer; that he went before the county commissioners and dictated to them what they should do, right in antagonism with the known law-officers of that county—the county attorney and of the attorney general.

He not only assumed to control them in those matters, but he was oppressive about it; he was vindictive; he was boisterous, violent and abusive. He sometimes asked them if they dared to do so and so—do you dare to do this thing—do you dare to do that thing. To sheriff Hall: "Do you dare to appoint Tom Riley?" &c. To the county auditor, Mr. McIntyre: "Do you dare to support John S. Irgins for office?" To the county attorney: "You are corrupt." "I care nothing," he says, "for a little man with no brains, nor for big men with little brains." To the previous sheriff, Mr. Baird, he used opprobrious and insulting language.

And, gentlemen, what county officers are there to whom he is not hostile? There is even a state of hostility between him and the clerk of his own court! With his sheriff and deputies! With the prominent attorneys—all officers of his court!

This general situation is ominous, and is the direct result of the respondent's ambition to rule, and, if no relief comes to that afflicted people through this high constitutional power, what may not a judge do with impunity, so far as fear of legal consequences are concerned? But may it not be well to inquire what will naturally be the next resort of an oppressed people when legal remedies fail. Do we not know that human nature has placed limits upon our powers of submission to insult, and has not Mower county been put to the extremest test? The respondent went upon the stand and was compelled, substantially, to contradict all these officers with many others, and what a spectacle! To what straits had the dominating will of this judge brought him; who would wish to have the scene repeated—ever? Grand in one respect; like some giant chieftain holding at bay by superhuman efforts, the forces closing around him, but in the moral aspects of the scene, how humiliating!—how unsatisfactory to dwell upon. What vain blows at the veracity of men hitherto unassailed—what futile attempts at bolstering up, by refreshing, through this respondent's mighty will, the blank memories of his horde of well fed servitors. They come and go at his call, and they chime in with suggestive sameness regarding the hypothetical charge of the judge—all the "if's" and all the "information of irregularities, etc.," being rattled out like so many bullets from a mold. But what a scattering—what forgetfulness, and what uncertainty, was developed by cross-examination. Their little lessons said, and the shades of oblivion were cast over their minds.

Through these desperate resorts, this respondent undertakes to explain away all this bad appearance; but how can he explain it away in the face of all this testimony that has been adduced here.

Is it to be supposed that these officers of Mower county are men who will come here and perjure themselves, not only in one matter, but repeatedly, upon one point after another, day in and day out, for four weeks? Do they elect men down there because they are champion liars of that county; for no one, not superhuman in that direction, could take the position they have taken, if they are testifying falsely, and maintain themselves so perfectly.

It is to be presumed, gentlemen, that the people of Mower county elect to office, men of respectability; men of character. And how as to those last elected? Those who were elected last fall, as you probably have some means of knowing, were elected by enormous majorities, and as the respondent's counsel has set forth in his objection to Senator Clough, that the Page and anti-Page question was then the issue; as he was correct, I may be permitted to notice the result. The honorable counsel of the respondent was most emphatically correct when, in objecting to Senator Clough, he stated that that Senator was elected upon that issue. He was elected by an immense majority over E. O. Wheeler, former, if not present partner of Judge Page, and elected to impeach Judge Page, I have no doubt; and as all the officers were elected there last fall as anti-Page men, and by large majorities, it certainly is clear that this judge has become obnoxious to the people. Could he become so obnoxious through good conduct? Could anything short of very bad conduct incense the people against an officer ordinarily more revered than any other?

Here he is pursuing this man Ingmundson, forcing upon him a disgraceful indictment on the smallest imaginable pretext, for doing things that are done every day in this State by county treasurers, without objection. And it has not yet been shown that it was unlawful, and I doubt if it can be so shown; and upon that point there will be argument hereafter by other counsel, and it will be shown here that Mr. Ingmundson officially, was acting legally and in good faith as county treasurer. He accommodated a man of his county when he could do it, when he could do it without any violation of the law; and the construction of Judge Page will not be borne out by a critical examination of the facts in the case, and of the law.

There was this man Coleman, who came in from the town of Clayton —gave him the information about it; the judge acted upon that; was there any reason to believe that anybody else wanted it done? Were the people for punishing Ingmundson? If they were, why did they elect him by eight or nine hundred majority down there last fall, when "it was an issue" in the contest? It has been referred to, there "was an issue" down there, sure! Not only in relation to the office of treasurer, but in connection with the office of Senator, at least the statement was made, which brought the subject before the court; and in connection with that matter of election, it appears, also, that in the town of Clayton but two votes were cast against Mr. Ingmundson—the very town upon which this great outrage was committed.

Gentlemen, a knowledge of those affairs can but have its weight. What are the Senators comprising this court, and what are the people

of this State to believe? "Are they to believe," as the counsel for the State, who opened this case, asked, "that this judge before you is all right," and that "the people of that county are all wrong." Is he, who is here accused of a heinous offense, an offense which his counsel characterizes as a grave one, and the penalty of which is claimed to be as fearful as, or worse than death,—is his word to be taken against all these citizens, the officers of that county—citizens of veracity—gentlemen of respectability?

I submit to you, gentlemen, that it is not reasonable; there is no ground for it. You must consider who has the incentive to perjury. You must take into consideration the weight to which the testimony of the accused is entitled. If the accused in this case is entitled to any more consideration than another person, the penalty of whose offense would be as grave as the counsel submits to the court the respondent's is, ordinarily you will give him very little credit.

And, gentlemen, the manner in which the respondent was put upon that stand to parade his testimony before all his witnesses, you must bear in mind. He testified contrary to the rule adopted, all through this case, without hindrance, and covering all visible points, so that he had his printed testimony soon before them. He led them along in it, shaped his case, and his will has been impressed upon that whole army that has been brought up here, to a greater or less degree. That, you can judge by the manner in which they have given their testimony; not but what they are respectable men in the main. I would not accuse them of perjury, but the matters in regard to which they were testifying, you will recollect, were in a great measure matters about which it would be very easy to forget in the time which has elapsed since the events transpired. It is very easy for them to forget them—for them to get dim in the memory. There are many things in connection with Judge Page's conduct which they without doubt would be glad to forget.

With these facts already dim in the memory of these men, they are brought up here—friends of the respondent, scraped up from all over the district, and isn't it reasonable to believe that their memories have been refreshed in this matter, by something that has been shown to them. Men refresh their memories in various ways; some, possibly, by going to records, and some, possibly, by looking at memoranda; some by talking with friends; they refresh their memories in various ways. But, gentlemen, isn't it reasonable to believe that the memories of most of these men in regard to these matters, especially in regard to that grand jury matter, have been refreshed by the statements of this respondent, and by the force of will power wrought by him upon their plastic minds?—the arguments which he has made, the way in which he has pressed it so powerfully upon them? Do not they "all the impress bear?"

Mr. President and gentlemen, I would that I were able at this time to do justice to this cause; not that the chances for the conviction of this judge might thereby be increased, but simply that every cause should have a proper presentation. No, gentlemen, far be it from my desire that this judge should suffer unjustly, for should he so suffer, I should exceedingly regret to have had any part of the responsibility laid at my door. But is he not guilty of that with which he, in substance, stands charged—malice, general belligerance, vindictiveness, corruptly indulg-

ing in practices unbecoming a judge? Is he not possessed of charteristics unbecoming a judge; incompatible with high inherent qualities so essential to the proper realization of our ideal of a just judge?

History has few judges entitled to the distinction attained by this respondent, and of the characteristics for which he has become so infamous; he stands in the history of our State alone, a shame and a disgrace to the bench and the bar, and his name will go down in history coupled with all that is odious, and mean and contemptible, despised and hated by all who love, honor and revere the high office of a judge, which with very rare exceptions has been filled and honored by the greatest and best men, in ancient as well as in modern times. Senators, we ask you, if you believe the evidence we have produced before you, of corrupt conduct and misdemeanors of this most unjust and malignant judge, to brand him with that humiliation and disgrace which he so richly merits at your hands.

The wonderful and semi-tragic scenes of his career as recorded under the light of this high investigation, will be a wonder to the future reader of this trial; a wonder because of the evidence of tame subjection with which the citizens of Mower county have submitted; citizens born and bred in the land of boasted independence, as well as those who have come from far off lands to escape oppressive masters. It will be a wonder, I say, that any individual, acting in any capacity, was so long and patiently tolerated, without rebellion, by those oppressed people. Men say that communities are few, where such things can be done. It would seem so, but who can tell what great *will power* and persistent determination may not accomplish.

Perhaps I have looked with partial eyes, and have heard with partial ears, and have judged with partial judgment in this matter. I have endeavored to keep a "level head," but I shall conclude that I am not without bias, if it is not decided that this judge has played the tyrant in Mower county, to rule over, oppress and humiliate all who would "not bend the supple hinges of the knee."

I shall assent to the proposition that men see and understand things altogether differently, if it is not found in your verdict that this judge has wilfully and corruptly transcended the powers of his office to inflict punishment upon his enemies in that county. His action in the Mollison case was unreasonable, unwarranted and without any justification whatever. I will not insist that it was criminal. In the Riley case and the Mandeville case, his conduct is clearly, wilfully and corruptly illegal and vindictive; in the Stimson and Baird cases (4th and 5th articles), clearly illegal and oppressive; in the Ingmundson case, diabolical. But why go through seeking for more and more expressive adjectives with which to characterize the various degrees of his vicious oppression and malignity. Gentlemen, if you think he is unfit for the bench—that he has not lost his usefulness (if he ever possessed any)—that he is a good judge—the "right man in the right place," don't for the world give him up. "Cleave unto that which is good." A good judge is a promoter of peace. A judge always indulging in libel suits, proceedings for contempt and other personal and exciting litigation, comes under another head.

So, on the other hand, if he is unfitted for the bench—has lost his usefulness—is found meddlesome, quarrelsome, malicious, vindictive, oppressive, corrupt—in that case, I apprehend, you will not search in

vain for authority through which to work your will. Public good and the fullest justice is the object of these proceedings, and your good judgment needs no suggestions from me as to the course you should take. This respondent has rights that are to be regarded, and so have the scores of good men who have suffered, and who have bravely and openly resisted his insults, abuses and unwarrantable assumption of power.

Many of them are men honored with important positions by the people. They, who are not accused and have no occasion to "slide into perjury," can hardly be discredited in the numerous conflicts of testimony between themselves and Judge Page who *has* occasion to "slide into perjury," and unless the multitude testifying against him are fearful liars, nothing short of Page's removal from the high office which he holds and disgraces, can give relief to the suffering and oppressed people of Mower county. There is no question of sympathy properly to be considered, and if there were, it could hardly result in favor of an unjust judge to prevent his being relegated to the private life from whence he was taken, as against the various officers and others there whom this judge has unlawfully sought to injure, and to drive from their pursuits, as was the case with Mr. Ingmundson and with Mr. Lafayette French.

The conduct of this respondent toward Mr. French, Ingmundson, and others has been such as to make any plea for sympathy a mockery.

It may be asked, why Judge Page, if tyranical in Mower county, is not so elsewhere. We have no evidence of his good conduct elsewhere, but would ask in return, if a man who is a tyrant in his own family, is not the most smiling and agreeable person elsewhere?

Even a tyrant must have his supporters somewhere, for no man can fight all the world.

Another question and I must close, for my illness is such that I cannot continue.

From the testimony adduced, does it not appear that this respondent is unfit for the position he holds, and if so, is he not, by reason of such misconduct brought within the scope of the constitutional power of removal from office vested in you, according to the high authorities given at the commencement of my remarks, and, if yea, is it right to leave him in position, when only trouble and vexation can arise?—

I endeavored to demonstrate in my opening remarks, that as public men, exercising your judgment upon a question effecting the public welfare, your main purpose should be to promote the best interest of the public, so far as it may be done within constitutional limitations

I have also sought in a general manner to demonstrate the unfitness of the respondent, and to show it to be allied to, and resulting from "misdemeanors," and "corrupt conduct in office," so as to remove all reasonable doubts of his guilt under the law. In addition to all evidences of his unfitness, do not his relations with the officers and others of Mower county, show that his usefulness there is gone. His willful violations of statute law proven, his usefulness shown to be gone, his utter unfitness established beyond question; shall the people there be rebuked by his acquittal, and future tyrants thus invited to imitate his example?

A quarter of a century ago our sister State, Wisconsin, tried Judge Hubbell for "corrupt conduct in office," and proved his guilt beyond a reasonable doubt, but for some reason, only one-half the Senate voted

for conviction, and he was acquitted. But the public condemned that decision, and that judge was quickly retired to private life, and Mr. Ryan, the leading counsel who was thought to be too severe in prosecuting Judge Hubbell, now honors that State as its chief justice. Then, as now, there was a higher court sitting in judgment.

I have been compelled to omit many points upon which I intended to speak, but other counsel will present them better than I could hope to do, had not this disability come upon me; and I now leave this case in your hands, confidently believing, that, under the sanctity of your oaths, you will mete out justice between Judge Page and the people of the State of Minnesota, "even as you would have it meted to you again." Not only the rights of the parties are in your hands, but the honor of the State. Such judges as this respondent, and such trials as this are, happily, like angel's visits. Not every generation witnesses a scene like this, to which the attention of future generations will be called whenever in this country a case of impeachment shall arise. And, when all of us shall have been forgotten, or shall be viewed as but specks of the dim and shadowy past, posterity will review and judge upon our work. Thanking you, gentlemen, for your considerate attention, I will close my remarks.

On motion of Senator Armstrong the Senate adjourned.

Attest:

CHAS. W. JOHNSON,
Clerk of the Court of Impeachment.

## THIRTIETH DAY.

ST. PAUL, FRIDAY, JUNE 21st, 1878.

The Senate was called to order by the President.

The roll being called, the following Senators answered to their names:

Messrs. Ahrens, Armstrong, Bailey, Bonniwell, Clement, Clough, Deuel, Donnelly, Doran, Drew, Edgerton, Edwards, Finseth, Gilfillan John B., Goodrich, Henry, Hall, Hersey, Houlton, Lienau, Macdonald, McClure, McHench, McNelly, Mealey, Morehouse, Morrison, Nelson, Page, Pillsbury, Remore, Rice, Shaleen, Smith, Swanstrom, Waite, Waldron and Wheat.

The Senate, sitting for the trial of Sherman Page, Judge of the District Court for the Tenth Judicial District, upon articles of impeachment exhibited against him by the House of Representatives.

The sergeant-at-arms having made proclamation,

The managers appointed by the House of Representatives to conduct the trial, to-wit: Hon. S. L. Campbell, Hon. C. A. Gilman, Hon. Henry Hinds and Hon. W. H. Feller, entered the Senate Chamber, and took the seats assigned them.

Sherman Page, accompanied by his counsel, appeared at the bar of the Senate, and they took the seats assigned them.

The PRESIDENT. The counsel will proceed to the argument of the case.

Mr. CLOUGH. Mr. President and gentlemen of the Senate: I shall demonstrate to you, in as short a way as I am able, that the respondent in this case has been guilty of crimes and misdemeanors, and of corrupt conduct in office, as charged in the articles of impeachment.

I feel that this case must be becoming tedious to the Senate, from the necessary reason that the facts in the case are very voluminous, and from the further reason that in the argument and presentation of the case very many matters must necessarily be repeated which have already been dwelt upon to a greater or less extent. But I shall try to be as brief as possible, and I shall ask you to bear with me; and if I touch on matters which have been touched on before, I will ask you to excuse me, because I shall do so thinking that justice requires it, and for no other purpose.

To begin this matter at the beginning, (because we can very well begin no where else,) I will read once more the clause of the constitution under which we are proceeding:

"The Governor, Secretary of State, Treasurer and Attorney General and the Judges of the Supreme and District courts, may be impeached for corrupt conduct in office or for crimes and misdemeanors."

Now, as far as my reading and observation have extended—and upon the subject of impeachment, they have gone to a considerable extent—the origin of the constitutional provisions in this country now in force in respect to impeachment is in the constitution of the United States. The constitutions of the several States,—most of which have been framed since the constitution of the United States was adopted—have the general language of the constitution of the United States upon this subject.

But I might remark, although I do not deem it a matter of great importance here, that there is this distinction between the description and designation of what are grounds for impeachment in the constitution of the United States and in the constitution of this State:

In the constitution of the United States, impeachment is for "*treason, bribery, or other high crimes and misdemeanors.*"

Under the constitution of the United States much discussion has arisen, and particularly in the case of Andrew Johnson much arose, as to whether it is necessary in order to constitute an impeachable offense, that the act charged should be something which either the common law or the statutes denounce as a crime when done by another person than the one who is charged with doing such act. That controversy arose in the case of Andrew Johnson, upon one of the closing articles, which charged him with unbecoming conduct in the course of a journey through the country, by making speeches in which he denounced Congress and the motives of Congress. It was upon that article, that the great discussion particularly arose, which occupied the Senate so long, and which formed so important a part of the arguments both on behalf of the prosecution and of the defense, as to whether or not it is necessary, in order to constitute an impeachable offense, that the act should be a crime under the common or the statutory law.

In this State, as I remarked a moment ago, I apprehend that whenever a case does arise in which it shall be necessary to be determined, that there will be no difficulty whatever, on the part of the impeachment court, in reaching the conclusion, that it is not necessary that the act should be a crime within the purview of the common law or the statutes in order that it be impeachable. And I derive my impressions upon that subject, from the very plain language of the constitution itself.

Now, the word *high*, which appears in connection with the word "crimes," in the federal constitution has been dropped in our own; and under the provisions of the constitution of this State, a public officer is impeachable for crimes *and* misdemeanors.

The word *crime* we all know is the most comprehensive term that can be applied to any act which is prohibited by law, and for the doing of which, contrary to such prohibition, a penalty has been denounced.

At common law, "crime" was the name, and it is so under our statutes, of every offense; and offenses were divided into two classes: There were felonies and there were misdemeanors. Now, the term crime, includes both felonies and misdemeanors.

When we are reading constitutions, we interpret them in this way: A constitution is the fundamental law of the land. It is expressed in the most concise language possible. There are few repetitions; and consequently we must give to every part and to every expression, a meaning standing by itself. So, here, when the subject of crimes is spoken about, that word "crimes" includes every act which the law prohibits

and denounces a penalty for doing. We must not construe the term "misdemeanor," as used in the connection referred to, to be included under the term "crimes," because to do so would be contrary to the usual rules for the construction of such instruments. Crimes are to be the subjects of impeachment, and misdemeanors are also to be the subjects of impeachment. But that matter, however important it may be in some cases, will not be of any consequence whatever in this case, for the reason that the acts which the House of Representatives has charged here, and for which it has asked the Senate to convict the respondent, are crimes both at the common law, and under the statutes of the State of Minnesota. Hence, the question whether or not, in order to constitute an act, an impeachable offense, it is necessary that it should be a crime, will be absent from this case entirely.

That question might have arisen in this case, if the House had asked that this respondent be impeached for something else than misconduct in office. The constitution does not confine impeachment to acts which have been done by an officer, under color of his office, and in the course of the performance of the duties of his office; but an officer is impeachable for acts done entirely outside of his office,—for crimes and misdemeanors that have no relation to the duties of his office. If, instead of confining the accusation against this respondent here, to acts which he had done criminally, by virtue of his office, and while exercising the functions of his office, the House of Representatives had seen fit to arraign him before you charging him with acts done outside of his office, then the question would have arisen whether or not those acts were crimes, and whether or not if they were not crimes, the respondent would be impeachable on account of them.

It was true in the common law, as it is true in the statutes of this State, that every act of misconduct on the part of a public officer, whether of high or low degree, constituted a crime. And I will trouble the Senate with a few authorities upon that point, because I consider it a matter of importance here.

I will cite, in the first place, *Russell on Crimes* (an authority of great weight and celebrity), marginal page 135.

"Where an officer neglects a duty incumbent on him, either by common law or by statute, he is indictable for his offense; and this, whether he be an officer of the common law, or appointed by act of Parliament: and a person holding a public office under the King's letters-patent, or derivatively from such authority, has been considered as amenable to the law for every part of his conduct, and obnoxious to punishment for not faithfully discharging it. *And it is laid down generally, that any public officer is indictable for misbehavior in his office. There is also the further punishment of the forfeiture of the office for the misdemeanor of doing anything directly contrary to its design.*"

Then the learned author proceeds:

"*The oppression and tyrannical partiality of judges, justices, and other magistrates in the administration, and under color of their offices, may be punished by impeachment in Parliament, or by information or indictment, according to the rank of the offenders and the circumstances of the offense.*"

I read again upon the same subject from another celebrated authority—*Hawkins' Pleas of the Crown*—a work upon Criminal Law, which, I think, stands at the head of all treatises upon that subject

which have ever been written in the English language. I read from the beginning of *Chap.* 27:

"*Offenses against the public justice of the Kingdom.*
"Offenses against the public justice of the Kingdom are:
"1. Such as are committed by officers.
"2. Such as are committed by common persons, without any relation to an office.
"OFFENSES by OFFICERS seem reducible to the following heads:
"First. Neglect, or breach of duty.
"Secondly. Bribery.
"Thirdly. Extortion.
"As to the first of these offenses, viz.: Neglect, or breach of duty.
"SEC. 1. I take it to be agreed, that in the grant of every office whatsoever, there is this condition implied by common reason, that the grantee ought to execute it diligently and faithfully; for since every office is instituted, not for the sake of the officer, but for the good of some other, nothing can be more just than that he who either neglects or refuses to answer the end for which his office was ordained, should give way to others, who are both able and willing to take care of it. And, therefore, it is certain, that an officer is liable to a forfeiture of his office, not only for doing a thing directly contrary to the design of it, but also for neglecting to attend his duty at all usual, proper, and convenient times and places, whereby any damage shall accrue to those by, or for, whom he was made an officer."

Then the learned author further proceeds:

"Under this head may be ranked another *offense of deep magnitude*, namely, *the oppression and tyrannical partiality of judges, justices and other magistrates in the administration of, and under color of their offices.* However, when this offense is prosecuted, either by impeachment in Parliament, or by information in the court of King's bench (according to the rank of the offenders), it is punished with forfeiture of their office, either consequential or immediate, fines, imprisonment, or other discretionary censure, regulated by the nature and aggravations of the offense committed."

So again, that other great writer, whose work is in the hand of every student of the law, uses similar language. I cite now from *Blackstone's Commentaries, Vol. IV.*, marginal page 141.

The great author says, using the same words with *Hawkins*, nearly:

"*There is yet another offense against public justice which is a crime of deep malignity;* and so much the deeper, as there are many opportunities of putting it in practice, and the power and wealth of the offenders may often deter the injured from a legal prosecution. *This is the oppression and tyranical partiality of judges, justices and other magistrates in the administration and under the color of their office.* However, when prosecuted, either by impeachment in Parliament, or by information in the court of King's bench (according to the rank of the offenders), it is sure to be severely punished with forfeiture of their offices (either consequential or immediate), fines, imprisonment, or other discretionary censure, regulated by the nature and aggravation of the offense committed."

So we see at the common law, as laid down by the greatest writers, that misbehavior in office has always been an offense, and that any particular oppression or tyranical behavior on the part of judges has been denounced as a crime of the deepest dye, and of the greatest malignity.

Now, there is this difference between the common law and the statute of the State of Minnesota, which has been read; and the lawyers of the Senate have already, perhaps, noticed it and will anticipate what I shall say in that regard.

In England, the *minor* officers were punished for misbehavior in office by *indictment*, prosecuted before an ordinary tribunal; but the great

officers of the realm, whether judges or belonging to the executive departments, on account of their great power and influence, were punished by a tribunal similar to this, and one which answers in England the same purpose which this tribunal answers here. The great officers, including the judges of courts of record and the ministerial officers, were punished by impeachment by the House of Commons, and conviction by the House of Lords.

Now, in the State of Minnesota, the statutes have made this change; it has been declared that misbehavior in office is *indictable*; and that provision or declaration applies to all offenses, and to all officers; so that what in England would be punishable alone by impeachment by the Commons, and conviction by the House of Lords, in this State is punishable as well by indictment, as by that other method.

So, I say, it is clear that, both by the common law, and by the statutes of the State of Minnesota, misbehavior in office, and particularly oppression and tyranical conduct on the part of judges, is a crime. In the State of Minnesota, it is a felony. In England, it was a felony punishable by fine and imprisonment, as well as by forfeiture of office.

So too, it has further appeared that, by the common law, misbehavior in office has always had annexed to it the penalty of forfeiture of the office. If the officer were one of low degree, such forfeiture has always followed his conviction and punishment in an ordinary court of justice. If he were an officer of high degree, such forfeiture has always followed his conviction and punishment by the House of Lords. So we say, that question whether or not anything but a crime is the subject of impeachment, is not before the Senate for its determination in this case, and that it is a question which is entirely foreign from this proceeding.

Now, the next question that follows, is whether, what we have charged here, and what we have proven here, amounts to misbehavior in office, or to tyrannical or oppressive conduct in office.

What is misbehavior in office? Misbehavior is a common term. We all know the meaning of that term. We all know what *good* behavior is. *Mis*-behavior is the *contrary* of *good* behavior. It is the other pole. *Good* behavior stands upon the one hand, *bad* behavior or *mis*-behavior stands upon the other hand.

Now, that which constitutes misbehavior in office, is a breach on the part of the officer of his duties in the performance of the functions of his office. Can anything be plainer than that?—a breach on the part of the officer of his duty in performing the functions of his office. Therefore, misbehavior in office must vary with the character of the office itself.

Misbehavior on the part of an executive officer is one thing; misbehavior on the part of a judicial officer is another thing. And, whenever it is desired to ascertain whether or not any particular act committed by an officer does or does not constitute misbehavior in his office, that matter is to be ascertained by inquiring, in the first place, what are the functions, what are the duties of the officer, and then whether or not the act which has been performed is consistent with such functions and duties.

What are the functions of a judge? It would be very difficult to enumerate them all. It will be unnecessary in this case to enumerate them all. It is, however, very easy to enumerate some of the most important of them. It is a matter of little difficulty to enumerate the greatest and most important of those functions.

It is one of the duties of a judge, and it is his chief duty, *to administer justice impartially, without favor to any man, without ill will toward any man.* That is what he is sworn to do by his oath of office—in substance—to administer justice. What is justice? The best definition of justice, I think, contained in the books, is one found in the *Institutes* of Justinian—a definition of great celebrity, and one which has been pronounced by all lawyers and law writers to be unrivalled for comprehension and accuracy. The *Institutes*—I believe I quote the language correctly—say that justice is a constant and perpetual disposition to render to every man that which is due him. That is the duty of a judge. It is the duty of a judge, in administering his functions, to act entirely with the purpose of rendering to every man his due—to act solely for the purpose of advancing the public good, and never with a view to injure or to hurt any man in his person, his feelings, or his property.

Now, it is the due of every actually and apparently innocent man, who is brought before a court of justice, that he shall not be loaded with false accusations of crime; that he shall not be convicted of crime. It is also the right of every man, that he be not deprived of his liberty, without due process of law; that he be not deprived of his property or his rights, without due process of law.

Right here we are confronted with another proposition; and one which was dwelt upon by the learned counsel for the respondent, who opened his case here, at considerable length. And I refer to it at this time, because I admit many of the counsellor's propositions upon that point to be correct. The point is this: suppose a judge mistakes the law. It is undoubtedly one of the fundamental duties of a judge to decide controversies, and to administer justice, in accordance with law. Every body agrees to that. Suppose the judge mistakes the law, what are the consequences? I apprehend the rule upon that point to be a sensible, a sound, a logical one, and about which there is no difficulty. Whenever a judge is acting with a view to the promotion of the public interest; whenever he is acting entirely with the view of rendering to every man his due; when he is acting, not being moved by ill will, nor by a desire to hurt any individual in his person, his property, his liberty, or his feelings—in such case, if he mistakes the law, undoubtedly he is guiltless. But when a judge, in administering his high functions, breaks the law himself; when he fails to apply the law properly; if he knows that he is acting improperly; if he knows that his directions, or his orders, are contrary to law—in every such case clearly he is guilty of gross misbehavior in office.

But that is not the only case in which he will be guilty of misbehavior. Private rights, the rights of property and of person, could not be preserved under such a rule alone. A judge who errs in the law, who administers it incorrectly, is only protected when he is acting with a design of advancing the public interest and the public welfare. Whenever he leaves behind him that purpose; whenever he is actuated by any other motive; especially if he is actuated by a motive of ill will toward anybody; *in that case he acts upon his peril*, and he is bound to administer the law correctly, or he will be liable to punishment. How can men preserve their rights upon any other principle than that?

It may be true—for the purposes of this case, perhaps, the managers would not dispute it—that, so long as a judge acts legally, so long as he acts in a manner in which the law says he may act, his motives are not

a matter of particular importance. That proposition may be true. But suppose the judge acts from another motive; suppose he acts from ill will; suppose he desires to favor "A," or to hurt "B;" in that case he must look to it, and see that all his orders and all his directions, and all his acts, are squared by the law of the land, or he will be liable for the consequences. And when he has been actuated by improper motives, he cannot say; he cannot plead, when arraigned before a court of justice, or a court of impeachment; that he mistook the law; that he did not know what the law was; that he believed he was administering the law correctly. Senators, that plea of belief on the part of the judge that he was administering the law correctly, can only be set up when he shows his motives to have been those which ought to actuate a judge—viz: to advance the public interests and to administer justice.

Now, I apprehend that it must be too clear for argument, and must be apparent upon the bare statement, that a judge misbehaves in his office in the first place, when he knowingly acts in a manner which the law does not permit; in the second place, when he knowingly acts in a manner which the law prohibits; in the third place, when he carries a discretionary power to an undue excess, which is termed an abuse of discretion; and when he acts with the purpose of injuring the feelings—of humiliating those who are about him and who come in contact with him.

We have charged the doing of all these things, all these misbehaviors in office, against this respondent; and if they have been made out here, then we have convicted him of crime; we have convicted him of that which was a crime at the common law, punishable by imprisonment and fine and forfeiture of office; and of that which is punishable by fine and imprisonment under the statutes of this State.

I have the firmest conviction that the proofs against the respondent that have been adduced here, have been of conclusive weight and certainty; and with these brief prefatory remarks, I will now proceed to consider the several charges that have been made, and some of the evidence which has been adduced under them. I will review the main facts at all events, in order to see whether or not this judge—this respondent here—has misbehaved, and has acted in a manner in which the law denounces as a crime.

ARTICLE I.

In the first place, I shall speak briefly of the first article; and I may say, at the outset, that if that article were standing alone, it would undoubtedly be true that the managers would not insist upon a conviction upon it. But I can say here, that an important question to be determined in respect to all these articles, is the intent with which the acts therein charged were done.

We shall show you, in regard to the things averred in each and every of these articles, that the conduct of this judge was illegal; that it was conduct which was either not authorized by law or which was prohibited by law, or that he abused a discretion which had been vested in him by the law. In either case his conduct was unlawful. Consequently, I say it becomes an important question as to how his acts were moved; what set those acts in operation—what his motives were. And, for that purpose, I apprehend that the matters shown under each article are proof of the intent with which the acts set forth in every other ar-

ticles were done. In other words, themotives with which the respondent did the acts charged in any given article are to be determined from all the evidence in the case. I know of no other way of determining that question, and I think it perfectly legitimate, that any evidence which has been introduced in this case should be considered and weighed by the Senate in determining the motive with which any act was done, which is charged in any particular article.

Now, in respect to this first article, the conduct of this judge was illegal, and was contrary to some of the fundamental propositions that are laid down in the bill of rights for the protection of persons. In the first place the bill of rights says that "every man shall be entitled to a speedy trial." It says that "excessive bail shall not be taken." A word upon that point. "Excessive bail shall not be taken." That is one of the dearest rights which are secured to citizens of this State by the bill of rights, by the constitution of the State—that excessive bail shall not be taken.

The struggle which brought that right into existence in the mother country, whence we have transplanted it, lasted through centuries. It was one of the last rights secured by statute to the subject of Great Britain, that he might be released when awaiting trial upon a criminal charge, without excessive bail being required.

Gentlemen, what is the object of bail? In order to know whether bail is excessive we must determine the object of it. A man is accused of crime; a criminal charge is lodged against him; he is taken before a court to answer the charge, and the purpose of bail is merely to secure his attendance before the court. Whenever the point has been reached, that the amount of the bail is sufficient to secure the attendance of the defendant to answer the charge lodged against him in court, then the power of the court under the limitation imposed by that provision of the constitution referred to has been exhausted, and it cannot lawfully be pushed any further. Bail is not a punishment. Bail is a *right* which the defendant has. It is not a thing to be used by the court as an instrument of inflicting a punishment upon a man who has not yet been convicted of crime, but who is only awaiting his trial for crime. Senators will remember the examination of Judge Page, and especially his cross examination upon the point of the amount of bail exacted in this case. He dared not deny but that bail in the sum of $250 would have secured the attendance of Mr. Mollison before the court to answer the charge, as effectually as bail in the sum of $1,500.

But he evaded the point by saying what no judge should ever be permitted to say, that he didn't consider that point at the time Mr. Mollison was admitted to bail. If that statement was true, gentlemen, this respondent here grossly failed to perform one of his highest duties as a judge; because he was bound to consider that point. That was *the* point—that was *the* question—the amount which would secure the attendance of Mollison to answer the charge; that was a proposition which lay in advance of and above all other propositions that came before the court when the bail was being fixed. Judge Page said he did not reflect upon that point; that he did not take it into account; thus clearly admitting that he had failed to do a duty which the law had enjoined upon him.

Whether or not a defendant is able to give bail, is a totally irrelevant matter. The question is not how much bail a defendant is able to give, but what bail is necessary to secure his attendance in court. Now, can

They were arraigned at the same term at which they were indicted. They interposed demurrers, at this same term to the indictmments. The demurrers went upon the ground that the indictments failed to state facts sufficient to constitute a public offense. The cases ran along until the next term of the court. The indictments stood, then. in court for trial at any time. What is the trial of an indictment? A trial may be upon a question of law, or it may be upon a question of fact. What is the effect of a demurrer to an indictment? The effect is merely this: that it is a preliminary proceeding to determine whether or not the indictment is sufficient upon its face; to determine whether or not the indictment states facts, which, if true, would constitute a public offense. When that has been determined, what follows: If the indictment is held to be good, there must be an investigation into the facts; there must be a trial before a jury. And that is the condition in which these defendants, Benson, Beisicker and Walsh, stood, when the March term of court, 1875, came on. They were charged with crime. They had said by the demurrers that the facts stated in the indictment, constituted no crime. The indictments were before the court for final disposition. Now, when a demurrer has been interposed to an indictment and it is overruled, the effect is that the party must at once get ready for trial, if he wishes to contest the case further. He can either submit to have judgment go against him, or he can interpose a plea of not guilty, and then the cause stands for trial by jury. But, when a demurrer is interposed to an indictment and the demurrer is overruled, then the defendant is bound to plead *immediately*. The learned counsel who opened this trial on the part of the defense, [Mr. Losey,] is wrong in supposing that any time is given by the statute, in such a case, for the defendant to plead. When the defendant is arraigned in the first instance, then he is allowed twenty-four hours to plead. But when he demurs, and the demurrer has been overruled, then he is called upon to plead and he must plead at once, or in such time as the court may see fit, in its mercy, to give him. I read from section 10 of chapter 3 of the General Statutes upon that point:

"If the demurrer is disallowed or the indictment amended, the court shall allow the defendant at his election to plead, which he must do forthwith, or at such time as the court may allow. If he does not plead judgment shall be pronounced against him."

Such was the condition in which these defendants were placed. They were prominent citizens of Austin; they were men who had never been charged with crime before. One term had passed by; they had interposed their demurrer; that demurrer had not yet been decided. They had no right to assume that that demurrer would be sustained, and the indictment would be overruled; but they were bound to prepare, or, at least, they had a right to prepare, to go to trial at once, upon the commencement of the March term, 1875. They were under bail. If their bail had seen fit to surrender them into custody, they were bound to go into custody. No man who is under a criminal charge before a court, simply because he sees fit to say to the court, in the form of a demurrer, that the indictment fails to state grounds sufficient to constitute a public offense, is under any obligation to run the risk of not being prepared for trial at the time when he must be prepared, in case the court shall overrule his demurrer. It would be a great wrong, indeed, if any such thing could be inflicted upon a defendant who is charged with crime.

His witnesses may be gone, it may be impossible to obtain witnesses when the time finally comes, at which the party must be ready for trial, if he be restricted as to when he may summon them.

A man who is charged with crime is under no obligation to throw himself upon the mercy of the court, and ask for a continuance of his case; especially when he believes the judge who is to sit in his case to be hostile to him, and he has good ground for believing so. Every man charged with crime has a right to have his witnesses in court at any and all times while the indictment is pending. And he has a right to be ready at any and all times to go to trial upon the merits of his case, in order that he may be finally acquitted or convicted of the charges against him, and have the matter brought to a determination at the earliest possible moment.

How was it with these defendants, Benson, Beiseicker and Walsh? They were not compelled to wait until the beginning of the March term of court, in order to see what Judge Page would do with their demurrers, and then to run the risk of their witnesses being gone, and scattered, when they should be forced to trial. They were not compelled to undergo the risk of making an application, if they could not be ready for trial, to Judge Page to continue their case. They had a right to proceed upon the first day of that term of court, by withdrawing their demurrers and interposing pleas of not guilty if they should see fit—a practice which obtains in every court, and is met with constantly. They had a right, before the commencement of the March term of court, to be prepared for trial on the first day of the term, and no court and no person could deprive them of that right. They did prepare. They prepared for trial, at the then next term of court, as every man accused of crime has a right to do. They were there with their witnesses, ready, in case Judge Page should overrule their demurrers, as they supposed he would do, to plead at once, and to proceed then to trial upon the merits.

It has been said—and I might remark upon it at this time—that the number of witnesses subpœnaed there was excessive; that too many witnesses were subpœnaed; even if such were the fact, it would be a matter of no consequence, in this case, as I apprehend. But it seems to me that is a strange objection for the respondent to urge here. It is a strange argument to come from one who has conducted himself in regard to procuring the attendance of witnesses upon a criminal court, in the manner in which this respondent has done. It is a strange argument to come from a man who, within the knowledge of this Senate, and as appears by the records of this Senate, has had his entire party throughout his entire judicial district, amounting to as many as a hundred persons, in attendance upon this Senate from day to day, for a whole month together, junketing at the State capital at the expense of the State of Minnesota. It is a strange charge, I say, for the respondent to make, that Benson, Beisicker, and Walsh, subpœnaed too many witnesses, or more than were necessary, to attend court for the trial of their criminal cases. We should expect it with much better grace from some other source than that from which it has now come.

Again, those men were charged with the commission of acts that had been done in the presence of a great multitude of people. They were charged with the commission of acts about which intense excitement prevailed at Austin. Great numbers of persons had witnessed those acts, and they widely differed from each other as to the nature of them. Probably there were fifty persons who were ready to swear, and have

always since been ready to swear, that a riot took place on that Saturday night, at Austin, and that those defendants were then and there rioters. On the other hand, at least two hundred persons were, and always have been, equally ready to swear that no riotous proceedings, whatever, occurred at that time or place, and that those defendants indulged in no improper conduct, whatever, on that occasion. Hence the case was one to be determined by sheer numbers of witnesses; and in consequence of that fact, Benson, Beisicker and Walsh, very properly took care to have subpœnaed enough persons to establish their inocence beyond doubt.

It has been said here, again and again, that those defendants procured thirty or forty witnesses to be subpœnaed in each of their cases. That is a great mistake. The bill of Thomas Riley was for the service of fifty-four witnesses, only—thus averaging but eighteen witnesses in each case.

But, even it were true, that 25 or 30 witnesses in each case were summoned, that number is less than the number which the respondent, according to his own admission, has summoned here and kept here for a month at the State's charge, to testify about the very same occurrences. Senators will remember that upon his cross-examination here, the respondent was asked by myself if he had not thirty or more witnesses in attendance here to prove what took place on the occasion of the so-called "whiskey riots," and he did not dare to deny that he had.

Why was it not necessary for Benson, Beisicker and Walsh each to have as many witnesses in court to prove those facts, as it was for the respondent to have here to prove the same facts? The respondent's admissions on that point show the fallacy and the absurdity of his claim that the number of witnesses subpœnaed by Riley was greatly larger than the exigency of the cases demanded, and that persons were subpœnaed not for any lawful end, but merely to swell the pay of officers.

Now, we come to consider what is the effect of allowing a demurrer.

I read from chapter 111, General Statutes:

"SECTION 7. If the demurrer is allowed, the judgment is final upon the indictment demurred to, and is a bar to another prosecution for the same offense, unless the court allows an amendment where the defendant will not be unjustly prejudiced thereby, or being of opinion that the objection on which the demurrer is allowed may be avoided in a new indictment, directs the case to be resubmitted to the same or another grand jury.

"SEC. 8. If the court does not allow an indictment, or directs the case to be resubmitted, the defendant, if in custody, shall be discharged, or if admitted to bail, his bail is exonorated, or, if he has deposited money instead of bail, the money shall be refunded to him."

It is therefore apparent that the effect of the allowance of these demurrers by Judge Page, connected with a failure on the part of the court to re-submit the cases to the same or to another grand jury, put the cases entirely at an end.

I will read another provision in regard to the payment of fees, from General Statutes, chapter 70:

"SEC. 40. When any prosecution, instituted in the name of this State, for breaking any

law hereof, fails, or when the defendant proves insolvent or escapes, or is unable to pay the fees when convicted, the fees shall be paid out of the county treasury, unless otherwise ordered by the court.

I will read still another provision of the statutes bearing upon the same question or at least upon one of the questions raised in this second article.

I refer to section 11 of chapter 92, which relates to the rights of persons accused:

"Section 11. The clerk of the court at which any indictment is to be tried, shall at all times, upon the application of the defendant, and without charge, issue as many blank subpœnas under the seal of the court, and subscribed by him as clerk, for witnesses within the State, as are required by the defendant."

Such being the provisions of law that bear upon the matter charged in the second article, let us test the conduct of this respondent by them. When that is done, I think it will appear clearly that his decision as to the law, and his finding as to the facts, in the Riley case, were false, and also that they were malicious.

In the first place, as to the finding of facts; or rather, before that, let me speak a little upon the subject of the conduct of the judge in sitting in Riley's case, he having prejudged it. One of the gravest faults which a judge can commit, is for him to sit in a case which he has prejudged; and, in Riley's case, there can be no doubt whatever that the prejudgment on the part of this respondent had gone to the fullest extent before the case had reached his court. He had not only formed an opinion upon the merits of the case, but he had publicly expressed and advocated that opinion. But, it will be said by the learned counsel on behalf of the respondent, if it has not already been said, that such being the fact, Thomas Riley should not have brought his case for trial before Judge Page. But that argument is fallacious, for this reason: all the facts in the case had been stipulated and agreed upon before they went into court, by the counsel for Thomas Riley and the counsel for the county of Mower. By so doing, slight room was left for Judge Page's prejudices to operate. The counsel for Thomas Riley agreed to submit the case to Judge Page, because this agreement as to the facts had been entered into, which left no room for the mind of Judge Page to act, moved by malice against his client, so far as matters of fact were concerned. No question of fact was left open for him to act upon nad determine contrary to truth and to the injury of Mr. Riley. So, I say, that when the counsel of Mr. Riley assented to submit his client's case to Judge Page, although he was aware of the prejudice of Judge Page, he did not waive any objection that might be made on that ground, because the case was submitted in the way I have stated. But, when the parties were in court, when it was too late to withdraw, then Judge Page took this stipulation which the parties had agreed to as truly stating the facts in the case, and, by his own act, done clearly without the consent of the plaintiff or his counsel, expunged the most important portion of it, and left the facts which had been stipulated in that portion an open question to be determined by himself, although he had prejudged them. So, we say, here is a case where Judge Page has acted wrongfully, from prejudice, in the most obnoxious sense of that term.

Then, again, we say that he found falsely in that case. He found falsely in this: in finding that an order had been made that the fees of Riley should not be paid out of the county treasury.

Now, gentlemen, it is perfectly plain from the evidence, that no such order had ever been made. I don't think it makes any great difference whether the evidence on the part of the respondent or on the part of the prosecution is looked into for the purpose of determining that fact. I believe, taking the evidence and statements of the respondent himself, and excluding all other evidence upon the point, that his finding upon that proposition was false; that it had no justification, no foundation whatever, in the actual facts. Judge Page found that he had made an order. Look at the statutes. What is the intent and purpose of that statute which says, that when a prosecution fails, the fees shall be paid out of the county treasury unless otherwise ordered by the court? The intent of that provision is perfectly plain. There are two purposes for it. It is a very wise provision of statute. It is a very great safeguard and protection to men who are accused of crime. In the first place it is the only reparation which the public tenders to a man who has been unjustly accused and tried for crime in the courts of the State. The criminal laws are very harsh in one respect. An innocent man may be accused of crime; he may be ruined by that accusation; he may be confined in prison for months to await trial; he may be ruined in reputation and in property, and yet, when the trial finally comes on his innocence appears clearly, and he is discharged. Now what reparation does the State offer for that great wrong which has been done that innocent man? No reparation at all except what is mentioned in this one provision of the statute, in section 40, in regard to fees.

Another purpose of this statute, and it is one of the greatest humanity, is to secure to those accused of crime, the faithful and diligent service of officers. The State has, as we have seen, taken pains to assure to persons indicted for crime, the free aid of process to secure the attendance of witnesses for their defence. The Legislature has said that defendants in criminal suits shall have blank subpœnas issued to them free of charge. But of what benefit is it to a defendant to have put into his hands a blank subpœna, unless he can procure it to be served upon his witnesses? and such service must be made by the sheriff or by one of his deputies. The statutes of this State authorize private persons to serve subpœnas in civil cases; but no such authority is given in respect to subpœnas in criminal cases. Hence, it is of the utmost consequence to those charged with crime, that officers empowered to subpœna witnesses shall ever have before them that greatest of incentives to the faithful performance of duty—the certainty of compensation in any event. This statute assures such certainty.

Now, looking at this statute in the light of a partial reparation tendered by the State to persons wrongfully accused of crime, certainly the reparation thereby offered should not be cut off, and it was not intended that it should be cut off, unless for some good legal reason.

It is a right which the law gives to a defendant in a criminal case, as much as the right of trial by jury or any other right as, for instance, the right to subpœna witnesses, or the right to have process. It is a valuable right; it is a right which relates to his property, as much as his right to the possession of his land, or of his oxen, or of his money. Such being the case, how can he be deprived of that right, that clear right, that right which always remains his, until the court has made a lawful order taking it away? This brings us to consider, how can the court make such order, when can it make such an order, and on what

notice can it make such an order? All these matters must be considered for the purpose of knowing whether the court in any given case has made a valid order at all.

We all know how a court of record orders. A court of record speaks by the record; it does not speak with the mouth of the judge. And particularly in a case of this kind a court can only speak by its record. Why? Because the order is to act upon persons outside of court. This order is to act upon the county auditor, the county commissioners and the county treasurer. It is to act, also, upon the defendant; it is to act upon the officer; and certainly no mere loose conversation in court between a judge and a clerk, where nothing is directed to be entered upon the record, can have any effect whatever.

In the second place, it being a valuable right which every defendant has who has succeeded in acquitting himself of crime, he cannot be deprived of that right, without being heard. When a court makes an order affecting the right of an individual, and that individual is not heard, or at least given a chance to be heard, such order is void. Hence, if an order had been entered upon the record in this matter under consideration, the parties interested not having been first notified, and not having been heard, it would be without any force or validity whatever. Now, when can such an order be made? The court cannot act until a case comes up for it to act upon. In this case, and in all similar cases, a court cannot act upon the provisions of section forty, of the statutes before mentioned, to determine whether or not the fees of an officer shall be paid, until the prosecution has first terminated. The court has nothing to do with the question until the prosecution has come to an end.

Those propositions seem too plain for any man to misunderstand or even to dispute; and we must assume that the respondent has some knowledge—some little knowledge—of the fundamental and elementary principles of law and justice.

We say, there was no order for the reason that all these fundamental rules which underlie matters of this kind were disregarded, and were violated in this case. In the first place there was no record.

Now, what occurred, taking the statement of the respondent himself? I think his evidence was untrue as to what occurred between himself and the clerk, but let us take it nevertheless. There was a casual conversation with the clerk of the court. It amounted to no more than this: a statement that the costs of the defendants in those criminal suits would not be paid by the county. There was no direction to enter any order of record; no direction to the clerk to do any act in the world. No case involving the rights of offices and parties under this law had ever before been before the district court of Mower county. Neither the court nor the clerk had ever had any occasion prior to that time, as appears from the testimony of both of them, to act upon that provision of the statutes. Yet there was a mere loose and casual conversation; whether in court or out of court I do not care. But the clerk was ordered to do nothing in the premises; and Judge Page, when he made his finding that an order had been made, must have distinctly recollected that only a casual conversation had occurred, and that he had given no direction to any man, to do or not to do anything whatever.

What is an order or a direction of a court? The statutes of this State, following what has always been the law in respect to the commands of courts of record, have said that an order is a direction made

or entered in writing. No direction not made in writing, or which is not entered in writing, is an order of a court of record. Every lawyer knows that to be elementary law. The statutes of this State, when they defined an order, added nothing to, and took nothing away from, what the law was, as it existed before.

And Judge Page himself, did not, at the time of this conversation with the clerk, nor until long afterwards, conceive that he had made an order. He had no idea when he had that casual conversation with the clerk of the court, that he was making an order by which he was cutting off from those defendants the reparation for an unjust accusation which the law had held out to them. It is absurd, it is folly, to urge for an instant that Judge Page, when he had that loose conversation with the clerk, dreamed that he was making an order of any kind, or for anything, that should have any operation upon anybody whatever. That he had made an order on that occasion, or even that he had meant to make an order, was a mere after-thought on his part, and such must be conclusively inferred from the evidence of himself.

Furthermore, this pretended order was without notice. If an order had been entered in writing at that date; if the clerk had taken down in writing a direction of the court that the fees of Riley should not be paid out of the county treasury, and had then and there entered it upon the minutes of the court; it was without notice to anybody who was interested in the matter. The officer who served this process and to whom these fees accrued, was not notified of this conversation with the clerk. Neither were the defendants in the indictments notified. And the rights of neither the officer nor the defendants could be cut off without notice. In the third place, if an order had been entered by the clerk; if there had been an order, and it had been entered of record; it would not have been done at a time when the court had any right to act upon the subject, because that matter could not come up before the court for its action until after the prosecutions had failed. It was not a question to be determined until the prosecutions had first failed. If a court acts at a time when it has no authority to act; if it acts prematurely in such a matter; its action is without authority and has no force or effect whatever.

All of these are elementary principles, and it must be presumed for the purposes of this case, that the respondent has always been fully acquainted with them. So we say, for all these reasons, no order was made; and I think every lawyer in this Senate will fully concur in the proposition.

But Judge Page, in his findings, found that an order had been made. That finding was untrue; it was clearly untrue; Judge Page must have known it to be untrue; and his pretenses, his subsequent pretenses, that he did make an order, must, from the evidence in this case, and even from his own evidence, appear to be entirely disingenuous and dishonest.

It appearing that this finding was false, the next question is, what motives actuated it? In determining the question of motive, because it will arise upon nearly all of these articles, let me say this: we must determine motives from all the circumstances which surround the case. We have no way of entering into a man's mind, to see what is going on there. We have got to look to external evidences to learn what is taking place within the mind.

What are the circumstances surrounding this case, which go to show what Judge Page's motives were? Can there be any question whatever, when we consider the circumstances, as to the motives which

actuated the judge in making this wrongful finding; in making this false finding? I shall discuss that proposition very briefly, because it seems to me that the evidence on the part of the prosecution has made out beyond a reasonable doubt, the proposition that Judge Page was actuated by intense personal hostility to Thomas Riley. Upon this question, as upon some others, there has been a conflict of evidence; and it has become an important question about which considerable testimony has been taken, as to what occurred before the board of county commissioners in connection with Riley's bill, and as to when it occurred. There is no question whatever, that, prior to the time when Judge Page sat in judgment in this Riley suit that he had had some angry words with Riley. The hard feelings between the two began upon the night of the so called "temperance crusades," in May, 1874, as appears from the testimony. A collision then occurred between Riley and Judge Page; and ever after that time we find Judge Page in intense hostility toward Riley. This hostility first developed itself in Page opposing Riley's appointment as deputy sheriff. Right upon that point there is an apparent conflict of testimony. And I think all these conflicts of testimony are things of importance to be weighed by the Senate, not merely with reference to their bearing on the matters charged in the particular article, but as well for the purpose of determining the general motives, character, and bent of mind of this respondent. Some of the matters which have been testified to here by this respondent, either are true and the testimony of many other witnesses has been false, or else they have been wilful misstatements on the part of this respondent.

This respondent first turns up as an active opponent of the interests of Thomas Riley, just about the time of the election of Sheriff Hall, when he hears that Riley is going to become one of the future deputies of Sheriff Hall. A conversation is testified to by Sheriff Hall as having occurred in Mr. Engle's store. Now Judge Page cannot have forgotten that conversation, if it occurred. He don't claim to have forgotten it; he don't claim that anything that occurred during the course of that conversation has slipped from his memory. But he denies, utterly, what Mr. Hall swore to, and raises a direct issue with him as to what occurred at that time. But the evidence of Mr. Hall does not stand alone upon these occurrences. Judge Page has sworn positively, and without any doubt or hesitation, that Thomas Riley's name was not mentioned on that evening, and in that place; but we have produced a second person, Mr. Tieter, who was present during a small portion of this conversation—who was present at the time the conversation terminated—and he directly contradicts Judge Page in the particular referred to. We called him in rebuttal; he was one of the last witnesses we called. We were not aware that he had been present at the interview in Engle's store, until after the publication of the evidence given here by Judge Page on that point. Mr. Tieter says, that what Judge Page swears to, is false; that Judge Page did on that occasion discuss the appointment of Thomas Riley to be deputy sheriff. You saw Fieter here; he looked like an honest man; like a disinterested man; like a man who has no particular grudge against Judge Page. There was no reason why he should not testify truthfully, and still he flatly contradicts Judge Page and says that Page, Hall and Engle were talking about Riley, and that Judge Page was then and there opposing the appointment of Riley to be a deputy sheriff.

How did Judge Page attempt to support his own assertions? By the testimony of Mr. Engle. What absurd evidence Mr. Engle gave! It was the most striking evidence that has been given in this case. Page and he were discussing the election, as Mr. Engle says, and charging that Sheriff Hall had used corrupt means to get into office. I attempted to draw out what those corrupt means were that they talked about. Engle first said, that the corruption consisted in Hall securing votes of democrats, by agreeing to appoint a democratic deputy. Right at that point, this man Engle saw that he was giving away the whole thing; that everybody would know that democratic deputy to be Thomas Riley; and that he was contradicting Judge Page instead of supporting him, as he had been called to do. So he retracted his first statement, and, after a great deal of hesitation, and hemming and hawing, said they were denouncing sheriff Hall because he had attempted to secure his election by obtaining the votes of those who were not temperance men. Gentlemen, that statement is absurd. No such conversation occurred there. It is perfectly ridiculous to suppose that men of sense,—and Judge Page I think to be a man of sense,—should berate Sheriff Hall because he had tried to secure his election by the corrupt trick of obtaining the votes of men who did not happen to be temperance men. If Judge Page can find any support in such extravagant, such ridiculous, such absurd statements of a witness, I am entirely willing that he should do so. Gentlemen, all the circumstances that surround the matter of that interview in Engle's store, point directly to the proposition that Judge Page has stated that conversation falsely, and it is impossible to avoid the conclusion that he has done so.

When next does Judge Page appear? Why, he appears actively opposing this bill of Thomas Riley before the county commissioners. And here comes another conflict of testimony, which, I think, and which the managers think, of much importance, because it directly impeaches the veracity of Judge Page as a witness upon this trial. It is important as showing his utter want of candor, and his willingness to resort to prevarication to escape the result which he fears in this case. According to the witnesses that have been produced on the part of the prosecution, in March, 1875, Judge Page appeared before the board of county commissioners and objected to the payment of the bill of Thomas Riley, which afterwards came up before him for adjudication. That statement is sworn to by Mr. French; it is sworn to by Mr. Richards; it is sworn to by Mr. Grant; and the last two were members of the board of county commissioners at that time. What does Judge Page, on that occasion, say against Riley's bill? He says a little to the effect that the service of the subpœnas was unnecessary; but the real objection is that the party has been "sold out," as he terms it, "to secure the appointment of Thomas Riley to be deputy sheriff." That was the real thing, according to the evidence of these witnesses, that actuated him to oppose the bill of Thomas Riley—that the party had been sold out for a "contemptible Irishman;" for a man whom, as the witnesses testify, he said "he would not have about his court as a deputy." Judge Page denies this conversation, and he denies it, as I believe, gentlemen, falsely, and knowing his denial to be false. And he attempts to locate the controversy over Riley's bill at another place. He attempts to show that the collision between himself and Mr. French occurred on a previous occasion—occurred at a time when sheriff Baird's bill (with whom also, he had had trouble) and before, the board, which was in January, 1875. It seems that which

Page, from the evidence, is in the practice of appearing before the board of county commissioners, and opposing the bills of such officers as he happens to have an ill-will against.

Now, Judge Page considered it a matter of importance to definitely fix the time when he had the rupture with Mr. French, in which the charge against himself of corruption was made by Mr. French. Judge Page considered it a matter of importance to fix the date of the occurrence of that quarrel. I also say, and the managers are willing to admit, that the date of the happening of that dispute is a matter of consequence. A number of gentlemen have been before the Senate to testify upon the point, as to when this rupture occurred; and I beg the indulgence of the Senate to allude to the matter, though not at any great length, because we consider the matter important as well as the counsel on the other side.

Felch comes here; Mr. French comes here; Mr. H. E. Tanner comes here. They were commissioners. They say that this rupture occurred at the meeting of the board in January, 1875. There is no doubt that such a quarrel occurred at some time. There is no doubt that such a conflict between Judge Page and Mr. French occurred, as has been testified to here. The question is, when did it occurr? We say it occurred in March; Judge Page says it occurred in January, previous. It is very easy for a man to be mistaken in regard to dates. A man may very much more easily mistake in regard to dates than in regard to transactions. We think that Mr. Felch and Mr. French and Mr. Tanner, are men of ordinary honesty; and their word as to any occurrence, would be entitled, ordinarily, to credit. But they have evidently come too frequently in contact with the strong mind and will of this respondent, which have made upon their own weaker minds, as upon wax, impressions which are false.

Mr. Tanner turns out, when we get his testimony all in, and particularly his evidence taken before the judiciary committee, to be a witness on behalf of the prosecution instead of on behalf of the respondent; or else he is a man whose word is entitled to no credit whatever. Bear this in mind: Mr. Tanner went out of office on the last of December, 1875. He was not a member of the board on the first of January, 1876. Judge Page says, and he says it confidently and emphatically, that he was first before the board of county commissioners on the Riley bill when that bill came up in January, 1876.

Mr. Tanner was a witness before the judiciary committee of the House of Representatives, last winter, upon the point of the Riley bill and of Judge Page's connection with it when it came before the board; and he then testified that Judge Page, while he (Tanner) was commissioner, was before the board of county commissioners, and opposed the Riley bill; and he related in detail the grounds upon which Judge Page placed his objection to the bill. That evidence, taken before the judiciary committee, has been introduced here, and it forms part of the record. Tanner, I might further say, located the occasion when Page was before the board to be in September, 1875.

Now, this proposition must be true: either Mr. Tanner testified before the judiciary committee to something which he never saw or heard, and concerning which he knew nothing about, at all, or else the occurrence really happened at another time than that at which he said it did, when he appeared before the Senate on this trial. And such is undoubtedly the

fact. It would be impossible to conceive that Mr. Tanner would go before the judiciary committee, and testify there to having witnessed an occurrence that did not take place when he was present. It cannot be imagined that a man like Mr. Tanner would tell a thing so wholly and inexcusably false, and one made up so entirely out of "whole cloth," as the expression is. The appearance of Page before the board of county commissioners in opposition to Riley's bill did occur, undoubtedly, when Mr. Tanner was a member of the board, and therefore it must have occurred at the time when we claim it occurred. The memory of Mr. French and of Mr. Felch is very bad in this respect. Their testimony, we apprehend, is entirely worthless, as to time. They did not even remember the important fact of a session of the board of county commissioners being held in the month of June, 1875. They had forgotten that fact entirely, and they did not remember that the Riley bill was before them on that occasion. They had forgotten all those facts, and yet they attempted to come forward here and testify particularly and exactly, as to the time when the discussion over the Baird bill occurred, and when the discussion over the Riley bill occurred. Now, we have shown that the Riley bill was before the board of county commissioners in June, 1875, and shown it conclusively; so that we say the memory of these men is entitled to no faith whatever. But we have the testimony of several other gentlemen, which shows conclusively that the Baird bill did not give rise to the personal controversy between Page and French. We have the testimony of Mr. Martin; we have the testimony of sheriff Hall; we have the testimony of Mr, Grant. We have the testimony of all those gentlemen to the effect that, in January, 1875, when the Baird bill was up, the dispute between Page and French, which Page claims to have occurred at that time, did not occur then, at all. So we say, that taking the testimony together, there is no difficulty in arriving at the conclusion that the statement of the witnesses for the prosecution, as to these various occurrences is true, and that the testimony on the part of the respondent is incorrect. That on the part of Judge Page himself, we believe to be wilfully false; that on the part of his witnesses we believe to be mistaken. So then, we conclusively show a plain state of hostility in Page's mind toward Mr. Riley—a plain state of personal antagonism between Judge Page and Mr. Riley. We show Judge Page's false findings, and how can you fail to link the two together? We show that he found falsely. We have shown him to be personally antagonistic to Mr. Riley. We claim it will be impossible to fail to link the two together.

ARTICLE III.

But, gentlemen, I have already detained you too long on the second article. I will pass to briefly consider the third article, which is the case of Mr. Mandeville. There, again, the evidence is conflicting. But we apprehend that when all of it is viewed together, the conflict will appear to have resulted from the wilful misstatements of Judge Page, and of the only witness of any consequence, or at least the principal witness, which he has called to support him. We say that Judge Page's misconduct in the matters charged in the third article, lay in his personally insulting an officer of his court, and in his wrongfully and maliciously withholding from such officer an order of court, upon which

alone he could get paid for his services in attending upon the court; for which services the officer was justly entitled to payment. What are the facts bearing upon the charges made in this article?

There is one point of criticism upon Judge Page's conduct in this connection which escaped my memory a moment ago. Judge Page not only wrongfully withheld from Mandeville an order for payment for services actually rendered, but he also gave Allen an order for services as deputy that Allen had never rendered, a proposition which the managers think to be entirely clear. Now, Allen swears that he was present, that he was acting as a special court deputy, on the first day of the term—the January term of 1876. When was the first day of that term? The first day was a Tuesday. If he had commenced on that Tuesday morning, and had acted during the entire week, then he would have been entitled to be paid for five days in that week; and if he had acted on the Monday, following, he would have been entitled to be paid for one day in the week following; six days in all. Judge Page gave him an order that he be paid for six days; so that if he did not serve six days, if it was not true that he commenced on the first day of the term, that is on Tuesday, then this order which Judge Page sat down and made up after the term wrongfully allowed Allen more money than he was entitled to receive. Now, when did Allen commence to act as a court deputy? His testimony is entirely in conflict with the circumstances which surround the case, and entirely in conflict with the record. We find by the court record, that on the second day of the term, which was Wednesday, Allen is summoned as a juror; that his name appears upon a special venire; that he is brought up in court as a juror; called to the jury box and challenged for cause; that afterwards the challenge is allowed. This is on the afternoon of the second day of the term; the afternoon of Wednesday, Tuesday having passed and the greater part of Wednesday also.

It would be absurd to suppose for an instant that the sheriff of that court summoned upon the jury an officer of the court. And if there was no other circumstance or fact in the case, there would be no difficulty in arriving at the conclusion that the statement of Allen that he was serving there on Tuesday and Wednesday as a special deputy, was false. But we have some evidence better than that. We have the fact that he was appointed a general deputy sheriff; and we know why he was appointed such general deputy. The case on trial at that term of court was one of great public interest. It was a case about the facts in which multitudes of persons had formed and expressed opinions. Hence, great difficulty was found in obtaining a jury. Special venire after special venire was sent out, but without success. Judge Page, at the close of the second day, called for the service of more special venires. The answer of the sheriff was, "I cannot serve any more special venires because my deputies are all engaged." What is Judge Page's answer to that? "Make more deputies." Then off goes the sheriff and makes a general deputy out of Allen; and then for the first time he appears as a deputy sheriff at that term of court. We have all these facts established here beyond any question. And Mr. Hall says in his evidence that the first service that Allen rendered at the term of court, as a deputy, he rendered in serving a venire.

That venire has been produced here in court. It was a venire which Allen took to Lansing and served in that neighborhood. He started there on the evening of Wednesday, and we have shown that he went there by virtue of appointment as a general deputy. Here, then, is this man, Judge

Page, who has been pictured by his counsel as constantly fighting little steals; as all the while standing with his back against the door of the county treasury: giving Allen pay for two days' services which he never performed, and while he was drawing pay for services rendered as a general deputy. The eagerness of Judge Page to cut Mandeville off from any compensation, induced him to make an order at the end of the term, to cover time which Allen had never served, and which he must have known that Allen had never served. This man Allen has admitted to a number of individuals that the conversation which took place between Mr. Mandeville and himself and Judge Page was substantially as Mandeville has stated.

ARTICLE IV.

Upon the above propositions, we think the case of the prosecution clearly made out; and I pass from the hasty consideration of the matters charged in article three, to the consideration of the fourth article, which relates to the fees of Mr. Stimson. And upon that article I shall ask that the Senate be somewhat patient with me, for it may be necessary to read the law and to discuss the facts at some little length, in order that the matter may be understood fully.

This case of Mr. Stimson's was a case where an execution had been issued, and placed in his hands as a deputy sheriff for service. It has been claimed by Judge Page on this trial, and in excuse of his wrongful conduct in this connection, and it was also claimed by his counsel in argument, that that execution was void upon its face; at all events I so understood the claim.

I do not consider it a matter of the utmost importance, whether or not the execution was valid or invalid in reality. It appears to be valid upon its face; it came to Mr. Stimson in that condition, and he proceeded to execute it in accordance with its terms.

Mr. LOSEY. The claim was not that it was void upon its face; the claim was that it was void in fact.

Mr. CLOUGH. Void in fact. I was absent and did not hear the argument.

I consider this fourth article as an important article, one of the most important of the articles which have been presented here, and consequently, I shall ask the indulgence of the Senate to consider it to the extent I think its merits deserve.

As I was about to remark when interrupted by the counsellor, an officer who is to execute the process of a court, must necessarily act in accordance with the terms of that process. He does not issue the process himself; it comes to him; it is already made up by the court; and it is his duty to obey the terms of the process, and to carry it out as it appears upon its face. I think there would be no difficulty whatever in showing from the law, from the statutes and from general principles of law, if it were a question of any importance whether or not that process was valid, that it was valid beyond any question; that it was not only valid, but that it was entirely regular; that it was not only valid and regular, but that process in any other form would have been invalid and irregular, and, as the learned counsel claims, in respect to

this process, would have been void in fact, however it might have appeared upon its face.

This was a case where a prosecution had been instituted before the court of a justice of the peace for larceny. The defendant in that case—one Weller—had been accused of larceny before a justice of the peace, and upon trial had been convicted. From that conviction, he took an appeal to the district court, and he afterwards not wishing to contest the matter in the district court, the judgment of the court below was affirmed.

I will trouble the Senate by reading a few provisions of the statutes upon the subject of appeals from justice's courts and the judgments which are to be rendered in the appellate court. I first read section 149, of chapter 65, of the *General Statutes*. All of my citations upon this subject will be from the *General Statutes*:

"SEC 149. The person charged with and convicted by any such justice, of any such offense, may appeal from the judgment of such justice to the district court; provided, said person shall, within twenty-four hours, enter into a recognizance with one or more sufficient sureties, conditioned to appear before said court and abide the judgment of the court therein; and, in the meantime, to keep the peace and be of good behavior; and the justice from whose judgment an appeal is taken, shall make a special return of the proceedings had before him, and cause the warrant and return, together with the recognizance, to be filed in said district court, on or before the first day of the term thereof, next to be holden for said county; and the complainant and witnesses may, also, be required to enter into recognizances, with or without sureties, and in the discretion of the justice, to appear at said district court at the time last aforesaid, and to abide the order of the court therein."

In order to take an appeal it is necessary that the party should enter into a recognizance; which is simply, as all the lawyers know, an acknowledgment that the party entering into the recognizance and his sureties are indebted to the State of Minnesota in an amount which is mentioned in the recognizance. It is a contract. This recognizance is a contract between the convicted party and his sureties upon the one hand and the State of Minnesota upon the other hand, that in case certain things upon the part of the defendant are not done, he and his sureties shall pay to the State of Minnesota a certain sum of money. Such a contract must be entered into, in order that one convicted of crime by a justice of the peace may appeal. If the appeal be not prosecuted, then the recognizance is, as the lawyers term it, forfeited; that is to say, a complete obligation arises on the part of the persons who have entered into the recognizance, that is the defendant and his sureties, to pay the sum of money which they agreed to pay in case those things are not done.

Section 152 of the chapter of statutes last read from provides:

"SEC. 152. If the appellant fails to enter and prosecute his appeal, he shall be defaulted on his recognizance, and the district court may award sentence ag inst him for the offense whereof he was convicted, in like manner as if he had been convicted in that court; and if he is not then in custody, process may be issued to bring him into court to receive sentence."

Section 153, of the same chapter, is the particular provision of statute under which the judgment in question was entered:

"SEC. 153. If the judgment of the justice is affirmed, or upon any trial in the district court the defendant is convicted, and any fine assessed, judgment shall be rendered for such fine and costs in both courts against the defendant and his sureties."

When a defendant in a justice's court, who has been convicted of crime and fined, takes an appeal and enters into recognizance, his person ceases to be bound for the payment of that judgment. When a fine is imposed, that fine is a debt to the State, and an action on it will lie; an action in the nature of debt at common law. An action upon contract will lie against any party who has been fined—a civil action on the part of the State to recover the amount of the fine. It is customary in most courts, where a criminal case has been commenced originally—in justice's court as well as in the district court—to secure the payment of any fine that may be imposed by holding the person of the defendant liable for the payment of it.

In Weller's case, undoubtedly, the judgment of the justice was, that Weller should pay a fine, and so he became indebted to that amount to the State of Minnesota; and it was probably, also, adjudged that his body should be committed to prison, his person should be liable to be taken into custody and held, until such debt should be paid.

Mr. Weller wished to take an appeal from the judgment of the justice, and consequently it was necessary, on his part, to give security for his attendance at the court above, and also to give security to the State of Minnesota, that this indebtedness to it which arose by virtue of his fine, should be finally paid. So he went before the justice with his sureties, and gave recognizance.

One gentleman came forward, or rather two gentlemen, I think there were, and joined in an instrument, and thereby agreed that they would pay this fine to the State of Minnesota in case Weller, himself, should not prosecute his appeal. After that had been done, then the body of Weller no longer remained liable, but the fine and costs became a mere matter of debt—a mere matter of contract between him and his sureties upon the one hand and the State of Minnesota upon the other.

Now, I think it to be true, and I think the lawyers of the Senate will all agree with me—at least I never heard it called in question until now—that when a fine has been assessed in a justice's court and an appeal has been taken, and that judgment has been affirmed, the only judgment that can be rendered against the defendant is the judgment which is mentioned in section 153 of the *general statutes;* that is to say, a judgment, not against the defendant upon his liability to pay a fine, but a judgment against the defendant and his sureties upon the recognizance; that is to say, a judgment against the defendant and his sureties upon that contract which they have entered into, by the act of giving the recognizance.

Senator NELSON. Please to read that section again in reference to the judgment.

Mr. CLOUGH. Yes sir; section 153?

Senator NELSON. In relation to the judgment.

Mr. CLOUGH:—

"SEC. 153. If the judgment of the justice is affirmed, or upon any trial in the district court, the defendant is convicted, and any fine assessed, judgment shall be rendered for such fine and costs in both courts against the defendant and his sureties."

Now, that is the judgment, and, as I look upon the law, it is the only judgment, which the district court has any right to render in a case where

the judgment below is affirmed, and a fine has been assessed. It is not a judgment against the defendant upon his original liability. This affirmance, let me say, takes place when the defendant fails to appear, or for any other reason no trial is had in the district court. Where a trial is had before the district court, then the judgment of the district court is an original judgment. A trial of an appeal in the district court is a trial *de novo*. The judgment of a justice assessing a fine, from which an appeal is taken, stands as a judgment until the case has been re-tried in the district court. If it is never tried there, a case of affirmance takes place, which is mentioned in this statute, section 153. But when an affirmance takes place, or when any fine is assessed, the judgment is not upon the original liability of the defendant at all: it is a judgment against his sureties as well as against himself. Now, only one judgment can be rendered in such an appeal. There is only one judgment provided for by law, and that is not a judgment against the defendant alone, but a judgment against the defendant and his sureties, upon the recognizance; consequently a judgment upon contract.

I have never heard of any attempt, let me say here, until the trial of this impeachment came on, to construe the statutes which I have read in any other way, or to explain them upon any other theory than that the affirmance in the district court in a case of this kind, is simply a judgment on debt, a judgment on contract, a judgment for the recovery of a sum of money only against a defendant and his sureties upon a written obligation to pay it. And I think that the district court has no authority to render any other judgment. The statute says that such *shall* be the judgment which shall be rendered. It does not in positive terms say that no other judgment shall be rendered, but we know the principle of statutory construction in such matters—that the expression of one thing is the exclusion of any other. So, when the law says that in a particular case a particular kind of judgment shall be rendered, that I take to be an exclusion of authority to render any other kind of judgment, especially in a criminal case; because all criminal statutes should be construed strictly. Possibly in a civil case the rule might be different; but the case contemplated by this statute being a criminal case, and the kind of judgment to be renderedbeing specified, I apprehend that authority in a court to render any other judgment, or a judgment of any different nature, would be entirely wanting.

This case of Weller came up to the district court. He did not care to contest it further, and consequently the State moved to affirm the judgment below. That judgment was to pay a fine. And if you, gentlemen, will take pains to examine this judgment, this judgment in the court above, you will discover that it was not a judgment assessing a fine against Mr. Weller, but it was a judgment that Mr. Weller and his two sureties in his recognizance should pay to the State of Minnesota a certain sum of money, being the fine which had been imposed below, and the costs of both courts, as provided for by the statutes.

Gentlemen, that was a judgment upon contract, as much as if Weller and his sureties had given their promissory note, and the State had brought suit upon it; as much as if I had given my written obligation to any gentleman of this Senate, and that written obligation had been sued upon and a judgment rendered in a court in his favor. This being a judgment which was rendered upon this written obligation, and properly rendered beyond any question, how could it be executed? It would be absurd that a judgment against a man and his sure-

ties should contain in it a provision that the man and his sureties should be imprisoned until that judgment should be paid; yet there was only one judgment to be rendered. It would be very strange and absurd, too, to render a judgment against a party and his sureties, containing a command that the party himself should be detained in custody or committed to custody, until that judgment should be paid. I apprehend that no such judgment has ever been seen upon the records of any court that has ever existed. A judgment against a party and his sureties that they shall pay a certain sum of money, and that the principal shall stand committed until it is paid, I don't believe a precedent can be found for.

And the district court proceeded rightly when it rendered this judgment in this case. That being the character of the judgment, what kind of an execution should issue to enforce it? The law provides the forms of executions to be issued upon judgments to recover debts, and the usual form of execution so prescribed was issued in this case.

Now, it is one of the provisions of the law, that whenever an execution is issued upon a judgment to recover a sum of money, the officer in whose hands it is placed is to collect the amount of the judgment, and also to collect his fees; and, consequently, when the district court issued the execution which was put into the hands of Mr. Stimson to serve, it did rightly in including in that execution a mandate that the sheriff of the county should execute the judgment by collecting the amount of the debt, which was mentioned therein, and also the fees of the officer himself. So we deny that there was anything even irregular in this judgment or in this execution, and we think we have shown that not only were this judgment and this execution regular, but that any other form of judgment or any other form of execution would have been irregular and unlawful.

Such being the form of the execution Mr. Stimson proceeded in accordance with it. As all lawyers are aware, in the first instance the sheriff is limited in the time within which he may enforce an execution to the period of sixty days. But the law provides for the extension of that period. When an execution is put into the hands, or a process of that kind is put into the hands, of an officer, the officer is entitled, before he is required to execute it, to have the full period of the time for service elapse. In this case the period of sixty days having been extended, the officer in whose hands it was placed for service had a right to insist, if he chose to do so, upon the passage of the full period of sixty days, before he should make any return of his doings under the execution to the court.

It is not until after a process has been executed; it is not until after the officer has finished the execution of the process, or until the expiration of the time allowed by law to do so; that he is under any obligation, whatever, to make return to the court who has issued it, or to render an account of his doings to the court in regard to it. Mr. Stimson took this execution and, according to all the evidence, he had made upon it twenty dollars. According to all accounts he had made levies under this execution. According to all accounts he had traveled two or three times to the place of the judgment debtor, Weller, some distance from Austin, to serve this execution.

Now, for all these things, he was entitled to fees. But it seems that the real question raised and decided by the judge, was whether Weller, the convicted thief, and his sureties, should pay those fees, or

whether the county of Mower should pay them. Judge Page decided that the county of Mower should pay the fees, and that the convicted thief should be exempt from any obligation to do so.

This matter was presented to the grand jury. The grand jury reported. What did it report? It reported what everybody admitted to be the facts, but did not touch the question of the rights of the interested parties at all. The grand jury reported that so many dollars had been collected; so many dollars had been paid over to the clerk of the court; and so many dollars had been retained. There was no dispute about those facts. Mr. Stimson never denied them. When the grand jury handed in its report, Mr. Stimson happened to be in court. He was called up. According to all accounts, the substance of this report, which did not state that he had done anything wrong, but only stated the facts that he had collected and paid over so much money, and still had in his possession so much money—the substance of this report, I say, was stated to him by the court; and then, without any opportunity to be heard as to his right to retain this money as his fees, he was peremptorily ordered by Judge Page to pay it over to the clerk, then and there, in the presence of the grand jury. Now, that order of Judge Page was wholly unlawful. It was unlawful on several grounds.

It was unlawful, in the first place, because it was a decision against a party without that party having been offered the opportunity to be heard. Take Page's own statement. Take the statement of all his witnesses. He never asked Mr. Stimson by what right or by what authority he claimed to detain those fees. He never asked Mr. Stimson if he wished to be heard, either by himself or by his counsel, as to his right to retain that money for his compensation; but without giving him an opportunity to be heard on that point, Judge Page made a peremptory order that, without delay, Mr. Stimson should pay over the money which he claimed to be his own (and which I believe to have been his own), to the clerk of the court. Mr. Stimson was wrongfully deprived of that money. It may have been small in amount, but the principle is just the same as if it had been a million. I don't know that we are to determine questions of this character by the amount of money involved. I do not know of any reason why a man is not entitled to property of the value of $5.50, or why he is not protected in his enjoyment of it by the law, as much as he is to property amounting to thousands of dollars in value. The law draws no line of distinction between the rights of persons to property founded upon the amount in controversy. If it did so, every right in a short time would be overthrown.

And if Judge Page wrongfully required Mr. Stimson to pay over $5.50; if the judge wrongfully deprived him of $5.50 which were his, and which he had a right to hold; it was as great violation of law and as great an outrage as if the respondent, in the same manner, had deprived him of his farm, or of a million dollars in money.

As I said a moment ago the judge had no right to make that order. It was utterly illegal, and utterly illegal for several reasons besides that stated a little while ago. In the first place, the judge had no right to interfere at that stage of the proceedings at all. In the second place, he had no right to require Mr Stimson to pay that money to the clerk of the court. A sheriff who collects money for the use of a county has no authority to pay it over to the clerk of the court. And when the $14.50 were paid by Stimson to the clerk of the court, it was done under a mistake as to his duty, and it did not relieve him from responsibility on account of it. The law has pro-

vided how the sheriff shall account for money which belongs to a county; and this money belonged to the county of Mower. That is so provided by the General Statutes, chapter 36, section 35. I will read that section.

"SEC 35. For the purpose of maintaining common schools, the commissioners of each county shall levy an annual tax of one-fifth of one per cent. on the amount of the assessment made by the assessor for the same year, which tax so levied shall be extended upon the assessment rolls of the year, by the county auditor, in a separate column, and this shall be collected in the same manner, and by the same person as other county taxes are collected, except that the school tax shall be collected in gold or silver, or United States treasury notes, and the money so collected," &c.

Now comes the passage to which I wish particularly to call the attention of the Senate:

"As further provision for the support of the schools, there shall be set apart by the county treasurer of each county, the proceeds of all fines for the breach of any penal law in this State, not otherwise appropriated by law."

So, then, this money which was collected in that case belonged to the county of Mower, to be applied by it for the use of the common schools of the county. Such being the case, it was the duty of the sheriff not to pay the money to the clerk of the court.

Mr. Stimson was the sheriff; he was the deputy sheriff, so he acted as the sheriff. Such being the case, and this money belonging to the county of Mower, it was Stimson's duty not to pay it to the clerk of the court, but to pay it over to the county commissioners.

That is provided for by general statutes, chapter 8, section 179:

"SEC. 179. The sheriff shall settle with and pay over to the board of county commissioners, at their regular sessions, and as often as they require, all money collected or received by him for the use of or belonging to the county."

Here is a direct command of the law as to what the sheriff shall do when he collects moneys which belong to a county. He is not to pay them to the clerk of the court; he is not to pay them to any other person; but he is to have a settlement, periodically, with the board of county commissioners, and when that period for settlement comes on, then he is to make payment to the board, and not otherwise.

It has been said, and it is true as a general proposition, that the officers of a court, including the sheriff, are under the general direction and charge of the court as to their conduct. But they cannot be required to do anything in violation of law. The mandate of the court must be in accordance with the law. It must follow the provisions of the law; it must be a direction of the sheriff to do what the law says he shall do, and not a direction to the sheriff, or other officer, to do what the law says he shall not do, either expressly or by implication. Every dollar that the sheriff, holding an execution like this one which Stimson held, pays over to the clerk of the court, is paid at his own risk. And if that money is lost by the clerk of the court, if the clerk of the court proves insolvent, or fails, or refuses to pay it over, the responsibility of the sheriff continues just as it did before. He must keep the money that he collects in his own possession until the time comes to settle with the county commissioners; then, whatever is found due from him he must pay over to the county commissioners.

So we say, that the requirement of the judge that this money should

be paid over to the clerk, even if Stimson had no right to hold it as fees, and even if the order had been made with proper forms and after proper notice, was an illegal order.

Suppose this had been a large sum of money, the principle would have been the same. Suppose it had been a thousand dollars, and in obedience to that order which the court made there, the money had been paid over to the clerk and then the clerk had proved insolvent and had not paid it over to the board of county commissioners, in such case Mr. Stimson's liability for the money would have clearly remained.

These acts being illegal on the part of Judge Page, they being without any authority or warrant of law, the question next to be considered is, what were his motives in committing them?

We show here, in the first place, a plain intent on the part of Judge Page to override those forms of procedure which are intended for the safety of personal rights and for the protection of property. A fundamental proposition, in all countries, even half civilized countries, is that no man shall be condemned to part with his property or his money, or be injured in his person, without being first heard as to his rights. That right lies at the basis of our institutions; and to take it away in any case, is a gross wrong on the part of any judicial officer—is a gross violation of the law on the part of any judicial officer. And yet that thing was done in this case.

Undoubtedly, the intent of Judge Page was to humiliate and insult Mr. Stimson. All the circumstances attending the transaction, indicate that such were Judge Page's motives in doing as he did. Why should it be necessary that Stimson should be arraigned in the presence of the grand jury, and that he should be required to pay the money over in the presence of the grand jury, unless the design was to humiliate him, to insult him, to injure him in his feelings? Certainly no other motive could plausibly be suggested.

On motion of Senator Edgerton, the court here went into secret session.

After which, the court took a recess until half-past two o'clock P. M.

AFTERNOON SESSION.

The PRESIDENT. Mr. Clough, you will resume your argument.

Mr. CLOUGH. Mr. President: At the time the recess was taken I was still speaking upon article four. I will beg leave to trouble the Senate by reading the judgment and execution in the Weller case, which were both introduced in evidence, and which are printed on page 69 of the journal of May 29:

"*State of Minnesota, County of Mower*—*District Court, 10th Judicial District.*

"STATE OF MINNESOTA, Plaintiff,

"*vs.*

"DWIGHT WELLER, Defendant.

"This action having been brought into the court on an appeal from a judgment rendered by T. W. Woodward, a justice of the peace in and for said county, in favor of the plaintiff herein, and against the defendant Dwight Weller for the sum of $49.97, said appeal having been taken on the part of the defendant, Dwight Weller, with W. R. Kellogg and George F. Schofield as sureties on the bond in said appeal, and said action being upon the calendar of this court, at a general term thereof, commencing September 19th, 1876, and having been reached in its order thereon and by the stipulation of the respective parties in open court, the judgment of the said justice of the peace having been affirmed.

"It is now on motion of Lafayette French, county attorney and attorney for the plaintiff, adjudged that the plaintiff recover of the defendant, Dwight Weller, and of W. R. Kellogg and George F. Schofield as sureties on appeal bond, the sum of $52.73, amount of the judgment of the court below, with the sum of $24.32 costs and disbursements of action in this court, making together the sum of seventy-seven and 5-100 dollars.

"Witness my hand and official seal this 21st day of November, A. D. 1876.

"F. A. ELDER,

"Clerk."

"*State of Minnesota, County of Mower—District Court, 10th Judicial District.*

"The State of Minnesota to the Sheriff of the County of Mower.

"Whereas, judgment was rendered on the 21st day of November in the year 1876 in an action in the District Court of the State of Minnesota, for the tenth judicial district, in the county of Mower, between the State of Minnesota and Dwight Weller, defendant, and W. R. Kellogg and George F. Scofield as sureties on appeal bond, in favor af said plaintiff, and against said Dwight Weller, W. R. Kellogg and George F. Scofield, for the sum of seventy-seven and 5-100 dollars, as appears on the judgment roll filed in the office of the clerk of said court for said county of Mower.

"And whereas, said judgment was docketed in your county on the 21st day of November, in the year 1876, and the sum of seventy-seven and 5-100 dollars is now actually due thereon, with interest from November 21st, 1876.

"Therefore, you are commanded to satisfy said judgment, with interest, and your fees, out of the personal property of the said judgment debtor, within your county; or if sufficient personal property cannot be found, then out of the real property in your county belonging to said judgment debtor on the day when said judgment was so docketed in your county, or at any time thereafter not exceeding ten years, and return this execution within sixty days, after its receipt by you, to the clerk of the district court for the county of Mower."

Tested in the usual form.

It appears from what I have stated, it seems to me, that the conduct of Judge Page on that occasion was entirely without authority of law, and in many respects entirely in contravention of positive provisions of law. And the intent with which it was done, it seems to me, is one which the law cannot excuse or palliate for an instant. In fact there was no legal excuse for the course which was taken on this occasion with regard to this officer.

To arraign an officer of the court in such a public manner; to compel him, in such an arbitrary and peremptory way, in the face of a multitude of bystanders, in the face of the petit jury and of the grand jury of the county, to pay over a sum of money; and at the same time to charge him with taking illegal fees, and threaten him with possible future punishment, could only have been designed for one thing, and that was to humiliate such officer, to injure his feelings, to unduly assert authority and supremacy on the part of the judge himself.

I apprehend some excuse may be sought to be put in here for this uncalled for conduct of the judge—this unusual conduct. It may be said that it was necessary that these things should be done for the protection of the defendant in that execution, Dwight Weller. It may be argued that Weller and his sureties who were the debtors in that judgment, were not responsible for fees, but only for the face of the judgment. It may be said that it was necessary for their protection, that every dollar which they paid to the officer should be accounted for, so that when the face of the judgment was paid, then the sheriff should have no further authority to execute the judgment against their property. But that

kind of an argument has no weight nor foundation at all. It was not necessary for the protection of the judgment debtor in that judgment, even if the theory of Judge Page as to the fees were correct, that the proceeding should be taken which was taken. Whenever a judgment debtor pays to an officer holding an execution, the amount named in that execution; when he delivers over that amount to the officer having the process in hand, then that individual is acquitted by such payment, of any further liability under that process, whatever the officer himself may do with the moneys he has received, after they come under his control.

In this case, if Weller and his sureties could legally be acquitted of that judgment by paying the face of it over to Stimson who held the execution, it was entirely a matter of no consequence to them what Stimson should do with the money. They were not responsible for what Stimson should do thereafter with the money. If Stimson, at the end of the sixty days, within which he was to return the execution, had failed to make return that he had received as much money as the judgment debtors were entitled to be credited with, they would have had a right to call Stimson into court upon motion, and to have the amount that had actually been paid to him credited upon the execution, and the judgment satisfied, when paid in full, according to law. It was not necessary for the protection of the judgment debtors that the moneys be paid over to the clerk of the court. It was not necessary for their protection that the grand jury should be called in to investigate the matter. That afforded not one spark nor particle of protection, even upon the theory of Judge Page as to the right of Weller under that execution; it furnished, I say, not one particle of protection to Weller or his sureties.

If Stimson had failed to give them credit for the right amount, the proper remedy would have been by motion to have the proper amount credited upon the judgment and execution.

Nor was such a proceeding necessary to protect the county; because thereafter, when the sheriff should settle with the county commissioners, if Stimson should not account for the money and claim a greater compensation than the law entitled him to, in such event the commissioners would be there, the county attorney would be there, the county auditor would be there and the officials of the county, which would be affected, all would be there, to dispute his unlawful claims and to insist upon his paying the amount in full. The sheriff was to settle with the county commissioners, and the sheriff, for the purposes of that execution, was Mr. Stimson himself. And upon such settlement, the interests of the county were to be looked after, in case they should be endangered in any way by an unlawful claim on the part of Mr. Stimson. But no officer holding a process in his hand which he is not obliged to return until after the lapse of a definite period of time, is under obligation to make any return upon it whatever prior to the expiration of such time. And here the proper time for the return had not yet come. The acts had not been done on the part of Mr. Stimson which gave authority to the court, or to Mr. Weller, or anybody else, or to call him to account for his doings under the execution, for the moneys which he received. The payment of $14.50 over to the clerk of the court was a mistake, as I have shown you, on the part of Mr. Stimson; a misapprehension of the law. That, however, was not a matter which was up before the court at that time, or a matter on ac-

count of which anybody had found any fault. It was a mistake on Stimson's part. It was his duty to keep the whole until after the entire judgment had been collected, and the execution had been satisfied, or until the sixty days in which the process could be executed had expired and he had returned the writ into court. If, on the expiration of that execution, he had returned it into court, and had not given credit upon it for the proper amount, then an application by way of a simple motion in chambers was the proper way in which Weller could have redress for his resulting grievance. So we say that the conduct of Judge Page in taking this extraordinary proceeding against the deputy sheriff—a proceeding I venture to say the like of which was never before witnessed in the State of Minnesota—must have been not for the purpose of either protecting the county or protecting the defendants in that execution or of subserving any lawful purpose in the world, but to brow-beat and humiliate and insult this new officer of Judge Page's court. I can understand the theory upon which Judge Page acted. Upon the same theory an honest country boy who moves into a town to live must be whipped and cudgeled by the town bullies. That is done in order to get him properly subjugated. So it was in this matter with Stimson, a new officer of court, a new comer to the village of Austin.

How could Page with his tyrannical spirit, neglect an opportunity of trampling under foot the feelings of this new officer of his court, in order to discipline him, so that thereafter he should be in a state of fear and trembling whenever he should approach the "mighty presence" of the judge. That was the theory upon which that unusual, that extravagant, performance was enacted. It was a kind of breaking-in process, a kind of Rary process applied to a human being instead of te a dumb animal. Now, the law does not permit that kind of thing to be done. The law does not permit a judge of a court, to brow-beat and humiliate and treat with disrespect the officers of his court. If the judge himself fails to treat with proper respect the officers of his court, how will the public at large treat them? And Judge Page has been complaining here, or did complain in a criminal proceeding which he instituted against Stimson afterwards, that Stimson as an officer of the court, had failed to show toward himself proper respect. And he argued that his treatment of Stimson on that occasion, was right, because, if an officer of his court failed to show hin proper respect, what would the public at large do? That doctrine is justly applicable to the case of Stimson, the deputy sheriff.

If the officers of Judge Page's court are liable to be treated with contumely and open contempt, and to be abused and insulted in the way in which Stimson was, upon that occasion, what respect could Judge Page imagine the public would pay to officers of his court? I say upon this proposition, in respect to this article, as I said at the beginning: Judge Page was evidently not acting with a view of administering justice; that was not his motive. He was not acting for the purpose of carrying forward the public good or promoting the public welfare. Such being the case; his motive clearly being one of ill-will toward an individual; clearly being to humiliate an individual; he was bound to know the law, and act upon it at his peril. And if he mistook the law, and made an illegal order, he cannot plead here that he made a mistake; or that he supposed he was acting lawfully, when he perpetrated the wrong he did. So much for that article.

ARTICLE V.

The next article, Senators, article five, I will call your attention to very briefly.

As was well remarked by the learned manager who opened this case, the matters which are stated in this article are principally valuable as furnishing a correct photograph of the mental characteristics and temper, and mental habits of Judge Page. Those matters are important for another thing. They are important because they put Judge Page upon the record. The are important because they furnish proofs of facts which cannot be controverted by Judge Page.

Here is a communication to an officer which is in black and white. Judge Page cannot gainsay it; he cannot deny it.

He sits down in cool blood, thirty or forty miles distant from the official to whom this letter is directed; days after the occurrences which have given rise to this order, and to the letter—time enough for the blood of any other man to have thoroughly cooled—have passed by; he writes this letter, which in abusiveness, I apprehend, has never been equalled by any communication ever passing between a judge and an officer in this country:

"PRESTON, June 2d, 1874.

GEORGE BAIRD, Esq.,

Sheriff:

I have this day heard with shame and regret that another noisy assemblage of riotous men have been allowed to parade the streets of Austin at night, defying the law and disturbing peaceable citizens. I send you herewith an order of a positive character. Rest assured you will not disobey any further orders with impunity. Every good citizen of Austin ought to be ashamed of his town and of its civil authorities.

Gentlemen, it is a good thing that this letter has been preserved. I have no doubt if we had lost the letter, and had relied upon secondary evidence of its contents, that Judge Page would have given a version of if comparing with the truth, just about as well as his version of the talk about the same subject matter, which Mr. Baird and Lyman Baird swear took place previous to writing the letter, bears to the truth. We should have had Judge Page representing that this communication was only a sort of *billet doux*: that it was merely a letter sent to George Baird conveying the judge's regard and friendship, and cautioning Baird against injuring his health in any manner, for fear his valuable services would be lost to the people of Austin and the county of Mower. Judge Page would have undoubtedly pictured this missive in that way if a chance had been given him. But as it happens these documents come here in their reality, and we see just what they are. And right here at this time, I might make this remark, as I shall not allude to the subject hereafter, that this conversation which we have shown to have taken place on Sunday morning between George Baird and Judge Page, must have been truthfully delineated (if we can judge from this letter), by Lyman Baird and his father.

The conversation as detailed both by Mr. Baird and his son Lyman, which took place on Sunday morning, right after the occurrences that gave rise to all these communications, and while they were still fresh and warm in the mind of Judge Page, was not a bit more insulting or abusive to Mr. Baird than the letter wrtten from Preston days afterwards,

when his blood ought to have cooled, and his angry passions to have subsided. I imagine, if the truth were known, that Mr. Baird and his son have not even pictured that conversation in fierce enough colors. If, after Judge Page had been holding a term of court at a distant place, he still was so heated, so angry, so insulting, as to write such a letter as he did, what must have been his manner on that Sunday morning, when he indulged in that angry broil over the occurrences of the night before, still so fresh in his mind and feelings?

Now, look at the order set forth in this article, for an instant. Gentlemen, that was a direction by Judge Page to make war, to levy war upon the inhabitants of Austin and of the surrounding country; and it cannot be construed into anything else.

"You are hereby ordered and directed to disperse any noisy, tumultuous or riotous assemblage of persons numbering thirty or more, or a less number if any of them are armed, found anywhere within the limits of your county; and for such purpose you are authorized to call to your aid any number of persons, *and arm with fire-arms* any number of men not exceeding twenty-five. Such *armed force* to be under your charge and who will obey your orders."

Now, gentlemen, taking that order into consideration together with this letter, which accompanied it and which formed a part of it, what can you pronounce it, but a wicked attempt to excite bloodshed in the midst of you in that community? And what do you think of a judge upon the bench who, instead of keeping peace, instead of trying to allay excitement, goes to a neighboring town and, in cold blood, tries to stir up strife with deadly weapons, as this judge did in this instance?

Gentlemen, he did not do that as an individual; he did it as a judge. It would have been wicked enough had he done it as an individual; but he signs his name to the atrocious document in an official capacity. This document purports to emenate from him in his capacity of judge of the district court. He sat in that district, in the tenth judicial district, armed with all the executive powers of the State of Minnesota; and, in that official capacity, he sat down and wrote those documents, and sent them forth, meaning that they should be executed. Look at the threats with which the execution of that bloody order is attempted to be secured! He says, "Rest assured you will not disobey any further orders with impunity;" implying that if the sheriff should fail to raise and arm a band of men, and fail to make a deadly attack upon the harmless inhabitants of his county, then the power of his court should be brought down upon that sheriff to punish him with the greatest vigor.

Gentlemen, the matters specified in article five need no more comment at my hands. I will now proceed to discuss the matters which are contained in articles six and seven:

### ARTICLES VI AND VII.

In the discussion of these matters, I will necsessarly be somewhat lenghty, and I shall beg you to bear with me if I become tedious, as I know I shall. This argument upon my part, in accordance with the wishes of the managers, is designed mainly to be an argument upon the legal propositions involved in this case; and it has been my design, and it is my design still, to refer to the facts merely in an incidental manner,

and not for the purpose of particularly discussing them. At the same time it is necessary, occasionally, to refer to the facts, in order to illustrate the propositions of law which I desire to express to you.

The sixth article and the seventh article assert two different forms of offence, and illegal conduct. The sixth article charges Judge Page with an unlawful and malicious attack upon the rights of an individual; upon the rights of the county treasurer of the county. The seventh article charges Judge Page with an illegal attack upon the rights and privileges of the grand jury of the county of Mower, which was summoned to attend, and which did attend, the term of district court held in March, 1877. As two offences are involved in the conduct of Judge Page in reference to these matters, to some extent they must be discussed separately; but as the occurrances took place in one continuous chain, they for the most part may be refered to in the same connection.

Now, I might say at the outset, as has been stated by the managers on one or more occasions during the progress of the trial, in the argument of interlocutory questions, that so far as the conduct of Judge Page in his opening instructions to the grand jury is concerned, we look upon it as a matter merely introductory to the charge itself here made against the respondent. The managers do not dispute, for an instant, that it is the duty of every judge of the district court to call the attention of the grand jury of his court, in the course of his charge to them, to their duty to investigate the condition of the public offices of the county, and the conduct of officers in connection therewith. But the managers are unable to find any provision of law, which makes it the duty of a judge to go beyond that point. And when that point has been reached, and the grand jury has been instructed, and their attention called to the matter, then the duty of the judge has been discharged, and whatever the court does beyond that, if it amount to no more than a mere matter of indecency, certainly will amount to that much. In this case, the conduct of the judge went to the degree of positive ciminality, both as respects the treatment of the grand jury, and of the county treasurer himself.

Permit me, at this time, to remark, that there are two ways of viewing the questions which are involved in this article, and of viewing the conduct of the judge toward the grand jury and toward Ingmundson. In the first place, no person will deny, as I apprehend, and all persons will admit, that it is gross oppression for the judge of any court to insist upon the prosecution, to insist upon indictment, the imprisonment, or the trial for crime, of a man who does not appear, in a legal way, to be guilty of any offence whatever. I apprehend that even the respondent himself would not claim anything to the contrary; and I think that we may asume, as a fundamedtal proposition, that unless it was made to appear to the court by the proceedings there, and in a legal way, that Ingmundson was guilty of a criminal offence, it was gross illegality on the part of Judge Page to press the grand jury to indict him; and after the grand jury had refused to indict him, to order him to be arrested, to be arrainged before him, and finally to be put under bail to await the further action of the grand jury in the premises.

There are two ways of considering the conduct of Ingmundson. So far as may be judged from the course of the respondent in the production of the testimony in this case, it would seem to be his theory that if Ingmundson, as a matter of fact, had been guilty of *any* unlawful conduct in office, the judge was entirely justified in the course which he took

toward him. In other words that if Ingmundson had been guilty of one offence it excused the judge for an attempt to procure his indictment and prosecution for another and a different act.

Now, there is nothing sound in that theory, whatever; it clashes with many rules of constitutional government; it clashes with all rules that have been devised for the protection of individuals against the unlawful use of power. And the question in every case where a judge has prosecuted a man, or committed him to custody, is not whether that man may have been guilty of some other offense, but whether he was shown, in a legal way, to have been guilty of the very offense then under the consideration of the court, and for which the court has procured him to be indicted or prosecuted. Acting apparently upon the hypothesis that it made no differance what the particular offense was, if Ingmundson had been guilty of any irregularity, considerable testimony has been introduced here as to whether or not Mr. Ingmundson had deposited the funds of the county in banks. Ingmundson has never denied that he has deposited the funds of the county in banks. He has done it openly and above board. Whatever responsibility the law may attach to such conduct upon his part, he has ever stood ready to meet and he has always courted any action which may be taken in the premises. If what he has done in that regard be unlawful, he has always stood ready to defend himself for it before a court and jury of his county, in a lawful way. But whether or not he had deposited public money in banks, was not one of the points that were up before the court on the occasion when Judge Page instructed the grand jury in regard to his delinquencies, or alleged delinquencies. It was not one of the matters which were before the court when Ingmundson was arrainged before him for preliminary examination. It was not one of the matters for which Ingmundson was committed to await the action of the grand jury. Consequently, all consideration of that matter must be laid aside; and we are to judge whether or not he was guilty of the offense which was charged against him, by looking at the matters which were shown against him, and at the particular matter which was under consideration before the court at the time such proceedings were had.

Now I shall undertake to demonstrate—because I deem it a matter of some importance—that, with reference to the town order of the town of Clayton—the county treasurer was guiltless of any crime in regard to that matter.

Now, whether as a matter of fact he was guilty of a crime in connection with that order is not of much importance. It is of more importance whether there was any legal evidence before the court on that occasion going to show that he was guilty of any crime in respect to the order. But I am willing to waive that point. I am willing to waive any insufficiency in the evidence which was adduced upon the preliminary examination of Ingmundson before Judge Page, if the evidence were weaker than the actual fact, or any insufficiency of statement in the report of the grand jury, if it failed to state all the facts. I am willing to waive all such deficiencies, I say, and to consider the whole matter strictly upon the reality.

What were the facts, as undisputed here; as appearing by the report of the grand jury; as appearing again by the testimony adduced before the judge upon the preliminary examination?

So far as the report of the grand jury was concerned, I shall speak of the sufficiency of that further on. These were undoubtedly the facts:

Mr. Ingmundson was county treasurer. He had in his hands, in the month of October, in the fore part of the month of October, 1875, certain moneys which he had collected for and on behalf of the town of Clayton. At the same time, Sever O'Quam was the town treasurer of the town of Clayton. He applied to the county treasurer for the sum of $114.52. He applied as town treasurer of the town of Clayton for that sum, and he applied for the moneys of the town of Clayton to be paid to him to that amount. On such application being made, and on the 4th and on the 6th of October—because payments were made at two distinct times—the county treasurer of the county of Mower paid to the town treasurer of the town of Clayton, upon his order, the sum of $114.52 out of moneys in his hands which had been collected and received by him for the use of the town of Clayton. And the county treasurer, upon making such payments, took from the town treasurer a town order of the town of Clayton for the amount of $114.52. He bought nothing; he acquired title to nothing; but he thought the best evidence of that payment to be a certain town order which was equal in amount to the amount of money which he had paid out, and for the payment of which the town treasurer claimed he wanted the moneys paid him. Gentlemn, these are all the material facts concerning that transaction. And those facts are undisputed. They cannot be doubted for a moment. Their truth is clear beyond any question. Sueh being the case, where was the crime on the part of the county treasurer? The duties of county treasurers at that time and now—and such has been the fact ever since the organization of our State government—have not been defined in any one particular statute, nor in any particular part of the statutes; but, from the structure of our statutes, they have been defined and reglated by various provisions of statute which are to be found in various places. And it may be difficult sometimes—I think it would be difficult at all times—to gather perfectly what is the duty, in every case, of the county treasurer in regard to the custody and payment of funds, on account of that subject matter being treated of in so many different parts of the statutes.

But one thing I believe to be certain—I believe always to have been the law of this State—that when a county treasurer has in his hands moneys received from taxes which he has collcted, either for the State of Minnesota, or any township, or for any municipality, corporation, or school district, the lawful treasurer of the State of Minnesota, or of such township, school district, or municipality; is entitled to call for such moneys, and the county treasurer is fully authorized by the law, if indeed he is not absolutely required by the law, to pay them over and deliver them up to such treasurer of the town, state, or municipality, as the case may be.

I think—and I have heretofore so advised county treasurers—I think whenever the county treasurer has moneys in his hands which have been collected for a town, and the town treasurer calls for those moneys, that there is an absolute duty on his part, which he cannot lawfully fail to comply with, to pay those moneys over to such treasurer. I go beyond saying that it is a mere matter of discretion on the part of the county treasurer; I hold it to be his duty. I hold that a town treasurer has a right, at any time and all times, to demand of the county treasuaer any and all moneys which the county treasurer has collected upon taxes belonging to his town. And, certainly, the other proposition, that the county treasurer whc has moneys of that kind is at any time authorized to pay them over, I think clear beyond any question.

I will mention one further paoposition. before reading the statute upon the subject,

I apprehend that the obligation of the county treasurer, as it is of all other officers, is this: that he is to execute the law, and to perform the duties of his office as defined by law, to the best of his judgment and ability. I apprehend that it is no crime on the part of any officer who is entrusted with the execution of duty prescribed by statute, to make a mistake in his understanding of what the statute requires him to do.

When we come to the respondent, the respondent claims that he may fail to do what the law requires; he may fail to administer the law as the legislature intended; and still be guiltless of any offence. I will call the attention of the Senate very briefly to an argument by the respondent's counsel who opened this case, upon that topic, and I think it entirely unanswerable. I read from the journal of the Senate of June 5th, at the bottom of page 19. The counsel, as you remember, quoted at great length upon the same subject matter from the argument of Mr. Wirt on the trial of Judge Peck; and after finishing that, he proceeded with argument of own; and this passage, which I now read, is a part of his own argument on that subject:

"Now, we think we can show you, gentlemen, by the statutes of Minnesota that Judge Page uniformly acted—"

[Something has been omitted here from the print—I do not know what it was.]

"—that the charges against him in every one of these articles of impeachment were within the strict construction of the laws of this State. But if you find that it be not so, if you find Judge Page mistaken in his judgment of the law, you have got to go further and find that he misjudged the law and decided in a manner that was not legal from a guilty intention to oppress the people against whom he decided; that his intent was a corrupt one. That is what you have got to find before a conviction can follow."

Now, what the learned counsel meant to assert by that argument was simply this—and we claim it to be just as true of the county treasurer as we admit it to be of the judge,—that when any officer is called upon to administer the law, if he administers it to the best of his judgment as to what the mandates of that law are, he is guiltless; and that if any officer who is called upon to administer the law or any portion of the law, mistakes in his construction what his duty is, it does not follow that he has done a criminal act, but there needs to be a guilty and corrupt intent on the part of the officer who has failed to administer the law in order to constitute such failure a crime.

The learned counsel makes that claim on behalf of the respondent, and I suppose he makes it on behalf of all the judges of our superior courts of record. But it would be a most astonishing proposition if the judges of our courts of record, who, above all others, are supposed to know the law were the only ones not required to know it. It would be an astonishing proposition, if judges of the superior courts of record were the only persons who, in the administration of the law, could mistake the true construction of it without being criminal.

If Ingmundson mistook in his construction of the law—and there are in the statutes, by which the duties of county treasurer are defined and were defined at that time, many apparent conflicts—he was as guiltless as Judge Page's counsel here claims that he [Judge Page] would be for doing a similar thing.

And so we say when Judge Page held absolutely, and instructed the grand jury absolutely, that Ingmundson was guilty, upon a certain state of facts, without it appearing whether or not he had intentionally violated the law, whether he had corruptly violated the law; that of itself was a gross abuse, an illegality on the part of this judge thus instructing the grand jury.

Hence, the question which Page had to decide; the question which he had to instruct the grand jury upon; the question which he had to determine when sitting in Igmundson's case as an examining magistrate; was not so much whether Ingmundson had complied with every statute which relates to the duties of county treasurer, in the exact manner which the legislature intended, as whether there was any corrupt, or wilful, or unlawful, intent on the part of Ingmundson in failing to act upon those statutes as the court construed them to mean.

Gentlemen, with these preliminary remarks, I will proceed to read to you the statutes, and to discuss, somewhat, their effect upon the subject of the duties of county treasurers. As I remarked to you before, the duties of county treasurers under the statutes of this State are scattered through a large space, and in the revision of 1866, these duties were defined under three or four distinct heads. They were treated of in the chapter relating to county auditors, in the chapter relating to county treasurers, in the chapter relating to town treasurers and in the chapter relating to taxes. The revision of the statutes in 1866 left them in such a way that the several clauses defining the duties of county treasurers were not entirely reconcilable upon a first view; but they became clear enough when all of them were read in conjunction.

Since that revision, various legislatures have, from time to time, amended various provisions of the statutes in regard to county treasurers; and, in so doing, sometimes they have amended the chapter in regard to the duties of county treasurers directly; sometimes they have amended the tax laws, and sometimes they have amended other portions of the statues, at the same time too, failing to expressly repeal former provisions of the statute, treating of the same subject matter.

It was possible, as a result of this, that if we were to take any one particular statute by itself, we might arrive at the conclusion that the duty of the county treasurer in respect to some given matter was one thing, while if looking exclusively at another part of the statute, it would seem to be a totally different thing, if not the opposite thing. So that one of the difficulties which have always confronted county treasurers, in this State, at all events since the revision of the statutes of 1866, is the fact that the definitions of their duties are scattered through so many statutes, and there are so many statues that, construed by themselves, might seem to require things very difficult on their part to be performed, if not absolute impossibilities.

I read first, in reading the statues upon the subject of the duty of the county treasurers, from 1st Bissell, under title 4 of chapter 11, which is the title relating to the puties of county auditor. And it tells how claims shall be allowed, and how moneys shall be disbursed:

"Sec. 48. No claim against the county shall be paid otherwise than upon the allowance of the county commissioners upon the warrant of the chairman of the board, attested by the county auditor, except in those cases in which the amount due is fixed by law, or is authorized to be fixed by some other person or tribunal, in which case the same shall be paid upon the warrant of the county auditor; upon the proper certificcate of the person or tribunal allowing the same."

This is the first half of that section of the statutes. The provision which I have read amounts to this: that when the law has not said that a particular claimant shall be paid a specified amount of money, then the claim of such claimant is to be passed upon by the board of county commissioners, and the chairman of that board is to draw his warrant for the amount found due, and the county auditor is to countersign such order, and upon that warrant, drawn by the chairman of the board and countersigned by the auditor, the amount of the bill is to be paid. But when the amount is fixed by law, and is defined, then it appears that the board of county commissioners or its chairman has nothing to do with the claim, but the auditor alone draws his warrant. So that there are these two classes of payments out of the county treasury and out of the county funds; those payments which are to be made upon the warrant of the chairman of the board, and those which are to be made upon the warrant of the auditor alone. But now follows a proviso which illustrates the peculiar condition of the statutes of this State upon this and some other subjects:

"*Provided*, that no public money shall be disbursed by the county commissioners, or any of them, but the same shall be disbursed by the county treasurer, upon the warrant of the chairman of the board of county commissioners, attested by the county auditor, specifying the name of the party entitled to the same, on what account, and upon whose allowance, if not fixed by law."

Now, in the first part of this section of the statute, it was stated that certain payments need not be made upon the warrant of the chairman of the board of county commissioners, but might be made upon the warrant of the auditor alone. Then follows a proviso, right in the same section, that all payments shall be made upon the warrant of the chairman of the board of county commissioners, countersigned by the auditor.

The section then proceeds:

"And all such orders shall be progressively numbered, and the number, date, and amount of each, and the name of the person to whom payable, and the purpose for which drawn, shall, at the time of issuing the same, be entered in a book to be kept by the auditor for that purpose."

I read from the general statutes of the State of Minnesota to which I next refer, under the chapter treating of county treasurers, which is chapter 8, section 130:

"SEC. 130. The county treasurer shall receive all moneys directed by law to be paid to him as such treasurer, and shall pay them out only upon the order of the proper authority All moneys belonging to the county shall be paid out upon the order of the board of county commissioners, signed by the chairman thereof, and attested by the county auditor, and not otherwise.

Now, here is a designation in this section of what moneys shall be paid upon the order of the county auditor. In the first place, the section says that they shall be paid out "on the order of the proper authority." Then follows the sentence that I read:

"All moneys belonging to the county shall be paid out upon the order of the board of county commissioners, signed by the chairman thereof, and attested by the county auditor, and not otherwise.

"All moneys due the state, arising from the collection of taxes, or otherwise, shall be paid on the draft of the State auditor drawn in favor of the State treasurer, a duplicate copy of which the State auditor shall forward to the county auditor, who shall preserve the same and credit the county treasurer with the amount thereof."

While this section of statute says that moneys shall be paid out on the order of the proper authority, you can see that the question who is the proper authority is left substantially in the same state as if no officer had been mentioned, although it does mention that certain payments shall be made upon the order of certain officers.

I read again from section 132 of the same chapter:

"On the last day of February and tenth day of October in each year, the treasurer shall exhibit his accounts, since the last settlement, balanced to said day, to the board of commissioners and county auditor, and in the event of the board of commissioners not being in session, then the county auditor alone, showing all the moneys received and disbursed by him since his last settlement, and the balance remaining in his hands. The books, accounts and vouchers of the treasurer, and all moneys remaining in the treasury, shall at all times be subject to the inspection and examination of the board of county commissioners, or any committee thereof."

Again I read from section 143, in regard to orders, and the dealings which the county treasurer may have in respect to orders:

"SEC 143. No county treasurer or deputy county treasurer shall either directly or indirectly, contract for or purchase any orders or warrants issued by the county of which he is treasurer, or any State warrants or town orders, or of any city, town or other body politic, for which he is the collector of taxes, at any discount whatever, upon the sum due on such orders or warrants; and if any treasurer or deputy treasurer directly or indirectly contracts for, purchases or procures any such orders or warrants, at any discount whatever upon the sum for which the same are respectively issued, he shall not be allowed on settlement the amount of said warrants or orders, or any part thereof, and shall also forfeit the whole amount due on such warrants or orders, and shall also forfeit the sum of one hundred dollars for each and every breach of the provisions of this section, to be recovered in a civil action at the suit of the State for the use of the county."

I read that provision merely for the purpose of showing that there is nothing which prohibits a county treasurer from purchasing county or town orders if he sees fit to do so, provided only that he pays the full face value for them. I apprehend that to be a matter of not much importance in this case, if it is of any importance at all.

Now, I call the attention of the Senate to the provisions of the General Statutes of 1866, although I read now from Bissell's statutes, but they are the same in regard to the rights and duties of treasurers of towns. Page 262 of 1st Biss.

The provisions of the statute that I am now going to read relate to the duties of treasurers of towns, and incidentally also to the duties of county treasurers in relation to moneys in their hands collected for the use of towns.

"SEC. 78. The town treasurer shall receive and take charge of all moneys belonging to the town, or which are by law required to be paid into the town treasury, and shall pay over and account for the same upon the order of such town, or the officers thereof, duly authorized in that behalf, made pursuant to law, and shall perform all such duties as may be required of him by law."

"SEC. 79. Every town treasurer shall keep a true account of all moneys by him received by virtue of his office, and the manner in which the same are disbursed, in a book provided at the expense of the town for that purpose, and exhibit such account, together with his vouchers, to the town board at its annual meeting for adjustment; and he shall deliver all books and property belonging to his office, the balance of all moneys in his hands as such treasurer, to his successor in office, on demand, after such successor has qualified according to law."

"SEC 80. The town treasurer shall from time to time draw from the county . such moneys as have been received by the county treasurer for the use of and on receipt of such moneys shall deliver proper vouchers therefor."

Not mentioning what said vouchers shall be, but merely saying that "he shall deliver proper vouchers therefor." The section proceeds:

"Each town treasurer shall be allowed and entitled to retain two per centum of all moneys paid into the town treasury, for receiving, safe keeping, and paying over the same according to law; except such moneys as are appropriated for bounty to soldiers, of which he shall be allowed to retain one per cent."

"SEC. 81. Each town treasurer, within five days preceding the annual town meeting, shall make out a statement in writing of the moneys by him received into the town treasury from the county treasurer, and from all other officers and persons; and also of all moneys paid out by him as such treasurer, in which statement he shall set forth particularly, from whom and on what account such moneys were received by him, with the amount received from each officer or person, and the date of receiving the same; also to whom and for what pursose any moneys have been paid out by him, with the amount and date of such payment. He shall also state therein the amount of moneys remaining in his hands as treasurer. Such statement shall be filed by him in the office of the town clerk, and shall be by such clerk preserved and recorded in the town book of records."

Now, again, I read from another provision of the statute under the chapter in regard to taxes, which relates to the duties of county treasureres. Section 105 of chapter 13, page 330. This section which I am now about to read was one upon which the grand jury asked instructions of Judge Page; one upon which Judge Page instructed the grand jury; and, consequently, one whose provisions Judge Page must have been perfectly familiar with.

He said, as it will be remembered, that the grand jurors came into court on one occasion and asked instructions about some statute; and that statute, as appears from the record, was this very section:

"SEC. 105. The county treasurer of the county shall pay over to the treasurer of any municipal corporation or organized township or other body politic, on the orders of the proper officers, at any time, all moneys received by him arising from taxes levied and collected belonging to such municipal corporation or organized township, and immediatly after his settlement in February and October in each year, pay over all moneys and deliver up all orders and other evidence of indebtedness of such municipal corporation or other body politic, and take duplicate receipts therefor, and file one with the comptroller of the city, or the clerk of a town or other corporation, and one with the county auditor; and such money as said treasurer may receive after that time for delinquent taxes belonging to such township or other corporation, he shall pay over to the treasurer thereof as he receives them, and he shall take duplicate receipts of the treasurer of said township or corporation, for said moneys, one of which he shall retain and one of which he shall file with the county auditor; and for a failure to pay over money held by him to the proper authority, when demanded, or a failure to account for money received by him as required by law, he shall be deemed guilty of a felony, and, upon conviction, shall be punished by confinement in the State Prison not less than one year nor more than three years"

To the same effect is section 109, chapter 1, Gen. Laws, 1874.

Now, gentlemen, I apprehend that to be one of the most important provisions of the statutes of 1866 in regard to the duties of county treasurers; and I am unable to construe the provisions of that section in any other way than that it is not only the right of the county treasurer when he has collected money belonging to any town, or to any municipal corporation, or other body politic, to pay it over to the proper officer of such town, but also that it is his duty to pay it over.

I do not see how under the provisions of that statute he can resist a demand made by a town treasurer, to say nothing about its being a voluntary matter with him, a matter of his choice to pay over the money or not.

Let me read a provision of that section once again, and I think all of you will agree with me:

"County treasurers shall pay over to the treasurer of any municipal corporation, or organized township, or other body politic, *on the orders of the proper officers.*"

Not on the order of the county auditor.

It is the theory of the respondent that only the county auditor can make an order authorizing the county treasurer to make a payment to any municipal corporation or organized township, or other body politic. That is not he provision of the statute at all.

"The county treasurer of the county *shall* pay over to the treasurer of any municipal corporation or organized township, or other body politic, on the orders of the *proper officers.*"

Plural—

"The orders of the *proper officers.*"

Well, now, that certainly indicates, beyond any question, that it is not the county auditor who is to make those orders.

When are such moneys to be paid; when?

"*At any time,* all moneys received by him arising from taxes levied and collected belonging to such municipal corporation or organized township."

These are the current payments of taxes collected for the use of the town. But there are other payments provided for by those parts of the came section which I now read:

"And immediately after his settlement in February and October in each year, pay over *all* moneys and deliver up all orders and other evidence of indebitness of such corporation or body politic, and take duplicate receipts therefor, and file one with the comptroller of the city or the clerk of a town or other corporation, and one with the county auditor."

There are other provisions of the statute that should be refered to, and I read now, in order to clearly understand the duties of the county treasurer, from the General Statutes, sections 26 and 30, page 606. Here is still something further that the county treasurer has got to consider in order to understand his duties.

"If any person, having in his possession any money belonging to this State, or any county, town, city, or other municipal corporation or school district, or in which this State, or any county, town, city, village, or other municipal corporation or school district, has any interest, or if any collector or treasurer of any town or county, or incorporated city, town or village, or school district, or the treasurer or other disbursing officer of the State, or any other officer holding any office under any law of this State, or any officer of any incorporated company, who is by virtue of his office intrusted with the collection, safe keeping, transfer or disbursment of any tax, revenue, fine or other money, converts to his own use, in any way or manner whatever, any part thereof, or loans, with or without interest, any portion of the money intrusted to him as aforesaid, or improperly neglects or refuses to pay over the same, or any part thereof, according to the provisions of law, he is guilty of embezzlement."

I simply read that section to show what persons are refered to in section 30, because section 30 refers to the same persons who are mentioned in section 26. Now, I read section 30:

"Whoever is mentioned in the twenty-sixth section of this chapter shall pay over the *same money* that he received in the discharge of his duties, and shall not set up any amount as a set-off against any money so received; and all justices of the peace, clerks of the district courts, sheriffs and other officers, shall pay into their respective treasuries all the money collected on fines within thirty days after said moneys are collected."

Now, there is still another provision of the statute in regard to the duties of the county treasurers, which I will read before commenting particularly upon section 105, and that is section 88 of chapter 13, Bissell's statutes:

"The county treasurer shall be the collector of all taxes assessed upon the duplicate of his county, whether assessed for State, county, city, town, township, school, poor, bridge, road, or other purposes, anything in the charter of the city of Saint Paul, or in the charter of any town, or in any other act of the Legislature heretofore passed to the contrary notwithstanding; and also of all fines, foreclosures, or penalties received by any person or officer for the use of his county, and he shall proceed to collect the same according to law, and place the same when collected to the credit of the county, but this provision shall not be so construed as to include any fines or penalties accruing to any municipal corporation or the violation of its ordinances and which was recovered before any city justice. Each county treasurer may appoint one or more deputies to assist him in the collection of taxes, and may take such bond and security from the person so appointed as he deems necessary for his indemnity, and shall in all cases be liable and accountable for the proceedings and misconduct of his deputies in office."

Now, that provision of the statute makes the county treasurer collector of all the taxes levied in any town. That is all he is so far as the town taxes and town moneys are concerned—he is the mere agent of the town to collect them; made so by the statute. He does not act for the county. When he collects the taxes of the town he is collector for the town, and any moneys which are in the hands of the county treasurer, which he has collected for the town, are the moneys of his principal—the town for which he has collected them—and are not in his possession for any purposes of the county for which he is county treasurer. So, too, he is required to pay over the identical money which he collects. That is a provision of the statute which I apprehend has never been very closely insisted upon, and has always remained a dead letter.

I suppose that its construcion would be, that if the treasurer of any town should come to any county treasurer and insist that he should keep the identical money, collected by him for the town, under this provision of the criminal law, it would be his duty to do so; but that is a right which is usually waived.

Now, when we take these propositions into account: that the town levies its tax, and that the county treasurer its collector (because that is the provision of the statute), we see the light shining through that provision of the statute—section 105—which I read defining the duties of the county treasurer in regard to paying over the moneys collected by him:

"The county treasurers of the county shall pay over to the treasurers of any municipal corporation or organized township, or other body politic, on the order of the proper officers"—not the county auditor at all—"at any time, all moneys received by him arising frim taxes levied and collected belonging to such municipal corporation or organized township."

Those are his duties from day to day. He collects as the agent of the town; he holds the moneys which are collected upon town taxes, as

the agent of the town. And when the town treasurer, who is the disbursing officer for the town—the county treasurer, let me say right here, is not the disbursing officer, for, in this case under the theory of our statutes, the officer who collects is not the officer who disburses, the town collecting through one officer and disbursing through another —whenever the disbursing officer who is directed by the statute to receive for the town, from time to time from the collecting officer, the moneys which have been received for the use of the town, makes his demand, then the money is to be paid over.

Consider the absurdity and inconvenience of any other system, or any other theory. And I shall mention, in a little time, that the practical construction put upon these statutes, from the beginning of the State government until now has been precisely what I claim the true theoretical construction to be.

Look at the inconvenience of waiting until the final settlement is made with the county auditor, before any town taxes are paid over. The county treasurer does not hold these taxes for any county purposes in the world. He holds them exclusively for the town. Those taxes are not raised for county purposes. The people of the county outside of the particular township, are in nowise interested in those taxes. The county at large is in noway interested in those taxes, They are raised to meet the exigencies of the town, exclusively, and for no other purpose.

When a tax has been collected; for instance, it has been collected the next day after a general settlement with the county auditor, which formerly took place twice a year, but which now takes place three times each year; suppose the last day of september or the first day of October is the day of settlement and a tax is collected the next day, what is that tax collected for? What was it raised for? It was raised to be used by the town for its own purposes. It would be most absurd indeed, if that money, being collected and in the hands of the agent of that town who has collected it for the town, should lie dead and of no good or use to any body in the world for the period of four or six months, until another settlement should come around. I say it would be absurd if a town, having a collector, whether he is the county treasurer or anybody else, who has collected money for it, and has the same in his hands, should be unable to go to such collector and get those moneys and apply them for the purposes for which they were raised. Such a state of affairs would be contrary to the entire theory and spirit of the laws upon the subject of taxation; contrary to the theory upon which the county treasurer is made collector for the town. So I say that when a town tax has been collected by the county treasurer, the theory of the law is that the town treasurer may go to the county treasurer and demand it, and if he does so, it becomes the duty of the county treasurer to pay it over, so that it can be applied to the purposes for which it has been raised.

But then there are to be periodical settlements. The payments I have just been speaking of are merely upon current account. There is no difficulty in ascertaining, so far as the county treasurer, or so far as the county auditor is concerned, the amount of taxes which has been collected, for any town, up to any given day. That can be known exactly. Any county auditor can tell that. It is a mere matter of arithmetical calculation. Every town treasurer in this State can go to the county treasurer of his county, or to the county auditor of his county, and

ascertain precisely the amount of moneys which has been collected, between that day and any prior day, that belongs to his town.

Now, why under such circumstances, should the town be kept out of its money for several months, simply because the county treasurer is the collector of that town tax instead of some officer of the town. There is no good reason for it, and we don't want to accuse the Legislature of an absurdity in providing a law that would necessitate the doing of such a thing.

But it is deemed desirable that there shall be periodical settlements with the county treasurers. It is deemed desirable that, after a certain time is passed, there shall be a final and full settlement, as between the town and the county, and between the county treasurer and the county auditor and the town, in regard to moneys which the county treasurer has collected for the town. When these days of periodical settlement come around, then the books are balanced; not that that settlement by any means, as I shall claim by and by, is final and conclusive upon the county treasurer. But the books are, for the purpose of better book-keeping, balanced up, and then comes into play the second provision of this statute, which I shall read:

"And immediately after his settlement in February and October in each year, pay over ALL moneys and deliver up *all* orders and other evidences of indebtedness of such municipal corporation or other body politic, and take duplicate receipts therefor and file one with the comptroller of the city or the clerk of a town or other corporation, and one with the county auditor; and such moneys as said treasurer may receive after that time for delinquent taxes belonging to such township or other corporation, he shall pay over to the treasurer thereof as he receives them, and he shall take duplicate receipts of the treasurer of said township or corporation for said moneys, one of which he shall retain and one of which he shall file with the county auditor; and for a failure to pay over money held by him to the proper authority when demanded, or a failure to account for money received by him as required by law, he shall be deemed guilty of felony, and upon conviction shall be punished by confinement in the State prison not less than one year, nor more than three years."

Take even the case of the State Treasurer. We all know that it has been the practice since the beginning of the State government, that it is the practice of to-day, on the part of the State Treasurer, to call upon county treasurers, between days of settlement, to pay over moneys that have been collected for the use of the State. I have no doubt, gentlemen, that, if the fact were known, the very moneys which are being paid over the counter of the State treasury for the expenses of this trial are obtained and have been obtained from county treasurers in the way which I have explained.

Why, gentlemen, it would be impossible to conduct the fiscal business of the State, upon the principle, that if a county treasurer should have moneys in his hands collected for the State, he should be under obligation to hold them for three or four months, and not be at liberty to pay them into the hands of the State Treasurer, until the expiration of such period. And hence it is now, and has been in the past, the habit of the State Treasurer to call, between the settlements, upon the treasurers of the several counties of the State, to pay over in advance of the settlement, such money as may have been collected for the use of the State.

And must we say that the doing of this thing, which is done every month, and which has been done every month, from the beginning of the State government, by the highest fiscal officer of the State, is a crime? A thing which everybody has admitted to be perfectly legiti-

mate up to this day, or at least up to the day when Sherman Page tried to force the grand jury of Mower county to indict Ingmundson. Shall this practical construction which has always been put upon these statutes now be set aside?

Why gentlemen, one of the best means of interpreting the statute is to interpret it according to the practical construction which has always been habitually put upon it by those whose duty it has been to administer it. And every county treasurer in the State will tell you that he has been in the habit of acting upon the statute in the way which I have just stated.

Hence, I say, that when this town treasurer of the town of Clayton, came to Ingmundson and demanded the sum of $114.52, which, beyond any question, had been collected before that time, for the town of Clayton—I say when that town treasurer came to Mr. Ingmundson, and made a demand of that money, it was the *duty* of Mr. Ingmundson, not a mere matter of lawful choice with him, but it was his duty to make the payment, which he did.

He made the payment. What next? He took a voucher. What did he take as a voucher? He took a town order as a voucher. He did not buy that order. That order, when it passed into the hands of Mr. Ingmundson, passed into them as the agent of the town. It did not pass into Mr. Ingmundson's hands and was not received by him as evidence that the town owed him so much money. But it passed into his hands, and was received by him, as evidence of the fact that $114.52, which he had previously collected as agent for the the town of Clayton, had been paid over to the disbursing officer of that town—his principal.

Was there anything wrong in taking that order? Where is any provision of the statute that prevents a county treasurer from taking such a voucher, or any such evidence of the payment of moneys—because that is all a voucher is— as he may see fit to take. The statutes will be searched in vain for any prohibition or restriction upon a county treasurer in that regard.

He did not take this order as an evidence that the town owed him so much money; he did not take it as an evidence that he had a right to present himself to the treasurer of the town of Clayton and insist upon that town paying him so much money; but he took it, as I remarked before, purely as an evidence that he had already paid over that much money, which he had collected for the town of Clayton, and consequently that he owed it no longer.

But it will be said, that, sometime afterwards the county auditor issued his warrant for a sum that included this sum of $114.52. What is the warrant of the county auditor? It is simply an evidence that, according to his books, so much money is in the hands of the county treasurer belonging to a particular organization, belonging to a particular township, belonging to a particular school district.

I apprehend, that the warrant neither protects the treasurer in paying less money than he ought to pay, nor compels him to pay more money than he ought to pay, I claim that no treasurer is legally estopped by any warrant which the auditor may draw; but that he is still entitled to insist upon the truth, and is only under obligation to pay over to any town so much money as he may still owe, it is a matter of fact. If the county treasurer collects the sum of $500, and he has that sum in his hands belonging to any town, and the county auditor sits down and makes

out a warrant for a thousand dollars and passes it over to the town treasurer, what force or effect or binding obligation has that warrant upon the county treasurer to make him pay more than he has actually collected? On the other hand, if after a settlement where a county treasurer has collected a thousand dollars of taxes for a town, the county auditor draws his warrant for but $500, and afterwards the town treasurer comes up and says: "You have collected $500 more, pay it over," can the county treasurer shield himself under the wing of that warrant, and defy the town? Can he say that was a final and conclusive settlement, and the end of the matter? That he is protected by the warrant, and that he will keep the $500? That is a thing which works both ways. What is true in one case, must be true in another. No man is bound by the statement of a book-keeper, his own, or anybody's else, but is always at liberty to show the facts, to show the true state of the accounts. The county auditor is a mere kook-keeper in this State. He states a balance, and for convenience, he hands that statement or balance over to the town treasurer. If the balance is not the true balance, it does not bind the county treasurer. It is not the auditor's warrant that binds the county treasurer, but the fact that he has the money in his possession that binds him. The warrant can't make one hair white or black. It can't bind the county treasurer or loose him, but he is still at liberty to show the fact.

As a matter of convenience, I have no doubt it is better where, between settlements, a county treasurer has paid over moneys that he has collected for a town to the treasurer of that town, for him to make that fact appear in his settlement with the county auditor. But, suppose by mistake, the matter is overlooked, as it undoubtedly was in this case. Suppose Mr. Ingmundson, having paid of the money which he had collected for the town, the sum of $114.52, when he came to settle with the auditor forgets that fact, and the county auditor makes a statement from the books which brings the county treasurer in debt to the town $114.52 too much. Is any man going to say that, under such circumstances, that mistake binds Mr. Ingmundson? That, at any time, when the real fact returns to his mind, when he recollects that he has paid $114.52, he is not permitted to resist the payment of that sum again? Where would be the justice, or the equity, in compelling men to pay sums of money twice, either county treasurers or anybody else, simply because of a mistake in recollection at the time of a settlement.

Now, gentlemen, there is nothing from the beginning to the end of the statutory or the common law jurisprudence of the State of Minnesota that authorizes or requires a county treasurer to pay anything more than once; and that was exactly the condition of things in this case. Mr. Ingmundson, in pursuance of law, paid $114.52 which he had collected. Afterwards, by some mistake on the part of the county auditor, or by reason of forgetfulness on the part of Mr. Ingmundson himself, in the settlement of his accounts with the county auditor, a demand is made upon him to pay more than he owes,—to pay $114.52 that he has already paid, and which he cannot be made liable to pay more than once. Was it not right and proper for him to refuse to pay this over again?

I might make another remark right here bearing upon the equities of this matter; bearing upon the substantial justice of it.

Under the institutions of this country we have local self-government. We have a separate government in every school district, in every township, in every municipal corporation, in every State; and each and all of these governments is considered entirely capable of caring for its own interests, and entirely willing to take care of them.

It appeared upon the preliminary examination before Judge Page, and it has appeared here in evidence, that when the town treasurer of the town of Clayton presented the warrant of the auditor, which was excessive of the true amount of indebtedness owing by the county treasurer to the town by the sum of $114.52, in accordance with previous instructions given by the town official, the advice of a lawyer was sought as to the respective rights of the town and of Ingmundson. That fact appeared from Mr. Haralson's testimony. Haralson was the town treasurer; and it appeared from Haralson's own evidence, taken before Judge Page and introduced here as a part of the evidence for the prosecution. The same fact also appears here by other evidence. The town treasurer and the county treasurer went and consulted counsel—and he was not Mr. Ingmundson's lawyer either; he was counsel who had been chosen by the authorities of the town of Clayton. He was one of the most eminent counselors in the county of Mower; a man who had never, in any way, been retained by Mr. Ingmundson, and who did not become Ingmundson's attorney until long afterwards. They consulted that counselor. The counselor gave the same opinion which I should have given, and which I think any other disinterested counselor would have given; that the payment to the town of Clayton had been a proper payment; that the county treasurer could not be required to pay the same sum more than once. What happened upon that? That advice was entirely satisfactory to the town authorities of the town of Clayton, and they proceeded to settle with the county treasurer in accordance therewith. I might remark, right in this connection, that Mr. Dean pretended to overhear a conversation between Ingmundson and some other party, about this town order. Mr. Ingmundson gives us the true account of that conversation, and he says that the other party was Mr. Harlson. Ingmundson's position was not that he refused to pay over *any* money unless the $114.52 were credited to him; "but," said he, "we can't have a *full* settlement, such as the law requires, until this matter of the order is concluded." Such was the fact, as any member of this Senate knows.

After this town had consulted counsel as to its rights, it, by its officers and agents, went forward and settled this matter all up with the town treasurer. That took place in March, 1876, and who, from that day to this, has ever heard any authority of the town of Clayton complain about that settlement?

Why, gentlemen, so far from any such complaint being made, it is a fact, and a matter of public notoriety, that at the election which took place last fall, when Mr. Ingmundson was re-elected county treasurer, he received every vote in the town of Clayton, with the single exception of two, which there is the best of reasons for believing were cast

by the old gentleman with the blue beard who testified here on behalf of the respondent (I have forgotten his name), and his hired man. It has not been the town of Clayton that has ever made any complaint about this matter. The town settled the whole thing up; settled according to law, and it was willing to take its rights according to law. But the old gentleman, to whom I have just referred, (I will remember his name after a while,) had a law-suit on the calendar of Judge Page's court, and he knew that certain kinds of information just at that period of time would be very acceptible to Judge Page. This old gentleman is a man who appreciates character; he is a discriminator between men; and he knew that if he could go to Judge Page and give him some point by which Mr. Ingmundson could be brought into disgrace, undoubtedly it would not hurt him any in his law-suit, in the trial of which he expected Judge Page to sit during the coming term of court.

Those are the facts in this matter. Not only was this transaction entirely lawful, but it was settled up and concluded, and has been left so in a lawful way, and by the lawful authorities; and the lawful authorities have never made any complaint about it, but are entirely satisfied with it at this day.

Now, gentlemen, I have discussed these as being the facts in this case. These are the facts bearing on the rights of Mr. Ingmundson. Most of these facts appeared in the district court of Mower county, just as they have appeared here, and Page all through the period when he was hounding on the prosecution against Ingmundson knew them well.

But what were the facts relating to Ingmundson's conduct that appeared before Judge Page in his court, and how were these facts obtained? I might remark in this connection in respect to the report of the grand jury, that I have yet failed to see anything in the statutes of this State which authorizes a judge to coerce a grand jury into making a report of facts upon any subject in the world, I don't care what that subject is. The coercion of that report from the grand jury was an illegal act on the part of Judge Page. But I shall speak more at length upon this point hereafter, because it will come up under a different branch of my argument. But the grand jury under this illegal coercion did present to the court what purported to be a recital of the facts in that case. Now that document has been traced into the hands of Judge Page himself, and Judge Page is the defendant in this proceeding; and we can't trace it any further. It is gone; and I might say furthermore, that there are many grounds of suspicion in regard to the disappearance of this document. The occurrences of the March term of court, 1877, created a great agitation throughout the county of Mower; a storm was seen rising in the sky by Judge Page. We find that document in his possession, immediately after the March term of court, and we have not been able to find it since that time. I think we may safely infer, from the circumstances, that nothing in particular was contained in that document that would tend to exculpate Judge Page, or to reduce the enormity of his offense. If there had been, we might expect some effort to be made to find it; or at all events, that Judge Page would come here and make claim of not being able to find it if he had, as a matter of fact, looked for it.

So we are compelled to resort to secondary evidence for the purpose of proving the contents of that report, because upon that report, when it came in, Judge Page said that Mr. Ingmundson had been guilty of a criminal offense, and that it was the duty of the grand jury to find an indictment against him in order that he might be arraigned and put upon his trial. We have brought one witness, Lafayette French, who had familiarized himself with the contents of the document, and knew substantially what it was, because he had made use of it, in the drawing of that celebrated complaint. Here is what Mr. French says that document was, and I suppose, there being no contradictory evidence of any kind, we must accept it as true. I read from page 42 of the journal of May 30th.

His giving of this report was interspersed with questions and answers, but I read what the witness attempted to state, and did state, the contents of the report to be:

"Q. Now give us the report of the grand jury, as near as you can?

"A. We find that the county treasurer, on the 30th day of December, 1875, received of the town treasurer of the town of Clayton, a certain town order for the payment of the sum of one hundred and fourteen dollars and fifty-two cents; that the county treasurer paid to the town treasurer of the said town of Clayton the sum of $114.52 for said order, out of the funds belonging to the said town of Clayton, then in his possession and under his control. We find that said order had previously been paid by the treasurer of said town, and afterwards, when he came to settle with the town, the county treasurer held this order as a receipt for moneys paid out by him belonging to the town, and then demanding of the town that they take said order as a receipt for the amount named therein as having been paid by him on behalf of said town. That the town was compelled to pay the sum named in the order twice. We also find that in February, 1876 (I think that was the date), the county treasurer by his deputy received from a resident and taxpayer, a certain town order issued by the town of Mashall, for the payment of the sum of fifty dollars, and paying therefor the sum of forty dollars in money, and giving such person a tax receipt, covering his said taxes to the amount of ten dollars. That also the said county treasurer, at the same time and place, received of another resident and taxpayer of the town of Marshall, a certain town order for the payment of the sum of fifty-two dollars, and then and there giving to the said person holding the order, a tax receipt therefor on general taxes on real estate, a portion of which was delinquent, to the extent of said order and in payment of said tax."

As to these minor matters contained in the latter part of the report, it is very evident that Judge Page, himself, never regarded them as amounting to anything. They clearly are without any trace of criminality, or illegality, in any respect. No facts are even stated. Those passages of the report are mere jargon; and that, in fact, may be said to characterize the entire report. But these minor matters, particularly, state nothing which would not be entirely consistent with the law. Such was very clearly the opinion of Judge Page; because, when Ingmundson came up for examination, he made no inquiry about them, and he has never referred to them at any time.

Now, what was in that report showing that Ingmundson had done anything illegal? It states much less than the facts. For all that appeared by this report, at the time these $114.52 were paid, the town treasurer may have had a warrant in his hands, and the county treasurer have taken this order as a voucher additional to the warrant. For

all the report shows, it may be that when the town treasurer, Haralson, came to demand the $114.52, he had no warrant nor any other evidence of right to demand the money of the town. Certainly, the statements of this report, even under the theory as to the law which has been sought to be maintained by the respondent here, lacks every element necessary to constitute an offense. There may have been a thousand reasons why the money was not paid over by the town treasurer, that would be entirely legal, and still consistent with this report made by the grand jury,

Notwithstanding all these considerations, the respondent gave an unqualified instruction to the grand jury, that the things set forth in this report constituted a crime on the part of Mr. Ingmundson. And at this point, I refer, again, to the subject of Mr. Ingmundson's intent; and one of the worst features of Judge Page's conduct in this respect—a feature which indicated the greatest disregard of the fundamental principles of criminal law—was that he instructed the grand jury that those things constituted an indictable offense, that Ingmundson's conduct was punishable, was a crime, without reference to the intent with which the acts had been done.

It is part of the statutory law of this State, as well as a general legal principle, that there must be a criminal intent in the mind of a person doing an act prohibited by law, in order to constitute such act a public offense. Such is the express provision of the statute, I say; and all the statutes in regard to crime, like the statutes upon other subjects, must be taken together in order to arrive at the true meaning of any particular clause of them.

I read from section 37 of chapter 107, of the General Statutes:

"The grand jury shall inquire:

* * * * * * * * * * * * * * * *

THIRD: into the wilful and corrupt misconduct in office of public officers of every description in the county."

"*Wilful* and *corrupt* misconduct."

Now, Judge Page was perfectly aware of the existence of that statute. The law commands him to read that statute to the grand jury on every occasion when he charges them; and he undoubtedly had read it to them at the March term, 1877, in his charge in chief. He admits he did. It was his duty to know, and he did know, that a criminal intent, that a dishonest intent, an intent to injure, was necessary to constitute the acts of Ingmundson a crime. But still, in the teeth of this statute, —which is but a declaration of what general principles of law were before its passage—he absolutely and unconditionally instructs the grand jury that the acts stated in that report constituted a crime. There is nothing whatever stated in that report—unless the taking of a town order as a voucher would be illegal under any and all circumstances, that would be illegal. But, as I showed you a little while ago, there is nothing in the law that prevents a county treasurer from taking a town order as a voucher in case he sees fit to do so.

Again, Judge Page, not content with the action of the grand jury,—

which undoubtedly viewed the law and the facts in the case in a much juster light than he—ordered the county attorney to make complaint before himself, as an examining magistrate, for the arrest of Ingmundson. Upon this point, there can be no doubt that, at the conclusion of the proceedings of the grand jury, and prior to his discharge of them, Judge Page ordered—not an investigation; he would have us think that he merely ordered an investigation into the treasurer's conduct, but nearly all his own witnesses contradicted him on that point—he ordered, not an investigation of the conduct of the county treasurer, and the making of complaint against him in case any criminality should be discovered; but he ordered a complaint to be made setting forth the facts contained in the report, and a warrant to be issued thereon, and Ingmundson to be arrested and brought before himself. When Mr. Ingmundson was brought before him, witnesses were sworn. What was the nature of that proceeding? Judge Page would have us think that an examination was waived there on the part of Ingmundson. It is true, that the counsel of Mr. Ingmundson was willing to waive an examination; but Judge Page declined to accept the offer of counsel to do it. So that tender was off; it amounted to nothing; and the question came up there for decision by Judge Page, and was decided by him, whether or not Mr. Ingmundson was guilty of any offense. And when the evidence had been adduced, Mr. Ingmudson's counsel objected to Mr. Ingmundson being held to bail.

Now, we say, again, upon that examination it clearly appeared that Mr. Ingmundson had not been guilty of any offense. It was perfectly clear, before, upon the face of the report of the grand jury, that he had not been guilty of any offense. At all events, the report of the grand jury failed to set forth any facts constituting an offense. And when the examination was had, then all the facts came out, showing, if there had been any doubt before, that Mr. Ingmundson had not been guilty of any offense whatever.

Mr. President, it would be a convenience to me, if the Senate would take an adjournment at this time until to-morrow morning.

Senator NELSON. I move that the Senate adjourn.

The motion prevailed.

Attest:

CHAS. W. JOHNSON,
Clerk of the Court of Impeachment.

## THIRTY-SECOND DAY.

ST. PAUL, SATURDAY, JUNE 22d, 1878.

The Senate was called to order by the President.

The roll being called, the following Senators answered to their names:

Messrs. Ahrens, Armstrong, Bailey, Bonniwell, Deuel, Edwards, Gilfillan John B., Goodrich, Hall, Henry, Hersey, Langdon, Lienau, Macdonald, McClure, McNelly, Morehouse, Morrison, Morton, Nelson, Pillsbury, Shaleen, Smith, Swanstrom, and Waite.

The Senate, sitting for the trial of Sherman Page, Judge of the District Court for the Tenth Judicial District, upon articles of impeachment exhibited against him by the House of Representatives.

The sergeant-at-arms having made proclamation,

The managers appointed by the House of Representatives to conduct the trial, to-wit: Hon. S. L. Campbell, Hon. C. A. Gilman, Hon. W. H. Mead, Hon. J. P. West, Hon. Henry Hinds, Hon. W. H. Feller, and Hon. F. L. Morse, entered the Senate Chamber, and took the seats assigned them.

Sherman Page accompanied by his counsel, appeared at the bar of the Senate, and took the seats assigned them.

Mr. CLOUGH. Mr. President and gentlemen of the Senate: At the close of the session last evening, I was speaking upon the subject of the contents of the report of the grand jury, and upon the evidence that was adduced before Judge Page upon the examination of Mr. Ingmundson. And there is one point I wish particularly to refer to in connection with this report and that evidence. In the report of the grand jury, as detailed by the witness French, was this expression: "That the town was compelled to pay the sum named in the order twice."

Now, there was nothing whatever in that report—and we must consider the entire contents of the report, to determine whether or not Judge Page was authorized to insist upon this grand jury finding an indictment upon the state of facts before it—there was nothing whatever in that report, although the report contained that expression, to show that any conduct, any act, on the part of Mr. Ingmundson, had resulted in compulsion of the town to pay this order more than once,

If that sentence had stood by itself, and disconnected from prior passages in the report to which I shall refer in a moment, still there would have been nothing there to indicate that Mr. Ingmundson was in any manner connected with the payment of the order twice; that he was in any way responsible for the payment of the order twice; that he knew of the payment of the order twice. But, when the entire report is considered together it becomes perfectly apparent, as it did afterwards, upon the examination of Ingmundson, that that expression of the grand jury was a mistaken one, that it could not have been true that the town was compelled to pay the order more than once. Because, in the forepart of this report it is said, "that the county treasurer paid to the town treasurer of said town of Clayton, $114.52," &c., and "the county treasurer *held this order as a receipt for moneys paid out by him.*" "Held it as a receipt for moneys paid out by him;" *not* as an evidence of debt against the town, as I explained yesterday.

If this order had really been paid twice, when the grand jury made up its report of the facts, it would naturally have stated to whom it had been paid twice; how it had been paid twice. But nothing of the kind is mentioned in this report. It is very apparent that the order was not paid to Mr. Ingmundson a second time; that nothing he did caused it to be paid a second time; because the report states explicitly upon its face that it was only held by Mr. Ingmundson, only treated by Mr. Ingmundson, only insisted upon by Mr. Ingmundson, as evidence that he had already paid the town the sum of $114.52, and not that he held it as an evidence that the town was still indebted to anybody in the sum of $114.52.

When the matter came up on the examination before Judge Page, it appeared conclusively that this order had only been paid once. Mr. Coleman testified there; Mr. Haralson testified there. Mr. Coleman was the payee named in this order. Mr. Coleman did not swear that he received his pay more than once. On the contrary, he swore that he received it just once, and that he then surrendered the order to the town treasurer; and when it came into the hands of the county treasurer, it appeard from the evidence before Judge Page, as well as from this report, that it only went there as evidence that the town of Clayton had been paid by the county treasurer $114.52, out of moneys that had been collected for the town, and that the sum of $114.52 went, not to anybody who held any indebtedness against the town of Clayton, but went directly into the town treasury itself of that town.

So we say that when the matter came up for investigation before Judge Page, and the facts came out, there appeared what by inferrence plainly appears upon the face of the report itself: that the town had only paid this order once, and that it had not been paid twice.

Now, it is impossible, it would have been impossible for Judge Page, it will be impossible for his counsel here, by any kind of argument, by any amount of forced inference, or by the twisting or mis-statement of facts, to point out the least particular wherein the town of Clayton was injured by the transaction.

So far as the conduct of the town treasurer was concerned, in embezzling moneys of the town, who was responsible for that? Certainly

not the county treasurer. The people of each town elect their own treasurer. They select a man in whom they have confidence, to act as their agent to receive from the county treasurer the moneys he has collected on behalf of the town, and to disburse them for the use of the town. And what moneys come into the hands of the town treasurer, are in the hands of the town itself. Certainly that is the plainest proposition in the world. Whatever moneys passed out of the hands of Mr. Ingmundson, on this occasion, and into the hand of the town treasurer of the town of Clayton, went straight to the town, and for the use and benefit of the town. And it would have been a matter with which Mr. Ingmundson had no concern, if every dollar that he paid over to the town treasurer, upon every warrant, was the next moment misapplied by that town treasurer and converted to his own use. But, is there any indication, is there the slightest testimony in this case, is there the faintest assertion in this report, was there the slighest testimony before Judge Page upon his examination of Mr. Ingmundson, to the effect that these $114.52 were in any way misapplied? They have been traced directly into the town treasury of the town of Clayton, directly into the hands of the treasurer of that town. We must presume, and Judge Page was bound to presume until the contrary was shown, that every cent of that money was applied to the legitimate uses of the town. And there was not one spark of allegation in this report of the grand jury, there was not one scintilla of evidence in the examination before Judge Page to show the contrary of what the law would presume, viz., that every cent of these $114.52 was applied by the town treasurer of the town of Clayton, to the lawful and proper purposes for which he held them.

But Judge Page, in his eagerness to beat down a man with whom he was at enmity, pushed aside all these considerations, and, overturning every rule which the law has formed for the protection of individuals against unjust accusations for crime, still put this man under bonds to appear before a grand jury of his county.

Now, it was said by the learned counsel who opened this case, that the town of Clayton might be injured in this way—with all of his ingenuity he could think of nothing else—that the accounts of the town treasurer might be in a different shape from what they otherwise would be.

But, gentlemen, that is entirely a false position. The town treasurer annually makes out his statement of the condition of his office, five days before the election of his successor, and publishes it to the people of his town. But what was there to prevent the town authorities, at any time, by going to the county auditor and to the county treasurer, from ascertaining the precise sum which had been paid over to the treasurer of their town? Nothing in the least. There stood the treasurer, ready and willing, at all times, to exhibit his accounts. There stood the auditor, at all times ready and willing to exhibit his accounts. And necessarily, the accounts of every town treasurer with the county treasurer, must be found in those two offices. The accounts of the county auditor show what amount of taxes has been collected. The accounts of the county treasurer show what amounts have been paid over to the town treasurer. Now, what was there arising out of the fact

that this money had been paid at the time when it was paid, or in the fact that this order had been received as a voucher, that prevented any body who wanted to know the condition of the accounts of the town treasurer of the town of Clayton, from ascertaining precisely how they stood, in so far as that matter could be ascertained from any thing that ought to appear in the office of the county treasurer, or in the office of the county auditor?

As I said yesterday, the taking of this order as a voucher, was an entirely legal act; there is nothing in the statutes that prohibited it. The statute merely says, that upon payment being made by the county treasurer to the town treasurer, the county treasurer shall take proper vouchers; but what shall be proper vouchers is not defined. That is something which the law leaves to the county treasurer himself. The object in taking such vouchers is, to have evidence that a payment has been made. In this instance, the county treasurer preferred as evidence of that payment, the order which was handed over to him, and which was never paid but once, as is perfectly apparent.

Suppose he had taken a receipt, what difference would it have made. The fact that this order was taken is entirely irrelevant, unless the further fact exists that the taking of an order as a voucher, under any circumstances, would be an offense. Suppose the town treasurer had gone to the county treasurer and said; "I want $114.52;" not saying anything about an order, and the county treasurer had paid over the amount, what difference would it have made? The county treasurer had collected certain moneys belonging to the town of Clayton; he was under no obligation to pay them more than once. His obligation was to turn those moneys over to the town. He turned them over, and the fact that he took one thing instead of another thing, as an evidence of that payment, is totally irrelevant in this case; was totally irrelevant in the district court of the county of Mower, as the respondent must have well known. The town has not been injured, it could not be injured in this transaction, and, furthermore, as I demonstrated yesterday, the county treasurer was not only protected by the law in making this payment to the town treasurer, but, as I believe, and as I think the true construction of the law and practice under it has been, it was his duty—having money in the treasury, and being informed by the town treasurer that it was needed for town purposes—to turn it over to the town. Having turned the funds over to the town, his duty in connection with them entirely ceased. He was not responsible for any misappropriation of them by the town treasurer; and if there had been any misappropriation of any moneys there was nothing in the report of the grand jury, there was nothing adduced in evidence before Judge Page upon the examination, there has been nothing introduced in this court, to show, or to raise any presumption whatever that the town treasurer did not apply this particular sum of $114.52 to the legitimate purposes of the town. I have no doubt he did so apply it, because if he had not done so, that fact would have been shown here, and would have been shown in the district court of Mower county.

So here we have this case. We have an innocent man, against whom a prosecution has been hounded on. That act was an illegal act on the the part of Judge Page, whatever were his motives in doing it.

I shall not discuss the question of motive to any great length. His motives must be very apparent to everybody. I shall not recount the history of the relations between Judge Page and Mr. Ingmundson. The evi-

dence has brought that subject out clear enough. It was ill-will toward Mr. Ingmundson that actuated the respondent in his conduct toward him. It was a desire to see him punished; it was a desire to see him stricken down; it was a desire to see him ruined and his good name taken away. Such being the case, the offense of Judge Page is one described by Blackstone and by Hawkins as "an offense of the deepest malignity."

It was a case of judicial oppression,—an offense at the common law and under the statutes of the State. It was an offense which was contrary to the purposes of the office of judge. It was an offense which overthrew the very designs for which the office was created—the administration of justice, the acquittal of the innocent, and the protection from persecution of men who have committed no offense against the law.

But, gentlemen, the offense against Mr. Ingmundson, so far as Mr. Ingmundson was individually concerned, was trivial when compared with the offense which was committed on that occasion against the grand jury of the county of Mower. Because Mr. Ingmundson was but an individual. If he had been stricken down in the wrongful manner in which Judge Page attempted to strike him down, the injury might possibly have stopped with him; but in his conduct toward the grand jury on that occasion, Judge Page struck at the very foundation of our free institutions—the basis of our free government. The basis of self-government is the right of the community to participate in the administration of justice. Many men forget and overlook the place where self-government is really carried on in this country. Many people imagine that self-government is chiefly carried on at the ballot box. That is a grand mistake. Self-government, under our institutions, is but partly carried on there. The people of this country govern themselves in the courts, through grand and petit juries, far more effectually than they do at the ballot box. Our self-government rests upon the fact that the community, through its direct representatives, the grand and petit juries, determines for itself, on whom the hand of power shall descend. We govern ourselves through our grand juries; we govern ourselves through our petit juries; and whoever strikes at the independence of those institutions, strikes directly at self-government. Any people that enjoys the blessings of the grand and petit jury system, if it remain true to itself, will be free from oppression, no matter who makes the laws. A country with the grand and petit jury system, enjoys well nigh all the blessings of local self-government, though the legislative power be all vested in an hereditary monarch. Russia lately introduced jury trial in a partial and modified form, and the people of that vast empire have already found in it an effectual check to the arrogance of despotic power.

I do not believe that the importance of the grand jury system can, by any posibility, be over-estimated. Criminal justice would be painfully defective, if a power did not somewhere exist, to determine whether or not the highest interests of the community would be subserved, by the punishment of particular failures to comply with the mandates of intricate and confusing laws. To make such determination, is one of the highest functions of the grand jury. It is a power, in the first instance, resting exclusively with the grand jury, and no officer should be permitted to interfere, by reprimand or threats, with its free exercise,

If the grand jury system is ever swept away in this country, I firmly believe that the decay of self government will rapidly set in.

If the ballot were taken away, there would be little danger of any individual suffering oppression, so long as the grand jury system, and the petit jury system, should be suffered to remain. Because it would then depend upon the people themselves of each community, whether or not any given statute, any given law, should be applied to any given individual.

Gentlemen, it is in the courts, and through the agency of the courts, that the law comes in contact with the individual. The executive of the State, high though his office may be, is powerless to touch the person or property of the humblest man. That can be done only through the courts. The individual feels the hand of the law, he comes in contact with the hand of the law, only through the courts of justice which administer it. Such being the case, the importance of preserving the fairness of judges, and of preserving intact the machinery by which the community administers justice in the courts, is seen to be of the highest importance.

I shall not attempt to discuss at any particular length, the facts in respect to the treatment of the grand jury by Judge Page upon the occasion in question. There has been some little conflict of evidence about small details; but there has been no conflict about the great leading facts. Multitudes of witnesses have been brought here, who have testified directly and positively that, upon the discharge of the grand jurors, they were informed that they had perjured themselves; that they had violated their oaths. Those men who testified to that were of every bent of mind; were of every profession; of every calling; and they all concur in one version of the facts. It would seem that there can be no mistake about it.

Now, in the first place, the wrongful conduct towards this grand jury commenced with the coercion from them of that report which I have spoken about. That was an act clearly illegal. It was the province of that grand jury, as the respondent must have known, to determine whether or not there was anything criminal in the conduct of Mr. Ingmundson, even upon the theory that he had done something which was not exactly in accordance with the exact letter of the statute. It was the province of that grand jury to determine whether or not there had been any criminality in his motives; and no judge had any right Judge Page had not any right, to interfere with the jurisdiction of the grand jury in that respect.

I venture to say, that there is nothing, either in the common law or in the statutory law of this State, that empowers any judge or court, to coerce from a grand jury a statement of facts upon any subject whatever. We all know it is common for a grand jury, in this country, to close their labors by a report upon general subjects; particularly in relation to county buildings and county offices; but doing so is a voluntary act upon the part of the grand jury; it is something that cannot be coerced from it. The duty of the grand jury under the law, is to inquire into offenses; and when it has inquired into an offense, if it finds that one has been committed, it reports by an indictment or by a presentment, which accuses the person charged, of having committed such crime. If it fails, upon inquiry, to discover that any offense has been committed, its duties are ended. It is not the practice, and it is not the duty of the grand jury, to communicate with the court in respect to cases in which no indictment or presentment is found.

The duty of the court in connection with the grand jury stops with calling the attention of the grand jury to the particular matters which it is to investigate; and unless something affirmative is found; unless some offense is found by the grand jury to have been committed; there is no occasion for any further communication upon the subject with the court. In such case, the duty of the court has ended, the duty of the grand jury has also ended. It is not usual, it is not even proper for the grand jury to be compelled to report specially upon any case where it finds that no offense has been committed.

Judge Page, at the outset, read to the grand jury the true rule of the law, upon the subject of official misconduct. That rule is contained in the statute which provides that the grand jury shall inquire into *wilfull* and *corrupt* conduct, misconduct in office. And the grand jury, and not the court, was the judge, whether or not any failure to comply with the statutes, if they found such a thing had occurred, was wilfull or corrupt. And, his attempting to coerce the grand jurors to act upon Ingmundson's case, contrary to their consciences, was the grossest wrong which judge Page could perpetrate either upon Mr. Ingmundson or upon the jury which had been summoned there to inquire into offenses, or upon the public, which is so deeply interested in the independence of grand jurors.

Can there be any doubt that Judge Page coerced this report from the grand jury? Look at the facts, even as admitted by Judge Page. The grand jury came into court and made a report. It was in the form of a resolution which had been wrung from it—evidently by persistent importunities on the part of the judge. The grand jurors come into court, and they hand a paper to the judge. Now, gentlemen, look at the frivolous excuse which the judge makes for not accepting that report as a finality: He says, "It is not signed by anybody." Where is there anything in the statute that provides that any communication by a grand jury to a court, save an indictment or a presentment need be signed? Nothing, whatever. What is the occasion of signing? Only to authenticate the document signed.

The grand jury might as well have come into court and verbally stated that they found no cause for indictment against Mr. Ingmundson, without reducing the statement to writing. Had the grand jury done so the action would have been perfectly legal, as Judge Page himself must have known at that time, because we must presume that he knew something of the law.

Could there have been any doubt, when that paper was handed to the Judge by the grand jury, in open court, that it was the report which the grand jury made upon the subject therein treated? There could not have been any doubt at all, and Judge Page knew that there was no room for any. Why, then, did he refuse to receive that report, which the law required him to receive? He says "it was not signed." Well, that evidently is a false position; it is a false excuse. Why didn't he return the paper to the grand jury and tell the foreman to sign it, if he deemed signing necessary? He knew signing was not necessary. He did nothing of the kind. He says, even taking the accounts of his own witnesses, "This is not such a report as the law contemplates," and as has been overwhelmingly proved here, he further says, "I don't want your opinion on this subject of whether or not Ingmundson is guilty, I want the facts in the case." And he declined to receive the decision which the grand jury had come to, that no offense had been committed,

What was charged against Stimson in that case was the circulation of a libel. It is not mentioned in this warrant that this libel was in the form of a petition, although the alleged libel, as appears from evidence, was in the form of a petition. It appears on the face of this warrant, I say, that what Stimson did, was, being an officer of the court, to libel the judge.

The subject of what things constitute contempts of court has been very much discussed in the books. The jurisdiction of contempts is one which is of the utmost danger, and which is more inconsistent with the theory of our institutions, than any other jurisdiction that the courts wield; and it ought to be held down to the narrowest and closest limits. It is a "Star Chamber" proceeding. And when I call it a star chamber proceeding, I don't use that expression as a simile at all. I use it as expressing a fact. If any gentleman of this Senate will take the trouble to ascertain precisely what the Star Chamber was, and precisely what its course of proceedings were, he will discover that the jurisdiction and procedure of the courts of law in respect to contempts, have been transplanted from the star chamber.

The star chamber punished contempts; and contempts exclusively. And it punished them by precisely the same forms of proceedings that courts of law now use in punishing contempts against themselves. There is no jury trial. The judge, who is the subject of the insult, and who must necessarily always be in a state of more or less irritation, sits in the trial of the cause.

Now if a judge were libelled, as Judge Page said he was, and the facts and the law were to be submitted to a jury, under the statute of this State, as Judge Page himself admits, it would be improper for him to preside.

When a judge sits in a case of libel, he has very little authority, indeed; under the constitution of this State, the jury being the judges both of the law and the fact. The duties of the court and the power of the court, to injure or oppress the defendant, in libel cases, are very small. But in this case, Judge Page thought it proper to sit and try a man who had libelled him, without the intervention of a jury. He saw no harm in doing so; nothing improper in it.

Gentlemen, you see the danger of permitting jurisdiction over alleged contempts to be carried to any improper extent. On account of this danger, the law which permits the courts to punish for contempts should be construed strictly; and judges should be held responsible in every instance, for the least departure from it.

The subject of what constitutes contempt of court, has been a matter of very great discussion both under the common law and under statutes; and it had been settled, at common law, what constituted contempts, long before the discovery of this country. But most States of this country, knowing the danger of permitting too free an exercise of the power to punish in such a way, have passed statutory enactments defining both what shall constitute contempt of court, and the method of procedure. The legislature of this State has passed a code of that character. It is a code defining what are contempts, and defining the procedure which the courts must adopt to punish them.

That code is chapter 87, of the *General Statutes*. The first section defines what constitutes contempts of court, and I will read one or two provisions·

"FIRST. Disorderly, contemptuous or insolent behaviour towards the judge, while holding the term of court, tending to interrupt the due course of a trial, or other judicial proceeding."

That is one ground.

"SECOND. A breach of the peace, boisterous conduct or violent disturbance, tending to interrupt the due course of a trial, or other judicial proceedings."

"THIRD. Misbehavior in office, or other wilful neglect or violation of duty by an attorney, counsel, clerk, sheriff, coroner, or other person appointed or elected to perform a judicial or ministerial service."

I will not read the specifications of grounds of contempt through; but I will state what is a fact: that there is nothing laid down here as a ground for contempt, as constituting a contempt, which, under the common law, as settled by a long series of discussions and adjudications, was not also a contempt. There is nothing new in this section one, and, in fact, I think nothing which amounted to contempt at common law has been cut off by the statute. Whatever, at the common law, constituted a contempt, is still a contempt under the statute; and, consequently, in construing these various provisions of statute, in order to know what is contained under any one of them, what constitutes a contempt within the meaning of any one of them, the common law authorities will afford us the best guide.

Now, in what cases libels constitute contempts, has been a subject of special adjudication, and the adjudications are all to one effect. I venture to say that the contrary cannot be proved, that a different adjudication cannot be found; an adjudication laying down a different rule of law from that which I am now about to state, viz: that a libel upon a judge or public officer, or upon a court, only becomes a contempt of court when it relates to some specific matter which is pending before the court and yet undetermined. It must be in relation to a matter which is before the court for determination, and it must be published while the matter remains pending. *Any* publication not of that character, although it may be a libel, and punishable as a libel, is not a contempt of court, and no authority holding it to be so can be found. I make that assertion confidently, for the reason that I have searched the books high and low; I have searched the cases which have been adjudged in every court in this country; I have searched the cases which have been adjudged in England; and I have yet to find a single case where a rule has been laid down different from that which I contend for here.

Upon this point I will trouble the Senate with one or two authorities, and the first is the case of *Dunham against The State of Iowa*, reported in the *VI Iowa Reports*. The State of Iowa has adopted a statute upon this subject of contempt, and that statute is almost identical in language, from beginning to end, with the statute of this State. There is no material difference in the force of them; the only difference lies in a slight difference in the phraseology, and it is a very slight one indeed. Here is the rule as laid down by the court in that case:

"The publication of articles in a newspaper, reflecting upon the conduct of a judge, in relation to causes pending in his court, and which were disposed of before the publication, or the publication of the evidence and the arguments of counsel in a case undisposed of, in which there was no rule of court prohibiting such publication, however unjust and libelous the publication may be, do not amount to contemptuous or violent behavior towards the court, under chapter 94 of the code; nor are they so calculated to impede, embarrass, or obstruct the court in the administration of the law, as to justify the summary punishment of the offender under that chapter."

In that case the articles which were charged were published in a newspaper, and I will read them; that is, I will read one or two of them; several were published:

"In the malicious prosecution pending against J. F. Abrahams, under the rulings of the court, he was convicted of leasing his house for improper purposes, and fined by Judge Claggett, $100. Upon his appearing and offering to appeal to the supreme court, Judge Claggett fixed the bail at *fifty thousand dollars*. What do our readers think of the fairness and impartiality of a judge who is guilty of this extraordinary demand, in direct violation of the eigth amendment to the constitution—'excessive bail shall not be required.' In the light of this oppressive demand, it is easy to see what an engine of injustice and outrage our courts of justice are capable of being made, in the hands of a vindictive and implacable man, such as we hope Judge Claggett will not prove himself; or corrupt or infamous men, such as Lecompte and Cato, of Kansas. We do not believe our records have ever before been disgraced by, or our archives contained, such a bail bond, as that demanded by Claggett, and given yesterday by J. F. Abrahams. Fifty thousand dollars bail, in a case wherein the sentence of the court was a fine of one hundred dollars! Has the case a parallel?"

Then, again, another article was published which was as follows:

"The first attempt in Iowa to muzzle the press. Waiting no longer for the decision of the court, we shall to-morrow publish a correct, and so far as we can make it, a full and complete report of the arrest and trial of C. Dunham, in violation of his constitutional rights, and the privileges of trial by jury, for daring to speak of the doings of Judge Claggett, and the circuit court. We shall give a full account of this high-handed assault upon the liberty of the press, by a vindictive and august judge, with the speeches of counsel, etc."

Then again:

"At the mere will and pleasure of an august and arbitrary judge, in violation of his constitutional rights, the editor of this paper was arrested and carried before Judge Claggett, for daring to express his opinion of the doings of the circuit court, in a case already adjudicated. We have neither cried over it nor called for public sympathy. Yet the most intense interest has been felt in this community, and democrats, republicans—men of all parties—have not only expressed their sympathy, but their determination to see the liberty of speech and the press vindicated, and the petty tyrant who disgraces the judiciary of Iowa shorn of the power he is now abusing."

The judge in this case in Iowa attempted to punish the publication of these articles as a contempt of his court; but it was held by the Supreme Court of the State that the publication of a libel is not a contempt, unless it be in relation to some matter actually pending before the court, and in relation to that specific matter. And I will read a few extracts from the opinion:

"The power given to the courts to punish for contempts, is not alone for their own preservation, but also for the safety and benefit of the public. The life, liberty and prosperity of every citizen are protected, and the true welfare of society ensured and promoted, in the preservation of this power in its proper vigor and efficiency. Take from our courts this power—deprive them of this trust—and they would be subject to the clamorous demands of an excited mob—to disturbances calculated to interrupt the due course of judicial proceedings. Every order and process made or issued, might be illegally resisted with comparative impunity; and at no very distant day, they would cease to command the respect of the public, or to be able to secure obedience to their mandates. This respect and this obedience, they must command

and receive, however, upon the principle that the power to punish for contempt is a preservative power, and should not be used for vindictive purposes. It is a power delicate in its character. Necessity, alone, should justify a resort to it. It must be used and applied by the soundest discretion. 'Respect to courts cannot be compelled. It is the voluntary tribute of the public to worth, virtue and intelligence, and while they are found on the judgment seat, so long and no longer, will they retain the public confidence.'

"Our code declares that certain acts or omissions therein named, are contempts, and are punishable as such, by the courts of the state, or any judicial officer acting in the discharge of an official duty. The acts charged in this case, if punishable under the code, must be so by virtue of the first clause of section 1598, as being 'contemptuous or insolent behavior toward the court while engaged in the discharge of a judicial duty, which may tend to impair the respect due to its authority.' In this view, however, we cannot concur. We think this clause has reference to some act or behavior in the actual or constructive presence of the court. The use of the words 'behavior towards'—'while engaged,' and 'in the discharge of'—would clearly seem to show that this was intended. Not, it is true, that the conteptuous and insolent behavior, need be in the court room, and under the eye of the court, in order to amount to a contempt. But, the court being in the discharge of its judicial duties, the guilty party, though not in its immediate presence, might do those things which would amount to a contempt. Thus, if the respondent had procured, to be posted within the court room, pictures or articles calculated to obstruct, embarrass or impede the administration of justice, or impair the respect due to the authority of the court, either by caricaturing the judge, or otherwise, the act might well be said to be done in the presence of the court, it would be 'behavior towards said court.' So, also, a person outside of the court room, but within hearing, might make use of such language, or do those things which would render him liable for contempt, as fully as though spoken or done within the bar. But to make a party guilty under this clause, the contempt or insolent behavior must be towards the court—the court must be engaged in the discharge of a judicial duty, and this behavior must tend to impair the respect due to his authority. It must be a perversion of the entire language used, and a palpable violation of the spirit and policy of the provision, to say that a judge could bring before him every editor, publisher or citizen, who might, in his office—in his house—in the streets—away from the court, by printing, writing or speaking, comment upon his decisions, or question his integrity or capacity. The law never designed this. It is not thus that an independent and intelligent court will be apt to secure public confidence. Such a power is not necessary for either the protection of the court or the public.

"To investigate and discuss the opinion of the court, and to disobey its mandates or orders, are quite different things. All men may rightfully make their comments, but none should disobey, except on pain of suffering the penalty attached for the violation. And should those thus commenting, leave the subject, and impute dishonesty or base motives to the judge, he may be punished by indictment, for a libel—he may be answerable in damages in a civil action- or he may be liable to both prosecutions."

"As to the acts of the respondent, it will be observed, that, except in relation to his comments, and the publication made by the proceedings in his own case, on the first hearing, his articles had reference entirely to cases that were not before the court. The case of Abrahams and Boke had been adjudicated, and appealed to this court. As already stated, there was no rule, general or special, prohibiting the publication of the speeches of counsel, remarks of the court, or giving a statement of the proceedings on the first investigation. And without referring to the effect of making the publication, if there had been such only, it is sufficient to say that it could not, under the circumstance of the case, amount to a contempt."

**And the respondent in the case was discharged for the reason, that his publications, although they had accused the judge of being arbitrary, vindictive and oppressive in his conduct, they not relating to a case which was pending before that court, were not contemptuous because they could not be held to impede or embarrass the decisions of the court in any way.**

The same subject came before the court in the case of *State against Anderson* in the XL *Iowa*, page 207. This is a much stronger case than the former, and a case more directly in point, for a reason that I shall mention in a little while more fully, and dwell upon more particularly; and that is, the respondent in the case was an officer of court, an attorney,—an officer as much as Stimson was an officer of court at the time he is alleged to have made the publication concerning Page.

The syllabus is this:

"*Contempt: publication of newspaper article: attorney.* The publication by an attorney of an article in a newspaper, criticising the rulings of the court in a cause tried and determined prior to the publication, does not constitute contemptuous or violent behaviour towards the court, punishable as contempt. Whether the publication, if made during the pendency of the trial, would justify the court in punishing the writer for contempt, *quaere.*"

Now the court says in its opinion:

"The record shows affirmatively that the cause, in which the rulings of the court were made, and which are reviewed in the newspaper article, had been tried and determined prior to the publication of the article by defendant, and according to the established rule in the case of *Dunham vs. The State of Iowa*, 6 *Iowa*, 245, the action of the district court was erroneous. In that case it was held, that the publication of articles in a newspaper, reflecting upon the conduct of a judge in relation to a cause pending in court, which had been disposed of before the publication, however unjust and libelous the publication may be, did not amount to contemptuous or violent behaviour towards the court, under chapter 94 of the code of 1851, nor that such articles were so calculated to impede, embarrass, or obstruct the court in the administration of the law as to justify the summary punishment of the offender under that chapter. Chapter 113, of the revision, which was in force at the time of the conviction in this case, is identical with the chapter of the code of 1851 above mentioned.

"The case above referred to was a much stranger one than the case before me: there the judge was denounced as arbitrary, oppressive, and as a violator of the constitution; here it appears that no disrespect of the judge was intended, although the correctness of the various rulings in the case is criticised somewhat severely, and it is implied by the article, that the mind of the judge was biased in favor of the plaintiff therein. Both cases, however, fall within the same rule. The proceedings in the cause had been brought to a close, and what was said in the published article could in no manner influence the rulings of the court. The publication was not contemptuous or insolent behavior towards the court '*while engaged in the discharge of a judicial duty*,' tending to impair the respect due to its authority. If it were true that the publication of the article did constitute 'contemptuous or insolent behavior,' tending to impair the respect due to the authority of the court (and we do not decide whether it did or not), yet it was not '*towards the court while engaged in the discharge of a judicial duty*,' as required to be by the statute in order to amount to contempt."

I read these two cases simply because they are like all the other case that I have ever read upon the subject. The law is not laid down differently anywhere else, so far as I have been able to discover—and I have examined the authorities very carefully, bearing upon the point. So, we say, that this alleged libel, which it was said Stimson had published, not being about or towards the court, in respect to any matter which was pending before the court at that time, and not being calculated to influence its rulings upon any particular point before it at that time, did not constitute, and could not constitute, whether a libel or not, a contempt of court; and it must be presumed that Judge Page knew that fact, because we must assume, as I have already stated, that he was acquainted with the laws of the land, to some extent, at all events.

But, it may be argued, that the publication of a document like this one was misbehavior in office, on the part of this deputy sheriff. But there is no authority for that. This provision of the statute which I now read as constituting a ground for contempt—

"THIRD. Misbehavior in office, or other wilful neglect or violation of duty by an attorney, counsel, clerk, sheriff, coroner or other person appointed or elected to perform a judicial or ministerial service,"

Relates entirely to acts which are done by an officer or an attorney in the course of the performance of the duties of his office. It does not relate to what may be done by either an officer or attorney of the court, unless it is done in connection with the performance of his official duties.

Misbehavior in office of an attorney or officer, has always been a ground of contempt. It was a ground of contempt at the common law; and, in order to know what was meant by the legislature by misbehavior in office, it is entirely proper to refer to what the common law was before upon that subject, and to what was considered as misbehavior in office under the common law.

This last case in the 40*th Iowa* is directly in point. It holds that, simply because the publication of a libel may happen to be made by a person who is an officer of court, it does not constitute a contempt; for there, the party who published the alleged libel was an attorney, an officer of court.

Again, I cite very briefly from a work from which I cited yesterday, 2 *Hawkins' Pleas of the Crown*, under chapter 22, page 207:

"But for the better understanding in what cases the court may proceed in the manner above mentioned against such offenders, I shall endeavor to show:
"First. Where it may so proceed against the ministers of the court."

And it is claimed in this case that Stimson could be proceeded against because he was a minister of the court.

"As to the first of these points I shall consider:
"1. Where it may so proceed against sheriffs, bailiffs of franchises, and sheriffs' bailiffs.
"2. Where against attorneys, and others acting as such.
"3. Where against other officers.
"4. Where against jurors.
"As to the first of these particulars I shall endeavor to show,
"1. Where the court may so proceed against sheriffs, bailiffs of franchise, and sheriffs' bailiffs, for not executing a writ."

Now here he enumerates what are punishable by courts as misbehaviors in office by sheriffs or officers in court:

"1. For not executing a writ.
"2. For doing it oppressively.
"3. For not doing it effectually.
"4. For making a false return."

Those are the delinquencies that constitute misbehavior in office, on the part of an officer of court. Every illegal act which may be done by an officer, or any illegal act which may be done by an officer, not done as a part of the performance of the duties and functions of his office, is no misbehavior in office. That was well illustrated by the learned counsel who opened the case far the respondent. I will recall it to your minds. He says:

"Suppose Judge Page goes down town and meets a man that calls him a liar and he knocks him down, is that misbehavior in office? "

It is certainly a breach of the peace. The judge of every court is bound to maintain the peace, as much as any other officer is bound to maintain it. Judge Page is in duty bound to maintain the peace as much as Stimson was in duty bound to maintain the peace. And it would be a breach of the peace on the part of the judge, who is bound to maintain the peace, to knock a man down. Still it would not be misbehavior in office, and it would be absurd to say that it would be misbehavior in office.

So, if the judge should publish a libel, or do any other act, not in course of his judicial duties, nor while performing his functions as judge, although it might be an illegal act, it would not be misbehavior in office.

In order to be misbehavior in office the act must be connected with the execution and performance of official functions and not otherwise. And it has never been maintained to the contrary, in anyway, or by any authority.

Courts have punished misbehavior in office on the part of their officers as contempts, from the earliest times. More cases of contempt of that character have come before the courts than any other. And long before the statutes of this State were enacted, what acts constituted misbehavior in office, so as to amount to contempts, had been thoroughly well defined and settled. The courts a hundred years ago, treated the question as settled; and it has never been agitated until this occasion. No court or author has ever attempted to extend the doctrine of contempts beyond official acts or neglect of official duty. So we say that it is impossible to find a provision of the statute or of common law, under which, even if Stimson had actually printed or circulated this obnoxious petition, it would have amounted to a contempt of court; and Judge Page must have known it.

The conduct of Stimson was not a contempt, and Judge Page must have known it. He says: "I searched quite a number of authorities;" but you must remember, gentlemen, when I pinned him down on that question, he could not cite one; not a single one; and this occurrence took place less than a year ago. He says that he examined this matter carefully and looked up authorities, and I insisted upon his naming a single authority which would justify his course, and he was unable to do so. It was not true, gentlemen, that he found authorities going to support his pretensions, because none existed, and never had existed, and he knew it at the time. But the substance of this charge against Stimson is of little importance compared with the utter disregard of every form of law in the prosecution of the proceedings.

This is one of the fundamental propositions in our Bill of Rights—that "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation."

"No warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized."

I read from section 10 of article 1 of the constitution of this State.

Now, that is one of the first and fundamental propositions in criminal law, that no warrant can issue to arrest a person unless a complaint is made and probable cause is shown upon oath or affirmation. In this instance a thing occurred which, I venture to say, without fear of contradiction, has never occurred before in this country, and that is: that a warrant of arrest was issued without any complaint being made upon oath or otherwise, to the magistrate who issued the warrant.

A proceeding in contempt is a criminal proceeding. A contempt of court is a criminal offense. It is not an offense against the judge who issues the warrant, it is not merely a personal injury to him, but it is an injury against the State whose official servant the judge is. It is an offense against the authority of the State as much as larceny is, or murder, or embezzlement, or libel, or any other offense. And when a judge, who has been libeled in such a way that it amounts to contempt of court, issues his warrant, he is issuing his warrant in a criminal proceeding as much as he is when he issues a bench warrant on an indictment found for that same libel.

Contempts are of two kinds, as defined by the statutes of this State, and as defined by the common law. There are, first, those that are committed in the immediate presence of the court. That is, in the view of the court, so that the facts come under the actual and judicial notice and knowledge of the court: and second, those which are not committed in that way. Whenever they are committed within the immediate notice of the court, then the court has the evidence of its judge's senses. It sees what occurs. It makes a record of the facts which occur, and awards punishment accordingly. But, when the facts constituting the contempt have not come under the immediate and official notice of the court, then, according to all practice, both under the common law and under the statutes, the court cannot proceed without a complaint being made, or issue its warrant without a complaint being made, or other legal evidence being adduced, any more than a justice of the peace can issue a warrant for apprehending an offender without a complaint being made. A warrant issued without a complaint upon which to found it is utterly void. That process which was sent out for the arrest of Stimson, did not even protect the sheriff. The judge who issued it was a trespasser; the sheriff who served it was a trespasser; both of them were trespassers and are liable to Stimson in damages at any time he may see fit to sue them for it. It would be just the same as if a justice of the peace should issue his warrant to apprehend a man for larceny without any complaint being made before him. The process would be utterly void; it would not protect the magistrate, it would not protect the officer.

Section three, of chapter 87 of our statutes in regard to contempt, provides just what the common law provided before; and I might say right here, as perhaps I have remarked before. that our statute in regard to contempts is a mere reiteration, both as to the procedure and as to to what constitutes a contempt, of what the common law was, before the statute was enacted.

"When a contempt is committed in the immediate presence of the court, or officer, it may be punished summarily, for which an order shall be made, reciting the facts as occurring in such immediate view and presence, adjudging that the person proceeded against is thereby guilty of a contempt, and that he be punished as therein described. Such punishment, however, cannot exceed that prescribed by section twelve; where the contempt is not committed in the immediate view and presence of the court an affidavit or other evidence shall be presented to the court or officer, of the facts constituting the contempt."

In this case it was not claimed that anything which Stimson might have done was done in the presence of the court. I shall consider the contents of this warrant, and shall demonstrate to you their known falsity, from beginning to end, on the part of this judge at the time he put his hand to them. But I will first briefly mention the law bearing upon the point as to what will authorize the issuance of a warrant. At the common law, and before the statute, whenever the facts constituting the contempt occurred elsewhere than in the immediate presence of the court, the machinery of the law could only be set in motion by an affidavit; and so the authorities all lay it down.

I read again from *Hawkins's Pleas of the Crown*, section one of page 206:

"If the contempt happen to be done by a person present in court, and it appear either from the confession of the party on his examination upon oath, or by the view or immediate observation of the judges themselves, the court may immediately record the crime and commit the offender, and also inflict such further punishment as shall seem proper. And if such offenses be done by a person not present in court, and be complained of by affidavit"—that is the limit—"the court will either make a rule on the party to attend at a certain day, in order to answer the matter of the complaint against him, or else will make a rule upon him to show cause why an attachment should not be granted against him; or else, if the offense be of a very exorbitant nature, as for words of contempt of the court itself, will grant an attachment on the first complaint, without any such rule to show cause."

The same rule is laid down in *Blackstone*. The same rule is laid down in another great English authority, *Tidd's Practice*. I read from volume one, on marginal page 479 80 of *Tidd's Practice*:

"If the contempt be committed in the face of the court, the offender may be instantly apprehended and imprisoned, at the discretion of the judges, without any further proof or examination; but otherwise it is usual to apply to the court on an *affidavit* of the circumstances for a rule for an attachment, which is either absolute in the first place or only to show cause."

But the proposition has been repeatedly decided by the courts in this country, that a warrant to arrest a party for contempt not committed in the immediate presence of the court, can only be founded upon a complaint upon oath, as in other cases of criminal proceedings.

I read now from 4 *Blackstone*, marginal pages 286 and 287:

"If the contempt be committed in the face of the court, the offender may be instantly apprehended and imprisoned, at the discretion of the judges, without any further proof or examination, but matters that arise at a distance and of which the court cannot have so perfect a knowledge, unless by the confession of the party or the testimony of others upon *affidavit*"—the author has put that in italics—"see sufficient ground to suspect that a contempt has been committed, they either make a rule on the suspected party to show cause why an attachment should not issue against him; or in very flagrant instances of contempt, the attachment issues in the first instance."

Now, coming to this country, that proposition has been adjudged a great many times. And I have brought a few cases where the proposition has been laid down.

I cite in the first instance a case occurring in the United States Circuit Court, for the southern district of New York:

3 *Blatchford*, 148. *In the matter of William Judson.*

That was a case of contempt, and the court thus lays down the method of procedure:

"It is a cardinal principle, in relation to the summary and imperative proceeding by attachment, that that writ will not be granted unless a case of clear contempt be established. When the contempt in not committed in *facie curiæ*, it must be proved by affidavits from persons who witnessed it."

Then again, I cite a case in the 36 *Indiana*, the case of *Whitten vs. The State*, page 196.

I read first from the syllabus:

"CONTEMPT. *Direct Contempt.* A contempt is direct when committed before and in the presence of the court, or so near the court to interrupt the proceedings thereof; and such contempts are usually punished in a summary manner, without evidence, but upon view and personal knowledge of the presiding judge Contempts are constructive, when tney are committed, not in the presence of the court, and tend by their operation to corrupt, obstruct, embarrass, or prevent the due administration of justice. The proceeding against a party for a constructive contempt must be commenced by either a rule to show cause, or by an attachment; and such rule should not be made, or attachment issued, unless an affidavit is filed specifying the acts committed by the person accused of the contempt."

Now, I will trouble the Senate with a short extract from the opinion, bearing upon this point:

"Contempts are constructive, when they are committed, not in the presence of the court, and when they tend, by their operation, to interrupt, obstruct, embarrass, or prevent the due administration of justice. The refusal of a witness or juror to obey the process of the court; the refusal of a citizen, when lawfully called upon by an officer, to assist in executing a warrant, or other lawful process; the refusal of a person, against whom an officer has a warrant, to submit to an arrest, or the escape of such person after arrest; the attempt on the part of third persons to prevent an arrest or to procure an escape; any attempt to bribe, intimidate, or otherwise influence a juror; any attempt to threaten or intimidate a person from instituting or defending any action; to counsel, advise, or persuade a witness or juror not to attend court when lawfully summoned; to threaten, intimidate, persuade, or bribe, or offer to bribe any witness to testify to anything that is not true, or to suppress or withhold the truth; the forcible abduction of a witness or party with the view, or for the purpose of preventing such witness from testifying in any case pending in any court, to prevent such party from prosecuting or defending any action pending in any court, may be mentioned as some of the cases of constructive contempts.

"The proceeding against a party for a constructive contempt must be commenced by either rule to show cause, or by attachment, and such rule should not be made or attachment issued, unless upon affidavit specially making the charge. When the rule or attachment has been served, the person accused has the right to be heard by himself and counsel. If the contempt is admitted, the court may render judgment on such a decision; but if the defendant denies that he committed the acts complained of, or insists that they do not constitute a contempt, then the court should hear the evidence, and upon that determine the guilt or innocence of the party."

Lastly, I will trouble the Senate with a case occurring in California, and I do so because the statute of the State of California in regard to contempts, is identical with our statute; the two are almost word for word alike; and particularly the provisions which relate to the issuance of a warrant.

I read from the *Code of Civil Procedure* of the State of California, page 320, section 1211:

"When a contempt is committed in the immediate view and presence of the court, or judge at chambers, it may be punished summarily; for which an order must be made, reciting the facts as occurring in such immediate view and presence, adjudging that the person proceeded against is thereby guilty of a contempt, and that he be punished as therein described. When the contempt is not committed in the immediate view and presence of the court, or judge at chambers, an affidavit shall be presented to the court, or judge, of the facts constituting the contempt, or a statement of the facts by the referees, or arbitrators, or other judicial officers."

The Senate, if it remembers the provisions of section three of our chapter in regard to contempts which I read, will perceive that the section I have just read from the California code, is identical in effect as to the manner in which the warrant shall issue for contempts that are not committed in the immediate view and presence of the court, and knowledge of the court.

And I now read a case construing the provisions of this California statute. It is the case of *Batchelder against Moore*, reported in the 42 *California*, on page 412. The syllabus upon the point is this:

"When the alleged contempt is not committed in the presence of the court, an affidavit of the facts constituting the contempt must be presented, in order to set the power of the court in motion. If the affidavit be defective in stating the facts, it is equivalent to the utter absence of an affidavit."

I will trouble the Senate by reading a short extract from the opinion of the court:

"The power of a court to punish for an illegal contempt of its authority, though undoubted, is in its nature arbitrary, and its exercise is not to be upheld, except under the circumstances and in the manner prescribed by law. It is essential to the validity of proceedings in contempt, subjecting a party to fine and imprisonment, that they show a case in point of jurisdiction within the provisions of the law by which such proceedings are authorized, for mere presumptions and intendments are not to be indulged in their support."

"The statute of this State, regulating contempts and their punishment, provides, that when the alleged contempt is not committed in the presence of the court, an affidavit of the facts constituting the contempt shall be presented."

Precisely what our statute provides:

"If there be no affidavit presented there is nothing to set the power of the court in motion, and if the affidavit, as presented, be one, which, upon its face, fails to state the substantive facts, which in point of law do, or might constitute a contempt on the part of the accused, the same result must follow—for there is no distinction in such a case between the utter absence of an affidavit and the presentation of one which is defective in substance, in stating the facts constituting the alleged contempt."

Now, gentlemen, it seems that all the authorities in this country are consonant with what the common law was before; and that is, that a judge cannot sit down, and, upon mere rumor, issue a process that is going to take the body of an individual, and restrain it. He cannot sit down, and, upon rumor, however authentic he may think it to be, issue process which will deprive men of their liberty. But the proceeding must be in accordance with the provisions of our constitution. There must be probable cause supported by oath or affidavit. Otherwise, the court is powerless to proceed; as powerless as a magistrate would be to issue a warrant to apprehend an offender for any other crime. So we say at the very outset, these proceedings on the part of Judge Page were utterly without any jurisdiction whatever; and this process which was issued to arrest Mr. Stimson, was utterly void, and neither protected the judge who issued it, nor the sheriff who executed it. And they are liable, to-day, for the false imprisonment and for the wrongful restraint of liberty of Mr. Stimson, which took place in consequence of the issuance of that warrant.

In this case, the warrant was not issued upon as good authority as a rumor; and I shall read this warrant here, and you, gentlemen, will perceive from the testimony, and even from the evidence of the respondent himself, that the recitals of fact in this warrant were false from beginning to end, and were *known* to be false by the judge when he put his hand to the warrant.

He says:

"Whereas, information has been given to the undersigned, judge of the tenth judicial district of the State of Minnesota, that one David Stimson, a deputy sheriff of said county, recently, and more particularily during the months of March, April and May, A. D. 1877, while such deputy,—"

Now, that is false. The judge had not heard even rumors, when he signed this warrant, that the alleged petition had been circulated by Mr. Stimson in either of those months.

"And while engaged in the discharge of his official duties—"

There was not a particle of rumor, even, to the effect that Mr. Stimson had circulated that petition while engaged in the discharge of his official duties. That is a complete falsehood set forth upon the face of this warrant, and something which the judge knew to be a falsehood when he penned it. He had never received any information of the character either that the petition had been circulated at the time stated, or that it had been circulated while this deputy was in the "discharge of his official duties."

He, furthermore, recites that he was informed that the petition was circulated by Stimson "while a general term of the district court was in session in said county."

That is another falsehood, something known to be a falsehood by the judge when he signed the warrant. He had no such information. His cross-examination shows what information he then had upon the subject. I will not take the time of the Senate to read it, but I will call the attention of Senators to the places where it is to be found.

In the journal of June 11th, on pages 59, 60, 61, 62, 63, 64 and 65, it appears that he had no information, whatever, that Mr. Stimson had ever circulated the petition.

Now, those recitals in the warrant were falsehoods, and Judge Page knew them to be false at the time he appended his hand to the warrant.

Then he says:

"And while he was in attendance at said court as such officer."

The judge knew that to be a falsehood when he inserted it in that report. He never had any information of that kind. In the first place, Mr. Stimson did not attend that term of court as an officer. Judge Page admits that he never saw him there as an officer, or knew him to be attending upon the court as an officer; that the only time he saw him there was when he was arraigned upon the report of the grand jury; that he might have been there watching a suit which he had in court for trial.

Mr. Stimson was not one of the officers that attended upon the court at that term, as Judge Page knew when he issued this warrant, and as he has always known since.

Then he says:

"Did write, print, circulate and publish."

It was false that Mr. Stimson ever printed that petition; that he ever wrote that petition; that he ever published that petition; that he ever circulated that petition. And Judge Page had no information that he had ever done so.

Gentlemen, those are the recitals of fact upon which this warrant was issued, and, from beginning to end they are *false*. Judge Page had not a rumor even to justify his sitting down and inserting those things in that warrant.

To what a pass have we come in this country, if a judge, even upon rumor which he believes authentic, can sit down in his chambers, and issue his warrant, which will, when put into the hands of the sheriff, throw a man into prison.

The falsity of these recitals, and their known falsity on the part of the respondent, is clearly indicated, not only by his own testimony, but also by the testimony of Mr. Kinsman, a witness whose character is irreproachable, and whose evidence is undoubtedly truthful. Judge Page took occasion to consult Mr. Kinsman, to get his opinion; not as counsel, but knowing him to be a prominent member of the bar there. He

took occasion to get the opinion of Mr. Kinsman, as a lawyer, before he issued this warrant, as to his power to issue the same, and it was then and there conceded by Judge Page that if this petition had ever been circulated by Mr. Stimson at all it had not been circulated during a term of court. Judge Page knew that petition did not come into being until long after the term of court had been adjourned, when he issued his warrant.

Now, whom did Judge Page summon before him for witnesses on that occasion? He says the subject of the circulation of this petition was town talk. Whom did he hear talk about it? Did any of the men whom he summoned as witnesses claim to have ever seen Stimson do anything with that paper? Not a man, except one, I think—Mr. Schwan. He says that Mr. Schwan, in a conversation held in the depths of Judge Page's office, stated that Mr. Stimson had that paper in his hand or asked him to sign it. But, that story of Judge Page evidently was false. Mr. Schwan never told him anything of the kind; and when he was brought before Judge Page, he denied that he had ever said anything of the kind.

Then, here is the case we have: A man is perfectly innocent of contempt of court; and he is known by the judge of that court to be so. The judge sits down and says, upon rumor, that certain things have been done. He embodies recitals that certain things have been done in a warrant for arrest. However, these recitals are falsehoods from beginning to end, and are known by such judge to be so, when he sets his hand to the warrant. He has not even a rumor to justify him in stating that any of those assertions are true, yet a warrant issues, the defendont is arrested, and he is required to furnish bonds at an unseasonable hour of the night, when his friends are all absent from their places of business. You, gentlemen, remember the evidence upon that point. Mr. Stimson was in the hands of the sheriff and required to give bail in the sum of $500 to attend from time to time, and he was detained under those bonds for nearly a month. An officer of that county—a man having his interests all there—Judge Page knew well enough that bonds were not necessary to secure his attendance. But Judge Page evidently was in hopes that, from the lateness of the hour, Stmison's friends having gone home for the night, it would be impossible to obtain a bond, and hence he would have to stay over the night in jail. That is what Judge Page wanted. He wanted Mr. Stimson to be imprisoned that night in the jail of Mower county. And that was the reason of his exacting that bond at that unreasonable hour. It was not for the purpose of securing Stimson's attendance, because he knew Stimson would attend without bail. Mr. Stimson was placed under bonds which virtually restrained him from his liberty for a month. When the evidence was put in, exactly what the judge fully knew before, appeared, viz: that all the recitals in this warrant were false, and that Mr. Stimson was not guilty; that he had not done the things which the warrant stated he had done.

Again, the warrant is defective in another particular. From the earliest times, when men have been charged in any criminal form with publishing or uttering words of any character, it has been the require-

ment of the law, that the warrant shall set out the words which have been uttered. Judge Page had this illegal petition before him. No complaint for libel before a justice of the peace would have been worth a straw unless it set out the words. Judge Page was a judge of a superior court, and knew the law in regard to the punishment of men, and the proceedings for the punishment of men, charged with publishing words. He knew it was his duty to set out the words in this warrant. He failed to do so. If any justice of the peace had issued this warrant, even upon good cause shown, but had failed to set out the words, the warrant would have been worthless and would have been quashed on motion. It is impossible to put your finger upon a single thing from the beginning to the end of this proceeding which was done legally.

Then, again, Judge Page was at once the prosecutor and the court. This was a criminal proceeding. It was one which, in all decency, should have been prosecuted by the county attorney. Judge Page was sitting there not to vindicate the law, not to enforce the right, but for the purpose of reeking vengence upon his enemies. The only duty he had, the only duty which the law imposed upon him, was to redress the injury which had been done to the State of Minnesota by the offense against the court, in case one had been committed. Why did he not call upon the prosecuting attorney of that county to prosecute? It would have been time, after the prosecuting attorney had failed, for the judge, himself, to take the prosecution in hand. Decency required that he should invite the prosecuting attorney to appear there and prosecute. Then if that officer failed in his duty, or neglected his duty in any way, perhaps the judge might have had some color of reason to take the reins into his own hands, and become prosecutor as well as judge and jury. But every manner as well as every form, of law, was left behind when this proceeding was entered upon.

Stimson, after being restrained of his liberty, after having been unlawfully kept under bonds for the period of a month, was at last discharged.

Now, let us look at the conduct of the judge in other respects: Is it possible for any Senator to read the evidence in this case, as to what took place upon the mock trial of Stimson, without coming to the conclusion that vengeance upon Stimson was a mere incidental consideration with the respondent, after all? This proceeding was really in the nature of a bill of discovery on the part of Judge Page. He had civil suits pending against persons and corporations; he wanted to rake up evidence to be used in those suits. He wanted a chance to prosecute Harwood: he wanted a chance to prosecute several other men about Austin; and he thought the proceeding against Stimson would afford a good means of raking up the necessary facts. He thought it was a good opportunity to know who was counsel for the Pioneer Press Company, and how well the Pioneer Press Company was paying its counsel. Now, gentlemen, here is a very significant fact in connection with this Star Chamber proceeding. We have produced several witnesses who have stated what occurred there. Judge Page had employed and present there during those proceedings, a short-hand reporter. Why didn't he

put that short-hand reporter upon the witness stand, with his minutes, to tell this Senate just what did occur there, if the witnesses on the part of the prosecution had not stated it correctly? He had him here at the expense of the State, for a whole month together. Look at the records of the Senate, and you will find that that short-hand reporter came here very nearly at the beginning of the trial, if not quite at the beginning, and was here up to the close of the evidence, undoubtedly with his minutes,—at the expense of the State of Minnesota.

Why was not that short-hand reporter put upon the stand here to state the truth, to reveal the "true inwardness" of those occurrences there? Simply because Judge Page knew if those minutes were produced, it would be revealed, not only that the witnesses on the part of the prosecution had told the truth, but that the facts in reality far surpassed, in indecency, the recollections of the witnesses.

The only pertinent question there was, whether Mr. Stimson had written or circulated this paper. The only question that could have arisen was that. What difference did it make what Harwood had done or said about the respondent? What difference did it make whether Lafayette French had written a letter to the Pioneer-Press? What difference did it make whether Lafayette French was attorney of the Pioneer-Press Company, or what pay he got for his legal services, if any? What difference did it make what men about Austin had said concerning Judge Page? What Page desired to do was to rake up material to prosecute somebody other than Stimson, and to carry out to a successful issue prosecutions against other parties which he then had pending.

Gentlemen, annals of proceedings in courts either in America or England, will be searched in vain, for anything so utterly illegal and indecent from beginning to end, as the proceedings against Stimson for contempt. The annals of courts will be searched in vain for a proceeding wherein everything from beginning to end, has been so utterly in the teeth of the statutes and of the common law of the land. They will be looked to in vain for a case where a judge has deliberately set its hand to so many falsehoods and so many things known to be false when written.

Can there be any question about the intent with which those acts were performed? I shall not take up your time to argue that question. The proceedings were utterly illegal, from beginning to end. The prosecution was conceived and carried out in a spirit utterly illegal, and unconstitutional in every particular. It is a case of the grossest misbehavior in office of which a judge can be capable.

### ARTICLE X.

Now, gentlemen, so far as the tenth article is concerned, I have nothing to say in addition to what I have said, and said repeatedly, upon the arguments which have arisen upon interlocutory questions during the course of this trial. I have stated my views on that article fully.

The opinion of the managers is, that article ten is not only a valid article, but that perhaps it may be one of the most important of all. We charge him there as I have stated, with being habitually oppressive, and we think we have clearly made that charge out. We have made it out by the facts and matters which we have introduced in evidence under the other articles, and we have also made it out by proof under the bill of particulars setting forth specific and distinct acts not mentioned in the other articles. And because I have heretofore stated my views upon that subject, I do not desire to detain the Senate any further upon that point. As I stated at the beginning, I designed to demonstrate the guilt, as a matter of law, of this respondent, of corrupt conduct in office and of misdemeanors in office, as charged in these articles; I have attempted to confine myself, as closely as possible, to the legal propositions bearing upon the case. I have meant to discuss the questions of fact very little, leaving that matter principally to the honorable manager who is to make the final argument in the case. My argument has been wearisome to myself, and I know it must have been so to the Senate; and I am much obliged for the attention with which the Senators have seen fit to listen to it. So far as I am concerned, I commit the case into your hands.

Mr. DAVIS. Mr. President: I rise for the purpose of asking the Senate to adjourn until Tuesday morning. My desire to argue this case before a full Senate is very great. The importance and number of the questions of law and fact which I shall have to discuss are such, and they are so complicated that I require in justice to myself, and in justice to my client, that further time.

So far as the relations of the counsel for the defendant in this case are concerned, they have in some respects been a chapter of mishaps, especially as regards myself. Under an arrangement which we had made, and of which I suppose Senators are aware, Mr. Lovely was to precede me in summing up the case for the respondent. He was to assist me in briefing the law of the case, and was to so fully discuss many of the issues of fact as to make unnecessary any treatment by me. Day before yesterday, he was called home to attend to some official matter which had been sprung upon him in his absence. He fully intended to return. I telegraphed him yesterday to know when he would be back, and I received in answer the following telegram:

ALBERT LEA, MINN., June,———1878.

Mr. Lovely is absolutely unable to go to St. Paul or to attend to any business. He is sick of a low fever.

A. C. WEDGE, M. D."

This morning I received a telegram from Mr. Parker, Mr. Lovely's former partner, as follows:

"Mr. Lovely is very sick, and won't be off his bed for a week."

Mr. Losey of La Crosse has not been here for several days until yesterday. He came here at the commencement of this trial, fully intending to remain throughout. He is a member of the common council of that city, and was telegraphed to be present at a very important meeting of that body, where his advice and vote were required respecting the letting of a large contract for supplying the city with water, and he felt that he must go. When he went away, it was supposed that so far as advocacy is concerned, his relations to this case had ended.

From the time this court opened down to the present moment, I have not lost ten minutes of these proceedings. To attend to duties of such a character for a period of thirty days, involves a physical and mental strain which no man can fully appreciate who has not been personally subjected to it. I am compelled now to state that this entire case will necessarily be summed up by me. That Mr. Lovely cannot be here is manifest. Mr. Losey will say nothing more in this case unless from fatigue or omissions on my part in closing the argument for the defendant, he may say a few words, not occupying over an hour, and I doubt if he will do even that.

I have been preceded by Mr. Gilman and Mr. Clough. They have argued at length; I have taken elaborate notes. It is necessary for me to consult and consider the legal precedents which have been invoked, and to prepare myself in some further degree for the consideration of the questions of fact. I am wearied, exhausted, jaded; it is absolutely impossible for me to proceed at the present moment. I need rest, I need an opportunity to collect my thoughts and place myself in physical and mental condition to deal adequately with this great occasion. I most respectfully ask the indulgence of the Senate; I cannot go on to-day.

Senator GILFILLAN J. B. I would move that when the Senate adjourn it be until Tuesday morning at the usual hour.

Senator MACDONALD. Couldn't the counsel proceed Monday afternoon?

Mr. DAVIS. I would be perfectly willing to proceed at that time if there be a full Senate. I will say to the honorable Senator that it is but a few hours difference in time, and I think if I can have until Tuesday morning I would equalize that much time by condensation of thought and statement.

Senator MORTON. My experience has been that we cannot secure a full Senate on Monday afternoon.

Senator MACDONALD. One important consideration in this matter is as to whether we can get through next week. For one, it will be impossible for me to get here after next week.

Senator HALL. I would like to inquire if counsel for the respondent thinks he can get through in two days?

Mr. DAVIS. I think I can without any doubt. I will say, if I shall appear to violate what I think I may safely stipulate now, that I shall be perfectly willing to occupy Tuesday or Wednesday evening of next week in argument.

Senator MACDONALD. My only desire is to get through next week.

The motion of Senator Gilfillan prevailed and the Senate adjourned to Tuesday morning, at the usual hour.

Attest:

CHAS. W. JOHNSON,
Secretary of the Senate and Clerk of the Court of Impeachment.

10

## THIRTY-THIRD DAY.

ST. PAUL, TUESDAY, JUNE 25th, 1878.

The Senate was called to order by the President.

The roll being called, the following Senators answered to their names:

Messrs. Ahrens, Bailey, Bonniwell, Clement, Clough, Deuel, Doran, Drew, Edgerton, Edwards, Finseth, Gilfillan C. D., Gilfillan John B., Goodrich, Hall, Henry, Hersey, Houlton, Langdon, Lienau, Macdonald, McClure, McHench, McNelly, Mealey, Morrison, Nelson, Pillsbury, Remore, Shaleen, Smith and Waite.

The Senate, sitting for the trial of Sherman Page, judge of the district court for the tenth judicial district, upon articles of impeachment exhibited against him by the House of Representatives.

The Sergeant-at-arms having made proclamation,

The Managers appointed by the House of Representatives to conduct the trial, to-wit: Hon. S. L. Campbell, Hon. C. A. Gilman, Hon. W. H. Mead, Hon. J. P. West, Hon. Henry Hinds, and Hon. W. H. Feller, entered the Senate chamber and took the seats assigned them.

Sherman Page; accompanied by his counsel, appeared at the bar of the Senate, and they took the seats assigned them.

The PRESIDENT to Mr. Davis: Are you ready to proceed?

MR. DAVIS. Mr. President and gentlemen of the Senate:

I hope that no one will accuse me of expressing an affected diffidence when I state that I address myself to the consideration of the issues involved in this proceeding with the most oppressive feelings of self-distrust. Under ordinary circumstances, and before ordinary tribunals, advocates versed in the practice of our profession feel that they stand on ground made certain beneath their feet by precedents which have been confirmed by the acquiescence of generations. They appeal ordinarily to men trained in the administration of those precedents. They can look back to examples hoary with an immemorial antiquity, and they look forward in case of error to corrective and higher tribunals.

The body which I am to address is differently constituted. The proceeding which you are sworn to consider, is peculiar in its nature. Precedents are few, and, to a distressing extent, they are contradictory. We have been told that many of the axiomatic rules which govern the administration of legal right and responsibility, must not be influential here. The training of some members of this court admonishes me that as to them, it will be sufficient if I perform my duty in a strictly forensic manner. But these are a minority. I shall, I trust, commit no offense, if in my efforts to convince the understanding and to enlighten the consciences of those members of this court who are not of the legal profession if I labor overmuch in the treatment of many questions which in a court of law would not justify the least discussion.

The articles of impeachment exhibited by the House of Representatives of the State of Minnesota against the respondent, have been fully heard upon the proofs. All incidental questions have been set forever

at rest, and have passed into precedents which will survive every person who witnesses this solemn proceeding. The clamorous voices of comment are hushed, the myrmidons of hatred are now awed into expectant silence, the voice of affection has died away into silent and secret prayers to the God of justice, at this moment, when prosecutors and accused, friends and foes, stand in the presence of the law, whose embodiment you are, to hear her final words. This is the moment when counsel assume the exercise of sacred functions. The strategy of this contest has done its work, and he who yesterday was rightfully contending with every weapon which he could draw from the arsenal of offense or defense, is now consecrated to the duty of guiding blindfold justice along the sacred way. I pause before the task: would that it were in stronger hands than mine!

The power of the State, when concentrated against an individual, is of almost resistless efficacy. The condemnatory forces of society converge upon him in every open, in every occult form. This is true, even, in prosecutions for minor offenses, where the person is accused and tried by a social fragment of that great aggregation which we call the State. Even in such cases modern civilization has inherited some of the reproaches of darker times. The citizen who falls into the clutches of an indictment finds it hard to restore himself to the place from which it drags him. Consummate forensic ability arrays itself against him. The executive officers of the law are his antagonists. The limitless resources of the public treasury subsidize his prosecutors. The active hostility or the cold aversion of his fellow citizens breaks down his courage. The law which confronts him as his opponent, out of its omnipotence listens languidly before it strikes to a few cold, defensive maxims often of as little efficacy as a Tartar's windmill prayer. But aided by them he is not wholly defenceless. Revered principles which are without beginning of days in the law speak with peremptory voice in the assertion of certain constitutional rights which are his, and which no court can take away. They ordain that he shall be tried under salutary forms; that he shall be informed of the nature and cause of what he is accused; that he shall be presumed innocent until the proof that he is guilty seals up every avenue of presumption that he is innocent. Such principles as these walk with him through the fiery furnace of his trial like inseparable angels of deliverance.

But in proceedings like this we have been most feelingly admonished that many of these safeguards, inadequate as they often are, are not for this respondent. Counsel have invoked into this trial the clamor of the newspapers. Counsel have appealed to the result of elections in a county whose turbulence now finds its last disreputable expression on the floor of this Senate. We have been informed that this is a political issue. This court has put us to the ordeal of accusations which do not accuse, made by accusers who have no rightful power of accusation. The respondent has been compelled to defend himself against charges of which the House has absolved him, and against other charges which that body never saw. With some acts he has been accused by the House; with others he has been charged by the accusation of those who have no more power to do what they have done than they have to break the apocalyptic seals.

He has been compelled to defend at once himself and the constitution itself which has been assailed in his person, and to be the victim of a paradox which will be a puzzle to after times. The men of years to come will ask when it was that constitutional safeguards so vital and so

plain were overthrown; antiquarians will quarrel over the issue whether and when the House of Representatives as an impeaching body ceased to exist, and when its functions were merged in a select body of usurpers termed managers.

In ordinary cases a person accused of crime finds the legal elements of his defence in the statutes and the text-books in which it is defined,—and it is the duty of the public prosecutor to bring him clearly and entirely within the limits of those definitions. But we are told that the respondent is to be tried for crimes which are nowhere defined, which no statute has declared, upon which no text-writer has commented. He is accused of breaches of taste and decorum; he is on trial for acts which society may visit with social censure, yet over which no court from the highest to the lowest, excepting this, has ever yet coveted or had jurisdiction.

Standing here for a judge thus assailed, defending the constitution thus attacked, striving to replace precedents thus rudely pushed from their pedestals by the iconoclastic rage of the real prosecutors of this judge, I do not regard myself as speaking on this day for my client alone. Momentous and far-reaching as the consequences of this prosecution have been and may be to him, the effect of this proceeding to my mind, goes far beyond him and embraces persons other than he. I speak to-day for the judicial office; I speak to-day for the integrity and independence of the judicial department of this government. It will be my endeavor on this great occasion to ward off from that department the profaning hands which have been so rudely laid upon it.

I have been bred and brought up to regard that department as sacred. The philosophy of our institutions has placed it in theory above the influence of popular faction, clamor and distrust. Consider for a moment, Senators, the position in which a person placed in the office of a judge finds himself. No matter how active his temperament may be, no matter how decisive his executive ability, no matter how clear his convictions as to what ought or ought not to be in the community in which he lives, yet by public sentiment he is sequestered and set aside from interference with very many of the concerns of daily civic life. He becomes a legal monk as to secular affairs. If he is assaulted in person or character, it is generally deemed unseemly for him to resent; if he complains, he is liable to the imputation of mingling in concerns from which his office should absolve him. If he is assailed upon the very seat of judgment by acts which derogate from the majesty of the law and the dignity thereof which he represents, this proceeding demonstrates that any effort which he may make to protect that which society holds most sacred, is to be deemed a criminal act and a cause of impeachment.

The whole theory of the judicial office as formulated in our constitution is this: That although the executive may and must interfere *suo arbitrio* with the daily concerns of life, that although the legislature *suo arbitrio* may and must create the occasions upon which that interference is perpetrated, yet that the judge, standing between the legislature and the executive, with clear mind, with unclouded eye, with unbiased judgment and perfectly untrammeled by the fitful whims of popular desire, is to weigh, consider and restrain when either of these transcend their powers. The philosopher Hobbes held that mankind is fully personified in a single man. His Leviathan is the gigantic man pictured in the frontispiece of his book, whose outlines, lights, shadows, articu-

lations, members and garments are formed by a multitude of minute human forms and faces. He held that the colossal being which we name society, has, like individual man, its virtues which rise above the stars, has its vices which have their roots in the depths. That it has its passions, its will, its temptations, its revenges, its remorse. This conception, so persuasive of the dignity of man, is true. Correctly apprehended, it dilates the meanest human being so that he illustrates the history of empires, and is an index to all the records of time. Let it never be forgotten that society has its conscience also. It is not alone that secret monitor—that omniscient and unerring judge—that only perfect element of a humanity, otherwise erring and fallible all throughout—which the Almighty has installed in the temple of our being to judge us during our mortal lives infallibly as He will at last. It is more. Society has a visible conscience. It exists in our judicial system, speaking from the bench of judgment and with the voice of judges. Legislators err. They sin against constitutional precepts; they sin against the eternal laws of right upon which the deep foundations of government must rest if they rest on lasting bases, and such errors sap and mine the goodly structure of the state until the dome falls into the vault, unless this embodied conscience of the state corrects them with its irreversible judgments. Executives err. The unhallowed hand of executive power sometimes touches the ark of human liberty, and from it the God who hallows it departs unless it is re-consecrated by the atoning power of this conscience of the state.

It is of vital moment to the community that this embodied conscience be left to work according to its dictates, under the rules and regulations of the laws which it administers. But disturb it once; tell those who represent it that they are to be brought before legislatures and by legislatures into account for every act they may do, no matter whether with the purest integrity, and you debauch that embodied conscience, just as you debauch the conscience of a man, when, do what he may, the best he may, the world drags him into adverse and unjust judgment. How naturally we appeal to that embodied conscience of states! When all else seems going to wreck and chaos, to what do men turn? To the judiciary. There is that, men say, which administers the law of abstract right; there is that, which, if anything can, will save us. Only a short time ago, when this nation hung trembling upon the verge of revolution and dissolution; when the will of the people as expressed at the polls in a presidential election was doubtful in its results; when accusations of fraud were exchanged from all sides; when the premonitory roar of enraged parties was threatening anarchy; when Congress seemed powerless, and the term of a President was about to expire; when all was uncertainty; when business languished, and every patriotic heart almost ceased to beat in the presence of a great wrong threatening a great danger, the American people, by an instinctive effort, not made within the limits of any strict construction of our constitution, organized a tribunal to settle that great controversy, and in a moment the proud waves of revolution were stayed, and the light of peace poured like a sun-burst over the darkened land.

If these remarks are true of ordinary courts, how true they are of such a court as this? From your judgment there is no appeal. It is irreversible. It stands forever. Yourselves or your successors cannot take it back. The arm of executive pardon is not long enough to reach or temper it. If you invade the judicial department no prophetic soul can predict the results which may follow your misguided action.

You are no mere caucus, gentlemen. The constitution of this State prescribes your oath, and it was formulated with expressive solemnity by the chief justice when he administered it to you, "that you will do justice impartially according to the law and the evidence. *So help you God.*" And with that obligation resting upon your souls, am I not safe in appealing to you with confidence that you will try this case like judges, and not like partisans? The question is not whether you, in your private or even in your legislative capacity, may wish to get rid of a man who is disagreable to somebody; it is not whether you, in your electoral capacities, would or would not vote for Sherman Page, if he were a candidate for the office he holds. The question is, whether the prosecution has brought this case within the limits of your oaths, and whether you can say under your sense of obligation to God to whom you have appealed, upon the law and the evidence, that this man is guilty of corrupt conduct in office, or of crimes and misdemeanors.

There are certain great preliminary questions which are not only proper but necessary to be considered, before I address myself to the particular issues which you are to adjudicate. The first is what offences are impeachable? For what crimes have you the right to try this respondent? By what acts can he forfeit his office? By what misdoings is he to be driven into oblivion, into the wilderness of everlasting shame, to look back in his unending flight, upon the gates of society, forever closed to him,

"With dreadful faces thronged and fiery arms."

If our constitution itself, by apt words of indubitable limitation, defines clearly and restrictively the path which you are bound to tread to a result, then it is not necessary to look to the blood stained precedents of York and Lancaster, to ascertain by what processes legal in form but unjust in substance, power can bare its arm and inflict the immedicable wound of impeachment.

The constitution of this State provides that certain officers (therein named) may be impeached for corrupt conduct in office, and for high crimes and misdemeanors.

Mr. Manager CAMPBELL. *High* crimes? *High* crimes is not in.

Mr. DAVIS. Thank you.

"For corrupt conduct in office, and crimes and misdemeanors."

The words, *corrupt conduct in office*, are not in the federal constitution, and that difference in these instruments is exceedingly significant. It seems that our constitutional convention had a reason with that great instrument of federal organization before it, for defining and limiting the powers of the legislature with greater restrictions than was deemed necessary by those wise men who framed that immortal document. It was perfectly well known that the phrase *high crimes and misdemeanors*, as used in the federal constitution had opened the way to discussions of great difficulty, had given rise to legislative and forensic controversies, which no debate or judicial construction has yet settled; and so, in guarded language, with the experience of centuries before them, as well as the federal instrument, the men who constructed the constitution of this State, so expressed themselves, that it differs from the federal constitution in this most important particular, and perhaps differs from the constitutions of many other States.

Now, Senators, this difference was not made without a reason. It

was not made without some grave reason, which it is our duty to search and consider. My proposition is, that the constitution of this State in that respect should receive a limited construction; that they who framed it, and the people who adopted it, have dictated a limited construction by the use of the terms which they have chosen. There are many reasons which cause me to urge, with entire confidence, that this is the correct view. Under the other systems by which the judges were appointed for life, an unworthy man, a debauched man, a depraved man, holding his office by a tenure which endured as long as his life itself, was frequently a most serious problem, as well as a most foul disease in the body politic. But we have adopted another system. We have made our judiciary elective. Within the short term of seven years, if the people of his district choose, begins and ends any man's judicial life. The people have retained in their hands a corrective power.

There is, too, another provision of our constitution which by implication certainly, and I think expressly, authorizes the legislature of this State to practically deprive of office any unworthy or unfaithful judge by abolishing his judicial district; the only restriction imposed being that it shall not in the meantime abolish his salary.

Again, as I have remarked incidentally, the terms of office of these men are short. The communities in which they live sit in judgment upon them every seven years; and hence the necessity has abated for those extraordinary assertions of power which in former times have disgraced the annals of jurisprudence, even when directed against unworthy men. Because no precedents are so dangerous as bad precedents in a good cause. I say, therefore, that those dangerous precedents of former times have become valueless in the light of that strict construction which I think it is your duty to adopt.

From these considerations I proceed to state more definitely our proposition. It is that the words "corrupt conduct in office," and "crimes and misdemeanors" mean that the crimes and misdemeanors must be *indictable* crimes and misdemeanors, and that outside of those indictable crimes and misdemeanors, there is still a field of jurisdiction upon which this Senate may enter, and that field is where the person accused has been *corrupt in office*. Corrupt in the execution of his official duties is what that phrase means. It does not mean that he may have done unseemly things while not performing his official functions; it does not mean that he may have erred against the social laws; it does not mean those acts of doubtful morality which do not rise to the dignity, or rather which do not sink to the debasement of crime. It means, as to a judge, that he has acted with judicial corruption in performing his office. And no gloss, whether given by the most perversely expert expounder of statutes or by the most unlettered man, using only the lights which sense brings to bear upon the ordinary use of terms, can give to that phraseology any other construction.

I am aware, gentlemen, in taking this position, that I am striving against a vague and wandering notion that the jurisdiction of the Senate in this respect is transcendant, unregulated and extraordinary. I must confess, that in the earlier days of this trial, before my mind had been brought to bear upon this question under any particular sense of immediate responsibility, it was somewhat prejudiced by that same impression, but it is enough to say in advance, before I cite authorities upon the subject, that such an assumption was a contagious error imparted by a diseased public sentiment, which error, research and reflection have entirely dissipated.

a nullity in all cases except the two expressly mentioned in the constitution, treason and bribery, until Congress shall pass laws declaring what shall constitute the other high crimes and misdemeanors.'"

The whole article is exceedingly instructive, but the limitations of this occasion prohibit me from going into it any further than is absolutely necessary.

Much has been said here by way of assertion and little by way of correct statement as to what was done in President Johnson's case. What was not done is much more instructive for your guidance. There were eleven articles. The second, the third and the eleventh,—and indeed, all the rest except the tenth, by their express terms, charged the president with violations of certain acts of Congress, enacting that certain acts or omissions, shall be criminal. But the tenth was that famous article wherein the president was charged with committing acts and making speeches not officially. And I repeat, that the record of what was not done on that occasion by the Senate of the United States, is much more instructive upon the question under present consideration. Articles two, three and eleven, were voted upon. These articles charged the president with the commission of statutory crimes. But article ten which charged those breaches of decorum, those acts not done officially, was not brought to a vote before that body; that with the other articles, was swept into the limbo of oblivion by the adjournment *sine die* of the Senate.

If there was any act during that president's term which justly subjected him to criticism, it was that series of speeches which he made on his delirious journey through the country. The fact that he made them was too apparent for controversy; and yet after all the argument upon that subject, where Gen. Butler burlesqued the topic by saying that proceedings of this nature are a sort of "inquest of office," the Senate of the United States never dignified that article by voting upon it. If it had been honestly deemed valid, if Senators had actually thought that outside the domain of statutory, common and constitutional law, there is a region where a man may offend without knowing that he is a criminal, and that this president had erred into that region and had so offended, would they not have brought that article to a vote after it had been propounded so solemnly and argued so thoroughly?

Gentlemen of the Senate, there are grave historical reasons why the construction of the constitution for which I contend, ought to be sustained. The progress which the English people have made to their present state of freedom has been against the power which inhered in corrupt and tyrannical parliaments to pass bills of attainder and *ex post facto* laws. With the capacity to pass bills of attainder and *ex post facto* laws also existed from immemorial time, this power of impeachment; but in those troubled ages when King, House of Lords and Commons, often banded against the people, or against some champion of their rights it was as often found that the rules which protect a person accused of crime, not only in courts of impeachment, but in all other courts, were too strong and merciful to bring him to judicial conviction before the House of Lords, prejudiced as it was, and consequently in those dark days for human liberty, using the possibilities of that lamentable infirmity of human nature that men will do those acts as legislators which they will not do as judges, the course was often adopted when impeachment failed, or even when impeachment was pending and seemed likely to fail, when the consciences of men could not be prevailed

upon to say judicially that a man was guilty, to call upon them to enact in their legislative capacity by bill of attainder or by *ex post facto* statute that the direst results of a judicial conviction should follow.

The Earl of Strafford, a man undoubtedly guilty of stupendous political offenses, was impeached before the House of Lords. The trial was proceeding with due solemnity, but he was able to say in that immortal defense—which brings tears to the eyes of posterity wherever it is read, and which almost redeems the man—"I find this crime written in no book of common or statute law." It shook the consciences of the Lords. It drew from Sir John Elliot one of the most admirable expositions of constitutional law on this subject that ever has been or ever will be made. But the necessity for his overthrow was deemed transcendant and overpowering, so fearfully did his massive abilities energize the obdurate perversity of the King, and consequently by dark and unholy arts, while that impeachment was pending and Strafford was pleading for his life before the Lords, a bill of attainder was introduced in the House of Commons, hurried through the House of Lords and he went to the block; a man judicially innocent although probably morally not.

Coming down to a later reign, we find the case of Bishop Atterbury, at once the pillar of the church and state; a great man, as divine and statesman, in those troubled days of the changes of the English constitution, "when one man in his time played many parts." He was accused, not provably, of improper relations with the Pretender, then living in France. There was no proof against him. He was impeached, and there were no witnesses. While those proceedings were pending, and were certain to fail, the ever-recurring bill of attainder was introduced, and the great prelate went darkling into foreign lands, to die amid the consolations of those whose language he could not understand.

Sir John Fenwick in like manner was accused during the same reign. He was lured back to England by promises of safety. The confession which he was required to make was not satisfactory because it did not implicate the men whom destructive partizans d sired should be accused. He was therefore impeached. His wife, by a memorable effort of conjugal heroism, spirited away the witness and hid him in Paris. A bill of attainder was introduced and passed the parliament and he went to the block.

Let me read from Macauley's history the arguments which were adduced to those infuriated legislators why such a proceeding was not proper, and why they should not sit as judges of the court of impeachment even. I cite page 417, 4th volume of Macauley's History of England:

"Warm eulogies were pronounced on the ancient national mode of trial by twelve good men and true, and, indeed, the advantages of that mode of trial in political cases are obvious. The prisoner is allowed to challenge any number of jurors with cause, and a considerable number without cause. The twelve, from the moment at which they are invested with their short magistracy till the moment at which they lay it down, are kept separate from the rest of the community. Every precaution is taken to prevent any agent of power from soliciting or corrupting them. Every one of them must hear every word of the evidence and every argument used on either side. The case is then summed up by a judge that knows if he is guilty of partiality he may be called to account by the great inquest of the nation. In the trial of Fenwick at the bar of the House of Commons all these securities were wanting. Some hundreds of gentlemen, every one of whom had much more than half made up his mind before the case was opened, performed the office both of judge and jury. They were not restrained as a judge is restrained, by the sense of responsibility, for who was to punish a parliament? They were not selected as a jury is selected, in a manner which enables a culprit to exclude his personal and political enemies. The ar-

biters of the prisoner's fate came in and went out as they chose. They heard a fragment here and there of what was said against him, and a fragment here and there of what was said in his favor. During the progress of the bill they were exposed to every species of influence. One member might be threatened by the electors of his borough with the loss of his seat; another might obtain a frigate for his brother from Russell; the vote of a third might be secured by the caresses and Burgundy of Wharton. In the debates acts were practiced and passions excited which are unknown to well-constituted trifflunals, but from which no great popular assembly, divided into parties, ever was or ever will be free. The rhetoric of one orator called forth loud cries of 'Hear him!' Another was coughed and scraped down. A third spoke against time in order that his friends who were supping might come in to divide. If the life of the most worthless man could be sported with thus, was the life of the most virtuous man secure?"

Proceeding in the order of time along the history of such prosecutions made effectual by bills of attainder or of pains and penalties, we find the trial of Queen Caroline. The argument of her counsel, Lord Brougham, has been cited here as authority that an offense not defined by common or statute law is impeachable. It was an argument merely. The queen was accused of a life of habitual adultery with an Italian menial named Bergami. By the statute and common law that was undoubted treason, if committed within the realm. But whatever she did had been done on the continent of Europe, outside of the jurisdiction of England—was not committed within the realm, and the opinion of the judges having been taken upon that point (as it was in the case of Lord Melville), they held that adultery committed without the realm, and with an alien, was not treason, and was not subject to impeachment because it was not a statutory or common law crime. Lord Brougham had argued that the remedy was impeachment. He so argued as a reason why the proposed proceeding should not be adopted. He was overruled. And so the bill of pains and penalties was again started from its lair to devour that innocent woman. And there, for the first time in the history of that nation, that proceeding broke down, both in principle and in fact. It beat against that feeble woman powerlessly, and it fell lifeless at her feet, never to be resurrected again.

Why do I cite these oracular precedents? For what reason do I point to those ancient and eloquent warnings? It is because side by side with those constitutional provisions which confer upon bodies constituted like this, the power of impeachment there exist in federal and state constitutions, provisions declaring that no State shall pass any bill of attainder or *ex post facto* law. Our ancestors suffered under them. By them great families had been "entombed in the urns and sepulchres of mortality.' They saw that the law of impeachment when it was found insufficient to minister to the vengeance or cupidity of those in power, was supplemented by laws of attainder, bills of pains and penalties and bills *ex post facto* (for they are in substance the same thing), and they decided that the citizen should never again be endangered by them. They resolved that there should be but one means to work political death. They resolved that when justice refused to strike, parliamentary majorities should not assassinate.

Gentlemen, if a person can be convicted by a Legislature of that as criminal which no law has defined as a crime, is it not the same as the passage of a bill of attainder, or an *ex post facto* law? Wherein lies any distinction? The House of Representatives prefers a propositon in the shape of articles, to annihilate the civic life of a citizen; the Senate gives its consent. You have created and punished that as crimi-

nal which was not criminal before. To the plea which the respondent makes that this is a court, that you are sworn to decide according to law and the evidence, you reply "that may be so, but we find historic precedents where that plea has been circumvented, and we propose to follow them." But when you do that act in the name of the people of this State, which you are asked to do in substance here, do it manfully. Call in the House of Representatives; pass and send your bill of attainder and *ex postfacto* law to the Governor; do it openly and not from the ambush of impeachment. Let the people know that this attack is open and not covert. Tell them that all these historic precepts and securities by which our safety is confirmed, from which these immemorial precedents stand up and surround the respondent like a flaming wall of security, are trightful delusions, and that the evil spirit which once robbed the citizen of his citizenship and of his estate, which sent him to the block, which corrupted his blood through endless generations of attaint, has merely deserted its old abodes and still constitutionally lives in the forms of impeachment. Tell them that the language of the constitution in which it is written that a judge may be impeached for corrupt conduct in office and for crimes and misdemeanors, means everything which importunate faction clamoring for revenge can find to blame in strictly private conduct. I implore you to recur to your oaths. You are sworn to administer justice in this case according to the law and the evidence.

Mr. LOSEY [interrupting]. *Impartially.*

Mr. DAVIS. Impartially, as my colleague reminds me. What law? Is it the law of your own will? Have you merely sworn in this case to do as you please? Have you taken an oath to obey the laws and to support the constitution, and yet at the same time do you claim to be emancipated from them to an extent as wide as infinity itself? Go back Senators, to the law under which you hold your seats. Place yourselves as if you were in a jury-box listening to the charge of a judge, and speculate upon what those words mean. How instantly society would topple from turret to foundation stone, if the law advocated today were the law in ordinary criminal proceedings! Upon the floor of this Senate at this moment sit grave magistrates and men who have been magistrates. They never heard, they never will hear except in the law of such mockeries as this, such precedents as are sought to be here ordained, that a man can be accused of acts which are not defined as criminal either in the statute, common or constitutional law.

To further sustain our proposition, I desire to cite Story's Commentaries on the constitution, section 796, and particularly section 797.

"The next inquiry is, what are impeachable offenses? They are "treason, bribery, or other high crimes and misdemeanors." For the definition of treason, resort may be had to the constitution, itself, but for the definition of bribery, resort is naturally and necessarily had to the common law, for that, as the common basis of our jurisprudence can alone furnish the proper exposition of the nature and limits of this offense. The only practical question is what are to be deemed high crimes and misdemeanors; Now, neither the constitution, nor any statute of the United States has in any manner defined any crimes except treason and bribery, to be high crimes and misdemeanors, and, as such impeachable."

In this connection I wish to call the particular attention of the legal gentlemen of the Senate to the federal constitution, out of which some confusion has arisen in the application of the doctrines of Justice Story

respecting the powers of congress to impeach. Under the constitution as expounded by the supreme court, there is no common law of crimes in the United States. In other words, no act except treason is criminal against the United States, except those prohibited by statute, treason being defined in the constitution itself. Hence the question early arose, how an officer can be impeached for crimes and misdemeanors in the absence of any statute making the offensive act criminal. That problem was solved by determining that although for ordinary purposes of indictment there may not be any common law offenses against the United States, yet for the purposes of impeachment, the framers of the constitution must be held to have adopted the great body of the common and statutory laws, and while an act to be impeachable must be a crime against common or statute law, to the extent of making public officers amenable to this process of impeachment the common law of crimes for that restricted purpose does exist, and that result was arrived at after great difficulties and severe struggles. With that explanation I will proceed to read further from Justice Story.

"In what manner, then, are they to be ascertained? Is the silence of the statute-book to be deemed conclusive in favor of the party, until Congress has made a legislative declaration and enumeration of the offenses, which shall be deemed *high* crimes and misdemeanors? If so, then, as has been truly remarked, the power of impeachment, except as to the two expressed cases, is a complete nullity."

And that was the opinion of Mr. Rawle, one of the earliest expounders of the constitution, a man nearly cotemporaneous with its adoption.

"It will not be sufficient to say, that in the cases where any offense is punished by any statute of the United States, it may and it ought to be deemed an impeachable offense. It is not every offense that by the constitution is so impeachable. *It* must not only be an offense, but a high crime and misdemeanor; besides, there are many most flagrant offenses, which by the statutes of the United States, are punishable only when committed in special places and within peculiar jurisdiction, as, *for* instance on the high seas, or in forts, navy-yards and arsenals ceded to the United States. Suppose the offense is committed in some other than these privileged places, or under circumstances not reached by any statute of the United States, would *it be* impeachable?"

Now, would that consummate jurist, Justice Story, who, when he *wrote* this book was a member of the Supreme bench of the United States, have troubled himself to speak of crimes which are not impeachable, if it is true, as has been argued here, that not only the whole region of defined crimes, but the whole region of morals, is a domain over which this court has jurisdiction? Even within the body of the statutory and common law itself, this expounder, through whom the constitution speaks, has declared that there are offenses which the power of impeachment does not reach. He proceeds:

"Again, there are many offenses, purely political, which have been held to be within the reach of parliamentary impeachments, not one of which is in the slightest manner alluded to in our statute-book. And, indeed, political offenses are of so various and complex a character, so utterly incapable of being defined, or classified, that the task of positive legislation would be impracticable, if it were not almost absurd to attempt it."

Still going back to the common law of England, there being no political offenses against the common law of the United States except made so by statute.

Now how does he propose to solve that difficulty? He says:

"Resort, then, must be had either to parliamentary practice and the common law, in order to ascertain what are high crimes and misdemeanors, or the whole subject

must be left to the arbitrary direction of the Senate for the time being. The latter is so incompatible with the genius of our institutions, that no lawyer or statesman would be inclined to countenance so absolute a despotism of opinion and practice, which might make that a crime at one time, or in one person, which would be deemed innocent at another time or in another person. The only safe guide in such cases must be the common law, which is the guardian at once of private rights and public liberties. And however much it may fall in with the political theories of certain statesmen and jurists, to-day the existence of a common law belonging to and applicable to the nation in ordinary cases, no one has as yet been bold enough to assert, that the power of impeachment is limited to offenses positively defined in the statute-book of the union, as impeachable high crimes and misdemeanors."

Senators, I am exceedingly anxious to be thoroughly understood here. When this question first arose in the early days of the Republic, it was settled that there were no offenses against the United States except those defined by statute law; whereupon, Mr. Rawle, one of the earliest commentators upon the constitution, held that in the absence of such statutes there was no power of impeachment whatever under the constitution for any offense except treason and bribery, which are defined in the constitution itself, and that raised a very great practical difficulty, because we who are familiar with the criminal jurisprudence of the United States know perfectly well that burglary, larceny—in fact almost the entire catalogue of crimes are wholly left to the administration of the state governments. Then arose another school of constitutional expounders, who held that while it might be true that for the purposes of indictment and punishment in the ordinary courts, there were no offenses against the United States except such as were statutory, yet that the constitution for the purposes of impeachment must be held for those purposes to have adopted the common criminal law of England.

Now however much Justice Story may be cited (and he always is,) and commented on, and read carelessly, misapplied and made obscure, such, I venture to say, is the conclusion to which any candid man will come who reads his language in the light of history and controversy.

Upon this subject I read from the first of Kent's Commentaries, marginal page 343, note. He cites the language of Justice Story, which I have just read.

"The learned commentator, [Justice Story] in the volume last cited, ably, and, in my opinion, satisfactorily contends that the common law, in the absence of positive statute law, regulates, interprets and controls the powers and duties of the court of impeachments under the constitution of the United States; and though the common law cannot be the foundation of a jurisdiction not given by the constitution and laws, that jurisdiction, when given, attaches and is to be exercised according to the rules of the common law. Were it otherwise there would be nothing to exempt us from an absolute despotism of opinion and practice."

The opinions of these jurists, gentlemen of the Senate, are to my mind, of somewhat higher authority than the argument of Manager Butler in the prosecution of President Johnson.

The same was true at principle at common law in England. I cite from the 4th of Blackstone, page 259:

"The high court of Parliament, which is the supreme court in the kingdom, not only for the making but also for the execution of laws by the trial of great and enormous offenders, whether lords or commoners, in the method of parlimentary impeachment. As for acts of parliament to attaint particular persons of treason or felony, or to inflict pains and penalties, beyond or contrary to the common law, to serve a special purpose, I speak not of them; being to all intents and purposes new laws, made *pro re nata*, and by no means an execution of such as are already in being. But the impeachment before the lords by the commons of Great Britain, in

parliament, *is a prosecution of the already known and established law*, and has been frequently put in practice; being a presentment to the most high and supreme court of criminal jurisdiction by the most solemn grand inquest of the whole kingdom."

The whole confusion of ideas as to the powers of a court of impeachment has arisen from an identification of what Parliament could do in the exercise of its right to pass acts of attainder and what it could do under its power to impeach. Justice Blackstone in his commentary, says: "he speaks not of acts of attainder because they are in the nature of new laws;" but when he speaks of the court of impeachment he says it is a prosecution "of the already known and existing law." It is lamentably true that inaccurate scholars, partizan advocates, perverted senators, sitting with predjudicated opinions in judgment upon men, have drawn from the bloody records of attainder the argument that the proceedings in the high court of impeachment are not of the "already known and existing law" in face of the fact that all the sages of jurisprudence concur in saying that they are, and in face of the fact that the framers of the Federal and State constitutions all concur in ordaining that the Legislature shall not pass acts of attainder, or *ex post facto* laws.

There are, to my mind, other arguments, derived from the constitution itself, which prove that our exposition of the law of impeachment is correct. By the constitution of this State the functions of government are divided into three departments—the legislative, the executive and the judicial. They are made independent of each other. By constitutional inhibition the members of either of these departments are forbidden to exercise the functions of either of the others. The whole design of the founders of this commonwealth was that the members of those departments shall be perfectly free in the exercise of their functions, unaffected by any direct action of the other or of the other two combined. The judiciary has no right to enter this hall in its ermine and speak to you; you have no right to enter the adjoining room and exercise the least function of the Supreme Court. Judiciary and legisture, together, have no right to go into the governor's chamber and dictate to him what he shall do or what he shall not do. Perfect independence, freedom of action, unaffected by the action of any other department, is guaranteed to every officer.

The only occasion upon which the legislature is authorized to lay its hands upon the judiciary or on the executive, is when a member of either of those departments has committed a crime or misdemeanor, or has been corrupt in office. Was not that language used thus guardedly because the legislature had just adopted a provision that these departments shall be independent, and that no member of one shall infringe upon the functions of the other? But if this doctrine which you are asked solemnly to write in a book, and give down to recorded time is true, then I say that the executive and the judiciary are at the mercy of the legislative department of this government. For if it is true that this is a great political inquisition, that its object is, and only is, to get rid of somebody who is not liked, or of some one who has been guilty of a breach of decorum, who confessedly has committed no crime, then I say no reins can be put to the unbridled audacity of any House of Representatives which may accuse, or any Senate which may convict. With the observance of the construction which I have advocated, the way is clear, and easy. The governor sits securely in his seat of office; the judges sit securely upon the bench of judgment; they are impregnable

against popular faction or legislative prejudice, as long as they are not corrupt in office, as long as they have not committed crimes or misdemeanors. Was it ever contemplated gentlemen of the Senate, to place the stability of those two great departments of the state at the will of irresponsible legislative majorities? Surely not, surely not. That guarded language by which the powers of the departments were distributed and made exclusive in their possessors, was used for a different purpose. Provisions were introduced for the express purpose of making this government move on serenely and smoothly, unaffected by any such extraneous and erratic perturbations as those which you are asked to solemnly put into ruinous operation by your decision.

This is a court. Your duties are judicial. You have ceased your legislative functions. You are a Senate it is true, but you are a Senate sitting as a court. This court is presided over by a president who rules upon questions of procedure. You are governed by the rules of evidence; you are sworn to decide this case impartially according to law and evidence and not according to what your own wild and unregulated notions may be of what is fit or just. Each man of you rises in his place and solemnly gives in his verdict, and as the result may be, the judgment of this court is entered in the record, and punishment or acquittal follows. Beware gentlemen, how you trespass beyond the jurisdictional boundaries of the tribunal which you are! Beware how you infringe upon the province of any other deparment of government! Recollect that what you do here does not end here. It passes into precedent. You may make this persecution of an upright judge, the last that this Senate will ever witness; or you may throw open wide the doors of the House of Representatives, and of the Senate of this State, to every eruption of every little local mob upon whom a magistrate or officer judicial or executive may have placed the hand of the law somewhat too heavily too be comfortable.

I desire to be further heard for a moment upon the correct construction of this phrase, "corrupt conduct in office." Of course I do not intend to argue here, I could not do it with any assurance, that the words "corrupt conduct in office" as used in the constitution do not mean every kind of corruption. That is not the meaning. A man may be corrupt in his office in many senses outside pecuniary corruption. It means corrupt intention in the execution of official duties. It means not only doing wrong, but it means doing wrong wickedly intending to do wrong. If a magistrate does wrong thinking that he is doing right, he is protected in what he does by every law which the wit of man has ever enacted. If he does right why of course the question of intent is wholly immaterial

I cite from Russell on Crimes. 1st vol, mar. page 135.

"Where an officer neglects a duty incumbent on him, either by common law or by statute, he is indictable for his offence; and this, whether he be an officer of the common law, or appointed by act of Parliament; and a person holding a public office under the King's letters patent, or derivatively from such authority, has been considered as amenable to the law for every part of his conduct, and obnoxious to punishment for not faithfully discharging it. And it is laid down generally, that any public officer is amenable for misbehavior in his office. There is also the further punishment of the forfeiture of the office for the misdemeanor of doing anything directly contrary to its design."

"The oppression and tyranical partiality of judges, justices and other magistrates

in the *administration* and under color of their office, may be punished by impeachment in Parliament."

Judges may be punished by impeachment, but it must be for oppression and tyranical partially *in the administration* and *under color of their office.*

I read from 4 Blackstone, page 141.

"There is yet another offence against public justice, which is a crime of deep malignity; and so much the deeper, as there are many opportunities of putting it in practice, and the power and wealth of the offenders may often deter the injured from a legal prosecution. This is the *oppression* and tyranical partiality of judges, justices, and other *magistrates*, in the administration and under color of their office"

The PRESIDENT. The Senate will take a recess for five minutes.

After recess.

Mr, DAVIS [resuming]. Some reference has been made to a provision of the statute of Minnesota, which makes all breaches of official conduct indictable offenses. The existence of that statute has no possible connection with this proceeding. It is simply declaratory of the common law, by which all official misconduct by certain officials was always indictable, but at the same time it always was a principle of the common law that a judge of a court of record is not indictable for any act done with jurisdiction in the performance of his official duty. So that the statute of the State of Minnesota being declaratory merely of the common law, that law existing if that statute never had been passed, simply affects the class of officers which the common law affected, and has no operation whatever upon the judges of the courts of record. The reason of that principle is perfectly obvious. It would be most disastrous to all order if a judge holding a court could be indicted by the grand jury he has charged and tried by a petit jury empanneled before him. And hence it never was meant to apply to cases of that kind, and what is denounced as a crime and misdemeanor and made indictable in that provision of our statutes, was never intended to affect judicial officers.

I said a few moments ago that it is not sufficient that the respondent or any magistrate upon trial has erred in judgment. To a practiced eye the respondent may not seem to have gone wrong, while to an eye unpracticed (and such eyes seem to see clearer in such cases as this, probably by the clairvoyancy of a transient judicial trance) he may seem clearly to have gone wrong. There is not a member of our profession who does not often have expressions of wonder made to him by censorious and self-sufficient laymen why many well-settled legal principles exist, of which they cannot see the philosophy or reason. Even if the respondent has been wrong there must have been the intent to do wrong, he must have done wrong purposely, he must have done it purposely and with a corrupt heart; he must be shown before you to be a criminal with the same certainty of proof as is required in the case of the commonest felon. It must appear that he is not only a weak and erring man, not afflicted, perhaps, with more than his share of the common infirmities of humanity—not only that he has been impulsive beyond what you would have restrained yourselves to—but that he has deliberately, knowing his duty, seeing his way clear, turned aside from that way and took the path of malice, injustice, partiality, bias, corruption. If he has simply erred he is not impeachable. Consider that striking illustration of this principle in the history of our own times and within

the memory of every adult upon this floor. During the rebellion President Lincoln organized military commissions in the North and South, and memorably one in Indiana, which tried Milligan and Bowles. Those commissions sat upon the estates, liberty and lives of men. They had the warrant of the President and the great seal of the United States given under the supposed necessities of a flagrant and destructive rebellion; they were vindicated by every principle of self-preservation which can give validity to doubtful acts—if such principles can ever give validity to such acts. The lives of men depended upon them, the property of men was given away by them, and yet when their proceedings came before the Supreme Court of the United States, they were all declared unconstitutional, and flagrantly so. Was it proposed to impeach the President on that account? Was a voice ever raised in this nation proposing it? Never that I remember. But if there had been it would have been answered, "It is true he mistook the law, the court has so declared it, but he did it in the interests of justice, of honesty, of tranquility, of national preservation. That great and patriotic heart was right in what that great and patriotic head had, in doing, erred." And yet if he had been on trial before the Senate of the State of Minnesota, you would have heard learned managers gravely arguing, as Mr. Clough argued the other day, spelling out syllabically the meaning of crooked and often contradictory statutes, that because he did not do as some other man might have done, therefore wickedness must be imputed to him like original sin. The converse of that proposition is true.

If I shall succeed in demonstrating to you when I come to the particular matters which demand my consideration, that from article one down to article ten, and all of its progeny of specifications, that this respondent was right, judicially and legally right, in what he did; that he acted according to law, and within its restrictions; then, gentlemen, his intention or personal feelings have nothing whatever to do with this controversy. If I do right; if my actions are right, neither society nor the law of society, calls my intentions into controversy. If the respondent was right in regard to what he charged against Ingmundson; if he was right in what he said to the grand jury; if he was right in proceeding against Stimpson; he may have had against all those men the malignity of Jeffries, and it will make no difference. Otherwise, Senators, a judge adjudicating the cases of men whom he knows to be his enemies must sometimes decide wrong in order to escape impeachment. Such is the ridiculous dilemma to which that view of the case reduces such a proposition. This is not a court of error. I might agree with every single one of the propositions which my brother Clough elaborated so learnedly the other day, and still the merits of this case would not be touched. You may, as judges, in instance after instance, say that if this were before you on writ of error, you would reverse the action of the respondent, and still you have not touched the merits of this controversy which are the heart of the man. It is not enough to show that the law has been misconstrued; it must be shown that the law has been wickedly perverted and made to say that which it never was intended to say. The New York Senate sat as a Court of Errors, and at the same time it had the power of impeachment. It never was asserted that the right of impeachment went hand in hand with the power to reverse, no matter how clearly able counsel may have demonstrated that some of the judges in New York erred. The judgment which followed was that of reversal. It never was thought, it never was maintained, except in

the confusion and dust with which it has been attempted to envelope this controversy, that to every error of judgment in legal proceedings, blame is to be imputed. Why, if that were so, gentlemen, the history of judges would be little else than a history of their impeachments. Go into the next room and see those thousands and thousands of volumes arrayed there upon the shelves, and you view nothing but the marshalled ranks of error. The cases reported so voluminously in those books are cases where fallible beings have erred, or have been said to err. Through court after court those errors have been traced, and yet how rarely it has been claimed—and it is to the glory of human nature that we are able to say it—that because a judge has misconstrued anything so difficult and perplexing as the science of jurisprudence is, therefore corrupt motives must be imputable to him. And yet the argument the other day proceeded almost entirely upon the theory that if my learned and ingenious friend—whose powers of investigation are so very great—could convince you that this man had made a mistake, corrupt motives are therefore imputable.

There are certain presumptions, gentlemen of the Senate, which operate as limitations upon your power of decision, to which it will be my duty to call your attention at this present time. In the first place, there is the general presumption, applicable to all public officers, that whatever they have done has been done correctly. In regard to a judicial officer, jurisdiction once being shown, the presumption is that he has proceeded correctly, and decided correctly.

Upon that I cite section 713 of Wharton upon Criminal Law:

"Where acts are of an official nature, or require the concurrence of official persons, a presumption arises in favor of their due execution. In these cases the ordinary rule is *omnia presumuntur rite et solenniter esse acta donec probetur in contrarium*. Everything is presumed to be rightfully and duly performed until the contrary is shown. The following may be mentioned as general presumptions of law, illustrating this maxim: That a man acting in a public capacity, is duly authorized so to do; that the records of a court of justice have been correctly made, according to the rule, *res judicata pro veritate accipitur;* that judges and jurors do nothing carelessly and maliciously; that the decisions of courts of competent jurisdiction are well founded, and their judgments regular and legitimate; and that facts, without proof of which the verdict could not have been found, were proved at the trial."

Therefore it is not necessary for this respondent in regard to any of these charges by which it is alleged that he has made a mistake, and because he has made a mistake, that therefore it may be inferred that he is criminal, to enter into an elaborate defence in advance to show that he was right. These records which have been produced here of proceeding after proceeding, jurisdiction once being conceded or proved, stand enveloped in the presumption that the decision which was made upon them was right. And I might say here for fear I shall forget it in a more proper connection, that the presumption is much strengthened in this case by the fact that none of these records wherein he is alleged to have erred, were ever removed from his court to a court of final revision. Stimson has never taken up any of the records, there was no *certiorari* made on that order of the judge that Stimson should pay the fees into court. The Riley case was never appealed. There was no appeal, and hence the presumption becomes stronger.

There is another presumption which adds great force to that of regularity, and goes hand in hand with it. It is a presumption which arises out of

the extraordinary force which the State has when it converges its power upon a person accused of crime. Our fathers well knew that the man who is accused of crime fights with society banded against him. It is a matter of common observation that that is so. Friends fall off, resources fail, the public print may be full of exaggerated statements against him, there exists that universal feeling of distrust which leads us all to avoid a man who is accused. Hence sprang up that merciful maxim that a person accused of any offence, be it high or low, is conclusively presumed to be innocent until he is proved guilty by such a weight of evidence as shuts the avenue of every presumption in his favor. He must be proved guilty beyond a reasonable doubt, beyond the last reasonable doubt which can arise in the mind of any rational person considering the case. Doubt, not only as to the act, doubt, not only as to the intent, but doubt as to the motive, doubt as to each element of the act. And if, after hearing all this testimony,—even supposing and conceding for the purposes of this branch of the discussion only, that there is anything here which calls for the invocation of that maxim—if there should be in the minds of any of you after this discussion has closed, a doubt made apparent by a scintilla of reason whether this respondent did not think he was acting within the duties of his office, whether he was not promoting the welfare and good order of society, whether he was not subserving the cause of common honesty, whether he was not preserving the dignity of his office and the law of the State as it stood there embodied in and administered by him,—if in your minds there exists a reasonable doubt as to any of these propositions, then I say he must go quit. Take your own cases, sitting here as judges—sitting as Senators in your judicial capacity. How often, undoubtedly, during this trial, must have occurred to you grave questions weighing solemnly and heavily upon your consciences. Some of you may have had some prejudices against this respondent and are striving with them yet; some of you may have some prejudices in favor of this respondent and are striving with them yet. But under the circumstances, gentlemen, can you not appeal to your own consciences and say: "If I do the best I can with the lights which I have, and with the infirmities with which Almighty God has laden me, He will not hold me responsible, nor can society?" He who is made a judge is not by that act translated into perfection. He goes to the bench with the same infirmities that he had in the walks of daily life. He struggles against them, as you here must struggle against them, and as you must in other capacities if you do your duty. Your constituents knew what kind of men you were when they sent you here. His constituents knew what kind of a man he was when they elected him to be their judge. Nearly six years of his term have rolled around. That he has administered justice impartially between man and man, is not denied. His bitterest enemies come here and say that when he holds the scales of justice, their prejudiced eye cannot see that it turns a hair. What private suitor is here, man or woman, to claim that he ever has removed the land-marks of property or decided wrongfully in a case which involved private rights? All these cases wherewith he is accused, are where he has acted for the State of Minnesota in his public capacity against trangressors. His hand is as clean as an angel's of bribery. It is not pretended that he is not the justest man that sits upon any bench in this State. I say, therefore, that his counsel have a right to envelope him in the presumptions: first, that he has decided

legally, and, secondly, to ask you to give to him to an extent never given before, to any person accused, the benefit of that other presumption,—that until he is clearly proven guilty, until he is clearly shown to be a criminal in the very worst and lowest sense,—he is not amenable to the extreme penalty which the constitution of this State pronounces upon persons in his situation declared to be guilty.

The principle of reasonable doubt is excellently laid down in section 29 of 3d volume of Greanleaf on Evidence:

"A distinction is to be noted between civil and criminal cases, in respect to the degree or *quantity of evidence* necessary to justify the jury in finding their verdict for the government. In civil cases, their duty is to weigh the evidence carefully, and to find for the party in whose favor the evidence *preponderates*, although it be not free from reasonable doubt But, in *criminal* trials the party accused is entitled to the benefit of the legal presumption in favor of innocence, which in doubtful cases is always sufficient to turn the scale in his favor. It is, therefore, a rule of criminal law, that *the guilt of the accused must be fully proved.* Neither a mere preponderance of evidence, nor any weight of preponderant evidence is sufficient for the purpose, unless it generate full belief of the fact, to the exclusion of all reasonable doubt."

Mr. President, I shall feel exceedingly obliged if the Senate will take a recess at this time.

Senator PILLSBURY. I move that the Senate go into secret session.

Which motion prevailed.

AFTERNOON SESSION.

The PRESIDENT. Governor Davis will resume his argument for the respondent.

Mr. DAVIS. Mr. President and gentlemen of the Senate: At the recess taken by the Senate this morning, I had practically completed the preliminary remarks which I felt called upon to make.

I do not think I overestimate the importance of these large and general considerations which appeal not only to your own sense of duty as judges in this business, but which also establish to my mind, most conclusively, that this is a judicial proceeding before a judicial body, in the very highest and best sense of those terms. I am firmly persuaded that if we should leave this case right there, relying upon a complete understanding by you of the principles which I endeavored to establish, and upon their judicial application by you as judges, we could do it with perfect safety. For in my judgment, if the accountability of this respondent is tried by those tests, this prosecution loses its last remaining prop.

If you have no power to pass in effect a bill of attaint, if you have no power to pass in effect an *ex post facto* law, if you sit here in fact as judges without fear, favor or hope of reward instead of politicians truckling for approval or future promotion, if you do not break down the presumption that this man as a judicial officer has done correctly, if you do not strip from him entirely the armor of that maxim which ordains that he is conclusively presumed to be innocent until he is conclusively proven to be guilty, then I repeat, that the last remaining prop upon which this case rests falls away.

But in a proceeding of this character, no duty is performed unless it is fully performed, and I should fall short of what is due from me, of what is due to my client, if I did not proceed to the consideration of the ma-

terial and specific matters which have been alleged against him, and I therefore proceed to the discussion of the various articles and specifications of impeachment which have been propounded. And I shall apply to them as I proceed in the analysis of the testimony, the general principles which I have endeavored to establish, and which I hope have obtained a firm lodgment in your understandings.

The first article of impeachment charges, in substance (stripped of its unnecessary wording) that the respondent maliciously and wrongfully refused to permit Mr. Mollison's case to be tried at the term at which the indictment was found and continued the case; and that at the terms which have intervened since September, 1873, when he was indicted, down to September, 1877, the defendant in that case appeared each term in court and demanded his trial, but that at each term the respondent of his own motion continued the case, and that the respondent has never procured another judge. Such, gentlemen, I undertake to say, is a fair condensation of the charges propounded in that article.

The charge is three-fold: 1st, That the respondent *refused* to permit Mr. Mollison to be tried at the term at which the indictment was found—and this charge proceeds on the assumption that the respondent himself had a right to try him. 2d, That Mr. Mollison appeared at each term and demanded a trial, but each term the respondent of his own motion continued the case—which also implies that the respondent had the right to try him at any term. And 3d, That the respondent has never procured another judge for that purpose—which abandons the assumption in the first two subdivisions which I have made of this article, and proceeds upon the ground that although the respondent has not the right to try him, yet, that he did not adopt the measures which the law placed in his power to secure a magistrate for that purpose.

Under the first subdivision which I have made of this article, it must appear that the respondent wrongfully and maliciously refused to permit the cause to be tried at that term. The Senate will bear in mind that this was a term of court which was held by the respondent himself. If the respondent had no right to preside as a judge in this case for the reason of his interest therein, then of course that subdivision of this article falls entirely to the ground. In regard to the question of the right of Mr. Mollison to a trial—the constitution provides, it is true, that a person accused of crime is entitled to a speedy trial. But that provision must receive a reasonable construction; it does not mean immediate, instantaneous trial. All public business is not to be stopped—the administration of justice in all of its various complications is not to be arrested for the purpose of giving a person accused of crime a trial upon the instant. A fair and reasonable construction of that constitutional provision, is simply this: That reasonably speaking, within such reasonable time as may be consistent with the other interests of justice, a person accused of crime is entitled to a trial. Furthermore, this right to a speedy trial is a right wholly in favor of the defendant. He can waive it. He does waive it when he applies for a continuance. When a court announces that it has no right to proceed upon the trial and that announcement meets no remonstrance, and the case goes over without any objection or exception, he has waived it just as strongly as if it had been done upon his own motion for a continuance.

Now let us see whether the allegations of this article that Mr. Molli-

son has been anxious for a disposition of this case is at all borne out by any course of procedure that he has adopted under the statutes of this State which give him certain rights in certain contingencies.

I cite 2nd. Bissel, page 978:

"If a defendant indicted for a public offense whose trial has not been postponed upon his application, is not brought to trial at the next term of court in which the indictment is triable after it is found, the court shall order the indictment to be dismissed unless good cause to the contrary is shown."

This is a plain provision of the Statutes of this State made for the benefit of persons in such predicament as Mr. Mollison is alleged to have been, that if for any cause the power of the State is not brought to bear upon him to give him his trial at the next term after the indictment is found it is the defendant's privilege to have that indictment dismissed unless good cause to the contrary is shown by the prosecution. It is a striking, uncontradicted fact, in these proceedings, that it nowhere appears in testimony—and, conclusively, it is not the fact—that in this long period of time, from 1873 until 1877, Mr. Mollison, although he had Mr. Cameron for his counsel—a gentleman presumed to be fully alive to the rights of his client—ever made any motion before Judge Page, Judge Mitchell or Judge Dickinson, who were there, that he might be accorded this statutory privilege. If that is true, gentlemen, what becomes of his assumption that he was denied a hearing in that court; that he was deprived of the rights which the constitution and the statutes, taken together, guarantee to him.

Section nine provides:

"If the defendant is not indicted or tried as provided in the last two sections, and sufficient reason therefor is shown, the court may order the action to be continued from term to term."

That places the situation in this way: Two terms have rolled around, from the term at which he was indicted. It was the privilege of Mr. Mollison to move for a dismissal of this indictment, and when that motion is made the court cannot continue the case, but must dismiss it unless sufficient reason is shown for the continuance. Thus the State in its mercy, casts the burden of showing sufficient reason for the perpetuation of the case in court, upon the prosecution. Now, gentlemen, "it is the language of truth and sober earnestness" to say that Mr. Mollison never availed himself of either of those provisions during all this period of time when he claims to have been harrassed and abused and prevented from getting justice.

Again, (I cite from page 1,046) he could have applied for a change of venue. This statute, section 160, provides:

"All criminal cases shall be tried in the county where the offense was committed, except where otherwise provided by law, unless it appears to the satisfaction of the court, by affidavit, that a fair and impartial trial cannot be had in such county, in which case the court before whom the cause is pending, if the offense charged in the indictment is punishable with death or imprisonment in the State Prison, may direct the person accused to be tried in some other county, in the same or any other judicial district in the State, where a fair and impartial trial can be had; but the party accused is entitled to a change of venue once and no more."

It will be found that this was an offense for which in the discretion of the court, the person charged may be punished by imprisonment in the State Prison. The statutes of this State prescribe no specific pun-

shment for the crime of libel, but they do provide for cases where the statutes have omitted to prescribe a punishment.

Section 280, page 1,062:

"In any case of legal conviction where no punishment is provided by statute, the court shall award such sentence as is according to the degree and aggravation of the offense, not cruel or unusual, nor repugnant to the constitutional rights of the party."

I undertake to say that this provision of that statute gives the court the power in an atrocious case of libel in his discretion, subject, of course, to the revisory power of other tribunals if the punishment is cruel, harsh or unusual, to imprison a person upon conviction, in the penitentiary.

Referring to the first subdivision which I have quoted, it is made a ground of offense against this respondent that he did not give Mr. Mollison his trial at that term. To that there are two answers—one of fact and the other of law. The first, as I shall demonstrate further on, is that Mollison did not demand it, and the second is, that under the statutes of this State, this judge had no right to try this case, and he would have been much more impeachable if he had undertaken to try and sit in judgment upon a case wherein a person was prosecuted for a libel committed upon himself, than he would be, doing as he has done, to refuse to sit upon it and endeavor to procure the services of another judge.

I cite 2*d Bissell, p:* 723, *section* 20:

"No judge of any of the courts of record of this State shall sit in any cause in which he is interested, either directly or indirectly, or in which he could be excluded from sitting as a juror."

There are two grounds of disqualification in that statute, direct or indirect interest on the part of the judge, and then such general grounds as would exclude him from sitting as a juror in case he were qualified to be drawn.

I cite from pages 1055–6 of the same volume of Bissell to ascertain what are the disqualifications of jurors:

"Particular causes of challenge are of two kinds:

"*First.* For such bias as, when the existence of the facts is ascertained, in judgment of law, disqualifies the juror, and which is known in this chapter as implied bias.

"*Second.* For the existence of a state of mind on the part of the juror, in reference to the case or to either party, which satisfies the triers, in the exercise of a sound discretion, that he cannot try the issue impartially, and without prejudice to the substantial rights of the party challenging, and which is known in this statute as actual bias."

"Causes of challenge for implied bias:

"*First.* Consanguinity or affinity, within the ninth degree, to the person alleged to be injured by the offense charged, on whose complaint the prosecution was instituted, or to the defendant.

"*Second.* Standing in relation of guardian and ward, attorney and client, master and servant, or landlord and tenant, or being a member of the family of the defendant, or of the person alleged to be injured by the offense, or on whose complaint the prosecution was instituted, or in his employment on wages.

"*Third.* Being a party adverse to a defendant in a civil action, or having complained against, or been accused by him in a criminal prosecution."

Upon those grounds of statute, if the respondent had been a private person and had been drawn as a juryman, he would have been dis-

qualified upon the general ground of the statute, by reason of direct or indirect interest in the controversy, and if not upon these grounds, then for the existence of the state of mind known as actual bias. If he had been a private person and drawn on a jury and the challenge had been interposed, it needs no citation of authority to convince any man not of our profession that the principles of justice would be violated by allowing a person who has been libelled to sit in judgment upon a case in which his feelings and reputation were so deeply involved.

But if these grounds are not valid—and I am aware that there are authorities the other way—if, upon those grounds, the reasons of exclusion which I have stated, should fail, then the legislature seems to have provided for just this case, by excluding the person alleged to be injured by an offense; and if that were not sufficient or were not this case, then by being a party adverse to the defendant in a civil action. Now, it is amply in proof here that the respondent had sued Mr. Mollison in libel for damages, and that the civil action was based upon the same state of facts upon which this indictment was predicated. So that, the first allegation in the article that he did not give him a trial at the same term, falls to the ground, for two reasons: First, Mr. Mollison was not entitled to have all the functions of public justice arrested that his case and his alone might be tried by another judge brought in instanter for that sole purpose; and second, for the further and substantial reason that the respondent could not legally try that case. He would have been impeachable if he had attempted to do it by reason of disqualification resulting from his interest in the case, and from his relations to Mr. Mollison in the civil action.

Being thus disqualified to try this case, what was the respondent's duty? It was not, as I have remarked, to turn his court into a special tribunal for another judge to try Mr. Mollison immediately; but it was to use due and reasonable diligence, if Mr. Mollison requested it (which he never did), to procure the attendance of another judge. If a defendant does not request—if a man indicted for a crime sits by silently and lets the indictment be pigeon-holed, his attorney mum as the grave from term to term, and does not call the attention of the presiding judge to the case, and it is a case of peculiar delicacy, such as a libel upon the presiding magistrate, which it is not seemly for him to push by hastening another judge to try it, it is very questionable in my mind whether a judge who never calls in another judge when not moved thereto by the defendant, is open to any denunciation on that account. Mr. Mollison never made any such request for another judge. His attorney never made any such request. If Mollison did anything, it was to come into court from term to term and bawl out from any part of the court room, "I am here! I am ready!" But, supposing to a severe eye it may seem to have been the respondent's duty in the true sense and meaning of the constitutional provision upon that subject, to have procured another judge, when should he have done it? I say, within a reasonable time; not invidiously quickly, not invidiously dilatorily, but within such reasonable time as the state of the public business and the necessities for the trial of the indictment would warrant. I will go back to say here, in reference to a proposition in regard to disqualification, which I thought I had done with, that I desire to cite the attention of the Senate to a case in the 22*d Minnesota*, the case of Jordan against Henry, *page* 245. There are some peculiar circumstances about

this case which attract the attention. Mr. William Henry was a justice of the peace. He is the same gentleman who is now a Senator in this body. His attorney in that case was the Hon. Henry Hinds, one of the managers of this impeachment. Some property had been stolen from Mr. Henry which he was very anxious to recover, and he being a justice of the peace for the county of Scott (acting honestly no doubt, at least the case was of such doubt that eminent counsel on both sides went to the supreme court upon it in the utmost good faith)—accordingly issued a search-warrant to a constable in the county of Scott, directing him to search the house of a certain citizen for the recovery of that property. The question arose whether the justice had the right, the offense being alleged to have been committed against him, to proceed judicially. The case was very ably argued and fully presented in the supreme court, and the court held:

"A search warrant issued by a justice of the peace, commanding search to be made for certain property of such justice, alleged to have been stolen, is void, and the fact that the property to be searched for is the property of the justice appearing upon the face of the warrant, the warrant furnishes no protection to the constable who executes the same."

The court says:

"In view of this provision of the statute, defendant, Henry, was interested in the proceedings in which the warrant was issued in like manner as he would have been in an action of claim and delivery instituted by him to recover the books charged to have been stolen. He was, therefore, wholly disqualified to issue the warrant, because, independent of general considerations of propriety and decency, the statute declares that no judge of any of the courts of record of this State shall sit in any case in which he is interested directly or indirectly, or which he would be excluded from sitting as a juror; and by general statutes, chapter 65, section 4, this provision is made applicable to justices of the peace, as being a law of a general nature, and not inconsistent with the justice's act. The warrant was, therefore, void."

Now, unless this Senate is above all law, if the views of the learned managers in this case are not correct, if you are to be controlled by any precedents, it results that if the respondent had undertaken to try Mr. Mollison, and it had resulted in conviction, that conviction would certainly have been reversed by the supreme court; it would have been void. Mr. Mollison would have been entitled to his emancipation upon *habeas corpus*—possibly the respondent would have been liable to a suit for damages for proceeding against him. He would certainly have made himself liable to impeachment if he had done it. But for not doing it, for abstaining from that which the supreme court of this State have decided that a magistrate of this State must abstain from, he is brought to the bar of this court and his impeachment is sought upon the ground that he did not give Mr. Mollison a trial at that term, when it was perfectly manifest that he was the only judge presiding who could have held that term, all considerations of public interest being considered.

To proceed: What was the respondent's duty, if I am correct in this assumption, that he could not try it? It was, as I have said, to procure another judge as soon as the grounds of public convenience would admit; and as soon as another judge, considering the importance of his duties, could be prevailed upon to come.

I refer to second Bissell, page 723, section 21:

"Whenever a judge of the district court is interested as counsel or otherwise, in the event of any cause of matter pending before said court, in any county of his dis-

trict, another district judge, in an adjoining district, shall, when thereto requested by said judge, attend and try said cause, and the judge of any district shall discharge the duties of the judge of any other district when convenience or public interest requires it; and whenever a district judge is a party or otherwise interested in any cause, another district judge in an adjoining district, shall, within his district, transact any *ex parte* business, hear and determine motions and grant orders, in such causes when brought before him, which acts shall have the same force as if done in the district in which such acts are pending."

I pause right here to refute an assertion of the managers which has been made over and over again, with great apparent confidence, that the respondent had it in his power to detail into his district a judge from any other district in this State. This statute provides in express terms, that a judge of a court, situated as the respondent was in this instance, can call upon "the judges of *adjoining districts*," and that they, and they only, are subject to his call under such circumstances.

Now, what did the respondent do? This court will take judicial notice of the boundaries of the judicial districts of this State, and upon doing so it will see that the district of Judge Page is surrounded by Judge Mitchell's, Judge Lord's, and what is now Judge Dickinson's district, formerly Judge Wait's. There were three judges, then, upon whom he might call. The testimony shows that immediately upon Judge Page going upon the bench, for the purpose of clearing the calendar of cases in which he was interested, he did call upon Judge Wait, and that Judge Wait went to Austin and transacted some business; that, however, was before the Mollison indictment. The Mollison indictment was found in September, 1873. The uncontradicted testimony of the respondent, shows that he wrote to Judge Lord, requesting his attendance; but to that application no answer was received. It may not be improper for me to state that the feebleness of Judge Lord's constitution and health, is perhaps a thorough explanation why he did not feel as if he could go into the respondent's district to try that case. Within a short time after this indictment was found, the respondent entered a very earnest correspondence with Judge Mitchell, which correspondence finally resulted, after the engagements of Judge Mitchell had been fully considered and he had emancipated himself from them enough to tell the respondent that he could hold a term of court there, that by the time the next term of court came around after this indictment was found, namely, the March term, 1874, it had been fully arranged between the respondent and Judge Mitchell, that Judge Mitchell would come there in July and try all cases in which the respondent was interested or which he was disqualified from trying. We, furthermore, find from the uncontradicted testimony of the respondent and of Mr. Elder, that the respondent in open court, explained the difficulties he had had in obtaining a judge to take his place for those purposes, and notified the bar that he had finally succeeded in engaging Judge Mitchell to promise that he would be there in July. And I think that Mr. Elder testifies that he, under the direction of the court, notified the attorneys personally who were interested in cases which the respondent could not try, that such would be the case. And Judge Mitchell was there. He came and opened the court within seven months after the indictment of Mollison. What took place on that occasion I shall comment on, further along.

Now, permit me to go back and consider briefly, the testimony under this Mollison article. Judge Page went upon the bench in January,

1873. It is a matter of common history that that was a time when the public mind was peculiarily feverish and susceptible upon the subject, whether the railroad corporations of this State and throughout the country had not acquired such a dominant position over public affairs and public men, as rendered their existence exceedingly dangerous to the body politic unless restraints were put upon them. At that time no more dangerous charge could have been made against a public man,—no more heinous charge could have been made against any judge, than, at that moment, when not only this State, but the entire community of the Union was lying in a sense of apprehended danger from the encroachment of bodies politic upon the rights of the people, to accuse him of corrupt alliances with, or corrupt decisions made in favor of a railroad corporation. Accordingly, shortly after Judge Page took his seat upon the bench, we find that this man Mollison, apparently without any provocation, appears in print, in a public journal, printed in the city of Austin, wherein were set out, the nauseous details of that libel accusing this respondent of "plowing with the railroad heifers," with corruptly deciding in favor of the railroad, a certain question in regard to taxes by which, as the libel said, $50,000 would be lost to the county of Mower. That was the libel; that was the charge made against this untried magistrate—a man scarcely firm in his seat—of making a decision, which, in the slow progress of the administration of justice, the supreme court of this State, some four years afterwards, affirmed. That there was any excuse or vindication for this libel, no man has risen in his place with hardihood enough to affirm. That it was an atrocious lie was demonstrated by the abject retraction, which was afterwards published. That it was malicious speaks trumpet-tongued from every line of it; that it was intended to break down this respondent and destroy his usefulness in the inception of his judicial career, will, I think, be made abundantly manifest before I close my argument upon another branch of this particular case. Mr. Mollison was arrested, and it is in proof by the officer who arrested him, that when he took him into his custody informing him of that for which he was detained, instead of expressing any surprise or any contrition for his crime, he threatened to do just as he did afterwards in that court room to "*make his tongue ring*," against the respondent. Mollison is brought into court. He is arraigned at the bar. Any man with the least impulse towards decency would have acted differently. The district attorney read the indictment; Mollison was listening and when the officer arrived at that part of the indictment which contained the words in which this malignant libel was set out, this man began to nod. The body of the county of Mower was there, the grand jury was presumably present; the best citizens in that community were there seeing their neighbor enter upon the yet unattempted task of his judicial position, and this impudent and infamous libeller, standing in the presence of justice, instead of behaving himself with a decorum which few men are so abject as to altogether lose the sense of, reiterated his libel by nodding his assent to it when it was read to him for the purpose of obtainiug his plea.

Now, I undertake to say that when Mollison, upon the stand, endeavored to explain his conduct at the bar, by saying it was a habit, he told a falsehood. The witnesses for the prosecution all concur that the movement of his head there was offensively made. It was

intended to show "what kind of a man he was," and was the prelude to that ringing of his tongue against the respondent which he threatened to perpetrate when the officers arrested him. The court very properly stopped the reading of the libel and asked him what he was nodding his head for. And if Mr. Mollison's own testimony is true, he gave the judge three impudent answers. "My head is my own," "I will nod it if I have a mind to," and when the respondent threatened to commit him he said, "I am in custody already." That Judge Page did not stop and commit him then and there, that he did not instantly try him for a contempt committed in the presence of the court, and order him into custody, speaks volumes for his self-restraint. Of what use is any court of justice if a person arraigned for libel can come into court and endorse it, assert it and re-assert it by nodding his head over and over and over and over again in the most offensive manner, looking around in the meanwhile for the gratulations of the men who may sympathize with him? The respondent asked Mr. Mollison about bail; he was determined to give no bail. He wanted his trial; he had no lawyer there; he had not prepared for it. He perfectly knew that the delicacy of the respondent's position was such that he could not try him. He intended to put him in a false attitude; he intended to be martyrized. "I will give no bail; I have no counsel; I have not prepared for trial, but I want my trial." The court told him very kindly, "I cannot try you. I will have to procure another judge for that purpose," and Mollison retired to the body of the court room to take his seat.

Up to this time the conduct of the respondent demonstrates his self-control. I do not believe there is another magistrate in this State who would have tolerated that conduct for an instant. He would have stopped it instantly, would have asserted the dignity of his court, would have preserved its usefulness. And I verily believe if the respondent had laid a strong hand upon these men in the earlier days of his judicial term, these disgraceful overridings of the judicial power of the State by that ungodly mob at Austin, would not have brought them before the bar of this Senate to have their miserable little local quarrels settled by the high process of impeachment.

Mr. French says that when the district attorney in reading the indictment reached that part which contained the libel, Mr. Mollison commenced to nod. Mr. French does not say that the respondent was angry; he said that he was decidedly stern and that he did not know whether he was angry or not. Now, how does that testimony on behalf of the prosecution, compare with Mr. Mollison's manner and his vociferous attempt at imitation of the judge's language and manner on that occasion? After Mollison had been arraigned and on the same day, he retained Mr. Cameron, who came in and the bail was fixed.

It is said that the bail was exorbitant. I do not think that the sum of $1,500 as bail in a case like this when the defendant is able to give it, is at all exorbitant when the flagrancy of the crime is considered which Mollison confessedly committed, and when his actions and demeanor in court are taken into consideration. There is no allegation in the articles that this bail was exorbitant; it is simply brought in under that comprehensive pretext called malice, to show that this respondent had some feeling against Mr. Mollison. So far as the testimony is concerned it does not appear that there had ever been any trouble between

the two men in the world. But in any event whether the respondent should have fixed $1,500 bail or $1,200 bail, or less bail, no one ever complained that it was exorbitant; it was given readily; the defendant had no difficulty in obtaining it; no motion was ever made to reduce it; he did not take his commitment under it and appeal to the supreme court or to any other tribunal by writ of *habeas corpus* to have it reduced to theguage which in the year of grace, 1875—five years afterwards —for the first time, the managers appear to have reached.

Permit me here to revert to a conflict of testimony. The respondent in his answer avers this indictment was procured without his knowledge, direction or advice; that he first knew of it when the grand jury brought it in. Upon that there is contradiction. Mr. Kimball who was a member of that grand jury, stating that a great portion of the respondent's charge was upon the matter of libel; that he had read from some books upon that subject; that he recollects it because it was the first grand jury upon which he ever served and possibly the last. I do not intend to impute anything designedly wrong to Mr. Kimball in making that statement; but I think I can show you from the testimony that he is thoroughly and completely mistaken; that he has two events confused; that Judge Page never said a word to that grand jury upon the subject of libel, but that the indictment arose from other causes.

In the first place, Judge Page most squarely contradicts it; and now right here, for fear I shall not mention it in its proper connection, although I doubtless shall a dozen times before I get through—I wish to call the attention of the Senate to the fact that although the respondent has arrayed himself in square contradiction to a good deal of testimony from various men, yet wherever the events concerning which he and those men have testified have taken place in the presence of others, the respondent has been amply and abundantly corroborated. It is only when McIntyre and Baird locate him alone with them in a barn yard for the purpose of matching their testimony against his, that the least criticism can be made upon the respondent's testimony for the want of full, ample and proper corroboration. Judge Page testifies that he gave no charge at all upon the law of libel. Mr. Wheeler was the district attorney at that time. He testifies that Judge Page never said a word to the grand jury about libel in his charge in September, 1873. This witness would be likely to recollect correctly on that subject. He drew the indictment, and the details and the circumstances from which Mr. Kimball doubtless gets his ideas are the fact that the question of of libel did come up in the grand jury room (that is what Mr. Wheeler says), and the district attorney did produce the books upon that subject and read from them to the grand jury. There is where Mr. Kimball gets his impression that the judge charged the jury upon the subject of libel. Again, Mr. Spencer was foreman of that grand jury, and he says there was nothing in the charge upon the law of libel. Now, so far as the testimony is concerned, weighing it fairly, the testimony of the respondent, the testimony of the district attorney that Mr. Kimball is mistaken, the testimony of the foreman of the grand jury that Mr. Kimball is mistaken—these three concurring, it is perfectly manifest that Judge Page was not pressing Mr. Mollison to an indictment; knew nothing about it; that the matter arose from the sense of outraged sentiment which the grand jury felt, and that the matter came into Judge Page's court by regular channels.

Mr. Mollison is contradicted so often through these proceedings by perfectly reputable witnesses, that he is entirely unworthy of your belief. He undoubtedly told a falsehood when he said he merely nodded there because it was his habit to nod. The rascal knew when he was giving his testimony upon the stand in the other room, that he had done a wrong act, and he laid it to the force of habit. He didn't think of the remark which he made "that he would make the court house ring." He did not appreciate how all honest men would regard a libeller as atrocious as he has proved himself to be. He furthermore says that standing before the judge, and after his plea had been entered, he asked liberty to speak, and that the judge said "not a word, sir." He never made any such request in that way; he never met with any such answer. His request was not made under those circumstances. He did not desire to address the court; he desired to address the by-standers before whose eyes he had insulted the court. He felt encouraged because he thought perhaps the judge did not dare to commit him for nodding his head insultingly.

I read from the testimony of Sterling Chandler, (June 11th, page 90 of the journal):

"Was special court deputy. Mollison nodded his head at the words '*plowing with the railroad heifers.*' The judge asked him if he had counsel. Page didn't say he would put him in the hands of the sheriff. After Mollison took his seat he got up and wanted to make an explanation or a speech, and the judge would not allow it."

In other words, and the testimony shows that another case was on trial, (and was interrupted for a moment for the purpose of arraigning Mollison,) that after Mr. Mollison had been arraigned, had turned his back upon the court, had retired beyond the bar, got among the audience and sat down, and the other case was progressing, he rose from his seat and wanted to make a speech. This man who "was going to make his tongue ring," this man who had nodded at the most bitter and caustic language of that libel for which he had been arraigned, wanted "to make a speech," and the judge would not permit him. Which one of you, gentlemen, would have permitted it under the circumstances?

Mr. F. W. Allen (June 11th, page 97,) testifies:

"Arrested Mollison. Before Mollison was taken to court he made repeated threats that he would *make his tongue ring* against the judge. The judge asked him if he wanted counsel, and he said he didn't want any. He nodded his head. He sat down in the audience; he rose up and asked him if he could speak. The judge told him that at that time he couldn't hear him. He insisted on talking and the judge told him to sit down."

From the slight view which we have been able to get in this trial of this precious Mr. Mollison, it seems to me that that probably is about what took place on that occasion. That the judge had treated him forbearingly, Mr. Mollison felt encouraged, he went back to his seat, and then rose and said, "May I make a speech?" or "May I explain?" and the judge told him, (as any other magistrate would have been likely to have done,) mildly, that he could not hear him at that time, another case was progressing; that Mollison insisted on talking, and that thereupon the judge told him in peremptory tones *to sit down*, and he doubtless *sat* down where he belonged. [Laughter.]

The testimony of Mr. Wheeler:

"Mr. Mollison told the court, from the audience, that he wanted to make a speech, and the court told him that he couldn't, that it was not the proper time, that his case

would be heard in court He persisted in his attempt to speak and the court told the sheriff to make him sit down."

It was not necessary for us to accumulate witnesses upon that point. There is no doubt about what Judge Page did on that occasion. That his conduct was forbearing seems to me clear beyond all controversy. I firmly believe that if that libel had been against any private person, and a flagrant libeller like Mollison brought into court had nodded and reiterated the libellous words, any other judge of a court of record in this State would have committed him immediately for his conduct, instead of exhibiting the forbearance which the respondent unquestionably showed in this instance.

Now, where is the proof of malice, of bad feeling, of harshness, of injustice? There is none whatever.

Again, it was said that Mr. Mollison could not get his trial. The first article avers, and the House of Representatives have come here and as solemnly affirmed that the respondent *never* procured another judge to try this case. Is it possible that the learned managers who drew these articles did not *know* or did not inform themselves of the undoubted historic facts which accompany this transaction? The charge is not that the respondent failed within a reasonable time to procure another judge, but it is that he never procured another judge. And they go on and give a table of terms, from 1873 down to 1877, which looks like the tables of the divisions of time in the old arithmetics we used to study, when this man has been "ringing" his tongue and howling for a trial, and could not be tried. And yet we find Judge Mitchell there in July 1874, in pursuance of a correspondence which Judge Page had with him early in that year, which correspondence was announced from the bench to the bar, and again brought to the attention of the bar by the clerk under the respondent's direction. And so positive was the prosecution in the early days of this proceeding, before many of the mists which encompassed this transaction had cleared away from even their eyes, that Mr. Clough wished to correct a supposed mistake on my part, for he said: "I wish to correct a misapprehension into which the learned gentleman has evidently fallen, because I know he would not willingly make a mis-statement In the first place it is a mistake that Judge Mitchell attended the district court of Mower county for the purpose of trying Mr. Mollison. There was no jury in attendance there at the term that Judge Mitchell attended." My learned friend was badly instructed; he was entirely and utterly mistaken himself. I do not censure that. The facts of this case are very complicated, but I do complain of these men who fomented this matter in the House of Representatives, who would not let the fact be known, and who have misguided the House of Representatives before this body to solemnly declare there never was a judge there from 1873 until 1877, for the purpose of trying this case.

Judge Mitchell, (June 7th, page 63 of the journal) produces a letter from the respondent, of the 21st of February, 1874. He testifies that he went there and held a term in July, 1874; he testifies that a jury was in attendance. He uses this language: "This is my very distinct recollection." In regard to this Mollison case he says: "It was called and continued by consent." Furthermore, the calendar of that term is produced, and the entry of the State of Minnesota against Mollison has an note in Judge Mitchell's hand writing, "continued by consent." Mr.

Mollison testifies himself that he was present at Judge Mitchell's court and that he staid there until his case was disposed of. Mr. Wheeler, the prosecuting attorney, testifies that the case of Mr. Mollison, was continued after conference between himself and Mr. Cameron, Mollison's attorney, and yet this prosecution has the hardihood to say in its articles, "that the respondent never procured another judge to try said case," when the contrary appears in proof. Then their counsel under misapprehension, says that although Judge Mitchell was there, no jury was there; and yet Judge Mitchell says "the jury was called; it was discharged;" "such is my very distinct recollection;" and the clerk swears that his books show that he paid twenty-two jurymen for attendance at that term. If it were necessary to add confirmation to the testimony of such a man as Judge Mitchell—a man who has the entire respect of every person in the State who knows him or knows of him, there is the testimony of Mr. Elder, "that Judge Page, at the March term, 1874, stated that there would be an adjourned term for the trial of that (the Mollison) and other cases; stated that he had difficulty in getting a judge; that a jury attended at Judge Mitchell's term; the Mollison case was continued by consent,—after the attorneys had consulted. Cameron appeared for Mollison. My books show twenty-two jurors paid."

I will read Judge Mitchell's testimony, as it happens to be under my eye:

"Q. Did you proceed to open and hold a term there?
A. I did.
Q. Were you ready to try all cases that were to be tried?
A. I was.
Q. Jury cases called?
A. Yes sir.
Q. Was there a jury in attendance?
A. That is my very distinct recollection.
Q. Do you recollect calling the calendar?
A. It is my recollection that I called both the civil and criminal calendar.
Q. Jury and court cases?
A. Jury and court: the attention of the witness is called to page 98 of the court calendar, the entry of the State of Minnesota against D. S. B Mollison.
Q. Is there anything in that entry or on that page, by which you recognize it: on either page by which you recognize it?
A. There is
Q. What is it, Judge Mitchell?
A. It is an entry made by myself.
Q. Read it, please.
A. "Continued by consent."
Q. That is opposite the entry of the case?
A. State against
Q. State against Mollison.
A. Yes sir.
Q. That is your handwriting, is it?
A. It is.
Q. Have you any recollection independent of that entry, or your mind refreshed by it, as to the circumstances connected with that continuance by consent?
A. My recollection is that the county attorney was in court at that time, who I think was Mr. Wheeler; and my recollection is that Mr. Cameron was in court, and who appeared on the calendar as the attorney, or one of the attorneys, for the defendant.
Q. And that they consented?
A. That is my recollection."

Now what a charge that is to ground articles of impeachment upon! A charge false in law, false in fact, demonstrated to be so by the testi-

mony of their own witnesses, and dying in the very act of its birth, and yet insisted upon down to the last scene of this lugubrious farce!

The respondent is not charged in the articles with compounding the crime of libel, and yet the Senate in its wisdom, admitted testimony of what took place between the respondent and Gordon E. Cole, and Mr. French in regard to the settlement of the civil cases. Nothing exceeds the audacity of this Mower county clique, and they are perfectly adequate to the occasion of charging Sherman Page and Gordon E. Cole with compounding a felony or misdemeanor if it is necessary to subserve their purposes.

There is some misapprehension about the rights of private prosecutors in offenses of this character. I admit that the ground of control of a private prosecutor over an offense directed solely against himself (such as libels are), is somewhat vague and indeterminate. But this is certain, that in such cases as that, at common law, to use the good old language of the writers in that department of the law, "in the hope that these matters might be settled, the prosecutor and the defendant were allowed to go out of court and speak together;" and judges always listened very considerately, and willingly allowed prosecuting officers to enter a *nolle prosequi*, when, after the parley of the parties out of court, the offended person was satisfied. It was a wise policy and in the interests of public harmony.

Mr. Davidson, in whose paper this libel was perpetrated, let it rankle and fester in the minds of that community from 1873 unretracted and unqualified for five years. That want of retraction was equivalent to a continual reassertion that Judge Page's relation with the railroad companies were those of judicial adultery, and that he had made a dishonest decision by which the county of Mower had been robbed of $50,000. What was the man to do? Was he to cower under it? Were the people of his district through which that railroad runs, (for I believe it was the Southern Minnesota,) to be permitted from year to year to absorb the poison of this libel into their minds until they lost confidence in him? The proprieties of his position forbade him from doing what men in the private walks of life can do, to wreak personal revenge upon a person perpetrating a libel in that manner. I think the bringing of private libel suits matters of very questionable policy. But he felt bound to bring one. The people of the county rose up, indicted Mollison for libel, the respondent procured a judge to try this malefactor, he was not ready for trial, his attorney wanted the case continued, and so, from term to term, that case remained upon the record, that libel remained unretracted in Mr. Davdison's paper, until the Supreme Court of this State—thank God an institution above even the attempt of crimination by this Mower county ring—held that that decision was righteous and right. The astute counsel of these defendants then told them they must retract or criminal and civil consequences would follow, which would doubtless be unpleasant to them, whereupon Davdison and "all the little creatures whom God, for some inscrutable purpose" has permitted to infest the county of Mower, got down on their bellies and wriggled at the feet of counsel. [Laughter.]

What does Gen. Cole do? No one will dispute the high standing of that gentleman at the bar of this State, or his most perfect understanding of all the ethics of our profession. He is not the man to be engaged in compounding misdemeanors. It seems from the testimony of Mr. French, on page 38 of the journal of May 28th, that when he

went into court Mr. Cole was moving before Judge Dickinson to dismiss the Davidson and Bassford state cases, urging as a reason that they had agreed to publish a retraction which he thought would be satisfactory to the respondent. The judge passed the cases for the present. Judge Dickinson did not say to Gen. Cole, "Gen. Cole what business have you to stand before me arguing my right to direct the county attorney to consent to entering a *nolle?*" General Cole is too fine a lawyer; Judge Dickinson too accomplished a judge to see any impropriety whatever in what was in fact done. He told Gen. Cole when that statement was made. "We will pass these cases for the present."

Now, it seems that Judge Page, Mr. Davidson, Mr. Bassford, Mr. French and General Cole got together and Mr. Davidson is very anxious to make it appear that he was negotiating there for Mr. Mollison, but it is not worth our time to argue although Mr. Mollison was probably in court at the time, certainly his counsel, Mr. Cameron was there that he was no party to that interview. Judge Page swears that he never heard Mr. Mollison's name mentioned, and General Cole says he is not certain whether the judge could have heard it or not when Mr. Davidson mentioned it to him, and Mr. French says that Mr. Davidson said to him, "This will include the Mollison case, will it not?" and that he supposed this was in the hearing of the judge. But whatever was done, it resulted in the parties coming to an agreement and Judge Dickinson recognizing it as to the Davidson & Bassford cases that the criminal prosecution should be dismissed, because satisfaction had been rendered by retraction.

As to Judge Page's position in that matter, I have this to say: That he acted—I will not say with more delicacy, because that is not the term to apply to such men as Judge Dickinson and General Cole—but he acted with more circumspection and care than did the magistrate or the lawyer, because according to the testimony of Mr. French, when it was proposed to Judge Page, or that when it was indicated to him that as a consequence of the satisfaction of these civil actions a dismissal of the criminal proceeding might follow, he said:

> "I want it understood, that so far as I am concerned, I am perfectly satisfied. I have no disposition to prosecute these cases, but I want it understood that you have charge of that matter and it is not for me to say."

What more could the respondent have said? What less could he have said? So far from there being any malice towards Mr. Davidson or Mr. Bassford or anybody there, he was willing upon their retraction to abstain so far as he was concerned, but feeling the delicacy of his position, he told the prosecuting attorney, "it is not for me to say."

Senators will bear in mind that although General Cole, an upright and high-minded lawyer, was willing to advise his clients, Davidson and Bassford, to retract, Mr. Cameron, who was doubtless around the court room at that time, had no such magnanimity in regard to his client Mollison. From that time down to this, Mollison has never retracted that libel; from that day down to this, no retraction has been made in his behalf; from that day down to this, his tongue has "rung" against this judge; even down to his ridiculous declaration of war in case a prejudiced Senator should not be permitted to sit upon the trial of this case. I should not spend so much time in elaboration of this article if I did not deem that such articles as this amply characterize all the rest and show the animus of this entire proceeding; that there is

an undertone of hate and malice that runs all through this infernal clamor. No high-minded man like Wm. Meighen—not one single man, woman or child outside the county of Mower—appears here against this respondent. That he has preserved the observance of private right no man denies, except these men who were arrested in their raids upon the treasury. And I bring my mind to bear particularly upon this Mollison article, to show the extremes to which these men are willing to go, to show how they will lie, how they will cheat, how they will juggle, how they will do all acts of judicial uncleanness to present the facts before the Senate, not as they are, but as they desire them to be. And after this examination of the testimony, I challenge the gentlemen to tell me what shred of truth there is left of this Mollison article? The article itself is a weak but wicked lie; the testimony by which Mollison substantiates it is a weak but wicked lie. The libel itself was bad enough, but to place upon the enduring records of this tribunal such a charge as this and to endeavor to sustain it by such robust and muscular swearing, passes anything in the records of audacity that I have ever witnessed in any court.

The PRESIDENT. The court will take a recess for five minutes.

AFTER RECESS.

I crave the attention of the Senate now to the second article, known as the Riley article. The substance of this article is a charge that the respondent, in March, 1875, wrongfully, maliciously, and with intent to injure Mr. Riley, appeared before the county commissioners and asserted that it would be illegal to allow his bill, by reason whereof the board did not allow it. The same act is charged to have been again committed by him in January, 1876. Then follow allegations of a suit by Riley, of a malicious judgment by the respondent against him that the issuance of the subpœnas was unauthorized by law, by reason of which Riley was never paid.

That article is susceptible of two divisions: First, what the respondent is alleged to have done before the board of county commissioners; second, what he is alleged to have done in court when the matter was judicially before him.

In regard to what he did before the county commissioners, I ask the Senate to apply that portion of my argument made this morning wherein I attempted to demonstrate that no person in the situation of the respondent, is liable except for corrupt conduct in office, viz., for corrupt conduct in the performance of his judicial duties. I undertook to demonstrate that where the act is not a crime or a misdemeanor, it must be culpable within the meaning of the words "corrupt conduct in office;" and that it must be *conduct in office*. The words are so plain that they almost beggar any attempt at elucidation.

The respondent, in going before the county commissioners, did not act in his judicial capacity. He expressly stated to those gentlemen that he did not. I think he had a right to be there. Professedly and actually he was acting outside his judicial capacity. Were any judicial proceedings going on? Was his signature to any judicial paper required? Was any motion being made before him? Was there a question for him to decide? He was no more acting judicially in the conduct of his office there, than he is acting judicially when he goes to the polls and votes, or performs any other act which a citizen may rightfully do. And hence if my construction of the constitution is correct, that portion of

this article falls entirely from your consideration. Whatever his conduct there may have been, whether, as we maintain, perfectly proper and right, or whether, as they claim, exceedingly improper and indecorous (and they claim nothing more), it is nothing for which a Senate can impeach; it does not rise to the dignity of those offenses which remove a man from office, or disqualify him forever for holding any office of trust, honor, or profit in this state.

It is my design in summing up this case, in the first instance to attract the minds of Senators to the legal considerations which I think applicable to the facts, and to follow them by such discussions of the testimony as seem to me material. I have endeavored to make a careful analysis of all this testimony; I have so done with that of every witness—have digested it, have arranged it in its place. I think I am qualified to state how different parts of that testimony bear upon the whole. I shall endeavor to state it correctly, within its proper limits. If I err I beg immediate correction, for the mind of no man is capable of grasping without mistake such a mass of testimony, some incongruous, some not, some grossly immaterial.

The constitution of this State gives to the person accused of crime the right of compulsory process. That right is not given without a reason. It is an innovation upon a barbarous feature of the common law, by which the hands of a person accused of crime were frequently tied in such a manner that he could in no wise protect himself. The constitution of this State gives the accused the right to be heard by his counsel; and yet at common law, (and it will surprise many men not of our profession to learn it) until within the last one hundred and fifty years, a person accused of felony was not allowed to have a lawyer plead in his defense, nor to cross-examine witnesses, nor to sum up the case. The provision which authorized the accused to be heard by counsel in his own defense, does not bind the State to give him counsel free, as the State furnishes a public prosecutor. It merely gives him the right to have counsel. So the right to the process of subpœna merely gives him the right to take from the court that compulsory process, not to have it served at public expense.

In the 2nd of Bissell on page 978, section 11, it is provided as follows, (and it is upon this section that a deal of harping has been done and a deal of astute misconstruction has been lavished):

"The clerk of the court at which any indictment is to be tried, shall at all times, upon the application of the defendant, and without charge, issue as many blank subpœnas under the seal of the court, and subscribed by him as clerk, for witnesses within the State, as are required by the defendant."

A very just, humane, and beneficent provision of law. But the question is what does it mean, and were the defendants in these cases at the time when they ordered the subpœnas within the purview of this statute? What are the controlling words in this statute? The controlling words are those words which fix the time when the right to that compulsory process begins. It does not necessarily begin when the grand jury return their indictment. It unquestionably does not exist until a certain state of facts arises which makes it morally certain that the indictment is to be tried upon an issue which needs witnesses. What is the first object of witnesses in criminal cases? It is to prove or disprove certain facts. If there is no question of fact before the court, there is no necessity for any witnesses; and until a plea is entered, it is not certain whether the

issue raised or to be raised, will be one af fact or law. Upon a plea of not guilty to an indictment, the right of a defendant to blank subpœnas is most unquestionable. But that case was not this case. What response had those defendants made to that indictment? They had demurred. They had told the court by their demurrer that the indictment was so defective that they could admit it all and that there never would be any necessity for witnesses. And it so proved.

After demurring and while the demurrers were still pending, as I shall show when I come to consider the facts, they attempted to bleed the treasury of the county of Mower by subpœnaing a host of witnesses. So I say I am right in this construction that although this is a right, yet there is a time fixed when that right becomes operative, and up to which time it has no existence at all. I hold that a person cannot interpose to an indictment a successful demurrer, as this was, and at the same time encumber the county with the expense of as many witnesses as he, within his discretion, may choose to summon for the trial of that which, upon his solemn demurrer, he has asserted will never be tried at all. Is not that view reasonable? Does it not appeal to your understandings as a conservative and wise exposition of that statute? If it does not upon my say so, let me reinforce it by the authority of a very eminent judge in this State, given in testimony. Judge Mitchell of the Winona district, was upon the stand here, and we took occasion to ask him what the practice is in his district upon that point, and he told this Senate that it is not the practice in that district for a party to go to the clerk and draw out as many blank subpœnas as he chooses without an order from the court. That a defendant applies to the court for his process, representing the existence of a state of facts warranting the issuing of blank subpœnas for witnesses and that upon the word of a reputable attorney, that privilege is always granted by the court. This is his language:

"The custom has been for the counsel to apply to the court for a direction to the clerk and sheriff. I found that custom in existence when I went on the bench, and it has so continued up this time, so far as I now recollect."

Now, the district over which Judge Mitchell presides, at one time covered a part of the respondent's district. In old times the counties of Houston and Fillmore, I think, were a part of what is Judge Mitchell's district, and when the respondent went upon the bench he undoubtedly found a practice there which went beyond the memory of any practitioner. It was that the parties had not the power at all times to go of their own motion to the clerk for process and put expense upon the county at their own sweet will, but according to the old practice, the wise and conservative practice which prevailed in the district, they must apply to the judge for a direction to the clerk.

Other provisions of the statute confirm the wisdom of this practical construction which has grown up in the third district. When the demurrer is overruled—and I wish to correct a mis-statement of my learned friend, Mr. Clough, for I think I understood him to say that trial was instantaneous—

MR. CLOUGH. [Interrupting.] *Plea* instantaneous.

MR. DAVIS. "Plea instantaneous,"—but you didn't say that he was

entitled to four days for trial afterwards—a fact which you suppressed.

MR. CLOUGH. I did not suppress it.

MR. DAVIS. [Continuing.] My learned friend answered, in reply to a statement by us, "that a defendant had twenty-four hours to plead;" but he did not state, in addition to that twenty-four hours, he has certainly four days to prepare for trial. So no wrong is committed. If a demurrer is overruled, a defendant has four days as a matter of right, and has such further time, either as a matter of continuance or delay, as will enable him to prepare himself fully to meet the charge which the State has propounded against him.

I cite page 1,051, of Bissell's Statutes, section 198:

"If the demurrer is allowed, the judgment is final upon the indictment demurred to, and is a bar to another prosecution for the same offense, unless the court allows an amendment where the defendant will not be unjustly prejudiced thereby, or be of the opinion that the objection on which the demurrer is allowed may be avoided in a new indictment, directs the case to be submitted to the same or another grand jury."

Now this indictment had been found the term before these subpœnas were issued. If the demurrer was sustained, the court had to do one of two things: it either had to discharge the defendant or re-submit the charge to another grand jury; and so the the case was certain to go over upon the demurrer which was interposed in case it was allowed. I say, therefore, that the defendants had the time to plead which statutes under such circumstances gave them.

Now, upon one point, I believe that the prosecution has fallen into a most radical error, inasmuch as it has taken that for granted in the construction of the statute which a critical reading will not sustain. Down to this time I have simply considered whether the defendant had the right to compulsory process, namely the blank subpœnas. I have not considered, except by general reference, the question which has rather been taken for granted here, whether they were entitled to the services of the public servants of the State, to serve it at public expense, a right which is by no means the same. The constitution of this State simply provides that a defendant shall have the compulsory writ of this State placed in his hands. The statute which I have read, provides that the clerk shall issue blank subpœnas, but neither that constitution nor that provision of statute provides that the defendant shall have for nothing the services of the public officer to make service of that writ. He is entitled to the writ, and unless the statute which I am about to read gives him the power of the State *gratis*, then this Riley case falls to the ground, no matter what the right to the issue of subpœnas may be. I call the particular attention of this court to the provisions of this statute to show that Mr. Riley never had any valid claim against the State for his services as deputy sheriff. Sec. 42, page 976 of Bissell's statutes reads:

"When any prosecution, instituted in the name of the State, for breaking any law thereof, fails, or when the defendant proves insolvent, or escapes, or unable to pay the fees when convicted, the fees shall be paid out of the county treasury, unless otherwise ordered by the court."

In the absence of any statute upon the subject of the expenses of criminal prosecutions, it is perfectly manifest that they do not lie upon any

municipal corporation or county, but are a charge upon the treasury of the state at large. I say that neither at common law nor under any of the statutes anterior to this that I am aware of, does the expense of criminal prosecutions fall upon any county. In the absence of statutory provisions, the expenses of such a trial, the State of Minnesota being the plaintiff, is upon the public at large, and not upon any subdivision such as a county, town or city. That being the case as a general principle, the counties of this state are not liable to pay the expenses of prosecution, except under circumstances distinctly provided for, and for the purposes and in the instances stated in some statute to that effect. And it is an error of construction of this statute to assume that the counties of this state are bound to pay the expenses of the defendant in any case. This statute does not warrant that construction, no matter to what extent a contrary interpretation may have been indulged in. This statute is for the protection of the treasury against the demands by officers for fees incurred by the state. The context shows that it relates wholly to state fees, for it contemplates a judgment for costs against a defendant. It imposes upon the county the burden of state fees in state cases. This is the only statute which makes the county liable to pay officers' fees for services for the state in state cases; otherwise, the expenses of criminal proceedings, like the salaries of the judges, would be general charges upon the state treasury.

Let us further consider this statute:

"When any prosecution, instituted in the name of this State, for breaking any law thereof, fails, or when the defendant proves insolvent, or escapes, or is not able to pay the fees when convicted, the fees shall be paid out of the county treasury, unless otherwise ordered by the court."

The statute, throughout its entire text, proceeds upon the ground that the defendant himself is liable for the costs of his defense. "When the defendant proves insolvent or escapes," the fees must be paid by the county. "When he is not able to pay the fees when convicted," the expenses of the prosecution, "the fees shall be paid by the county, *unless otherwise ordered by the court.*" The object of this statute was to prevent public officers, sheriffs or attorneys, from running up exorbitant bills against the state or the county. It was, in the first instance, to declare when a county shall be liable for fees, and it is liable for fees in three instances. It is liable for fees when the prosecution fails; it is liable for fees when the defendant proves insolvent or escapes; it is liable for fees when the defendant is unable to pay the fees when convicted, "*unless otherwise ordered by the court.*"

It means simply this: that if the convicted defendant proves insolvent or escapes, the clerk or the sheriff, unless the court otherwise orders, can look to the county for their fees. If the defendant is unable to pay the fees when convicted, the clerk and the sheriff, may look for their fees to the prosecution. If the prosecution fails, they must look for their fees to the State, because, of course, judgment cannot go against the defendant in that instance. But this statute nowhere says, no statute of this State anywhere provides, that any county shall be liable, absolutely, to a defendant for the expenses of serving the process of the court. I ask a close analysis of this section of our statute. The more it is looked into, the clearer it will appear, that its object is to prescribe when counties shall be liable for the fees, instead of making them an expense from the State treasury; it was designed to protect the counties, and, incidentally,

the State, from the rapacious exorbitancies of sheriffs and clerks. From its very purview it contemplates that the county shall pay fees only when defendants cannot; that defendants must pay fees when they can. I believe this is a fair construction of that statute, and that Mr. Riley was not entitled to fees for serving the process of those defendants, All the statute gives these defendants gratuitously, is the blank subpœnas of the court, and if they desire the services of an officer they can hire that officer to serve it just as they would have to do in a civil action.

Again, I had always supposed, as regards the validity of this Riley claim, that when an officer of court wishes to obtain his fees, he must have them taxed by the tribunal he serves—a thing which Mr. Riley never did. He made out his bill to the full extent; never went before the court for his taxation; never submitted it to judicial consideration; took it over to the county commissioners—and from that dates all the trouble in this transaction.

I cite page 975 of Bissell's statutes, section 35:

"No fees shall be taxed for services as having been rendered by any clerk, sheriff or other officer, in the progress of a cause, unless such service was actually rendered, except when otherwise expressly provided."

That section, by implication, says that the fees of officers must be taxed. It is not permitted to any clerk, sheriff, or any ministerial officer of court, exercising one of the most subordinate of its functions, to make a conclusive claim upon the public treasury until it has been decided upon by the magistrate presiding.

Mr. Riley's bill was void for another reason. It was presented to the county commissioners in 1875, and the prosecution was then pending, and, of course, had not "failed." The order sustaining the demurrer was not filed until August, 1875. In January, 1876, the bill was again presented to the county commissioners, but the respondent had previously, in open court, directed that the fees should not be paid by the county and Mr. Riley was notified.

[A paper was here handed to Mr. Davis, and he continued]:

A question has been submitted to me. [Reading]:

"Could not the subpœnas have been served by any person other than an officer, for instance, by a friend?"

I will state that such was my first impression. But my recollection is now, that I examined the statutes upon that subject and found that subpœnas can be served by a private person in civil cases only. It is one of those nice little artifices whereby the officers of court have reserved to themselves the prerogative of serving subpœnas in criminal actions, and demands a strict construction of the statute to which I have just now called the attention of the court. The right ought to be, of course, the same in criminal as well as civil cases.

Under my construction the respondent's decision of the case was correct. The statutes make the judges, for certain purposes, the guardians of the public treasury. The respondent did his duty in vacating a stipulation which made an attack upon the treasury under a false statement of what took place in court and of its records. Courts take judicial

notice of their records and proceedings. I do not know, gentlemen of the Senate, what there was wrong in the respondent going before the commissioners and telling them, at their request, what was a fact. We all know that in outside districts much more freedom of intercourse exists between the judges and the citizens than perhaps does in the larger places. How natural it was for honest old Judge Felch, in the recess, when a disputed question of fact came up, to say, "I will go up to Judge Page's house and have him come down here, and find out"—not what the law is—but "what the fact is." The law was plain enough, and there was no dispute about it. I venture to say that there is not a district judge in this State who is not from time to time called upon by persons of co-ordinate branches of the government, exercising their functions of office to tell what has taken place in his court. He generally does it without objection; it is done without impropriety. And when Judge Felch became alarmed at what seemed to be a steal upon the treasury of the county, he went to ask Judge Page what the fact was. The respondent might have been more circumspect, he might have been more prudent, but he went there in the full conciousness that he was doing nothing wrong. And when the fact was asked him, he told the commissioners just as he understood it to be.

These indictments, gentlemen, were consequences of that riot, which this Senate has solemnly decided it will know nothing about, which took place in the city of Austin in 1874. I stated there was a riot there. I have an impression that something has been said about it in this court. It has been more than darkly hinted several times here that there was a riot in the city of Austin, and it appears of record here that these men, Beisicker, Walsh and another, were indicted as among the rioters. They were indicted at the September term, 1874. Whether they were arrested at that term or not my memory does not serve me, but I will venture the assertion that the demurrer was put in at the term at which the indictment was found.

The March term of 1875 comes around, and no notice having been made, no issue of fact joined, what do we find? We find French and Cameron joining hands in iniquity; they make up their minds "to put up a job" on the county treasury, and Hall and his deputy, Riley, join hands with them. Mr. French, without any consultation with the court, took out subpœnas for the State, and Mr. Cameron, without any leave obtained, as would be necessary in Judge Mitchell's district, ordered his respective clients to take out subpœnas for the defense. French takes out subpœnas for the State, for the witnesses "to be and appear and testify in a certain issue of fact" which had not been formed, and Cameron directs his client to take out subpœnas for "the within named witnesses to be and appear and testify concerning certain issues of fact" which had not been formed! This was a double-handed theft, and how many witnesses Hall subpœnaed on behalf of the State, God only knows—this record don't show. But it is a moral certainty that that unregenerate Riley subpœnaed *ninety witnesses* [laughter] on behalf of the defense, to appear and testify in an issue which had not been formed! More than that; although this matter was depending upon a demurrer, and he had subpœnaed ninety men, he did not have to go for any of them outside the corporate limits of the city of Austin, and I dont suppose the precious Hall had to go any further for his covey. It would not be expected that Riley, the deputy, *could* subpœna more witnesses than Hall, the sheriff. It would be gross

insubordination to do so, and I take it for granted that Hall was not surpassed by his deputy in that respect. [Laughter.] And so these ninety men are subpœnaed to come and testify upon an issue of law! And who do you suppose were in those subpœnas? Why, the very defendants themselves were subpœnaed as witnesses in their own case, and Riley taxes his fee against the county. And after Tom. Riley had searched and raked as with a fine tooth comb the city of Austin for witnesses whom Hall had not captured, he turns around and subpœnas *himself*. [Great laughter.] Having performed that automatic feat, he naturally looks around for other worlds to conquer, and it occurs to him that there still remain two individuals whom he has not grasped within the comprehensive powers of the subpœnas which he held, and so he subpœnas Cameron and Crane, the defendant's attorneys. [Laughter.] And I have no doubt that Hall subpœnaed French. [Renewed laughter.]

Now that is the transaction, gentlemen. I am making no misstatements, no exaggerations here. Those subpoenas are in this court, those names are on the back. This is the transaction, in all its original, unvarnished cussedness, just exactly as I tell you. [Laughter.] And Judge Page is to be impeached, because, hating a thief—knowing one when he sees him—he doesn't, perhaps, round all the sharp corners of the law, but cuts across-lots after him with a club! [Prolonged laughter.]

There are some interesting conflicts of testimony here. It was very necessary to show malice against Riley. That seemed to be the principal trouble with these managers—the acts themselves not being particularly out of the way—the respondent must be shown to be bedevilled by malice. And so Mr. French comes upon the stand and testifies that at a meeting *in March* 1875, Judge Page and he had some words before the county commissioners, wherein, I think, Mr. Riley's name was mentioned in a derogatory manner. Now we assert that it is proved by a decisive preponderance of testimony, that Mr. French has brought forward and interpolated into what took place before the board of county commissioners in March 1875, something which took place at another session before Riley's bill came into existence. It is a very difficult task, gentlemen of the Senate, to transport from a date and place where it has no possible relevancy in this proceeding, a body of facts entirely unconnected with it, and before your very eyes fabricate it into the texture of the issue so that no seam shall be visible.

Judge Page testifies that the meeting when Mr. French called him corrupt, was in January 1875, when the Baird bill was under consideration; and the Senate will bear in mind that this Riley bill did not originate until March 1875. It shows that either Mr. French or Judge Page is wrong and mistaken or worse than wrong or mistaken.

Now let us see whether Judge Page is confirmed, for I made a statement a few moments ago that in all the instances where Judge Page has made statements contrary to those of Mr. French or any other witness where that witness does not locate him *solus cum solo*, Judge Page is confirmed by the testimony of bystanders. Now bear in mind that Mr. French testifies that this altercation between him and Judge Page was in March 1875, and was over the Riley bill. J. P. Williams testifies on June 12th that he was county auditor and clerk of the county board; that at the January meeting 1875, the Baird bill was under consideration; the Riley bill not under consideration; no such bill before the

board: that the altercation was then between Judge Page and Mr. French.

H. E. Tanner testifies on June 12th:

"The commissioners were present at the controversy; that was in January 1875. It occurred in reference to the Baird bill; the Riley bill not before the board, and Riley's bill not mentioned. Respondent not before the board at the March session."

A. J. French testifies on June 12th:

"The controversy was in reference to the Baird bill; the Riley bill was not before the board; it was in January; not presented until afterwards, and then there were no words between respondent and French; no expression about 'big men with little brains,'" &c.

The fact is, that when this Riley bill was up before the county commissioners, which was in March, there were no words at all between Mr. French and Judge Page. Mr. French says that there were words at that time; that the judge used derogatory language in regard to Mr. Riley; and that he, (French) called the judge corrupt. But the respondent, backed up by the clerk of the board, the county auditor the county commissioners, Mr. French and Mr. Tanner testify that at the time when this Riley bill was under consideration, there were no words, and that the occasion when the words were used, was when the Baird bill was up, before the Riley bill came into existence. That matter is not so important in itself, but it illustrates the *animus* of this business. It proves this disposition, this willingness, which witnesses have, to take events which have no possible bearing upon these proceedings and bring them into relation and contact with events which have. Because this is a most wicked attempt, gentlemen of the Senate, to show that some other conversation which Judge Page may have had with some person months before the inception of the particular matter in controversy, was really in regard to that upon which you are to pronounce this respondent guilty or innocent.

I propose to demonstrate to you from the record of this board of managers which was made to the House of Representatives, that they are accessories after the fact to this diabolical attempt to impute to Judge Page, language on this occasion which he used on another. I refer to the report of the House committee on page 247 of the House journal:

"Mr. Campbell S. L., from the committee on judiciary, to whom was referred the resolution of the House relative to the charges against Hon. Sherman Page, reported that they had had the same under consideration, and submit the following report:

* * * * * * * * * * * *

"As to the matters alleged in the eighth specification, your committee finds that *in January*, A. D. 1875, Judge Page was requested by one of the members of the board of county commissioners of Mower county, to appear before said board with reference to the allowance of certain bills of George Baird, sheriff, and Thomas Riley, constable, upon which the board had already passed; that he went before the said board and told them that the bill of Baird contained illegal charges, and that the bill of Riley was entirely illegal; that he expressly told the board that he appeared before them as a citizen and a taxpayer, and in the interest of economy; that the commissioners told said Page that the county attorney had instructed them that the charges in the Riley bill were just and proper, and that they constituted a legal and valid claim against the county."

So it is the same transaction. Now this report, upon which these articles of impeachment are predicated under the signature of my esteemed friends, solemnly certifies that when Mr. French and Judge Page had this conversation, it was in January, 1875; and they just as solemnly certify that the Riley bill was under consideration in January, 1875. But upon closer examination, it was found that this would not work; it was found that Riley's bill had no existence in January, 1875;

that it did not come into being until March of that year. And if they wanted to be correct they must bring that conversation, which they solemnly asserted took place in January, 1875, relative to the Baird and Riley bills, out of January, and bring it down to March; and at the word of command every one of those witnesses changed front. [Laughter.] One county commissioner who had sworn positively that it was in January, came upon the stand and said he had refreshed his recollection by consulting a memorandum that he had never made.

Now, there is something wrong about this. Mr. French is either mistaken or he is worse. It is diabolical, I repeat, gentlemen, to impute to this respondent, conversations in regard to this occurrence, which never had relation to it. Mr. Hall was brought on this stand the other day, in rebuttal, and it was attempted to prove by him that this transaction was in March, and yet, upon cross-examination, he said that in January. 1875, there was something said about corruption on the part of this respondent by Mr. French. Thus we find that wherever their minds are not directed to a particular point with the strained effort of falsification, the truth rises in insurrection whether in the report of committee, upon cross-examination, or upon Mr. French's admission that he swore differently before the judiciary committee. The fact is, that a most unrighteous attempt has been made here to graft into that interview upon the Riley bill, conversations which Judge Page never had in relation to it. There is the report of the House committee; there is the testimony of that county commissioner, getting himself and them out of a bad position by *refreshing* himself with contradiction; there is the change of front on this whole business for the purpose of enabling Lafayette French to lug in that little piece of personal and individual malice.

Malice must be shown, and hence Mr. Hall and these three or four fellows, who must have a phonograph concealed about their persons, come on the stand to tell the same story after Hall has whispered it into their funnels, and all the managers have to do, is to turn a crank and the record of conversations and occurrences of years ago, comes out in a character fitted for the occasion. They want to prove malice, and Mr. Hall waltzes gracefully to the stand again and attempts to tell this court that sometime after the election, Judge Page met him in Mr. Engle's store and said something about how he dared appoint a man of Riley's character to the position of deputy sheriff. Now, gentlemen, Mr. Engle was there, and heard all of that conversation. He took part in it; he has been here upon the stand. I do not want to say anything unnecessarily harsh. I shall not go to any particular length to commend the appearance or demeanor of our own witnesses. Those things all speak for themselves more forcibly than I can. You saw Mr. Engle's appearance—his want of interest in this case; you saw Mr. Hall—his great interest in this matter. Mr. Engle distinctly swears that no such conversation as that ever took place. He testifies that there was a general conversation there between two citizens, (Mr. Hall being present,) in which it was asserted that it was wrong to barter off the offices of the county as a reward for votes. I think so too. every man on this floor, in his conscience, thinks it is wrong, in a candidate for an office, to promise this man and that man—no matter how bad his moral character—"if you will vote for me, you shall have such and such an office." It is not only wrong, but it is a misdemeanor at common law, and punishable as such. It is bribery; it is the selling of office; it is political simony.

Now after Mr. Engle departs from the stand, some of these gentlemen from Mower county who serve in the double capacity of witness and sergeant-at arms, having intimations of the surroundings of the the men at the time of this conversation, went down and dug up from the prairie of Mower county, some one who says he heard that conversation with Mr. Engle, a man never heard of before in connection with this prosecution—and he comes gaily up to testify that Mr. Engle is not correct in his statement.

Is this conversation proved? Do you believe Hall with all his interest and zeal, or do you believe the respondent, giving a plain, unvarnished version of this affair backed up by witnesses of the character he produces?

Now, after French, Cameron and Kinsman had played this little game upon the county of Mower, by Hall, on behalf of the State, subpœnaing most of the inhabitants of Austin, and Riley on behalf of the defense, subpœnaing all the rest, [laughter] French and Kinsman get their heads together and conclude that they have a good thing. Hall is sure of his pay anyway, for the county can't go behind that, and hence they go to the board of county commissioners, and are there together. And Mr. French, although he must have known how wrong this was (it speaks very badly for his integrity and his qualifications as a public officer) Mr. French, although he must have known how wrong this was, deliberately advises those gentlemen who look to him for legal instructions, that Riley's bill is a valid claim against the county.

The Senate will bear in mind that Judge Page and Mr. Elder have both testified (Judge Page first testifying that he had heard this crime was on foot to make expense against the county,) that when the judge saw the clerk in the act of issuing some subpœnas of this character he asked him what it was for, and upon being informed, told the clerk not to issue any more, and that the expenses would not be paid by the county. That was an order in open court within the language of the statutes which I have just read. It was not necessary to be entered in writing, because the provisions of statute which require orders to be entered in writing are wholly in relation to civil actions. There is many a thing done in court, many a direction to its officers not entered in writing; a rule is made upon evidence; an exception is taken, but there may be no formal record of it. It may be in the minutes of the judge, or in his memory, but it has no entry in the minutes of the clerk.

French and Kinsman, in rummaging around that clerk's office, discover that the order is not entered upon the minutes of the clerk—not through any fault of the judge—because he is not responsible for the omission of the clerk of the court.—These gentlemen finding that such a record does not exist, conclude they have "got a good thing,"—to use Mr. Kinsman's expression. Whereupon they go down arm in arm, I presume, before the board of county commissioners; Kinsman inserts his little bill, French stands by and says it is all right; the county is unquestionably bound to bleed," still some of these hard-hearted old fellows do not exactly see that, they see that the transaction is iniquitous, they propose to find out the facts and they ask the judge. But in any event Mr. French advises the county commissioners not to heed the facts, and Mr. Kinsman sues the county of Mower in a justice court. Well, what a suit! Kinsman prosecuting the county, and French *defending* it! They appear before the justice of the peace, and what does French do? Does he interpose any offense? No. Does he subpœna the clerk of the court? No. Does he bring the judge

there to prove whether he has disallowed that bill? No. And even Mr. Kinsman, when asked by my associate, "What did Lafayette French do to win that case?" opened his mouth, gasped for breath and finally said, "I can't tell." [Laughter.] And he couldn't. Even French's legal obstetrics could not abort the suit. Very much to his astonishment, no doubt, the justice who tried the case, rendered a judgment against the county. By that time the matter began to smell fulsomely, and French thinks it is best to take an appeal, and he does appeal. And then begins to work, and he himself, in view of all these facts which he well knew had taken place in court between the judge and the clerk, and which Riley knew—for he was there, or his principal was, when the respondent informed the clerk that the expenses of those subpœnas would not be paid by the county—with his own hands concocts one of the most extraordinary stipulations which an attorney ever framed to give away his client. It was not a case where the seductive Kinsman led this young man astray; *he* wooed and hugged Kinsman and offered up his young affections to him voluntarily, without ever sighing, "I will ne'er consent." He drew up a stipulation which stipulated away from the county of Mower, the only defense it had, which was that an order had been made that the claim should not be paid by the county. And then that precious brace of malpractitioners stand up before the judge and offer him that stipulation. I might remark here that although Mr. Kinsman knew what Judge Page's views were upon the facts of this transaction, he was willing to try the case before him, provided he could dictate the facts. Those two lawyers imagined that they could stipulate right and justice away before the very eyes of that judge; that they could estop him from doing justice by a dirty little stipulation; that they could rob the people, because openly and avowedly they had stipulated and confederated in writing to do so.

They hand it up to Judge Page.

My views of the functions of a district judge or any public officers, may be rather old-fashioned and narrow, but I believe that every public officer, by virtue of his office, is bound to protect the State and its treasury. Whether he is a senator, a judge, prosecuting officer or attorney, the duty, to my mind, is the same. I say that every man who holds a public office is by a tenure, stronger than that which is written in any obligation which the statute lays upon him, bound to protect the State and its treasury; and when Judge Page saw that a disreputable county attorney had not done his duty, it was his duty as a public officer to see that the treasury was not robbed by that false token.

Is it possible that a corrupt attorney general and a corrupt lawyer can make a stipulation which will give away thousands of dollars or thousands of acres from the State—and that a judge who knows it must be bound to give to that stipulation the sanctity of judicial conclusiveness? Suppose a private case: Two lawyers confederate and conspire to rob a client. They agree to do it by a stipulation to be presented to a judge who knows that the case is being given away and that a client is being assassinated in the temple of justice and upon its consecrated altar, and that, too, through falsification of the records of the court over which he presides. Is the judiciary to be dragged down from its proud position to be the mere executive of the wiles and tricks of dishonest lawyers? Did not this judge do right when he read that paper and said: "This is wrong; this is not the fact; you have falsified what took place here in court; I know it and you know I know." And what did the fellows do when they were caught up in the strong grasp of that honest man? Kinsman stood mute; French scratched his head and said: "Well, now you speak of it, I do recollect something of it; if

that's so, I want the stipulation changed." And so it was changed, and the respondent told these gentlemen: "These are the facts, I think —if the record don't show it, I will leave it to your proof. Call Mr. Elder; call the witnesses; call this man who was there getting the subpœnas at that time; be yourself sworn, Mr. French; let us know what the fact is, I may be mistaken." Mr. Kinsman himself testifies that the judge offered to hear proof upon that subject. Did Mr. French put in proof there to show what the fact was—that the order had been made that the fees should not be paid? No. And finally, Mr. Elder came in and was sworn by the direction of the respondent, and that miserable little steal sank into the grave which had been dug for it, the ground closed over it, and it never would have risen again had it not been dug up to spend its effluvium in this court.

And you are solemnly asked to impeach Sherman Page for corrupt conduct in office, and crimes and misdemeanors, and forever disqualify him from holding any office of trust and profit in this State! Glorify French and Kinsman; impeach the upright judge who, in every act he did, acted in the interest of common honesty, in rebuke of disreputable counselors who infested his court.

This brings me to article III.

Senator DORAN. Mr. President, I move that the Senate adjourn.

Which motion prevailed.

Attest:

CHAS. W. JOHNSON,
Secretary of the Senate and Clerk of the Court of Impeachment.

## THIRTY-FOURTH DAY.

ST. PAUL, WEDNESDAY, June 26, 1878.

The Senate was called to order by the President.

The roll being called, the following Senators answered to their names:

Messrs. Ahrens, Armstrong, Bailey, Bonniwell, Clough, Drew, Edgerton, Edwards, Finseth, Gilfillan C. D., Gilfillan John B., Goodrich, Hall, Hersey, Houlton, Langdon, Lienau, Macdonald, McClure, McHench, McNelly, Morehouse, Morrison, Nelson, Remore, Rice, Shaleen, Smith, Waite, Waldron and Wheat.

Mr. DAVIS [proceeding]. Gentlemen of the Senate: In the consideration which I wish to give to the remaining articles of impeachment, I hope that I shall be able to compress my remarks within the limits of to-day.

It is a matter of very great regret to me, and it certainly has imposed upon me a burden much greater than I expected, that our associate, Mr. Lovely, who was entirely familiar with the details of this case, having been connected with it from the beginning, and who was expected to take almost entire charge of some of the articles which I am compelled to sum up, was so suddenly taken sick and deprived of the privilege and duty of addressing the Senate. The fact that by that casualty the duties have been thrown upon me which he was expected to perform, must be the explanation why in some respects, my argument upon the law and the facts may lack the symmetry that possibly it might exhibit had

I had greater opportunities of giving my attention to those articles with which I expected to have little or nothing to do.

The article to which I shall ask your attention this morning, is the third article, known as the Mandeville article. The gravamen of that article is, 1st, that Mr. Mandeville was duly appointed a special deputy of the court; 2nd, that the respondent addressed to Mr. Mandeville when he applied for an order for his pay, certain language, which, regarding the official proprieties of his position, he ought not to have addressed to him; 3d, that he refused to give Mandeville an order for his pay; and 4th, his filing the order after the close of the term.

It is very important for the Senators to understand, in the first place, the origin of the authority which inheres in the court to authorize the sheriff to employ special deputies for the purpose of attending upon the court during the term. The crowding a court room with bailiffs and special deputies, who derive their pay from the county, was at a very early time in this State felt to be a grevious burden upon the treasury. It is the experience of those who are accustomed to attend upon courts of justice, that sheriffs have, too often, to reward friends, to relieve themselves of care and duties, crowded the court room with unnecessary attendants. Accordingly the legislature of this State, in 1873, enacted in Bissell's Statutes, pages 725-6, section 34:

"On or before the holding of any term of the district court, or court of common pleas of this State, the judge thereof shall determine and fix by his order, the number of deputies which shall be necessary for the sheriff of that county to have in attendance upon such terms, and thereupon such sheriff shall designate and appoint such deputies. Such deputies, appointed as aforesaid, shall be paid their *per diem*, to be determined by the court, for attendance upon such court, in the same manner as provided by law for the payment of grand and petit jurors."

Two things are perfectly manifest from this statute: The first is, that as a condition precedent to the appointment of any deputy, the judge shall, on of before the term, fix by his order the number of deputies for the occasion; second, that the sheriff shall thereupon, namely, after the court by his order has fixed the number which he deems necessary, designate and appoint such deputies. If the court on or before the commencement of the term makes no order at all on the subject, it must be deemed conclusive that in the opinion of the court, no special deputies are necessary. If the court deems no deputies necessary and therefore makes no order, the condition precedent upon which solely depends the sheriff's right to appoint, fails entirely, and anything that the sheriff may do in the way of putting special deputies in the court room, if he does it at all, is done without authority of law—at least, so far as putting an obligation upon the county is concerned.

Now, it is one of the charges in this article that the respondent in this case did not on or before the commencement of the term make any order at all in regard to appointment of a special deputy. It is averred in one of the charges in this article of impeachment, that he made no order on that subject until after the term had closed, and that is charged not as a legal act but as an offense. Hence, Senators, upon the very theory upon which the prosecution is proceeding, Mr. Mandeville was never a special deputy duly appointed, because the court had not on or before the term at which it is claimed he served, made any order whatever, authorizing his appointment, and, therefore, he was never entitled to any fees.

It is impossible for me to perceive how the force of this argument can be evaded when any one reads this statute with eyes which desire to be convinced. When we consider the evil which it was designed to

remedy; when we comprehend that its only object was to save money to the treasury by extending the judge's corrective authority over this otherwise unlimited power of the sheriff, the fact that the respondent did not before or at the time make any order at all on the subject, is conclusive that he deemed that the sheriff himself was sufficient to attend that term, and that no special deputy would be needed.

Senators will not forget that this was not a general term for the trial of many cases—jurors coming out and going in. It was a special term, for the trial of one particular case—the case of the State of Minnesota against Jaynes.

If my legal proposition is correct; if Mr. Mandeville was never legally appointed; if he had no standing in court as a special deputy, why then the charge entirely falls to the ground, irrespective of the voluminous mass of testimony which has been given to sustain and rebut it. Let me illustrate to show that Mr. Mandeville had no relation to this county which made the county his debtor. Suppose he had brought an action against the county of Mower to recover this small item of his fees as special deputy, it would not have been sufficient for him to allege that he served during the term, that the sheriff appointed him, and that the judge saw him in the execution of certain duties. He would have to base his right to recover upon the statute and upon statutory grounds. If he were plaintiff in such a case, he would be compelled to allege that the court, on or before the term, made an order fixing the number of deputies, and that "thereupon," in the language of the statute, "the sheriff appointed him" for that purpose, and that under that appointment and order he served. But the facts in this case would not warrant any such allegation. Mr. Hall has time after time deposed here, that between him and Judge Page nothing whatever took place as to the number of deputies to be appointed. If that is true, then Mr. Hall had no right to appoint anybody. A further discussion of that proposition will only obscure it; the force of the argument lies in its statement. Read the statute, collating it with the undoubted facts as averred by the prosecution and asserted upon the face of the article itself, and any charge of error of judgment, to say nothing of malicious intent on the part of the respondent, fails. It only results, that, knowing the fact, and stating the fact to be, for the purposes of this case, as the prosecution claims, this respondent did his duty under that statute. He told Mandeville that he never had authorized his appointment, and that he must look to Mr. Hall for his pay.

Now, what are the facts under this Mandeville article? Mr. Mandeville testifies that he commenced to work at the first day of the term. He also testifies as Judge Page came in that day and was proceeding to the bench, Mr. Hall told the judge that he "had set Mr. Mandeville to work." But it is noteworthy, in that connection, that while the respondent denies that any such language was ever addressed to him in his hearing, Mr. Hall does not attempt to confirm Mr. Mandeville, that any such statement was made by him.

The respondent testifies (and I depart now from the assumption of the prosecution, to our own theory of the case) that before the term commenced, he had a conference with the sheriff in which both of them recognized the importance of the issue which that special term was held to try, agreeing that it was extremely desirable, under the cir-

cumstances of great excitement which prevailed in that community, that a perfectly reliable man should be had for special deputy to take charge of the jury, and that Mr. Allen was agreed upon for that purpose. It is undisputed in this case that Mr. Allen did go to work as a deputy at that term. It stands here as an uncontradicted fact, that no information was conveyed to the respondent, that Mr. Mandeville was there in any other capacity, (if he were there at all) except as an assistant to the sheriff—not at the charge of the county, but at the sheriff's charge. It also exists in testimony here, uncontradicted, that Mr. Mandeville and Mr. Allen both claimed pay as special deputies at that term and that the sheriff drew his per diem for his attendauce there. It is in testimony here, by certain jurors, that they saw Mr. Mandeville around there during one day, and did not see him there afterwards. It is in testimony by other jurors that Mr. Allen performed the duties of special deputy at that time and that Mandeville's attendance, if it existed at all, was only intermittent and occasional. Mr. Mandeville testifies that after the adjournment of court, and while the judge was sitting alone at the bench writing up his docket, Mr. Hall escorted him and Mr. Allen, to the judge and said that he had brought them there to get an order for their pay.

It is to be remarked here, that the judge does not give such deputies an order for their pay, and the statute does not authorize him to do it. The statute authorizes the judge, not to appoint the deputies or give them an order for their pay, but it merely empowers him to fix their per diem. That is all he has to do after determining the number. The presence of these deputies before the judge was not for the purpose of having the per diem fixed; was not necessary for the fixing of their per diem; that could be done as a matter of record, without their attendance. It is entirely consistent with Mr. Hall's present attitude in this case, that he thought, that probably the judge had not made a formal order how many deputies should be employed on that occasion, and that he brought those two men there for that purpose.

Mr. Mandeville testifies that the respondent said "that he could not attend to them now, but in the afternoon he would." There is a little inconsistency here. If the respondent was filled with these feelings of rancor, which must be established in order to make him liable, why did he not, in the morning, when Mr. Hall brought these men before him, pour out his bitterness, as it is claimed he did in the afternoon? He merely said to them, "I am busy now, in the afternoon when I have my docket written up I will attend to it." Mr. Mandeville testifies that in the afternoon the respondent looked up and said, "Boys come up here" —an expession which, I venture to say, the respondent with his habits in the use of language, never used. Now I wish to call the attention of this senate particularly to what Mr. Mandeville says took place to show how utterly inconsistent it is with what must have been the facts. Mr. Mandeville testifies that the respondent said, "Mandeville, how did Hall come to appoint you court deputy? What dirty work did you do to help elect him that he appointed you court deputy?" That is partly true and partly untrue we assert. I have no doubt that Judge Page asked Mr. Mandeville how Mr. Hall came to appoint him a special deputy, in view of what the respondent knew the precedent facts were. But that he ever said "What dirty work did you do to help elect him that he has appointed you court deputy," I do not believe, and it is

flatly contradicted by Mr. Allen, the only other witness who heard the conversation.

Judge Page, according to Mr. Mandeville, said "that he considered it a steal and did not propose to sanction any of their steals," and he finally said, "I shall take time to comsider this matter, I shall not give you an order to-day." Now there is an inconsistency there—an inconsistency which becomes the more clear when we consider the decisive character of Judge Page as it is established by the testimony. If he had ever in the first place reproached Mr. Mandeville for being there, spoken about dirty work and denounced his demand as a steal, he is not the man who would have said as Mandeville swears he said, at the conclusion of such remarks, that he would take time to consider whether he would sanction a steal or not. He never would have said, "I shall not give any order to day." If he ever had announced to Mr. Mandeville, that he considered that matter a steal it would have been the last of it then and there.

Was it not a steal? The respondent testifies that he and Mr. Hall agreed before the commencement of the term that there should be but one special deputy; and that that deputy should be Mr. Allen—a man peculiarly fitted for the position. To be a special deputy he must be appointed in pursuance of the statutes. The statute further provides that the appointment of a deputy sheriff shall be recorded in the office of the register of deeds of the county; and on the second day of the term, as this testimony shows, the appointment of Mr. Allen was so recorded, and the appointment of Mr. Mandeville never was. There is the contemporaneous act of Mr. Hall, exactly tallying with the fact which the respondent through his counsel asserts at this moment. On the second day of the term, and probably just after this conversation between Judge Page and Mr. Hall, Mr. Hall does the only act which authorizes any person to serve as special deputy, by recording the appointment of Mr. Allen in the office of the register of deeds, and he never recorded Mr. Mandeville's appointment.

But it is claimed that the testimony in this case shows that Mr. Hall himself called Mr. Allen as a juror at that term. I am surprised that any act that sheriff Hall did on that occasion should be brought forward to cast a favorable light upon the evidence of the prosecution. The testimony of Mr. Severance, who was in attendance throughout the whole of that term, and which will not be disputed or questioned by any man who knows him, shows most conclusively that the actions of sheriff Hall in regard to jurors was most disreputable and unworthy of the position he held. It was a case which had excited that excitable community, and had divided it asunder. It had already been tried twice. On one trial a jury disagreed, on another, the verdict was set aside. With the peculiar aptitudes which exist in Austin, all the men, women and children, old enough to understand the case, were arrayed against each other in hostility. And that sheriff kept the court idle two days while going through the city of Austin with a poll list doubtless for the purpose of obtaining his *per capita* fee for jurors; bringing into court man after man whom he knew to be incompetent; and bringing in Mr. Allen for the purpose of leeching the treasury of that county, as he attempted to do on every occasion. And I say it redounds to the disgrace of Mr. Hall that having appointed a man deputy, he should produce that deputy as a juror, simply because he knew he must be rejected either as a deputy or as having formed and expressed

an opinion. Why, in the language of Mr. Severance, "It became a farce—a perfect burlesque." And when the judge reprimanded the sheriff for keeping the business of the court delayed, and bringing up man after man who could not serve as a juror, and told him to go into the adjoining towns, what did the sheriff do? He jumped the towns adjoining the city of Austin and went to towns fifteen miles away to get a jury, made a mileage of 60 miles over the country by wheel, at that time of the year when the roads were almost impassable, still further locked up the business of the court in order that he might steal more, and leech the treasury of that county in the way of mileage.

It is claimed as an offense on the part of this respondent, that he did not file this order in regard to Mr. Allen until after the term. I do not see anything significant in that. For certain purposes, under the statutes of this state, the courts are always open; term always goes on. I will not take the time to cite the statutes, but for the transaction of *ex parte* business, it is always term time in this state. And does any Senator honestly suppose that the respondent took the pains after the term to file an order to beat Mr. Mandeville out of some six or seven dollars pay? It is too trivial; human nature does not descend to meannesses so ineffably small. In their attempt to show that this was an exception to the practice of the respondent in such cases, they show that it was not an exception, for in producing such orders, made on other unquestioned occasions, they produce one fixing the number of special deputies, which was filed during the term, and another where he did just as he did in this Mandeville case—filed the order after the term had closed. There is nothing significant in that. What does Judge Page testify as to this conference between himself and Mr. Mandeville?

"At the June term, 1876, opening of court talked with Hall; Hall wanted a good deputy; both agreed that Allen should be appointed; nothing said about Mandeville. Hall never told him Mandeville had been appointed; Hall never stated, I have brought my deputies to get their pay. I asked Mandeville what services he had performed and what he claimed pay for. That was the first that I knew he claimed pay as deputy. I said to him, I did not authorize his appointment as deputy, and if Mr. Hall had appointed him to attend to his duties, I thought it was a matter that Hall should adjust."

How perfectly consistent that statement is, in view of the record facts in this case! We find that on the second day of the term, tallying right in with the respondent's statements as to what had taken place on first day, Mr. Hall records the appointment of Mr. Allen in the office of the register of deeds, so as to authorize him to be a deputy and a special deputy to attend at that term of court. We find Mr. Allen serving as a deputy of court, recognized as such by the court, jurors and bystanders. Mr. Mandeville's appearance on that occasion is exceedingly fleeting and evanescent. Some men saw him there once and did not see him there afterwards. When we come down to the final act why do we find Mr. Hall, according to his own statement, coming up to the judge at all to have an order for his special deputies? How natural it was for Judge Page, when Mr. Allen and Mr. Mandeville both came before him, and Mr. Mandeville demanded his pay, to ask him "what services have you performed? "I never gave any order for the appointment of more than one deputy." He said nothing to Mr. Allen on that occasion, because it was well known that Mr. Allen had been appointed and had served.

Mr. Mandeville's appearance was a surprise to him; he had decreed

and ordered that no more than one deputy was necessary at that term of court, and he asked Mr. Mandeville "What services have you performed? I have not authorized your appointment, and if Mr. Hall has found it necessary to engage you here, he ought to pay you." I believe solemnly, that is all that took place, and that this talk about "dirty work" is all an afterthought. Senators will bear in mind that the testimony in regard to the transaction at the bench is the testimony of three men. Mr. Mandeville says that a certain conversation took place; the respondent says that no such conversation ever occurred. There was but one other man there; that man was Mr. Allen, a person in whom, up to the time of the commencement of these proceedings, both the respondent and Hall had implicit confidence, and I am not taking too much for granted when I rely upon that fact in making my assertion that he must be a man entitled to credit. Mr. Allen is produced as a witneas, and he is asked what judge Page said; he gives it in language equivalent to that used by the judge, and he denies positively that the respondent ever addressed such words to Mr. Allen as "Mr. Mandeville, what dirty work did you ever do to help elect sheriff Hall that he should appoint you deputy?" Now it is true that immediately after Mr. Allen gives that testimony, some one girds up his loins and hies down to Austin to bring up some person to testify that Mr. Allen has made a different statement; but even the testimony of these persons goes to show how utterly uncertain and unreliable impeaching testimony of this character is. This new version leaves out the phrase "dirty work."—"what work have you done to help elect Mr. Hall, that he should appoint you deputy?" We have not the whole conversation, even if that language was used. The objectionable adjective "dirty" has dropped out by the testimony of their own witnesses in rebuttal. A conversation never can be understood until the whole of it is given, and in the intercourse which took place between Judge Page, Mr. Mandeville and Mr. Allen at that bench, it is not impossible that that question may have been asked, "what work did you do for Mr Hall that he should appoint you deputy?" I don't believe it ever did, but if it did what is there wrong? What is there of judicial corruption necessarily inherent in it? What is there in it worthy of being dignified by such a prosecution as this? If words proceeding from the mouth of magistrates or any person, are susceptible of two constructions, one innocent and one blameworthy, not only the law of charity but the law which is administered in the courts, imputes to that language the innocent meaning. Is there any feeling of hostility shown here against Mr. Mandeville or attempted? Anything to show that this judge was not acting magisterially on that occasion? Was *he* reaching his hand into the treasury to help anybody pilfer therefrom?

The statute imposed upon this respondent the duty of fixing the *per diem* of such deputies as the sheriff might appoint under his order fixing the number. Mr. Mandeville appeared before him as a claimant—he had to decide it. Did he decide it right or did he decide it wrong? The duty was upon him to decide that little case: the parties were before him—they were heard. And upon any theory, whether for prosecution or defense, he told Mr. Mandeville that he could not have his pay because the condition precedent, which the statute in guarding the public treasury had made indispensably necessary, had not been performed.

I repeat what I said yesterday, that if this judge has decided right in this matter, if his decision was lawful, his motives or his feelings are entirely immaterial. A magistrate may have against a party, the malice

of Jeffreys himself, but if he proceeds correctly and decides rightfully, unexceptionably, his motives have nothing, whatever, to do with it, nor has the state of his personal feelings. Otherwise a judge would have to decide unjustly, sometimes, on account of his feelings, to save himself from impeachment. And if, on looking over this entire Mandeville article, you make up your minds that this was a lawful decision, then whatever else was done on that occasion, whatever language or infirmity of expression the court may have been betrayed into, cannot constitute that corrupt conduct in office, the elements of which I endeavored to define in my argument yesterday.

Now how does this matter stand as to its bearing upon the treasury of the county of Mower, Sheriff Hall drew pay for attendance at that term; he also drew pay for summoning that multitude of jurors. Mr. Allen took charge of the jury. If Mr. Hall drew pay for his attendance, *per diem* and so forth, it seems to have been because he was there all the while. That must have been the assertion expressed or implied upon which his voucher was composed. Mr. Allen took charge of the jury, and from these circumstances we find that the sphere of the sheriff's duties was entirely filled by Mr. Hall, the sheriff, and Mr. Allen the deputy. I imagine that Mr Mandeville is one of those men who are around court houses, waiting for a job to turn up; and that in the hurry and press of that occasion, Mr. Hall may have employed him upon some duty; and it occurred to Mr. Hall, after the term was over, inasmuch as the court had possibly made no written order, that it was a good opportunity for him to pay Mr. Mandeville from the treasury of the county. Accordingly he approached Judge Page for that purpose, and failed. No suit was ever brought against the county, the bill was never presented to the county commissioners. It never was asserted in any form except as a crime in this high court of impeachment.

I proceed now to the consideration of article 4, known as the Stimson case. The gist of that article is, that the court ordered Stimson to pay over the money paid by Weller, without notice to, or opportunity by Stimson to defend himself, and threatened to punish him. Stripped of all the circumlocution of legal expression, that is what this article charges.

The Senate will bear in mind in listening to what I have to say upon this article, that Mr. Stimson was an officer of the court; that his relations to that court were not those of an ordinary citizen; that he was the servant of the court, subject to its directions, bound to preserve its dignity, amenable to its discipline.

The facts in this case were these: A man named Weller had been convicted of larceny before a justice of the peace. It was a criminal proceeding; the justice of the peace had fined him. Weller had taken an appeal, and the same result had followed in the court above. It all ended in a fine pronounced by the ministers of the law against Mr. Weller.

As a foundation for all that I have to say upon that subject, I assert, that when, in a criminal proceeding, a defendant is fined a pecuniary amount, that fixes and sets limitations to his liability; and no ministerial officer of the court has power, with process or without, to swell his fine under the guise of costs for executing the sentence.

It is implied, if not expressly provided in the constitution of this State, that punishment shall be fixed, limited and certain; and in the case of a fine, no ministerial officer of the court has power to extend that punishment, any more than the warden of the penitentiary has a right to extend a term by reason of the misconduct of any convict. In order to carry out that principle, persons who are under fine are not subject, ordinarily, and, I think, not at all, to execution against their goods and chattels, but their body is taken, and when the sheriff takes the body of a prisoner on a final commitment, was it ever heard, that he or the public could hold the prisoner, until he had paid his mileage or his prison fees? I am not speaking now about those little petty points of practice which I shall be obliged to discuss in a moment, but was it ever heard, I repeat, where a public officer, under the criminal process of a court, has arrested a person in satisfaction of a fine, that he can hold him, indeterminately, after the full amount of the fine has been paid, simply because there are costs and fees not included in the fine, yet to accrue?

Weller was fined seventy dollars; the costs of the prosecution were added to that and fixed; no officer costs beyond that were allowed as appeared from the testimony, although it was not very explicit upon hatt point. Weller, who was a poor man and subject to repeated visitations by the blessed Stimson, had finally, little by little, after considerable exertion, paid into the hands of the officers of the court, but not a cent to Stimson, the whole amount of seventy dollars and the costs. He imagined, and I think the law told him, that when he had paid the amount of his fine he was even with the State of Minnesota, but there stood upon the records of that court under the guise in which French and Stimson had made them appear, the false averment that all of that money had not been paid to the state; that Stimson or somebody had tolled the grist which never in fact went through his hands; that Weller was still liable to be taken on execution, that although he had paid the full amount that the law had said he should pay, yet nevertheless the records of the court showed an unsatisfied criminal judgment against him, Now what does Mr. Weller do? He had no desire to be snatched at by any more of the myrmidons of that sheriff 's office. He had had considerable experience with Mr. Stimson, and—as he had a right to do, that is as he would have had a right to do in any other county than the county of Mower—he goes before the grand jury to lay his case before them. He says there has been extortion here; I have paid my debt to the state of Minnesota, and this officer has stolen a part of it, and the judgment is unsatisfied.

The grand jury examine Weller; whether they had Mr. Stimson before them does not appear; but these facts all appear as I have stated. They bring in their finding to the court and make a presentment. And it appears that a certain officer of the court, has in contempt of the court abused its process—has in contempt of the court embezzled the school funds of the state of Minnesota.

Now I repeat that the powers of the court over Mr. Stimson as an officer are entirely different, so far as their corrective vigor is concerned, from the powers of the court over a private individual. It is important that the people have confidence in the administration of justice, and to that end the court has summary powers over its officers. If

money is deposited with the clerk and he does not pay it over, neither the party nor the court is driven to an action of assumpsit to recover it. It is a new doctrine that, if money be paid in to a sheriff or the clerk, and sheriff or clerk embezzles it, the party wronged is to be driven to his circuitous action of assumpsit against a man confessedly a thief. Take our courts of record in a place like this,—there are hundreds of thousands of dollars on deposit in the registry of courts for railroad condemnations, or as assets in bankruptcy; the officers of the court have this money; they must check it out upon the order of the court. Supposing that a person entitled to a sum under those circumstances, brings to the clerk the order of the presiding judge, and the clerk says, "I—I—I haven't got this money—I—I have disbursed it—I have sunk it." What in all time have all courts done with such culprits? They have laid their hands immediately and heavily upon them, and made them disgorge; they have the right to do it, and it is their duty to do it.

Let any one who has any curiosity remaining on that subject step over into the supreme court room and ask for the record in the case of Gronlund, an attorney of that court. It was charged against him that he had embezzled and refused to pay over the money of a client. He was cited before that tribunal; he made his explanation, such as it was. It was adjudged a high contempt of the courts of this State; he was ordered to refund it, and he languished in the jail of Ramsey county as a penalty for his crime. There is no trial by jury in such cases; none is necessary, the exigencies of public justice do not permit it. The supreme court of this State did not err in that matter; it is a plain jurisdiction, given by the statute over all its officers, attorneys as well as others. There are two other proceedings of the same character pending in that court to-day; and there is not a district judge in this State, who has not, in the course of his administration of justice, been compelled, with a temperate, yet firm hand, to execute the process of contempt upon the derelict officers of his court.

But it is said that there was a technical difficulty in the way here. That Mr. Stimson was executing process in a civil action; that he had the right to execute civil process; that civil process was the only process proper or that could be executed under those circumstances. I am free to admit that there is much to be said on both sides of that controversy. My learned friend argued strenuously the other day, that by some process of transformation, a criminal case becomes a civil proceeding in consequence of an appeal. I deny it. He argued very forcibly on his side—I cannot, of course, argue so forcibly upon mine—but I shall present some considerations to this tribunal to show that there is something to be said by us upon that subject, and that it remained a criminal proceeding not subject, so far as the penalty is concerned, to be increased by any costs, from its inception down to its very end.

I cite 2nd Bissell, page 779, section 125. It is a chapter in regard to justices of the peace, their jurisdiction in criminal cases and proceedings thereon:

"Upon a compliance with the foregoing provisions, the justice shall allow the appeal and make an entry of such allowance in his docket, and all further proceedings on the judgment before the justice shall be suspended by the allowance of the appeal. The justice shall thereupon make a return of all the proceedings had before him, and cause the complaint, warrant, recognizance, original notice of appeal, with

proof of service thereof, and return, and all other papers relating to said cause and filed with him, to be filed in the district court of the same county on or before the first day of the general term thereof next, to be holden in and for said county. And the complainant and witnesses may also be required to enter into recognizances with or without sureties, in the discretion of the justice, to appear at said district court at the time last aforesaid, and to abide the order of the court therein."

The recognizance is that the defendant shall be present in court—thus complying with the first pre-requisite of the administration of criminal law, that a defendant cannot be tried unless he is present.

"Upon an appeal on questions of law alone, the cause shall be tried in the district court upon the return of the justice; on an appeal taken on questions of fact alone, or upon questions of both law and fact, the cause shall be tried in the same manner as if commenced in the district court"

Now, this was an appeal upon questions of both law and fact; it was a case of larceny. This statute provides that in such cases, where an appeal is taken in that manner, the case shall be tried in the same manner as if commenced in the district court. When a case of larceny is commenced in the district court, it is commenced by indictment. Hence this appeal by Mr. Weller upon questions of law and fact should have been tried in the same manner as a case of larceny would have been tried if originally commenced in the district court. And no Senator of our profession, or outside, ever heard of an indictment for larceny resulting in a civil judgment, except in this case. The only provision of our statute which authorizes an execution upon judgment for fine and costs for the use of the county, is while the case remains in the justice court When it comes into the district court, then, I repeat, it must be proceeded with in the same manner as cases originally commenced there. The judgment in this case was that the defendant should pay the fine imposed by the justice, and costs; no prospective costs for serving the execution could have been collected, because the statutes do not contemplate any such costs.

But this execution, though regular on its face, was void, because it was wholly unsupported by any valid judgment. If this case must have been proceeded with in the same manner as cases originally commenced in the district court, then the judgment should have been different, and neither the clerk nor Stimson had the power to issue or execute the process of that court against the property of Weller. This was a criminal proceeding; the recognizance which Weller executed to the State of Minnesota was that he should be present at the trial of that appeal. It is to be conclusively presumed that he was present at the time, just like any other culprit arraigned at the bar of justice. When such a culprit is found guilty by any mode of proceeding, he remains in the custody of the law until he has paid the mulct imposed upon him. There is no way under the constitution of this State, or at common law, by which his property can be sequestered or reached so long as he remains in the custody of the law; and the statutes of this State are explicit upon that subject.

Senators will bear in mind that this was a case, which, upon appeal must have proceeded in the same manner as cases originally commenced in the district court, and that it was a case of larceny.

I cite page 106 of Bissell, on judgment and execution in criminal cases in the district court:

"Whenever any person convicted of an offense is sentenced to pay a fine or costs, or to be imprisoned in the county jail, or state prison, the clerk of the court shall, as soon as may be, make out and deliver to the sheriff of the county or his deputy, a transcript from the members of the court, of such conviction and sentence, duly certified by such clerk, which shall be a sufficient authority for such sheriff to execute such sentence; and he shall execute the same accordingly."

The execution which is provided in criminal cases in the district court is not a *fi. fa.* against the property of the defendant; but it is a transcript of the minutes of the court which simply certifies that judgment has been rendered which is delivered to the officers of the court and which is his authority to do that which is necessary for the purpose of securing the amount of the fine; and that authority under that proceeding authorizes no levy, but by principle as old as the common law, simply authorizes the sheriff to take the body of the defendant and hold him until the fine be paid or he be pardoned.

In making this argument I am not disguising the fact that there is considerable legal force in what my learned friend said the other day; I will not be so disingenuous as to pretend that I do not feel it. If you were sitting here as a Court of Errors, to determine whether you would reverse the judgment of this respondent in that matter for an error of the head not of the heart, while I should still have confidence and think our position is right, it might be that you would see the matter in the light in which my learned friend sees it. But where there are two roads laid out by the statute, where the understanding halts and falters, as to which one it ought to pursue, where two counselors who are endeavoring to be honest in presenting the law differ so diametrically, and argue so strenuously each from his own position, where the difficulty is not created by the facts, but where it inheres in the very law itself, which the respondent was bound to administer,—was it ever heard of until this day, that in taking either road which the statute it seems has opened to the judicial mind, he does so at the risk of committing an impeachable offense because he has not taken the other?

My learned friend, however, in his onset upon the respondent, stopped with that legal discussion. I do not believe that his mind is so constituted that he thinks that because a judge may differ from him upon a question of law he ought to be impeached. No member of our profession is, or can be, so uncharitable as that. But I must avow that the impression created upon my mind, by the manner in which counsel treated this branch of the discussion was exceedingly painful. He seemed to argue that it must follow, as an inevitable consequence, if in this case of conflicting statutes, the court be deemed to have erred, the sword of impeachment must fall with irreversible stroke upon his head. His argument was more significant in what is omitted than in what it contained; for he entirely omitted any consideration of the proposition which my associate enforced in his powerful opening of this case, that Mr. Stimson did nothing whatever to earn any money under this execution, and that his claim was therefore a fraud and steal. Now from this moment I say I do not care what the law was on that subject, it is immaterial what kind of a judgment should have been entered, or whether that execution was valid or not—I will concede that it may be. I say, conceding it to be a valid judgment and execution, this deputy sheriff made it the element of extortion and fraud and embezzlement of the money of the state of Minnesota, as the grand jury found.

Look at the return: that he had collected twenty dollars on this execution and deducted five dollars and fifty cents for his fees. Gentlemen, he took that execution and went twice to Lansing. He never made a levy under it. His doings were all a sham; he went to Mr. Weller's place of business and drove a yoke of cattle out into the yard and let Mr. Weller drive them back with his consent, and yet he swears he made a levy. He went there again and made another levy by driving the cattle out of the yard and Weller drove them back with his consent. That is no levy, or it is a release of the levy. He never arrested Weller; he never laid hands under his process on an article of Weller's property which he retained. He made two fruitless journeys to Lansing, which the cross-examination shows were upon other missions as well as that. He finally took Mr. Weller's promise that he would send twenty dollars up to Mr. French; and that twenty dollars never was in this man Stimson's hand. But, hearing that the money had been paid into the hands of French, Stimson calls on him and they make a little divide whereby Mr. Stimson rakes down five dollars and sixty cents, and the balance of the money is suffered to go into the registry of the court.

I am not informed whether any Senator has ever served in the office of sheriff; if so, I ask him to resort to his experience and tell me what this sheriff ever did to earn any fees under this execution? He had gone down there and laid his hands on that property and then released it and thereby released the sureties to the appeal bond; he had given away the rights of the State. He made a corrupt agreement with this defendant that if he would not execute that process the defendant would give $5.60. That was the agreement that Weller and this man made: "you can go home—I will send up some twenty dollars to Lafayette French, and out of that, for your forbearance, for not doing your duty, you just pocket $5.60." And so French and this deputy sheriff pounced down on this little morsel of twenty dollars and Stimson took the fruits of his corrupt agreement with Weller, out of it.

I wish to read an extract from his cross-examination on the 29th of May, page 75:

"Q. When you received that execution where did you start with it first?
A. To Lansing.
Q. How far is it from Austin?
A. Six miles.
Q. What is Mr. Weller's business.
A. Farmer.
Q. You say you made a levy upon some cattle?
A. Yes sir.
Q. Did you do it then?
A. Yes sir.
Q. On the first day you were there?
A. The first day I was there
Q. What did you do to make that levy?
A. The first thing that I done—
Q. Did you take possession of the cattle?
A. I drove them into the road sir.
Q. What did you do with them then?
A. He took them back again. [Laughter.]
Q. What did you do then?
A. I went back, took him into the sleigh and went to Austin with him.
Q. Did you drive the cattle away?
A. No sir.

Q. Did you take and retain possession of them?
A. No sir.
Q. Did you ever take a receipt for them of any person?
A. No sir.
Q. You never did?
A. No sir.
Q. You drove them into the road and he drove them back?
A. Afterward, yes sir.
Q. With your consent, didn't he?
A. Yes.
Q. You call that a levy, do you?
A. Yes sir, I did at that time.
Q. You call it a release of the levy too, don't you?
A. Yes sir
Q. And was it then that this agreement was made about this twenty dollars?
A. No sir.
Q. When did you make the agreement with regard to the twenty dollars?
A. Some time after that, I can't state how long.
Q. On the occasion of your visit to Lansing again?
A. Yes sir, I think I was there once before that time.
Q. Did you make a levy on that occasion?
A. I told him I was going to take the cattle.
Q. What did you do that time?
A. I took the cattle.
Q. What did you do with them?
A. I gave them back again. [Laughter.]
Q. Then you made the arrangement about the twenty dollars, did you?
A. Yes sir.
Q. When did you take the watch?
A. That same day.
Q. Did you make a levy on that?
A. No sir.
Q. How many times did you visit Lansing in all?
A. I can't state positively, two or three times, perhaps three times. I went there once I remember when he was not at home.
Q. Did you go up there solely for this purpose each time?
A. I can't say as I did.
Q. What other purposes did you have in going there?
A. I presume I had some other papers to serve on the road?
Q. You presume you did; did you as a matter of fact?
A. I don't remember.
Q. What is your impression?
A. I think the first time I didn't have any.
Q. You think the other times you did?
A. I think perhaps I might; I couldn't state.
Q. Who did you receive this twenty dollars from?
A. From Lafayette French.
Q. He was the county attorney, wasn't he?
A. Yes sir.
Q. This execution which you had in your possession at that time, was an execution rendered in a criminal proceeding against Mr. Weller, was it not?
A. Yes sir, it was.
Q. Mr. French was the county attorney of that county?
A. He was
Q The fine for which that execution called was twenty dollars, was it not?
A. It was a larger amount than that—$80 or something—I don't remember how much, at first.
Q. Seventy or eighty dollars—somewhere along there?
A. Yes sir.
Q. And the *modus operandi* of this business was, that the defendant in the case paid twenty dollars to the county attorney, and the county attorney paid it over to you, and you pocketed $5.50 and paid the balance into the court?
A. I kept five dollars and a half and paid the balance to the clerk of the court.
Q. Did you put any returns upon that execution of the amount of your fees in items?
A. No sir.

Q. Will you state to the court how you made up that bill of $5.40?
A. I couldn't state it now the way I done it?
Q. Are you familiar with the statutes of the State, in regard to the fees of officers evying execution?
A. Somewhat.
Q Will you go to work and construct, for the benefit of this Senate, a bill of costs of $5.40 for the services you have described and performed?
A I can by explaining how I made it up.
Q. That's just what I have been asking you to do, go ahead?
[A pause ]
Q. For instance, did you charge for these levies?
A. Yes sir.
Q. Did you charge for both of the levies?
A. Well, I can explain—
Q. Did you charge for both of these levies?
A. I can explain how—
A. I don't think I did—but for one of them.
Q. Which one?
A. The first one I guess, or the second, I don't know which it was.
Q. Did you charge for that operation with the watch?
A. No sir.
Q. Did you charge mileage?
A. Yes sir.
Q. Did you charge mileage?
A. I think I charged mileage twice for going up there.
Q. You had other process?
A. I am not positive I had.
Q. You think you had?
A. I don t remember.
Q. If you had, did you charge mileage for that too?
A. I presume I did, yes sir.
Q. Now go to work, and item by item, for what you did there, inform this Senate how you got a bill of $5 50 out of that matter?
A. I would like the privilege of telling just how it was.
Q. I want to know how you got a bill of five dollars and forty or fifty cents out of that?
A. Well sir, in the first place, the mileage; I was there twice.
Q. That is how much?
A. It was twelve miles up there and back.
Q. How much a mile did you tax the county for that?
A. I guess ten cents a mile; I don't remember what I did charge for the service of it; I presume a dollar, it might have been less.
Q. The service of what?
A. The execution.
Q. What else did you charge for?
A. When I got the execution renewed; paid the clerk of court for renewing the execution
Q. Was that after you make the levy?
A. I think it was before I made the levy. I don't remember exactly the time.
Q. Then you held the execution for sixty days and did not do anything with it, and got it renewed and charged the county with it, did you?
A. I did not hold it for sixty days
Q. How old was it when you got it?
A. I don't remember. I know I had to get the execution renewed.
Q. You charged that to the county?
A. No sir. I charged it to Mr. Weller.
Q. You got it out of that twenty dollars, didn't you?
A. Yes sir.
Q. Go on?
A. Well, the understanding was, that Mr. Elder was to pay the balance. He was to pay for the cow and Mr. Weller was to apply that amount on the execution; he was to endorse that on to the execution.
Q. Did you charge for that understanding?
A. I presume I did.
[Laughter ]
Q. Did you trade him that cow on the execution.
A. No. He did not take the cow afterwards."

The fact is, that this deputy sheriff went down there, engaged in a cow trade and took a bribe from Mr. Weller that he would not levy upon his cattle but that he would give him a chance to sell a cow so that he might steal $5.60 out of the proceeds of that live stock transaction. And the respondent is to be impeached. [Laughter.]

I cite, 1st Bissel page 236, sec. 98:

"No sheriff or other officer shall directly or indirectly ask, demand or receive for any service or acts by him performed in pursuance of any official duty, any more fees than are allowed by law, under penalty of forfeiting for such offense to the party aggrieved treble the sum so demanded or received, to be recovered in a civil action."

A sheriff cannot exact fees on an execution unless he executes the process, and it is not pretended that Stimson ever did in this case.

I cite 2d Bissell, page 975, sec 33, to show that this man was guilty of misdemeanor:

"No fee or compensation allowed by law shall be demanded or received by any officer or person, for any service unless such service was actually rendered by him, except in case of prospective cause hereinafter specified.

"A violation of either of the last two sections is a misdemeanor; and the person guilty thereof shall be liable to the party aggrieved for treble the damages sustained by him."

It was a criminal act that Stimson had committed. He had besides made himself civilly liable to three times the amount which he had collected. He was an officer of the court; the process of the court had been used in trading cows—squeezing this $5.60 out of the county of Mower. It was a flagrant contempt of court. The more contemptible because it was *so* insignificant—a little, dirty steal! [Laughter.]

Was the respondent wrong in taking an officer of his court to task for conducting the ministerial duties of his position in that manner? The grand jury investigated it. They made a formal presentment; the court called Mr. Stimson before it. An investigation took place (as I shall show in a moment by an examination of testimony), and Stimson admitted every one of the facts charged without objection, exception or reservation, and as I shall maintain, without asking for any further hearing than he had. Why he was just like any other little thief caught with the money in his hands—He admitted it; he was willing to disgorge. There sat the grand jury before him—There was Mr. Weller in court, liable to be imprisoned again if Stimsom was allowed to hold his money in this way. It is only a part and parcel of the way these men down there in Mower county treat the public treasury. He made no objection. He was requested to pay over the money so that the grand jury might see the process of deglutition reversed, and he walked up and did it. Now who will say that the action of the respondent was not right and morally right? I may admit that he might have travelled the technical zig-zag of assumpsit or indictment, but he was not bound to do it in the case of an officer of his court.

I have cited the Gronlund case, I now cite, to show that this was a contempt of the court, and punishable by the summary process of the court, the second Bissell 939:

"The following acts or omissions in respect to a court of justice, or proceedings therein, are contempts of the authority of the court:

THIRD Misbehavior in office, or other wilful neglect or violation of duty by an attorney, council, clerk, sheriff, coronor, or other person appointed or elected to perform a judicial or ministerial service."

If my proposition is true and my law is right, this man Stimson being a deputy sheriff, had neglected his duties; he had been guilty of embezzlement. He had also laid himself liable to damages, and how was he to be punished? To be punished summarily—in some cases having an opportunity to be heard. He had such an opportunity. The grand jury had made their presentment; it was read or explained to this man and he admitted it, as I shall show when I come to examine the testimony. Everything was done that he could have required to give him a hearing.

This proceeding is as old as the common law, and has been exercised in parliamentary bodies. Precisely the same principle was considered by the supreme court of the United States in the case of Randall against Bingham, reported in the 7th of Wallace, page 539. The grand jury in that case, upon the strength of a letter charged that an attorney and counselor had been guilty of such a violation of his professional duties as to induce the supreme court of Massachusetts to call that gentleman before them, very much as Judge Page called Mr. Stimson, and it disbarred him after a very informal hearing, and he sued the justice who disbarred him for damages, alleging as Stimson does here, that he had no sufficient opportunity to be heard—possibly that he had not been indicted and convicted—that the law did not in stately ceremonial reach him in tangled ways. The case went through all the courts. Here is what the supreme court of the United States holds:

"The informality of the notice, or of the complaint by the letter, did not touch the question of jurisdiction. The plaintiff understood from them the nature of the charge against him, and it is not pretended that the investigation which followed was not conducted with entire fairness. He was afforded ample opportunity to explain the transaction and vindicate his conduct. He introduced testimony upon the matter, and was sworn himself.

Here Stimson admitted the act, just as the grand jury charged it. "It is not necessary that proceedings against attorneys for malpractice, or any unprofessional conduct, should be founded upon formal allegations against them. Such proceedings are often instituted upon information developed in the progress of a cause; or from what the court learns of the conduct of the attorney from its own observation. Sometimes they are moved by third parties on affidavit and sometimes they are taken by the court upon its own motion." Such is the opinion of the Supreme Court of the United States. That is not only the practice in all courts in compelling extortionate officers to give up extorted fees, but it has been the practice in parliamentary bodies, and it was once adopted in a case of a man, who will be revered as long as the English language is spoken, or understood. I read from the life of the Earl of Nottingham, on page 194, vol. 4, of the Lives of the Lord Chancellors, of England. John Milton was thrown into prison in the disturbances which followed the overthrow of the Commonwealth, and while he was there some ancestor of Stimson squeezed the poet for fees. [Laughter.] With the advent of better times the laureate of Paradise was liberated, and, having been committed under an order of the Parliament, the question of restitution was brought up. Lord Campbell writes thus:

"As a lawyer, I blush for my order while I mention Finch's last appearance in the Convention Parliament. John Milton, already the author of COMUS and other poems, the most exquisite in the language after being long detained in the custody of the Sergeant-at-arms, was released by the order of the House—most men, however "cav-

alierly" inclined, being disposed to forget his political offenses. The Sergeant had exacted from his person, fees to the amount of £150—a sum which, with great difficulty, he had borrowed from his friends. The famous Andrew Marvell brought the matter before the House, and moved that the money should be refunded. He was supported in this motion by Colonel King and Colonel Shapcot, two officers of undoubted loyalty as well as gallantry; but Mr. Solicitor General Finch strongly opposed it, saying that 'this Mr. Milton had been Latin Secretary to Cromwell, and, instead of paying £150, well deserved hanging' However, the matter was referred to a committee of privileges, who, I hope, decided for the poet."

Now, gentlemen of the Senate, before I leave this portion of the charge, allow me to give it a parting kick by asking the question if it is not a grave and weighty matter for the Senate of Minnesota to be engaged so many days in deciding whether it will forever wreck the life of a man upon whose character rests no taint or stain of pecuniary corruption, for simply taking a rapacious officer by the neck and making him throw up what he had so wrongfully swallowed? If this magistrate thought he was doing right and was actuated by those motives of honesty which all men recognize, and admire when they do recognize them, will the Senate suffer that he, believing himself to be acting rightfully in that matter, shall be branded with the ineffaceable stamp of infamy, and be punished with such extremity of punishment as that which must follow conviction upon this or any other article?

A few words as to what actually occurred in court. Stimson testifies that he called him up, did not explain anything and told him to pay the money over right there and then, and when he told him he hadn't it, commanded him to borrow it. And that he said further:

"Young man, if you commit that offence again I will punish you to the full extent of the law."

Now, Mr. Root, for the prosecution on the thirtieth of May, page 16, testified:

"A few moments after the grand jury came in with a presentment, respondent said he had been informed that Stimson had money in his hands that he had collected as a fine that belonged to the county; asked him if he had, and he said he had: He told him he must pay it over to the clerk; that there was a way for them to get their fees, by presenting his bill to the commissioners. Stimson asked to explain, but this witness testifies that the court refused to hear him He said nothing about young man."

Mr. Hammond, who testified on the 30th of May, page 16, says on his cross-examination, that the judge stated the circumstances of the case to Mr. Stimson, and that he can't remember whether the grand jury brought in a presentment. Judge Page's testimony is that the grand jury made a presentment; that he did not know at the time that Stimson was a deputy; that he came forward:

"I stated to Stimson what was contained in the presentment; I stated it was a criminal case; that it was a fine and that when Weller paid it he was entitled to his discharge; the fine was a definite and fixed amount, and that Stimson was not entitled to the fees. I then stated to Mr. Stimson that the simplest way to dispose of this matter was to pay over the fees to the clerk, and so directed him to do."

So far from there being any malice in that matter, this judge exercised a merciful discretion. I have already shown that Stimson was guilty of a misdemeanor. If the judge had adopted a severe course, he would have told the grand jury that on that presentment they ought to indict; that it was their duty to do so, and so made Mr. Stimson a great deal of trouble; but in the exercise of that discretion in which courts

indulge in matters of trivial offence, he told Mr. Stimson in substance, instructing him that it was a crime and outrage, "the matter is small, it is your first offence—pay the money into the clerk of the court and the grand jury will undoubtedly ignore it." Judge Page states that Mr. Stimson made no request to be heard further or to explain it. He never used the phrase, "young man."

Mr. Elder testified on the 12th of June, pages 92, 93: He says in substance, that Mr. Stimson came forward; that the contents of that presentment were fully explained to him and he admitted that they were all true. The conversation occurred back and forth between him and the judge. The matter was fully heard, fairly understood by both parties, and as the result of it, Stimson paid over the money.

On the 13th of June, page 2, is found in the testimony of Mr. Harlan Page the most explicit account of that transaction which I have been able to find on either side. Mr. Page is a banker in Austin. He was in court at that time and observed this proceeding. He says, on pages 2 and 3:

"The judge said, 'Mr. Sheriff, have you a deputy by the name D. H. Stimson?' Mr. Hall assented and the judge said, 'is he in the court room?' Mr. Hall said 'yes,' and looked in the back part of the room; and then the judge said, 'you will call him.' Mr. Stimson immediately started forward and stepped inside the railing. The judge made some statement in reference to the Weller case, and asked him some questions with reference to it, as to the collection of some money to which he assented, stating I think, that he had collected $20; or rather, I think, he had received from Mr. French $20, and that he had paid it over. There was some question about the fees; he had deducted his fees, and the amount brought out then was $14.50, I believe $5.50 being deducted for fees. The judge stated in the first place that the fees were too much, and that he was not entitled to the fees, and then he said something connected with the case that the punishment was a fine, and the law contemplated that as a limit of punishment, and that he should not be made to pay more than that; he then asked him to pay the money over—the balance—to the clerk of the court in presence of the grand jury, so that the grand jury might see that it was paid. I don't remember if that was the form of the expression. Mr. Stimson said he hadn't the money with him, and the judge said to him, 'you can get it.' Mr. Stimson said, 'can I go to the bank;' the judge said, 'certainly, or perhaps the sheriff'—turning his head towards Sheriff Hall, to his right—'perhaps the sheriff can loan it to you.' Mr. Hall said he guessed the sheriff was in the same fix. Mr Stimson, I think, in the mean time had started toward the back part of the room as though he was going to the bank, and several persons offered money to him. I don't know who they were, and he stepped up and paid it over."

Now if that witness is not greatly in error, this plain unvarnished statement probably puts the situation just about exactly as it was. The judge heard Mr. Stimson with great consideration and explained the whole of the circumstances to him. When Mr. Stimson said he wanted to go to the bank, the judge said "certainly he could go, or perhaps the sheriff would loan the money to him," instead of using that brutal phraseology which was given in the testimony of Mr. Stimson, that he turned and said "he could not go—pay it right down—borrow it of the sheriff." Mr. Page is a gentleman of veracity, and that account of the transaction is so distinct and clear, and so likely to have taken place, that I am inclined to take it as the true and most complete version.

Again, Mr. Kinsman, a witness produced for the prosecution to sustain this article, was asked, on cross-examination, how long it took for the court to explain:

"Q. It took long enough so that the court explained to Mr. Stimson the circumstances under which it was claimed he had collected that money, did it not?
A. Yes sir
Q. Then there was a full explanation made by the court of the facts, and he admitted it, did he not?
A. Yes sir, that was in the first instance.
Q. He admitted that the facts were as the court stated?
A. With regard to the collection of it?
Q. Yes, and as regards the circumstancas under which the execution was issued The court told him that the execution was illegal, did he not?
A. He told him the retaining of the fees was illegal. I don't know that he told him that the execution was illegal.
Q What was the case as to the explanation to Mr. Stimson by the respondent?
A. I think that the respondent explained the case as a case in which the State was a party plaintiff, and that the execution was for a fine—was to collect a fine, I think.
Q. A fine imposed in a case in which the party should have been in the custody of the officer until it was paid, was it not?
A. I don't remember about that.
Q. You can't state whether the language was used or not?
A. I have no recollection.
Q. It was in the case of the State against Weller, was it?
A. Yes sir, I understand it so.
Q. And he so stated?
A. Yes sir, I think he stated so.
Q. To Mr. Stimson?
A. Yes sir.
Q. After the facts were stated by the court, did the court ask Mr. Stimson if he assented to the correctness of the facts as stated?
A Yes sir, he asked him if it was true, and Mr. Stimson stated that it was.
Q. Did he?
A. Yes sir.
"Q. Did you notice anything unusual in the tone of the court at the time he asked the sheriff if he had a deputy by the name of David H. Stimson?
[No answer.]
Q. Answer my question whether he did or did not?
A. There was something unusual in the—as I understood it. I may be mistaken in regard to it—I think he called him 'D. K. St mson.' That was everything unusual about it—his name was D. H.,—and I noticed it not being his name.
Q. That was the unusual thing about it?
A. Yes sir.
Q. He made a mistake in the name?
A. Yes sir
Q. No other unusual thing about it?
A. No sir; I didn't notice anything."

So we find Mr. Kinsman substantially agreeing with Mr. Page. Mr. Kinsman does not recollect any such remarks as Mr. Stimson says were made by the respondent to him about getting the money of the sheriff. and it seems to have been an orderly, decorous proceeding upon the part of the judge, laying his hand mildly upon a ministerial officer of the court. to correct him for a first offense.

I wonder, if a ministerial officer of this Senate were discovered in extortion or the collection of illegal fees, if this body, after solemn deliberation, would conclude that it had no power to correct that wrong as a contempt. You would do it in a moment. The right to do so is inherent in your very constitution. If the court cannot make itself respectable and dignified, against the attacks and malversations of its own officers, why of course there is no other agency in the world that can. And hence severity on the part of courts, when it is necessary, towards its officers, has always been countenanced. When a man enters into the service of the court as a ministerial officer, he assumes certain obli-

gations and gives up certain ordinary privileges that he would have as a citizen owing no duty to the court except when regularly cited there.

The PRESIDENT. The Senate will take a recess for five minutes.

AFTER RECESS.

Mr. DAVIS. [Resuming.] Mr. President: We have proceeded in the consideration of these articles of impeachment, down to article fifth, the Baird article. I sincerely wish that I could have as authentic an exposition of the conviction of the senate that they do not wish to hear argument upon that article, as we did that they would not hear testimony. We were distinctly notified by this body, after one manager had asserted that there was, in his opinion, nothing in this article, that they would hear no testimony upon it. We were as distinctly notified that this senate would not quash it. We have been placed between the devil and the deep sea in this respect, and I have great doubt as to what course I ought to pursue—whether to discard this article entirely —as the Managers and the senate seemed inclined to do one day—or to treat it with solemn and extended argument and consideraiton, as another manager and the senate seemed inclined to do on another day.

It is the first time, may it please the Senate, that I ever witnessed or ever read in all the annals of judicial abuse, that a controverted article upon which a prosecution had offered no proof whatever, should be retained for purposes of conviction, and yet the defendant be allowed to give no proof upon the subject. But I will treat this article with a few words.

It propounds that the respondent, with the intent to humiliate George Baird, wrote to him a certain letter which is set out. It is not charged that he published any such letter to the world. It was designed for aught that appears, for the private eye of George Baird; except by the act of exhibition by George Baird himself he need never have been in the least humiliated in the matter. It was taken by Baird, if by anybody, and publicly put into this impeachment nest to be hatched.

The respondent has made in his answer, full and sufficient reply to everything charged against him worthy of a moment's attention. He avers, in the first place, that he is the judge of that judicial district; he avers, in the second place, that for days, there had been a riot in the city of Austin; that danger to life and property were apprehended; that meetings were held in the houses of citizens to devise means for public protection; that the streets of that town were guarded by patrols; that the sheriff had been inadequate and insufficient in the performance of his duty when requested by the mayor of the city to arrest the rioters. The respondent also alleges that while this insurrection against law and order was flagrant, he was called by the duties of his position from Austin to Preston to hold a term of court; that the riot renewed or rather continued; that danger to his family was apprehended, and he was summoned by telegraph, to put into execution, the undoubted powers which inhered in him; that he did write a letter to the sheriff of that county—as I shall demonstrate he may have done, must have done and should have done—instructing him under the right he had to instruct him, that he should preserve the peace in manner and form prescribed by the statutes.

Gentlemen of the Senate, I do not know, and the managers have been peculiarly cautious that we should not know, precisely what attitude they assume in regard to the truthfulness of this article. If they ask you to take the article as true, then we ask you under the circumstances to which you have made us submit, to take that answer as true. It is asking none too much. Enough has come out in this case already, to show that such a state of facts did exist there, for Beisicker, Walsh, and these other men, were indicted for participation in that same riot.

Now, taking both the article and answer as true, with the exceptions of the allegations of wrongful and malicious intent to humiliate George Baird, which we humbly trust the Senate will consider as denied by the implicit form of denial which we adopted for that purpose, I undertake to demonstrate that the respondent acted within the strict line of his duty, and would have been blameworthy if he had not acted in just the way he did. And in doing that, I shall do what the learned counsel did not do. I shall read from the statute. I shall not content myself with saying merely that this was a proceeding which was all right and correct, in imitation of his course of assertive denunciation. I shall show that every line and every word in that letter—every act that this judge did, were written, said and done, in the line of his duty under the statutes of Minnesota, which he was sworn to enforce. And my argument will essentially be the reading of the law. I refer to page 628 of the general statutes. I cite this to show that the respondent throughout his district, whether in Albert Lea or Caledonia, or at any intermediate place, whether present or not, is the chief conservator of the peace in that judicial district.

"SEC. 1. The judges of the several courts of record, in vacation within their respective districts, as well as in open court, and all justices of the peace, within their respective counties, shall have power to cause all laws made for the preservation of the public peace to be kept, and in the execution of that power, or for good behavior, or both, in the manner provided in this chapter."

As to his duties in relation to riots, I cite page 616 of the same compilation. The Senators, by reference to that article of impeachment, will find that it contains no allegation that the state of things at Austin did not warrant such an order as that conveyed in the letter to Mr. Baird, if the court had power under any circumstances to give it. Chapter 98, section 1, reads:

"If any persons, to the number of twelve or more, any of whom being armed with any dangerous weapons; or if any persons to the number of thirty or more, whether armed or not, are unlawfully, riotously or tumultuously assembled in any city, town or county, it shall be the duty of the mayor and each of the aldermen of such city, and of the president and each of the trustees of such town, and of every justice of the peace living in such city or town, and of the sheriff of the county and his deputies, and also of every constable and coroner living in such city or town, to go among the persons so assembled, or as near them as may be with safety, and in the name of the State of Minnesota, to command all the persons so assembled, immediately and peaceably to disperse; and if the persons so assembled shall not thereupon immediately and peaceably disperse, it shall be the duty of each of the magistrates and officers to command the assistance of all persons there present, in seizing, arresting and securing in custody, the persons so unlawfully assembled, so that they may be proceeded with according to law.

"Section 2. Whoever being present and commanded by any of the magistrates or officers mentioned in the preceding section, to aid or assist in seizing and securing such rioters or persons so unlawfully assembled or in suppressing such riot or unlawful assembly, refuses or neglects to obey such command, shall be deemed to be one

of the rioters or persons unlawfully assembled, and shall be liable to be prosecuted therefor and punished accordingly.

"Section 4. If any persons who shall be so riotously and unlawfully assembled, and who have been commanded to disperse as before provided, refuse or neglect to disperse without unnecessary delay, any two of the magistrates or officers before mentioned may require the aid of a sufficient number of persons, in arms or otherwise, as may be necessary, and shall proceed in such manner as in their judgment is expedient, forthwith to disperse and suppress such unlawful, riotous or tumultuous assembly, and seize and secure the persons composing the same, so that they may be proceeded with according to law."

The result of this is, that the judge is a conservator of the peace throughout his district, with all these various subordinate officers subjected to his authority for that purpose by a statute which places them under his direction to the extent of empowering them to use arms if necessary to disperse rioters.

Section three of this statute, framed for public safety, for public peace and for the protection of the law-abiding, provides that if any person does as George Baird did on that occasion, he is guilty of a misdemeanor. Section six provides that if, after such orders are given in regard to arms, the rioters refuse to disburse, and any of them are killed, the person killing them shall be held guiltless and fully justified in law.

Now let us consider what order the respondent gave. Here is the order, and I ask any Senator to take the statute which I have just read, and see whether the order by its terms is not limited to just the authority which the statute confers upon judges and authorizes them to confer upon officers such as George Baird was:

"STATE OF MINNESOTA, }
TENTH JUDICIAL DISTRICT. }

To GEORGE BAIRD,
Sheriff of Mower County:

You are hereby ordered and directed to disperse any noisy, tumultuous or riotous assemblage of persons numbering thirty or more, or a less number, if any of them are armed, found anywhere within the limits of your county, and for such purpose you are authorized to call to your aid any number of persons, and arm with fire-arms any number of men not exceeding twenty-five. Such armed force to be under your charge and who will obey your orders.

In your proceedings you will be guided by the provisions of chapter 98 of the General Laws of this State." (Which is the statute I have just read.) "You are especially directed to disperse in the manner above indicated any assemblage of persons whose evident design and purpose is to violate and prevent the execution of the laws of the State and the ordinances of the city of Austin.

Witness my hand this 2nd day of June, 1874.

SHERMAN PAGE,
Judge of the District Court, Tenth Judicial District."

"PRESTON, June 2d, 1874.

GEORGE BAIRD, Esq., Sheriff:

I have this day heard with shame and regret that another noisy assemblage of riotous men have been allowed to parade the streets of Austin at night, defying the law and disturbing peaceable citizens. I send you herewith an order of a positive character. Rest assured you will not disobey any further order with impunity. Every good citizen of Austin ought to be ashamed of his town and of its civil authorities.

Yours truly,
S. PAGE."

Gentlemen of the Senate, within the past two years a portentous social phenomenon has appeared in this country, which, five years ago, no one of us could have had any reason to anticipate. From the seaboard to where civilization stands pausing on her western outpost, this country is infested with lawless tramps, who set the law at defiance,

who capture trains, rob homes, ravish women, murder citizens and who are rapidly, by some strange social elective process, taking unto themselves the forms of belligerent organizations. In our cities a wilder vagary has found expression. That which was formerly deemed to be an exotic, has been discovered to be indigenous though heretofore dormant in our soil. In Chicago, in St. Louis, in New York, in every considerable city of this country, the horrid front of communism has been reared. It threatens the holy bounds of property. It has its organization, its design, its avowed purposes, and bears to the other portent the relation of fire to powder. Only last year the electric thrill of one riot ran from the sea-board to the Mississippi River, and palsied the great arteries of commerce in a day; it sacked and burned the mighty city of Pittsburg; the great state of Pennsylvania, with its four millions of people lay crushed in its folds, and the authority of the Federal Government was powerless for a time.

With the coming of the harvest, there will sweep over the face of this state, bands of lawless men, unarmed now, perhaps to be armed in the future. From a sightly hill near the farm of the senator from Wabasha I venture to say that in two months, thousands of those men can be counted coming no man knows whence, and going no man knows where. And I say that in these times when such dangers are reasonably to be apprehended, the magistrate who has the courage to command the sheriff of his county to execute the law by taking life if necessary—to tell the citizens that they shall be protected in doing what the law says they may do—deserves the plaudits and commendations of his fellow men, instead of being arraigned before a court of impeachment. This charge is a public danger, senators. A few men like Sherman Page might have saved the city of Pittsburg that day. There would not at least have been that abject cowardice, while millions of property and hundreds of lives went out of existence—and when I see a sickly sneer of incredulity upon the face of any man who lives far secluded from any danger of that kind, it makes me tremble for the justice of this court.

If the senate will indulge me in a recess, I feel warranted in stating that I will close this afternoon, perhaps asking the senate to sit until six o'clock.

Senator HENRY. I move to take a recess until 2 o'clock.

Senator GILFILLAN, J. B. I would ask the counselor what time would suit him to continue.

MR. DAVIS. Two o'clock will suit me as well as any hour.

The motion prevailed.

AFTERNOON SESSION.

Mr. DAVIS. [Resuming.] May it please the Senate: In the view which I have taken of this case, but two transactions remain which demand any serious or prolonged exposition. It is true that article ten yet nominally exists in this proceeding, and perhaps ought to receive my slight consideration. I will, therefore, depart for a few moments from the numerical order of these articles and consider this article, and the specifications which have been begotten upon its prolific body.

Article ten propounds the general charge that the habitual demeanor of this respondent to officials of the county of Mower and to persons

everywhere else who have excited his displeasure, has been arbitrary, oppressive and tyrannical.

We took exceptions to the validity of that article at a very early stage of these proceedings. The argument upon those exceptions resulted in allowing the managers to specify under it, the various acts which they held to constitute a habit; and they specify seven particular instances. I shall go through them very briefly because I really do not think any of them deserve any very serious, or if not serious, extended consideration.

As to the language which is said to have been addressed to Mr. McIntyre in the barn-yard, it seems to me a sufficient answer to say, that this Senate was not constituted by the constitution a court of impeachment to try judges for faults of conversations upon the street, in social intercourse and upon politics. The entire scope and result of that first specification under article ten, is that the respondent was opposed to Mr. Irgens as secretary of the State, and told Mr. McIntyre so, in pretty forcible language.

What if he did? What if he did? Has he no right to express his opinion upon politics to Mr. McIntyre or anybody else? No right to criticise a person who is a candidate for a public office? Is a judge deciti-zenized from the moment he is elevated to the bench? I say the respondent had a perfect right, so far as any imputation upon his judicial character is concerned, to speak of any public man as a candidate for office, in derogation, if such was his opinion of him, and this Senate will establish no such tyrannical censorship of that liberty as to adjudge that it will impeach a judge for doing that, in social intercourse, which the meanest citizen of this State, not holding an office, or holding any other office, has a right to do unquestioned.

The respondent denies that that conversation took place. You saw Mr. McIntyre upon the stand; you saw his hostility, his bitterness. He has his money staked upon this prosecution. He asserted that Judge Page has refused to speak to him for years; and yet when you read Mr. McIntyre's testimony, a peculiar perversion of vision or language appears. He says, that after this affront had passed from Judge Page to him, or from him to Judge Page, he met Judge Page on the street, and there was such an expression on the judge's face that Mr. McIntyre himself, would not speak to him. [Laughter.] The fact is that McIntyre is the aggressor, a hot-headed, bitter Gael, who, years ago, refused to speak to Judge Page.

Now, in regard to the second specification. The fact is that Mr. Greenman never took charge of Lafayette French's case. How different the situation appears in the light of the testimony of Mr. Murray, Mr. Greenman, and others present in the court room! Why, as Mr. French gave testimony under this article, it would seem that he had been insulted in the presence of everybody there; deposed from his office—prevented from trying the case. Now the whole sum and substance of that business is simply this: That Mr. French was interrupting the proceedings of the court by loud conversation: the court spoke to him three times before he answered; a jury was being empannelled; he either left the court room of his own motion, or upon the suggestion of the judge that if he wanted to talk to witnesses he ought to go out. He was gone a few moments; Mr. Greenman was put in to empannel the jury. The public business went on; everything was satisfactorily

done; Mr. French came back at or about the time the jury was finally empannelled; Mr. Greenman surrendered his chair; Mr. French went on with the case, and the State got a verdict. And that is so long ago that hardly any of the witnesses can identify the term. It does not appear that this matter was ever brought before the House of Representatives, and if it was, of course it was rejected, because it is not among the articles of impeachment.

I shall say little respecting that conversation with Mr. Baird for the reason that it is answered by the argument which I have addressed to the Senate in regard to the conversation with Mr. McIntyre. Furthermore, the Senate has said that it will strike out all the testimony in regard to that whiskey riot, and if it does that it ought in justice to strike out all the testimony of Mr. Baird, because that testimony relates to the riot, and we were entitled to all the facts if we were entitled to anything; and we are entitled to nothing concerning that riot, the whole testimony of Mr. Baird ought to go out. But it was not corruption in office. The judge was doing nothing judicially then. He had the right to talk to Mr. Baird. A judge cannot be impeached for violating any law of social decorum if you conclude it to be so. If everything he said there was true, it bears not at all upon the issue of corrupt conduct in office; it is not a crime; it is not a misdemeanor. He was doing nothing by virtue of his office then. He was on the street.

As to the venire in the Jaynes case, I have already treated that. The testimony of Mr. Severance bears most decisively upon the general credibility of sheriff Hall. The testimony of Mr. Severance corroborates the testimony of the respondent that the sheriff was delaying the trial of that case—was failing to subserve the interests of public justice by bringing to that panel man after man from the city of Austin whom he must have known was not competent. The judge then told him to go just outside the city, within reasonable limits, and summon jurors. But Mr. Hall desiring to make up his loss of *per capita* of jurors by his fees for mileage, goes to towns fifteen miles distant. So, as Mr. Severance says, it went on for two or three days, until it became a ridiculous farce. Mr. Severance was there and heard the entire conversation; heard the conversation from beginning to end. It was his business to be there; and that most eminent lawyer comes before this Senate, under his oath and says, that the respondent spoke no such words as those which Mr. Hall attributes to him and he is confirmed by other witnesses.

There is no testimony whatever in regard to the fifth specification, as to the turnkey West.

As to the Huntly case: That is another conversation between Mr. Hall and the respondent on the street. Huntly was a horse-thief. He was out on bail; a bench warrant had been issued for him the term before. The stealing of horses along the State line is a pretty serious offense. It is a matter of great public interest, that perpetrators of that particular crime shall be punished. This man Huntly was conveniently located for the purposes of horse-stealing, for he lived about a mile from the Iowa line. He was arrested but let out on bail; he made his escape, a bench warrant had been issued, as I said, for his arrest the term before, and this sheriff did nothing with it whatever. He said he

went down once to sue his bail bond. The county did not care anything about that; they wanted the man. The judge enquired of Mr. Hall on the street what had been done. Here is the statement of these two gentlemen. Mr. Hall, as usual, comes up with his chronic ulcer of abuse. The judge says he called his attention to the subject and asked him what he had done. Huntly, living there within a mile of the Iowa state line, could skip over at any time, and Mr. Hall never sent the warrant down to a deputy in that neighborhood, but carried it around in his pocket from one term to another.

The respondent had a right to address words of reproof or words of admonition to the sheriff, for the sheriff was an officer of his court. It surely was not out of the way for the respondent, in regard to a criminal under indictment, to call the attention of the sheriff to his duties, to ask him what had been done and perhaps to remonstrate with him after he had made such a showing as he made in reply to that question.

The seventh specification is that the respondent habitually refused to allow the sheriff to appoint his deputies. Now, even upon Mr. Hall's testimony, there is nothing in that. They sometimes talked together about it. Mr. Hall testified in substance that the judge would suggest a proper man. I venture to say that in any district court in this State you will find that the sheriff, out of deference to the judge, appoints some man as court deputy who is agreeable to him personally. It is right and proper that it should be so. The sheriff should not force upon the judge a man personally distasteful, and I have no doubt that they talked it over together and agreed upon some one who would be agreeable to the sheriff and agreeable to the judge. But the evidence shows that the sheriff did at one time appoint a person whom Judge Page preferred, and upon another occasion appointed a man whom he did not prefer. So there is nothing whatever in that charge.

There has been, may it please the Senate, a great deal of feeling and a great deal of misconception in regard to the relations of the respondent to the Ingmundson case, and what he did in connection with it. There has been a persistent attempt, in this court, and out of this court, commencing with the grand jury of 1876, to make Mr. Ingmundson out a martyr, and the respondent a persecutor. My associate showed, by that remarkably able effort in opening this case—in which he so vigorously lifted the entire case out of the mist of confusion by which it had been surrounded and placed it on an eminence where its proportions can be truly seen—that there is grave question whether Mr. Ingmundson stands fairly before the law; that it is less than a question whether, instead of being a martyr, he does not deserve punishment as a criminal; that it is less than questionable, as the case stands upon the testimony for the prosecution, whether the respondent has not fallen short of his duty instead of exceeding it in regard to that man.

It is my duty, and I deem it my privilege on this occasion, to demonstrate from the testimony, from the records which have been placed in evidence and from the statutes of this State, that Mr. Ingmundson is a manifold offender against the laws of this State. It is not my intention to indulge in any personal severity towards him. If I am betrayed, in the zeal of discussion, into intemperate words, they do not come from the heart, because I know, as every man on this floor knows, that the

vice in the administration of our financial affairs throughout the State, comes not so much from the fault of particular offenders as from a diseased and too delinquent laxity of public sentiment. Such is the fact from the State treasury down to the last defaulting county treasurer.

The articles in regard to this Ingmundson affair, are articles six and seven. As a substratum for the charges which they make against the respondent, and as a proof that his conduct was criminal, malicious, oppressive, and corrupt, they premise by asserting to this Senate as a solemn fact, that a full investigation was had by the grand jury in 1876, at the September term, by which Mr. Ingmundson was exonerated. I shall demonstate that that examination was not full; I shall show from surrounding events, that if it had been full, manifold abuses would have been discovered and corrected; and if I demonstrate that, then that allegation with which article six opens loses its force as a reason, why the respondent should not have charged the grand jury as he did in 1877. Proceeding from this prelude, this article goes on to allege, that at the March term of 1877, the respondent maliciously and without probable cause, and with the intent to injure and oppress Mr. Ingmundson, and to procure him to be indicted without cause, instructed the jury as to the Clayton order, and stated that if the jury ascertained the fact to be as stated, they would be warranted in finding an indictment.

I shall attempt to demonstrate that it was the duty of that grand jury, under the undoubted facts respecting the Clayton order, to find an indictment against Mr. Ingmundson. I shall prove, I hope, from the law, that it was the duty of this respondent to charge just as he did in the matter, and if he did right in so charging, and if such was the duty of the grand jury, then as I have endeavored to enforce, on many occaoccasions heretofore the question of malice or of feeling toward Mr. Ingmundson, if he had any, becomes wholly immaterial.

The article avers that afterwards and during the second week of the term, he again instructed the grand jury; that they presented a writing reporting that they found no irregularities, and that he stated to them that that was not what he wanted done, that he did not want their conclusions, he desired them to investigate and report the facts; that they afterwards presented a paper setting out the facts in regard to the Clayton order and two orders in regard to the town of Marshall. That well knowing that these did not constitute a criminal offense, he falsely instructed the jury that they did, and sent them back to consider. The grand jury found no indictment. He then ordered the county attorney to make complaint. It is charged that these proceedings were unlawful and malicious, and that he treated Mr. Ingmundson in an insulting manner, and accused him of having talked against him in a derogatory way.

Now, it is perfectly manifest that so far as the general outlines of these charges are concerned, if Mr. Ingmundson in 1876 was not a faithful public officer, if he had violated the law, if he deserved investigation, if the respondent rightfully called the attention of the grand jury to his delinquencies for the purpose of correcting and regulating the conduct of an unfaithful public officer the respondent's motives are entirely immaterial.

But it is perfectly apparent from the evidence that Mr. Ingmundson had violated his duties as a county treasurer. I shall attempt to show that in repeated instances he has transgressed statutes carefully and

anxiously framed for the safety of the public treasury. It is manifest that the county officers of this State are persons whose liabilities, duties and authority are strictly conferred and strictly limited by statute. Each one moves with entire liberty within the sphere of his action, but beyond that, such is our financial system, he cannot move without transgressing and disturbing the whole scheme. The financial system of this State and of its counties, has been the subject of years of legislation. It has been the aim of our Legislature to create a system of checks and balances, so that another officer than the treasurer shall at all times know how the treasury stands, and that the treasurer shall not pay out money except upon the authority of the auditor. That, in brief, is the whole purpose of our statutes. The same policy controls the State Auditor's office, and the State Treasurer's office, and the offices of county auditors and treasurers. It has always been considered that as to the administration of county finances, a grand jury is the guardian of the treasury and of the public property. But it has been found so inefficient in this State and so inadequate are its means of investigation, that last winter the Legislature, in its wisdom, under the suggestion of the Governor, created the office of Public Examiner, whose authority it is to call upon any treasurer in this State, and go through his books and papers with the particularity which is now alleged as a cause of impeachment against this respondent when he requested the grand jury themselves to do it We find the impeaching House of Representatives concurring in a bill for the more perfect doing of that which this respondent is impeached for requesting a grand jury to do.

As bearing upon the question of official responsibility, I desire to cite the 2d of Bissell, page 981, section 8:

"Where any duty is enjoined by law upon any public officer, or upon any person holding any public trust or employment, every wilful neglect to perform such duty, and every misbehavior in office where no special provision is made for the punishment of such delinquency or malfeasance is a misdemeanor punishable by fine and imprisonment."

Now, I propose to link Mr. Ingmundson, in instance after instance, to that general statute. It is my purpose to show that time after time, he has violated duties plainly enjoined by law. I shall not endeavor to follow my learned friend through the tangled labyrinth, which, it seems to me, he willingly and wilfully laid out here, because if I establish the propositions which I now assert, I shall have furnished a complete refutation of everything with which he endeavored to confuse the minds of the Senate.

We start with the general proposition, that the violation by a public officer, of a duty enjoined by law, is a crime. And turning to other propositions of the statute, we find that when a public officer has done that which the law, in its wisdom says that he shall not do, such an act immediately connects itself with this general statute, and becomes a misdemeanor in office.

I assert in the first instance, that Mr. Ingmundson embezzled the State funds by depositing them with Wilkin and others. Upon that I cite the 22d of Minnesota, State against Munch, page 71.

Section 12, article 9, of the constitution of the State provides that this act of Mr. Ingmundson is a felony. So important has this question been deemed, that the constitution has described as a crime, and made felonious those acts which Mr. Ingmundson committed from year to year:

SEC. 12. Suitable laws shall be passed by the Legislature for the safe keeping, transfer, and disbursement of State and school funds, and all officers and other persons charged with the same shall be required to give ample security, for all moneys and funds of any kind; to keep an accurate entry of each sum received, and of each payment and transfer, and if any of said officers or other persons shall convert to his own use in any form, or shall loan with or without interest, contrary to law, or shall deposit in banks, or exchange for other funds, any portion of the funds of the State, every such act shall be adjudged to be an embezzlement of so much of the State funds as shall be thus taken, and shall be declared a felony."

I admit that Mr. Ingmundson followed great but bad examples; but he continued to follow them long after this Senate, sitting as a court of impeachment, in the case of William Seeger, had announced to the officers of this State, that such precedents in high places should no longer be a safeguard for them. That the funds deposited in Wilkin's bank were State funds abundantly appears from the testimony of Ingmundson. He admits that he deposited State funds in banks, and I say upon his own statement, if the law had been applied to him in all its vigor, he would have been indicted and prosecuted as a felon.

What are the duties of a county treasurer? To receive money, credit it to the different funds, and pay it out only upon the order of the proper authority.

I cite the Laws of 1874, page 51, section 108. He has no more to do with the town treasurers than I have until they present the auditor's warrant. He does not officially know, until then, who the town treasurers are. His account is not kept with them, it is kept with the auditor of the county; and to the auditor of the county, all persons having any demand upon the county treasury, must resort, and from his presence they must go, with his warrant, except in rare exceptional cases, which do not cover the matters under present consideration.

Section 108 provides:

"The county treasurer shall open an account with the State, county, and with each township, city, incorporated village or school district, in his county, and immediately after each settlement with the county treasurer in each year, he shall credit the State, county and each township, city, or incorporated village or school district, with the amount so collected for the use of the State, county and any such township, village or school district; and upon application of any town, city, village or school district treasurer, the auditor shall give him an order on the county treasurer for the amount due such township, city, village or school district treasurer, and shall charge them, respectively, with the amount of such order."

Now, if that section of the statute of 1874, means anything, it means that the office of the county auditor is to be a check upon the disbursement of funds by the county treasurer. The county treasurer is required to open an account with the county auditor, or rather, the auditor is required to open an account with the treasurer. How, in heaven's name, Senators, can he open and keep such an account if the treasurer is at liberty to pay out moneys in the absence of the auditor's warrant? If, I repeat, he is required to open an account with the treasurer in which these towns shall be credited and debited, how can such an account ever be kept, if the treasurer has the authority to honor the word of mouth, or draft or order, of any town treasurer not made through the medium of the county auditor? Such a construction as that, if once admitted breaks down our whole system at once. I do not need to illustrate such a proposition to business men. If it is so the office of the auditor, which has been thought to be a protection to the public funds, is a delusion and a snare, and ought to be abolished.

Furthermore, after each town is credited upon the books of the auditor, after the settlement, with the amount due it, this statute provides how the town can draw the money out of the treasury:

"And upon application of any town, city, village or school district treasurer, the auditor shall give him an order on the county treasurer for the amount due each township, city, village, or school district treasurer, and shall charge *them* respectively, with the amount of such order."

So the system works both ways. The town is credited, an order is given, the county treasurer is credited with the amount, and the town is debited with the amount; and thus an entire and symmetrical system of finance and bookkeeping is established in each county in this State.

Furthermore, it has its roots in the office of the auditor of the State. It springs from the constitutional provision by analogy, which provides that no moneys shall be paid out of the treasury except by virtue of an appropriation, and the whole scheme is founded in symmetry, in common sense and upon business principles—every one of which will be violated if Mr. Ingmundson has the right to handle the funds of the county as he assumes he had the right to do.

I cite 1st Bissell, page 226, sec. 55:

"The county treasurer shall receive all moneys directed by law to be paid to him as such treasurer, and shall pay them out only upon the order of the proper authority."

Now, connect this statute with the general statutes of Minnesota, passed afterwards, in 1874, and we find that "the order of the proper authority" is the auditor of the county giving his warrant to the town treasurer, upon the faith of which the funds are drawn from the county treasury. This statute provides that he shall pay them out "*only* upon the order of the proper authority." The proper authority is the only authority for it, and a county treasurer who wilfully pays out funds in a manner different from that prescribed by the law which I have read, is guilty under the first statute cited of a misdemeanor in office. If the treasurer violates his duty in this respect, of what value are the books of the county auditor? And when I come to the consideration of the order which the town of Clayton paid twice, I shall show how the transgression practically worked in the little affairs of that town.

Again, the constitution of this State provides that any treasurer who shall convert to his own use the funds with which he is entrusted, is guilty of a felony, and so different statutes provide.

The county treasurer, it is true, by a statute of 1873, seems to be allowed by implication, to buy county and town orders. Although I think that construction is subject to controversy, I will assume, for the purposes of this branch of the discussion, that under the act of 1873, a county treasurer may deal in county or town orders. But he cannot pay them back or pass them back upon the town without an affidavit attached that he has not bought them at a discount. But that statute does not protect Mr. Ingmundson, and has nothing to do with this case. That statute simply authorizes (if it confers any authority at all) the county treasurer to deal in county orders and town orders with his own money. It leaves the law untouched, that he shall not convert the public funds—as Mr. Ingmundson unquestionably did in this case

when he drew those checks on the public funds in the Bank of Le Roy and bought town orders with them.

He committed another misdemeanor in refusing to honor the warrant of the auditor. The Senate will remember that after Quam had received this $114.52 out of the treasury of the county, before the settlement and without the warrant of the auditor, he ran away and was succeeded by Mr. Haralson. Mr. Haralson proceeds to the auditor of Mower county, asks him to turn to the books wherein the financial balances of the town of Clayton are registered; and it appears there that the town of Clayton is entitled to so much money. Manifestly this $114 had obtained no entry upon the auditors book, because Quam and Ingmundson had violated the law in making a payment out of the county treasury without the intervention and not upon the warrant of the auditor, so that the auditor of that county, taking his books as a guide, gives to Mr. Haralson, Quam's successor, a warrant for the exact amount of money that ought to have been and would have been in the hands of the treasurer of that county, had he done his duty

Under the law of 1871, the auditor must state the accounts between the treasurer and the towns, and when the auditor drew his warrant upon Mr. Ingmundson for that amount of money, he raised upon Mr. Ingmundson a conclusive presumption that the amount of the warrant was there, and it would have been there but for the default of the treasurer himself. Mr. Haralson presents that warrant to Mr. Ingmundson. It is not checked off by any other order issued by the auditor. It calls for so much money, and Mr. Ingmundson, although bound by law to have that money, as he would have had it he had obeyed the law, when Mr. Haralson produced the warrant, takes him, figuratively speaking, by the throat, and says, "I will not perform my duty in this case and pay you the amount which is justly and equitably due according to the accounts of that public book-keeper whom the law has placed over both of us, until you consent to refund to me that $114.52 which I paid to Sever O. Quam contrary to law."

Now, that is embezzlement by Mr. Ingmundson. Any court would charge it to be embezzlement if it honestly applied the statutes of Minnesota in that behalf.

I read from page 998 of the statutes of this State, section 95:

"If any person, having in his posession any money belonging to this state, or any county, town or city, or other municipal corporation or school district, or in which this state or any county, town, city or village or other municipal corporation or school district has any interest, or if any collector or treasurer of any town or county or incorporated city, town or village, or school district, or the treasurer or disbursing officer of the state, or any other person holding any office under any law of this state; or any officer of an incorporated company, who is by virtue of his office intrusted with the collection, safe keeping, transfer, or disbursement of any tax, revenue, fine or other money, converts to his own use, in any way or manner whatever, any part thereof or loans, with or without interest, any portion of the money intrusted to him as aforesaid, or improperly neglects or refuses to pay over the same or any part thereof, according to the provisions of law, *he is guilty of embezzlement.*"

Carry your minds right back for a moment to the law which ordains that any officer who neglects to perform any duty enjoined by law is guilty of a misdemeanor—carry your minds back to the law of 1874, which men whom I now see on this floor voted to pass, which ordains that the auditor shall open an account with the treasurer, and after the settlement shall give to each town treasurer a warrant for the amount which the county treasurer must pay; connect these two statutes and

these events with the general law which has existed, I think, from the beginning, upon our statute books, and you find that Mr. Ingmundson refused to pay over to Mr. Haralson money which, in the eye of the law, was in his hands, or would have been if he had not committed another crime, and you must conclude that he was guilty of an actual embezzlement. I wish to repeat here, that course of doing business is a corrupt product of the times in which we live. The Seeger case demonstrated how perfectly perverted public sentiment can become. I do not believe, and have never believed, that any particular amount of invective should be indulged in by the public in matters to which the public by its complaisance and time-service has made itself so deeply accessory. But at the time when these acts of the respondent were committed there had been a revolution in public sentiment in this State in this respect. Let the Senate take judicial notice of historic facts. In the county of Sibley, the treasurer was a defaulter; in the county of Blue Earth, the treasurer was a defaulter; in the county of Carver, the treasurer was a defaulter; in the county of McLeod, the treasurer was a defaulter. When the legislative committee opened the vaults of the State treasury beneath us, five years ago, it was found to be honey-combed with corruption and empty of cash. So well has it been known that treasurer after treasurer in this State has been technically and probably actually a defaulter, that thousands of dollars have been spent in county after county to perpetuate rings through fear of disgraceful exposure. And at the time when these charges were being given by the respondent to this grand jury, the public was determined that there should be a reform in those particulars, and it was the duty of the county commissioners, if they too had been transgressing the law under the diseased and sickly abstinence of a too complaisant public sentiment, to have corrected their own doings long before any movement in that behalf was made. I read from section 99:

"Whoever is mentioned in the ninety-fifth (twenty-sixth) section of this title (chapter), [that is the section I have just read] shall pay over the same money that he received in the discharge of his duties, *and shall not set up any amount as a set-off* against any money so received."

The Legislature went on to provide that the county treasurer shall not, with one hand hold the public money and with the other hand administer his private rights against a town. It is made his duty to pay over the same money that he has received, without off-sets, if he had them. Did Mr. Ingmundson obey that law? To say nothing of the other offenses, did he not force Mr. Haralson to take $114.52 less than his warrant called for? He does not dispute the facts.

Again, the investigation of 1876 was not full. The treasurer was not guiltless because, if a proper inquiry had been made, the facts I have stated would have abundantly appeared, as well as the other facts to which I now call attention of the court. The county treasurer violated the law in regard to the keeping of the public funds, in other respects.

I cite from the 1st of Bissell, page 227, section 56:

"When any money is paid to the county treasurer, except that paid on account of taxes charged on duplicate, the treasurer shall give the person paying the same duplicate receipts therefor, one of which he shall forthwith deposit with the county auditor."

You see again how particular is the policy of this State to have every cent which the treasurer receives charged against him on the books of

the auditor. Of course, the treasurer is charged with the tax duplicate which comes from the auditor, but there are other sources of revenue, and in those cases he is required to give duplicate receipts, one of which he shall deposit at once with the auditor so that the auditor may keep on his books the exact condition of the treasury.

The statute also provides as follows:

"And there is hereby created a board of auditors for each of said counties in the State, which board shall consist of the county auditor, chairman of the board of county commissioners and clerk of the district court of either of said counties in this State, whose duty it shall be to carefully examine and audit the accounts, books and vouchers of the treasurer of their respective counties, and to count and ascertain the kind, description and amount of funds in the treasury of said county or belonging thereto, at least three times in each year, without previous notice to the treasurer.

"SECOND. All the funds of any of said counties in the State shall be deposited by the county treasurer in one or more designated national banks, or State or private bank, or banks, on or before the first day of each month, *in the name of the proper county* of which said board are officers. Such bank, or banks, or bankers, shall be designated by the said board of auditors, in their discretion, after advertising in one or more newspapers published in their respecctive counties, for at least two weeks, for proposals, and receiving proposals, stating what security would be given to said county for such funds so deposited, and what interest on monthly balances of the amount deposited upon condition that said funds with accrued interest shall be held subject to draft and payment at all times upon demand; *Provided*, That the amount deposited in any bank or banking house, shall not exceed the assessed capital stock of said bank or banking house, as shall appear upon the duplicate tax list. Every payment of the county treasurer shall be made on the warrant of the county auditor, or the chairman of the board of county commissioners, duly attested by the county auditor."

Before these banks are authorized to receive this money they must give a bond. It is made the duty of the county auditor and the county treasurer to comply with all the provisions of this act, except in counties where there are no such banks; and it is also provided that if any member of the board of auditors shall neglect to perform any duty imposed by this act, he shall be deemed guilty of a misdemeanor.

Not one of those provisions of law was ever obeyed or attempted to be complied with. The treasurer has deposited the money of that county in five different banks, one outside and four within that county, without even a colorable attempt on his part or on the part of the county commissioners to comply with the provisions of the act of 1873.

He has, in cumulation to his other offenses, violated the law which I read from page 997 of Bissell's Statutes, in that he has loaned this money out at interest. In other words, he has gone on, year after year, precisely as the State treasurer did in the bad old times, when the treasury was a machine which operated for the private benefit of a few banks in the city of St. Paul. He is expressly forbidden by the law, which denounces the act as a misdemeanor, to loan the public funds, and yet he does loan them. When I make a general deposit in the bank to be placed to my credit, I loan my funds to that bank. It is not a special deposit for the bank to keep specifically; the relation of debtor and creditor is created by the entry of the amount deposited in my pass-book.

Gentlemen, was the investigation in 1876 a full investigation, in which Mr. Ingmundson was rightfully exonerated? Bear in mind that the facts in regard to the town of Clayton order did not come out until after the investigation in 1876, according to the testimony of Mr. Cole-

man. That particular transaction was not investigated at that session of the grand jury. But was it a full investigation? Can it be said now that the exoneration of Ingmundson by that grand jury was deserved? I have shown that Mr. Ingmundson either violated every law for which Mr. Seeger was impeached, or that the judgment of your predecessors, by which Seeger was impeached, ought, if possible, to be set at naught and annulled. A good example had been set by the Senate before this respondent, and before all officers engaged in the administration of the penal laws. However weak or vacillating public sentiment may have been before, the House of Representatives, as the grand inquest of the State, the Senate of the State of Minnesota, as the highest court in the State, had solemnly declared in a judicial proceeding, that a State treasurer who had done from year to year the same things which Mr. Ingmundson is charged and is admitted to have done, should be impeached and removed from the office which he held. Mr. Seeger was not above the law, unoffending old man as he was, merely following a bad practice under which these statutes seemed to have grown obsolete. Mr. Ingmundson surely ought not to be above the law, with the precedent which was set before the respondent in the Seeger case. And hence the assumption upon which article is predicated, that the action of the respondent towards Mr. Ingmundson must have been malicious, because he was a law-abiding citizen, falls to the ground, for no man who does not shut his eyes with malice prepense against the fact can pretend that within the strict meaning of various laws of this State, Mr. Ingmundson was not a manifold offender. I tell you, gentlemen, if the district judges had, from the beginning pressed upon the attention of grand juries, the laws which have been enacted so carefully for the protection of the public funds, we should have been spared that sickening catalogue of defalcations which has been unfolded month after month in this State for the past six years. Conceding the liberties which county treasurers have taken with the laws, what member is there upon the floor of this house who knows whether the treasury of his own county is solvent? Only a year ago, the county of McLeod was boasting through its newspapers of being the tightest little county in the State, with $15,000 or $20,000 surplus in the treasury, and yet, when it was opened, it was found to be destitute of cash. The treasurer had been a defaulter for years. He had paid no attention to his duties as to the county auditor, and it followed that the money had been gone for years before any one missed it.

So powerful is the influence of these monetary responsibilities, so exalted does a man become in his own esteem, over the rest of his fellow citizens, when he lays his hands as a custodian upon large masses of the public pelf, that it does seem. that Mr. Ingumdson, as well as others in like condition, deem themselves superior to the law and its ministers. To call them to account, to bring to bear the investigating eye of the men who pay these taxes into his hands, for whom he is a mere trustee, is judicial persecution which renders the person who has the audacity to do it, under his sworn sense of duty, a criminal, instead of the man whom he undertakes to investigate.

Send out word to the treasurers of the State, send out word to the men who are carrying out their unlawful purposes—that no magistrate, however high, that no grand jury, however reputable,—that no amount of crimes though committed year after year and patent to the public gaze, is sufficient to warrant either judge, or jury, or public, in inves-

tigating their affairs, and you may as well throw open the doors of every treasury in the State for every thief who chooses to come in and pilfer, until he is surfeited with glut.

But it is said, (and that is a very wrong notion which prevails upon this subject,) that because a grand jury once investigated this matter therefore it should not have been repeated so soon. Gentlemen, how did that first grand jury investigate those crimes? That iron-jawed man, Ingmundson, placed himself in the grand jury room and dominated their investigation to such an extent that the grand jury dispersed and would not sign, and never did concur in, the written exoneration which was sent up to the court. The clerk drew it up after they had dispersed. It was denominated a burlesque. The clerk signed it without authority. Where a grand jury is dominated, circumvented, or overpowered, and it becomes apparent, that is so much more a reason why a succeeding grand jury should enquire diligently into the conduct of a man who had taken such extraordinary means to prevent public investigation.

This same question arose in a very interesting form in Ireland. In 1823 when the Marquis of Wellesley, I think, was the Lord Lieutenant of Ireland, a riot took place in the theater of Dublin. In the course of that riot the person of the Lord Lieutenant was assailed. Missiles were thrown at him, his life was endangered. It was a riot which grew out of the feuds which have distracted that island for so many centuries. When the offense was brought to the attention of the grand jury, so powerful was the influences in favor of the rioters, that the inquest were prevailed upon to report that they found no cause of indictment, and they threw out the bill. The offence was so clear and the offenders were so well known, that Mr. Plunkett, who was then the attorney general, filed an *ex officio* information, which is equivalent to an indictment, in the court of King's Bench. Instantly the cry went up, that because the rioters had just been absolved by the grand jury, the Attorney General was guilty of a grave violation of law in seeking to bring them before the courts for trial. And upon that occasion Mr. Plunkett with great eloquence and great power of thought, vindicated himself before the Irish Court of King's Bench, in the following lauguage which I quote so fully, because it is a most masterly exposition of the questions under present consideration:

"I am told that it has been alleged that this proceeding on the part of the Attorney General, by an *ex officio* information, is illegal. I do not know whether what has been said in respect to this has been rightfully reported; or whether it is meant, that the proceeding is in point of law invalid, or that the resorting to it, though a legal right, is not a fair exercise of discretion. I am led, naturally, without going out of the proceedings, to make a few observation upon this part of the subject; for, although all the traverse have put in pleas amounting to not guilty, yet two of them have thought proper to put upon the record what connot properly belong to that plea —a sort of preamble or inducement, in which they state that those informations have been filed against them after a grand jury had ignored bills for the same charge. My learned friends, who framed those defences, knew perfectly well that, on that allegation no issue could be joined, either of law or of fact. It amounts, therefore, to nothing else than a plea of not guilty. But I presume they thought it might be made use of (though scarcely to your lordships or the jury whom I address) to swell the cry, which amongst the vulgar of the public has been raised against the legality of this proceeding.

"I think upon that subject I need occupy but little time in addressing the court, before which I have now the honor to appear. What I am about to say is rather with a view to set right the public mind, and that it should be known that I have stated, in the presence of this enlightened court, what is the law upon this subject.

I assert then, that the ignoring of a bill by a grand jury is, according to the known and established principles of our law, no bar to any subsequent legal proceeding against the same individual for the same offense It is competent to the crown or prosecutor to send up another bill to the same or any other grand jury: and the same power belongs to that public authority in which is vested the right of filing an information. A party who has been already tried, may protect himself against a subsequent prosecution for the same offense. He may do so by plea; it is a principle of our law that no man shall be twice tried for the same offense; if he has already been acquitted there is a known legal form of pleading as old as the law itself, by which he can defend himself. But it is settled by authorities coeval with the law itself, that the plea of *autrefois acquit* is not supported by evidence, that a bill of indictment for the same offense has been preferred to a grand jury and ignored. It must be an acquittal by a petit jury. Your lordships would consider it a waste of time to refer to authorities in support of such a position. It is laid down by Lord Hale, Lord Coke, and every writer on the subject of crown law. Has it ever been heard of, that the court of King's Bench would refuse an information, because a grand jury had ignored the bill?

"So much trash has been circulated, and the public mind so much abused upon this subject, that I hope your lordships will excuse my calling your attention to it. So far from its being considered an objection, that the grand jury has ignored the bill, it is often a reason why the court of King's Bench grants an information. I have often applied for liberty to file an information, when I had the honor of practicing in this court; and the court has asked me whether I had tried a grand jury; saying, that if they refused to find a bill, they would then entertain the application. The court of King's Bench in England in the last term granted an information in a case where bills had been twice ignored by a grand jury, and because they had been ignored. So far, therefore, is that circumstance from being considered an objection to putting a party on his trial, that it is frequently insisted upon as a requisite condition. Thus it is where application is made to the court of King's Bench. This is an information filed by the sworn officer of the crown, in whom the law has vested that privilege. Were I to come in as Attorney General, and apply for liberty to file an information against these parties, what would be your lordship's answer?—the same as was given by my Lord Mansfield to DeGrey, and I think to Sir Fletcher Norton, namely: 'We will not file an information at your suit; the law has made you the sole judge of its propriety; if you think it proper, you have a right to file it; if not, why should we do so?' I am not now applying myself to the soundness of this exercise of discretion, but to the new-fangled notion of the illegality of this information."

**He went a great length in that court, ably to enforce this position, going back to the authorities as far as the reign of Queen Anne, where a grand jury overawed or overpersuaded, as this grand jury in 1876 was by Mr. Ingmundson, threw out a bill, and because they did it the court of the King's Bench, allowed a criminal information to be filed immediately afterwards. I am reading from the works of Lord Plunkett, and I have cited this particular case because it stood not only the test of the judgment of the Irish Court of King's Bench, but because the political party which was influential enough to prevent an indictment, had power sufficient to bring the matter into the British Parliament and ask its censure upon Mr. Plunkett for his conduct in that behalf.**

**Mr. Plunkett said in continuation of his argument before the court:**

"It is the privilege of the lowest subject in the realm, if by the error or impropriety of a grand jury he do not obtain justice, to apply to the court of the King's Bench for a criminal information, but the King, it is said, is to be in a totally different situation, and though for an offense indictable the court would grant an information because a grand jury has ignored the bill, the sovereign himself shall not have that redress which is open to the meanest of his subjects. A proposition too monstrous to need debate. I am asked for an authority; permit me to say, this is not quite a fair requisition; when a circumstance is totally immaterial it is not to be expected that it should be the subject of notice; and, therefore, we are not to be surprised if, in the greater number of reported cases of informations, it should not appear whether a grand jury had previously thrown out bills or not; such a fact would be totally immaterial. It cannot be stated in a plea, it could not be proved in evidence,

and therefore it would be too much to say, that because it is not mentioned, the case has been excused.

It has been my principle to hold in utter contempt the vile and scurrilous publications which have been circulated through the city in order to prejudge the matters to be tried, and effect the characters of the persons employed as public functionaries. But I have, by the generosity of some of their authors, been furnished with a case directly to the point, in which, by accident, the fact of bills having been ignored by the grand jury before the information filed does distinctly appear.

I shall state the facts as they appear in the Common's Journals. In the latter part of the reign of Queen Anne, in the year 1713, on King William's birth day, the play of Tamerlane was to be represented. King William, as your Lordships are aware, was compared to Tamerlane, and very deservedly so, if the possession of every virtue that could ennoble a monarch entitled him to the distinction. The name of Tamerlane had been connected with his A prologue to the play written by Dr. Garth, was very generously repeated at the time. The doctor it seems was more happy as poet than a courtier, and his reference for King William led him to compliment that monarch in terms not sufficiently guarded to avoid giving offense to Queen Anne. The government therefore thought it right that the prologue should not be repeated. When the play, therefore, came on for representation, the actor ommitted to repeat it, and by so-doing gave great offense to the audience. They were full of respect for the memory of William, and did not wish that attention to Queen Anne should break in on the ancient practice Mr. Dubley Moore, a zealous Protestant, who was in the house, leaped upon the stage and repeated the prologue. This gave rise to something like a riot. The government indicted Mr Moore for the riot. The bills were sent up to the grand jury, who returned a true bill, and were then dismissed. In about half an hour after the foreman came into court and made an affidavit that *'billa verd'* was a mistake, and they meant to return "ignoramus." The court refused to receive his affidavit; but then came in the three and twenty, and swore positively to the same fact to which their foreman had deposed. The party was, notwithstanding this, in my opinion, very unwisely put to plead to the indictment. But the attorney general, thinking it would be hard to compel him to plead when the bill had been, in fact, ignored, moved to quash the indictment, which was done. Do I overstate the matter when I say that things were then in the same situation as if the bill had been ignored by the grand jury? And yet under these circumstances, the attorney general though himself at liberty to file an *ex officio* information against the same person for the same offense. Sir Constantine Phipps, who was then Lord Chancellor, and one of the lords justices, was considered by many as a great Tory and Jacobite, and as a enemy to the Protestant interest. History has done more justice to him in that respect than is the head of that party he received from his contemporaries He interfered with the prosecution; he sent for the Lord Mayor, and lectured him as to the mode in which he was to conduct himself. He was even supposed to have interfered with the return of the jury. The whole matter was brought before the House of Commons, who addressed the throne to remove Sir Constantine Phipps for intermeddling in the trial. No fault was found with the information though directly before them, but the trial was treated as legally depending, and a petition presented against the chancellor for interfering with that trial. Do I not here show a case in which an *ex officio* information had been filed after a bill had been thrown out, and where, though the zeal of party generated an anxiety to lay hold of anything that could warrant an imputation on the proceedings, as the information filed was never questioned, but the chancellor and chief governor petitioned against for interfering with the proceeding."

The attack in the Parliament as Shiel states, was led by Mr. Brownlow, who, on the 15th of April, moved:

"That it appears to this house that the conduct of his majesty's attorney general for Ireland, with respect to the persons charged with a riot in the Dublin theatre, on the 14th of December last, particularly in bringing them to trial upon informations filed *ex officio* after bills of indictment against them for the same offense had been thrown out by a grand jury, was unwise; that it was contrary to the practice, and not congenial to the spirit of the British constitution: and that it ought not to be drawn into a precedent hereafter."

Mr. Plunkett in the House of Commons defended his conduct upon high legal and constitutional grounds, as he had done before the Court of King's Bench in Ireland, and he came forth in the same triumphant

manner that he had from the court in which his conduct was first called in question.

"Mr. Plunkett said; The honorable member had contended, that the grand jury was the constitutional barrier between the prosecutions of the crown and the safety of the subject; but if it were essential to the safety of the subject that a party should in no case be put upon his trial without the intervention of a grand jury, the whole system of informations must fall to the ground. The honorable member has contended, that the functions and privileges of a grand jury were impeached by this proceeding. It was impossible that anything could be more eloquent, or more calculated to excite an auditory, than the observations of the honorable gentleman. He has touched a string which could not fail to vibrate. But to what extent did the honorable gentleman mean to lay down the principle. Did he mean to say, that no criminal proceeding could be instituted without the intervention of a grand jury?—He admitted that the functions of a grand jury ought not to be called in question, nor could any public functionary be guilty of a more gross breach of decorum than by vilifying a grand jury for the exercise of that discretion with which the constitution had invested him. But was there anything in his (Mr. P's) conduct which would justify a comparison with the odious Jeffries? When the grand jury returned their verdict, he was free to say, that he in common with the court and auditors, was filled with astonishment, and that he did say on that occasion—'They have a duty to discharge with their province on their oaths, and they have exercised their discretion; I also have a duty to discharge, and with the blessing of God, I will discharge it faithfully and honestly!'

"There was one thing to which he would entreat the attention of the house, and particularly that of the country gentlemen; and that was the state of the law and the practice in regard to grand juries. He trusted he should be able to satisfy the house that it was no novel, violent, or unconstitutional thing to question their decisions.—He hoped to be able to show that there was nothing in it so very hostile to freedom, or so adverse to the spirit of the constitution as had been alleged. In doing this, he would in the first place, point out that trials upon information were really the law. This was the more necessary, not only on account of what had been said by the honorable gentleman, but on account of what had been detailed in newspapers, and taken up and repeated till the ears of the country had rung again. On this account he felt it necessary to go at some length into the proof of the legality. In the first place there was no point of the law more clear than this, that the ignoring of a bill by a grand jury was no bar to subsequent proceedings by indictment. Nay, the bill might be again and again sent to the grand jury, and again and again ignored, *toties quoties*. It might be questioned by the same grand jury or another, and from this it was evident that the verdict of a grand jury was not a sacred thing.

"Now, the presentment before the grand jury was no trial; it was only a proceeding towards putting the defendant on his trial; and therefore he must show, not the decision of a grand jury, but the acquittal by a petit jury. He defied any lawyer to show that the application of the principle had ever admitted any distinction between proceedings by indictment and by information. Ignoring the bill was no bar to a new prosecution either way; nor anything short of an acquittal by a tribunal competent to try the information.

"To establish these points, he had recourse to that place where alone it was possible to come at the precedents which guided him; and he would now proceed to state what were the results of that investigation. The case had all along been treated as if it were something quite new to have recourse to an information after the ignoring of an indictment, and as if he had acted in a manner highly indecorous in making any remark on, or attempting any application to, the finding of the grand jury. The House would see how this assumption accorded with the fact. The crown office had been searched, and he was now to inform the House what was the result. The first case was, the 'King against Hope,' (Trinity Term, 8 and 9, George II.) The motion was for an information on a charge of trespass and assault. It was insisted in the defense, among other things, that the prosecutor had already proceeded by indictment, which was ignored by the grand jury. This was the very case on which they were now at issue. Yet there was no condemnation on those who questioned the exercise of these functions by the grand jury—there was no complaint of throwing a slur or attempting to discredit them. It had been asked, was it not most unjust to impeach the conduct of those who, being sworn to secresy, could not be allowed to explain? This, if true, was equally applicable to the Court of King's Bench. But the fact was, that neither the court nor the grand jury were called on for a defense. The question was not between the court and the jury, but between the crim-

inal and the public—whether offenders should be allowed to escape through a failure in the exercise of the functions of grand jurors or not. The defendant in the case before named, pleaded that an indictment which had been presented had been ignored. The answer given by the court was that the ignoring of the bill was the very reason why the information should be granted, and that it was one of the great privileges of the subject to be secured, by this mode of proceeding, from the loss of his just remedy on cases where, from little party heats and local irritations, that was likely to happen; and this was assented to *per totam curiam*. It appeared from the report that the grand jury attempted to send the witnesses away; that they were unwilling to ask them any questions, and appeared to wish to turn the whole matter into ridicule. Here was not only the case of passing by the decision of the grand jury, but the particular grounds of conduct in the grand jury were alleged Here were reasons given which went beyond the statement just now made by the honorable member. And who said this? He could assure the House he was not using the words of Judge Jeffries, nor of Empson or Dudley; nor of any other of the odious authorities with whom he had been compared. This was the decision of Lord Hardwicke, in which it was declared that the attainment of justice was not to be frustrated through little party heats and local irritations. The next case to which he would allude was that of the King against Thorpe. This was a prosecution for a nuisance In this case it was alleged that an *ignoramus* had been returned by the grand jury. This was not a case in which there were political ferments and in which the jury had got into little party heats; yet Mr. Bearcroft said there was reason for filing information, and Lord Mansfield made the rule absolute, upon the ground that some of the grand jury had been influenced in favor of Thorpe. The next case was that of the present King against the inhabitants of Berks, in the matter of the repairing of a bridge From the affidavits it appeared that this case had been sent to the grand jury and been ignored; a second presentment was made, when Lord Folkestone was in the chair. This was again ignored; and it was presented a third time, when Mr. Dundas was in the chair, and it was a third time ignored; when an information was filed. He hoped he had now adduced cases enough to prevent the notion from becoming universal that the inoculation of this obnoxious right had not been communicated by him; that the taint to the constitution could not be of his giving; but that it was as old, at least, as the time of Lord Hardwicke. Now if in this country it was necessary to have a check over the local heats and the misconduct of grand juries; he would appeal to the House whether it would be safe that a similar check should be withdrawn in Ireland? He had looked over files of the records of the courts in that country, and he had found no fewer than thirteen cases since the year 1795, and these had had the sanction of Lord Clanwilliam, Lord Killwarden, and Chief Baron Downes. The first to which he would allude was in February, 1795, and it was for perjury. Some of the other cases were trivial, but if in the strong ones there was misconduct, that was sufficient to establish the necessity of the right. In another case the grand jury of Westmeath had thrown out the bill; and the affidavit stated that this had been done by the address of one of the grand jury. He would pass over the other cases, except two, which were valuable, inasmuch as the affidavits upon which the informations were filed contained no charge of misconduct. These cases were the King against Patterson, and the King against Crawford, and they were both for sending letters with a view to provoke challenges, and in neither of them was any accusation made against the grand jury, further than that they had ignored the bills by some influence unknown to the deponent. He should trouble the House with one more case, the more important as it referred to the very grand jury who had ignored the bills preferred by him. What would the House think when he informed them that at that very hour a conditional order of the Court of King's Bench of Ireland existed, to set aside the finding of that very grand jury, on the ground of misconduct at the very same sessions? He had the copies of the affidavits on which that conditional rule was granted; but as the case was still pending, he felt some difficulty as to the manner of expressing himself from a reluctance to mention names. The affidavits allege the misconduct of the grand jury as the ground for setting aside their finding. The bill on which they found *ignoramus* charged A and B with a conspiracy to defraud a third party. A got B to make oath that he had received a sum of money for the purpose of defeating the claim of C. Two witnesses were examined. The grounds of misconduct as alleged in the affidavits were, first, the refusal to receive a letter of one of the accused, because they would have nothing to do with a written document; and next, that they would not admit conspiracy, because the witnesses would not swear that the parties committed perjury. The interrogatories were curious: 'Did poor McMahon,' said the jury, (that was not the real name,) 'to your knowledge commit

perjury?' Witness—'No, the charge is for conspiracy.' The witness was then shown the door and the bill was ignored.

"After Plunket had withdrawn, Mr. W. Courtnay, with a brief and manly defense of his conduct, moved that the other orders of the day be read. In the course of the debate the English attorney general declared his opinion curtly that the proceeding had been perfectly legal and proper. Finally the original motion was withdrawn, on the undertaking of Sir Francis Burdett to move an enquiry *into the conduct of the sheriff* of Dublin."

I cite this historic case because, in a time of great public excitement a great court sustained a great lawyer, and both court and lawyer were thereafter sustained by the British House of Commons in doing substantially that which is charged against this respondent as blameworthy.

Let us resume the discussion of what took place at that term. By the laws of this State, a judge is required to read certain statutes in regard to the conduct of public officers, which direct the grand jury to enquire into every offense which I have been discussing for the last hour. If the Senators will take the statutes of this State and turn to the chapter in regard to grand juries, for I have not the time to read it, and my learned associate read it upon his argument, it will be seen that so important have the law makers deemed the attention of grand juries to public officers to be, that they require the district judges to read to them section after section, directing them to enquire into the manner in which the county offices have been conducted. The common law, also requires magistrates to bring to the attention of grand juries, any offenses known to the judge, which he thinks may require their attention. In the early days of the rebellion, we well recollect how the United States judges charged upon those subjects.

There was a case of alleged bribery in this legislature last year—a most astounding charge. There was some investigation had of the subject. Something about it was said, I believe, in the newspapers. The judge of this district has felt called upon to charge the grand jury in regard to that.

Now after the session of 1876, wherein Mr. Ingmundson was not investigated, Mr. Coleman, the payee of that town order, went into Mr. Ingmundson's office, and Mr. Ingmundson produced the order, and with a profane expression, wondered how it got into his possession. Mr. Coleman knew that he had been paid that order, and an examination of the facts, resulted in Mr. Coleman going to the judge and stating what the facts were; and they turned out to be the same state of facts under which Mr. Haralson, the treasurer, was taken by the throat by Ingmundson, and made to take $114.42 less than his auditor's warrant called for.

The grand jury met on that occasion, and the judge gave this matter to them in their charge. He directed them to investigate it. He charged them correctly, that if it was true, it constituted an indictable offense.

Now, what took place between Mr. Ingmundson and Sever Quam? I repeat that if Mr. Ingmundson had allowed the county auditor to keep his books, and had dealt with the county auditor, and with the town treasurer through the county auditor, this thing never would have happened. Mr. Haralson would have received his order for the correct

amount. The town of Clayton would have been paid this $114, which it never got through Haralson or through Ingmundson. Mr. Ingmundson was the drawee of that order; we find it in his hands. He has been here upon the stand and testified. I am guided now in my remarks, by the dates of those checks which were introduced here in evidence, and they probably fix the order of time more correctly than the mere memories of men derived from the influence of impressions and dispositions. I propose now, to prove that the town of Clayton has been deprived of $114.52 which belongs to it, by being compelled to pay that order twice. And I crave the careful attention of the Senators, because I think it is demonstrable in very few words. I say that we find that order in the possession of Mr. Coleman, who had been building a bridge for the town. Mr. Coleman testified that he went to Mr. Quam with this order for his pay. That Mr. Quam told him that he had not the money, but gave him to understand that his money was in Austin. Mr. Quam then paid to Mr. Coleman twenty dollars and took Mr. Coleman's receipt, informing him that he would have to go to Austin where his money was understood to be. He went to Austin and brought back the check of Mr. Ingmundson on the Bank of Le Roy for one hundred dollars, the order still being in Coleman's hands. That check is dated on the 6th of August. Mr. Coleman testifies that Mr. Quam handed him that check for one hundred dollars—making one hundred and twenty dollars paid Coleman, taking back from Coleman his change, making the amount $114.52; whereupon Mr. Coleman, on the 6th of August, delivers up the order to the town treasurer as paid.

This is a completed transaction, Senators. Mr. Coleman presents his order to the town treasurer; the town treasurer goes to some source, not material for the purposes of this discussion, and gets the money. He takes up the order thus drawn upon him. It amounted to a payment; he should have cancelled it immediately. Now, what happened? Mr. Quam, on the 2d of October, two months afterwards, with that paid order lying in his possession, and all obligation to the town under it extinguished if he and Ingmundson had done their duty, takes the order out of his files and sells it,—re-issues it to Ingmundson. That is what the transaction amounts to. This treasurer, by a breach of public trust, which he could not have perpetrated if Mr. Ingmundson had told him in the first place that he could not have any of the public moneyexcept upon the auditor's warrant, takes this paid order, upon which all liability of the town was at an end, and sells it to Mr. Ingmundson in exchange for the public moneys of the town of Clayton. The checks on the public funds were paid, for on the 2d of October of the same year, Mr. Ingmundson drew one check for $14.51 on the bank of Le Roy, and on the same day he drew another for $70, making $114.51, and thus Ingmundson, by payment of the public money, comes in possession of this order.

Mr. Ingmundson's explanation as to the one hundred dollar check is that Mr. Quam wanted it to pay town orders with. Mr. Quam has received the money of the town of Clayton upon one transaction, he has taken up this order and paid it, he has laid it aside, and two months afterwards he comes to Mr. Ingmundson and gets $114.51 more, by re-issuing it,—by a false token—by re-issuing to Mr. Ingmundson an order which he had no business with at all unless it were paid. The fact that the order was in Quam's possession was notice

to Ingmundson that Quam had paid it. Now this $114 paid August first, being gone from the town, this paid order being re-issued, Mr. Haralson comes upon the scene. Mr. Quam, in the meantime, was squaring himself, doubtless to run away. Mr. Haralson goes to the county auditor; he sees there ought to be the full amount upon the books. He receives a warrant for the full amount, and Mr. Ingmundson, drawing out this order which had no legal validity whatever (for it is not commercial paper), which had been paid once, says to Haralson: "No matter if this order has been paid by Quam, you pay it again." Hence, I say, the town of Clayton has been defrauded out of $114.51 by Mr. Ingmundson and Mr. Quam—a result which could not have followed if they had obeyed their duty and followed the requirements of the statute. The presumption was, when the town treasurer presented himself to Mr. Ingmundson with an order in his hands not payable to Mr. Ingmundson, nor to Mr. Quam, that he had received that order in the regular course of business which was by payment.

The grand jury were properly charged upon that state of facts. They went out. Two weeks rolled around. The first thing that this man Ingmundson did, was what he had done at the preceding term. He immediately did an act which would have quashed any indictment that the grand jury could have found against him. The grand jury had been instructed by the court that they must not admit as a witness to their presence any person whose conduct they were investigating. The supreme court of this State, in the case of the State of Minnesota against Froiseth, reported in the 16th Minnesota, has declared indictments void where the person accused of crime is summoned before the grand jury. And Mr. Ingmundson, exactly as he did in 1876, so in 1877, came before the grand jury, installed himself in the witness chair, was interrogated, and that grand jury might have piled indictment after indictment upon him so deep that he could not have been seen under them, and the court would have been bound by Ingmundson's own act to set every one of them aside. So that under these circumstances, the grand jury not being able to find an indictment, *could* find nothing else but a presentment of the facts. And yet this man who goes so imperiously to the grand jury room and demands that the door be thrown open to him, when he knows that the very act will vitiate any investigation which may be had of his doings, is an impeacher against the judge of that judicial district, for executing and doing no more than was his plain duty in the premises. After the grand jury had been in session a couple of weeks without touching this subject except to get Ingmundson in there—French, the county attorney, doing nothing whatever; Ingmundson insulting the court in every direction, using ribald and jeering terms to the jurors as they pass by, the judge inquired of the foreman, why are these matters delayed? It has not taken so long in other matters, what difficulty are you having? A very proper inquiry. And then it comes out that a majority of this grand jury will not investigate this matter; that this offender is greater than the law itself—the grand jury either will not or dare not investigate. They come in for instructions. They ask what they shall do; they present, first, a paper. It is not signed; it is informal. The court sends them back. Then they bring in a report of what Ingmundson had done in regard to this town of Clayton order, and the court tells the jury if these are the facts, it is an indictable offense. They request his views, and it is his duty to express them. They retire again to consider what they

shall do, and in a few moments, so great and overpowering has been the influence of this man during that session, that the good men of that jury in sheer despair give up—come into court with the others and say they have no further business.

Now, right here comes a conflict of testimony which I do not deem very materal. I do not deem it very materal in view of these facts, whether the respondent did roundly charge them with having violated their oaths, or hypothetically say that they might have done so, for, gentlemen, there was, on that occasion, by that jury, an undoubted violation of official duty, plain, clear and palpable. The weight of testimony in this case, juror after juror, the foreman, the county attorney, those who were present, (I cannot enumerate them all) prove that Judge Page told that jury that of course he could not dictate to their consciences, but that if the facts were as they had reported them, and they had disregarded them, they had certainly violated their oaths; words he had the right to say, words which it was his duty to say. It was a false verdict; it was a false finding. When they reported to him that they had no further business, with the ink not yet dry upon that paper wherein they had presented a state of facts which required an indictment, they stood there self-convicted of gross malversation in their duties, and it was the duty of any magistrate, who did not cower, as judges are too apt to do in these days of elective judiciary, before a diseased or complaisant public sentiment, to tell that jury, in the face of the public whose rights they had failed to vindicate, just what their conduct had been. If he had done less he would have failed in his duty, and that Sherman Page ever feared to do what he deemed to be his duty, no man has had the temerity here to charge.

It is no unusual thing, gentlemen of the Senate, for judges to treat the action of juries, in such a way as this. My learned friend, and I, tried a case before Judge Nelson, of the United States court, sometime ago, and one of us got a most outrageous verdict. The court, without waiting for any motion from either party, set that verdict aside in the very presence of the jury upon his own motion, with some remarks not very complimentary. A madder jury than that you never saw. They were a great deal madder than Mr. Clough or I was about it. They were very clear for a few moments that the judge had transgressed upon their province.

I witnessed a similar spectacle some years ago between Judge Dillon and a jury.

An anecdote is told of Justice Grier of the supreme court of the United States, a fearless judge, who passed a long life in the pure and upright administration of the law. An action of ejectment for a farm had been brought in his court. Technically the plaintiff might recover, but actually his claim was a most unrighteous one. The jury brought in an unrighteous verdict, stripping the defendant of his farm; and the old judge leaning over the bench said to the clerk in the presence of the jury: "Mr. Clerk, set aside that verdict, I want this jury to understand that it takes thirteen men in this court to steal a farm." [Laughter.] I have no doubt that plaintiff thought that judge ought to be impeached.

Great, fatherly Mr. Justice Davis, now Senator Davis of Illinois, perhaps, should have been impeached for a little performance of his some years ago, in protecting a defendant who was in court without his lawyer when his case was called. The court had been telegraphed that a certain train, upon which the defendant's lawyer was, would soon

arrive. But the case was ready for trial. The other attorney was sharp and eager to overreach, and the necessity of going to trial before the train arrived was great. Justice Davis told him such was his right, of course; he could go to trial, "but," said he, "we had just such a case as this down at Springfield the other day, the other lawyers were not there, and I was obliged to try the defendant's case for him, and, do you believe it, we beat!" [Great laughter.] I have no doubt that lawyer thought that Justice Davis ought to be impeached.

Judges have a paternal care over the interests of the public and the interests of suitors, and they have a wide latitude of discretion in their courts. To those persons who are at all familiar with the outside literature of our profession, such ancedotes as I have recounted are old and stale; they show what the power of the judge is to do right outside of any precedent which you may find laid down in the books.

In ancient times, the powers of judges over juries were very extraordinary, very extreme. In regard to a verdict of a petit jury, if it was corrupt there was a judgment of attaint against every member. It is a most extraordinary judgment, as I extract it from an old law book, and it reads like an apostolic anathema:

*"Quod amittant liberam legem; quod forisfaciant bona et catalla; quod terræ et tenementa in manus regis capiantur; uxores et liberi ejiciantur, domus prostrentur, arbores extirpentur, prata arentur et corpora sua carceri mancipentur."*

A SENATOR. Translate it.

Mr. DAVIS. *It is adjudged that they lose the protection of that law which is the right of free men and be infamous forever: that they forfeit their goods and chattels; that their lands and tenements be taken into the hands of the king; that their wives and children be thrown out of doors; that their trees be uprooted, their meadows plowed up, and their bodies cast into prison.*

Such were the denunciations of the ancient law upon jurors in such a case as this; and yet, for rebuking a jury which had been made pliant to the will of a criminal who had found his way unauthorized into their presence, for doing what this judge ought to receive the thanks of any honest community for doing, he is is brought before the high court of impeachment of the State of Minnesota, with the demand by the this man Ingmundson, that this respondent, a born citizen of this country, shall cease in all effect, to be a citizen of the State of Minnesota and lose the honors which, after years of study and toil he has so justly won, so justly worn.

Where a jury cannot find an indictment, they are authorized to find a presentment; and a presentment is a report of the facts which the jury design to submit to the court. When a presentment is found, the court can perform one of two duties upon it. It can issue its warrant upon the presentment, or the facts detailed therein can be made the foundation of a criminal complaint. The grand jury did find a presentment, although they refused to find an indictment. The facts were not in dispute. The little town of Clayton had a right to have rectified a wrong which had been perpetrated against it. The prosecuting officer was there in court; the judge turned around and told him to prepare a complaint upon the basis of that presentment and have Ingmundson arrested.

If that presentment contained a statement of facts which con-

stituted a crime, what else could he, as an honest judge, have done! What else could any upright magistrate have done? Witnesses had been there, the public saw what had been done, the jury had expressed themselves,—there the facts were in court, and the question plainly presented in the sight of the best men of that county was, whether Ingmundson or the statutes of Minnesota were strongest. He had forced two grand juries into submission, and avoided any indictment which they might find. According to the testimony of Mr. Murray, he was in the basement of Felch's hotel during this session of 1877, interviewing a grand juror, and telling him he did not want to be indicted because the jury of 1876 had not indicted him. He sat like Jezebel by the window of his office cursing and damning this judge as the petit jury filed by; he used, respecting him, the most vile, opprobrious, and indecent language He felt towards the respondent, the hatred which all men feel for those whom they have injured; because, whatever you may think of the testimony of Mr. Ingmundson in other respects, it is perfectly apparent that until Ingmundson himself made his attack upon the absent judge in the convention at the court house, there had been no ill-feeling between them, and from that time Ingmundson, who had attacked Judge Page, ceased to recognize him.

Mr. Ingmundson is brought before the court. How patiently the judge heard that case! The county attorney could not be relied upon to prosecute it. He would not supoena a witness; he did not do one act; he never was near the grand jury room when Mr. Ingmundson was under investigation. Mr. Coleman was there, Mr. French was there. the judge heard the testimony, took it down, turned around to Mr. Ingmundson and asked him to produce his testimony and clear the matter up. No man but French testified that Mr. Ingmundson wished to waive an examination. Mr. Cameron does not so testify, Ingmundson himself does not so testify. What was waived was the putting in of testimony on their defense. The judge did what he was under no obligation to do, he asked him to put in his testimony and clear the matter up. Mr. Ingmundson was still defiant, he would not do it. The testimony was uncontradicted ; this magistrate had to commit him and fix his bail.

Much has been said here in testimony upon an assertion that the judge told Mr. Ingmundson that he had been talking against him down in Le Roy. Lafayette French testifies that he did not understand that that conversation had anything to do with fixing the bail. My theory is that Judge Page's statement is correct. The judge says that after that transaction was over, after Ingmundson had refused to put in testimony, after the judge had fixed the bail, knowing Mr. Ingmundson's disposition, he said to him, "Mr. Ingmundson, I don't want you to think that there is anything personal in this. I am but performing my duty in the matter- I am doing that which I think ought to be done"—and such talk as a considerate magistrate, after he has performed his duties, may very properly indulge in. There is some assertion that French had told the judge that Mr. Ingmundson had been talking about him down in the town of Le Roy. My theory is that this took place after the trial. Now the respondent in this case has never been accused of being a fool. He never has been accused of having lost or lacked dignity in the administration of his judicial duties. and he never could have used that language in that connection. And if Senators have the patience to investigate a subject which has become merely a matter of ab-

stract curiosity, by turning to the cross examination of Mr. Ingmundson they will see that at one period he fixes this time of talking about the judge in the town of Le Roy, after the time when the names of Quam and Hanson had been mentioned, and that these were the names with which the defendant closed his remarks, in fixing the bail. But the judge stands fairly and squarely upon the record that he did not use those names at all in that connection, but that in conversation afterwards when Mr. Ingmundson wanted to ask a question, there was some talk there between the parties. The judge was not bound to stand mute.

There is a great mass of testimony upon the subject of what took place and what was said. I have not the time, you have not the patience to go through it. The witnesses have been here. So far as numbers are concerned, of the grand jurors who were present, of the by-standers and members of the bar, the testimony decidedly preponderates in the respondent's favor.

I may without any impropriety, call the atttention of senators to one fact, that Mr. Richard Jones of Rochester, who was sworn as a witness in this case, does not testify a word of Judge Page having accused the grand jury of violating their oaths. Not a word of that in Mr. Jones' testimony.

Just as as a parting illustration of the manner in which Mr. Ingmundson conducted himself during this examination, I wish to call the attention of Senators to the testimony of W. L. Corbett, a grand juror, who testified that after the jury were sworn, Mr. Ingmundson told him (the witness) that the grand jury had investigated him in 1876 and found his office all right, and that he did not care to be investigated. So we find Mr. Ingmundson approaching the grand jury, holding out this proceeding in 1876 as a reason why he should not be investigated in 1877. The truth is, gentlemen, that Mr. Ingmundson is a man who has forgotten, in the fact that he holds official station, that he holds it *under* the law. He is evidently a lawless man. He evidently is bound to have his own way. He is a man of a great deal of determination and fierceness of disposition, as was perfectly manifest upon the stand here. He cannot brook that either court or grand jury shall assert the ascendency of the law over him and any of his official matters.

The PRESIDENT. The Senate will take a recess for five minutes.

AFTER RECESS.

Mr. DAVIS. [Resuming.] I am now brought to the consideration of the eighth and ninth articles, which involve the relations of the respondent to the matters growing out of the Stimson contempt case. I am somewhat admonished, may it please the Senate, by my own feelings of fatigue, that I have overexerted myself; and if I do not deliver my views upon this particular article with a force to which I feel myself now physically inadequate, I hope my own failure will be compensated by your careful attention. I am approaching the end of this discussion. I shall close this afternoon.

The respondent is charged in the eighth article, with wrongfully issuing a warrant for the arrest of Mr. Stimson, he, the respondent, knowing that no complaint, affidavit, or legal evidence had ever been laid before him as a judge, and that he maliciously caused Mr. Stimson to be brought before him, to give bail, and finally acquitted him.

The ninth article is that the respondent in that proceeding sub-

poenaed witnesses before him for the purpose of causing them to answer questions irrelevant to that investigation.

I desire to state, in the first place, Senators, in regard to this charge, that although courts from the beginning of time have laid a strong, severe and relentless hand upon persons guilty of contempt, that, so far as I know, this is the only attempt which has ever been made to impeach any judge except Judge Peck for asserting and upholding the dignity of his court. By common consent, as well as by legal precedent, the courts of this country, for the purpose of protecting their dignity of maintaining themselves in the confidence of the people, are invested with an arbitrary, direct and absolute power, not exercised through any jury, not exercised under any indictment—exercised frequently upon view. The necessities of the situation have also caused the introduction into this very narrow and restricted field of our jurisprudence, the converse of the maxim that no person shall judge in his own behalf. A contempt of court cannot well be punished by another court; because it is necessarily a contemptuous act toward the man in whom the court is embodied, and whose duty it is at once to protect himself and make an immediate example, and hence we find that, owing to the exigencies of the situation—the same necessity which suspends all law under certain circumstances, which establishes martial law in times of war—which abrogates all law in times of fire or riot,—also confides to the judges a certain power which might be called absolute—if that word were not an offensive one to an American ear—but a power which, I will say, is exercised differently from that entrusted to them in the ordinary routine of judicial proceedings. It is also a proposition in the law of contempt, that great and extensive as it is over all the citizens of the community, it is much more rigorous and exacting over the officers of the court.

When a person takes upon himself to become the ministerial officer of a court, he impliedly agrees, indeed he expressly stipulates, to asser its dignity, to preserve its decorum, to maintain its authority. In regard to the position of subordination to the judge in which he places himself, it is particularly to be said that he submits to certain rules of discipline, not indeed regulated by the discretion of the judge, but well defined by precedents. Mr. Stimson was such an officer of this court; he was a deputy sheriff; he was the ministerial and executive officer of this court. Through him the court acted. It is through the sheriff that the power of the court is made manifest to the people, through its writs and processes. The judge, in his seclusion, has no executive power. He is simply seen and heard; he is never felt except through the sheriff who executes his decrees, and hence the importance of the rule that the executive officer of the court shall always maintain, instead of derogating from its dignity; that he, being that presence or manifestation of the court most frequently seen, and which oftenest touches the community in the daily concerns of life, shall deport himself in such a manner as to certify to that community that the authority which he executes, the magistrate under whom he sits, is worthy of the confidence of the people upon whom and among whom the court administers justice and he executes it. It is unnecessary for me to say, with any elaboration of statement, that for any person, much more for a person occupying such confidential and intimate relations to the court and to the administration of justice, to publish a libel upon the court itself, is not only a crime indictable, but a very gross and flagrant con-

tempt. A sheriff who is so audacious as to strike a magistrate down upon the bench, would meet with instantaneous punishment at the hands of the court. The sheriff who should go out doors and make a noise in such a way as to distract the orderly and decent administration of justice, would be speedily stopped in his noisy manifestations. These would be most offensive acts of contempt. But the sheriff who inoculates the public through a newspaper or through a written document intended to be published in a newspaper with the virus of contempt, which the judge, from the dignity of his position, cannot contradict or controvert—who puts in motion an agency which no human power can recall—who sends forth into the air those spoken words which can no more be taken back than I can take back what I have been saying here for the last two days—who puts into execution processes of injury irremediable by any art known to man, to be remembered forever—commits a more lasting insult to the court than he who strikes down a magistrate in his seat of judgment.

Now that Mr. Stimson had had a libel in his possession, and had been conferring with certain conspirators in regard to it, is one of the facts in the case which has not been, and will not, be contradicted. That libel is as follows:

"To S. Page, Judge of the District Court, Tenth Judicial District, Minnesota:

"SIR—Knowing you, and believing that your prejudices are stronger than your sense of honor, that your determination to rule is more ardent than your desire to do right; that you will sacrifice private character, individual interests, and the public good to gratify your malice, that you are influenced by your ungovernable passions to abuse the power with which your position invests you, to make it a means of oppression rather than of administering justice; that you have disgraced the judiciary of the State, and the voters by whose suffrages you were elected; therefore, we the undersigned citizens of Mower county, hereby request you to resign the office of Judge of the District Court one which you hold in violation of the spirit of the constitution if not of its express terms."

It is perfectly apparent, senators, from the appearance of Mr. Stimson upon the stand, that this stilted piece of malignity never proceeded from his brain. His pen never indited it. It is the offspring of the cowardly malice of some person who knew better than to identify himself with it in public. It is a rank, overgrown and crude imitation of a certain style of calumny made memorable by Junius, and never yet re-produced with any degree of likeness, by any of his imitators.

Furthermore, this document was never intended to be presented to this Judge; it never was presented to him as a matter of fact. After it had been circulated, the conspirators concluded, in the chaste language of one of them—"that there was too much hell in it"—and they concocted another. But the one which I just now read was intended to be published through the county of Mower for the purpose ot prejudicing the public mind and bringing the administration of justice into contempt.

These men who conceived this project, knew well enough that the charges which it contains are arrant falsehoods; that no private suitor, except Riley, in all the length and breadth of his district, could be produced who would say that in regard to any suit, the conduct of this respondent had been other than most magisterial and just. They knew perfectly well that such men as Richard Jones, a man of magnanimity with all his hatred—and Mr. Cameron a man of character, although the bitter enemy of the respondent, not speaking to him from a time long antedating his accession to judicial position,—would state, as

they have stated under oath here, that a more impartial man never sat upon the judgment seat. This document is an emanation from that same band of conspirators whom I purpose to dissect by and by, who form this overpowering public sentiment of which we have heard so much, and which has resolved itself into so little as far as the number of its individual members is concerned.

The time chosen for the circulation of this document was during a term of court. It was circulated, not only during a term of court, but it had been circulated before, and the question arose before the respondent, and was propounded to him by the very logic of the situation, whether he should sustain the dignity of his court against attacks of which this was a sample of many, or whether he should say, I fear that this band of malefactors is too strong for me, too strong for the law, and therefore I will sit down and become contemptible and allow my court to become contemptible in the eyes of the people among whom I administer justice. His position was one of great delicacy, it was one of exceeding importance. Does any Senator suppose that if that libel had been circulated with impunity, other disgraces would not have followed? We have seen this respondent's house surrounded with these rioters whom this Senate has judicially determined it will know nothing about; we have seen him libelled by Mollison and Davidson and Bassford, in 1873; and that libel suffered to gnaw at his reputation like a vulture, for five years, And now, at this time, after having been goaded in his judicial capacity and outraged as a private citizen, this respondent was confronted, not only with the responsibilities, but with the duties of his position, under a libel more calumnious than its predecessor.

My learned friend says that this libel was not in regard to any case then pending in court. In a certain qualified and little sense, that is true; but in a larger sense it was a libel as to every case that had ever been pending, or that was then pending, or that was to be pending in the respondent's court. It was a libel upon his administration of justice throughout,—day in and day out, term in and term out, from one year's end to the other,—it covered and touched every case; it stigmatized every moment of his judicial life. It was a libel upon the tenure by which he held his office, upon his personal character, and it declared that "in no case are you fit to sit in judgment upon your fellow men."

That this was a contempt I cite the 2nd of Bissell, page 939, paragraph 3 of section 1:

"Misbehavior in office, or other wilful neglect or violation of duty by an attorney, counsel, clerk, sheriff, coroner, or other person appointed or elected to perform a judicial or ministerial service—"

"Violation of duty"—what is the duty of a sheriff to a court? Is it from the moment of his installation, to slander and libel the judge? While the American people are disposed to criticise very freely the acts of executives and of legislators, there is one feeling implanted in the spirit of our people noticed by all who visit among us, and appreciated by ourselves whenever we think of it, and that is that we have great respect for our judges. With what respect a judge is treated in the community in which he lives and wherever he goes! With what respect this respondent is treated as the evidence shows, in the great counties of Houston, Fillmore and Freeborn! In all this investigation not a voice of complaint has come from either of those three counties against him; and the only words of accusation that have come, are the last and expir-

ing echos of those ancient calumnies in Mower county which haunted him before he took the seat of magistracy.

My learned friend, or some one in this proceeding, seemed to have the idea that if a man wishes to libel a judge, although he cannot safely do it by a broadside, or in a newspaper, he may sneak under the right of petition and do it there unquestioned. Now, although the right of petition is a sacred right, yet when it is abused and made a cover for a wrong, then the wrong which it is made to cover becomes much more flagrant than if it were perpetrated openly and manfully.

I cite State vs. Burnham, 9th New Hampshire, page 34:

"Indictment for publishing a false, malicious, and defamatory libel upon Lyman B. Walker, at the time solicitor for the county of Strafford, in the form of an address, or petition to the Senate and House of Representatives, containing allegations that said Walker was intemperate, incompetent to discharge the duties of his said office, had misconducted in many instances, and that his character was notoriously immoral, and praying for his removal from office."

It appeared in that case that the petition to the legislature was merely a pretense; that the real design was to enable the bad men who composed it, to peddle it around among the neighbors, and come in and plead in court that they were getting up a petition. It never was presented to the legislature, as *this* petition was never presented to this judge, and the Supreme Court of New Hampshire, delivering its opinion through Chief Justice Parker, the most eminent magistrate who ever sat upon the bench of that State, declares:

"A libel is an offense, for which the party is liable to be indicted and punished.',

"If a person publish defamatory matter of another, without any lawful occasion for making a publication, and where the only end to be attained is to gratify a spirit of detraction, or to bring the subject of it into contempt and disgrace, he cannot justify or excuse the publication; and in such case an indictment may be sustained, whether the allegations are true or false.

"If the end to be attained by a publication be justifiable, as, if the object of it is the removal of an incompetent officer, or to prevent the election of an unsuitable person to office, or to give useful information to the community, or to those who have a right and ought to know, in order that they may act upon such information, the occasion is lawful; and the occasion being one in which matter of such nature may be properly published, the party making the publication may either justify or excuse it. Where, however, there is merely color of a lawful occasion, and the party, instead of acting in good faith, assumes to act for some justifiable end and merely as a pretense to publish and circulate defamatory matter, he is liable in the same manner as if no such pretense existed."

No one pretends here that it ever was intended to present this petition to this judge. Not only is the fact uncontradicted that it was not so presented, but no man has come forward to swear that it ever was intended to be presented to him. It was to be one of those missiles of newspaper defamation which are never thrown and whose passive office it is to stink, which have gone so far to prejudice the case of this respondent before the people of this State.

I was surprised to hear my learned friend apply to this case a provision of the constitution of this State against search warrants and seizures.

This is the section:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue but on probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person and thing to be seized."

I cannot imagine that my learned friend, with his spirit of fairness and habits of research, is ignorant of the historic origin of that clause in the federal and state constitution. It has no relation whatever, and never did have, to the procedure in cases of contempt. It has its origin in the fact that from the earliest times the state department of Great Britain, (I cannot now recall its proper name), arrogated to itself the power, not as a judicial act, but as an executive act, to issue to sheriffs general warrants to search any place and seize any person, without any specific description of the place or the person. About the middle of the last century there arose a revolt against that absolutism, headed by Pratt, afterwards Lord Camden, which steadily progressed in force and efficiency until it became a cardinal principle of English law, and has embalmed itself in the federal and all state constitutions that the executive shall not issue a general warrant of that kind, but if the judicial power issues any search and seizure warrant, it must describe the places to be searched and the persons to be seized. In that view I am amply sustained by Professor Cooley, who says on page 300 in his work on Constitutional Limitations, where he treats the matter at much greater length than I read:

"If in English History we inquire into the original occasion for these constitutional provisions, we shall probably find their origin in the abuse of executive authority, and in the unwarrantable intrusion of executive agents into the houses and among the private papers of individuals, in order to obtain evidence of political or intended political offenses. The final overthrow of this practice is so clearly and succinctly stated in a recent work on the constitutional history of England, that we cannot refrain from copying therefrom in the note."

It relates only, as any Senator may demonstrate for himself, who examines the constitution on that subject in the light of history to search warrants for property, where seizure of the person is also included as a part of the act to be performed by the officer; and it ordains that it shall not issue upon the mere will of any officer, executive or judicial, and that it must contain a description of the persons to be seized and the places to be searched. But it applies only to these warrants, leaving the other questions of the administration of criminal jurisprudence to other provisions of the constitution and to common law safe-guards. If my learned friend's view is correct, if a magistrate cannot arraign an offender guilty of contempt without complying with that provision, then the whole chapter of contempt, as found in the statutes of Minnesota, is void; because we both agree that if the chapter authorizes anything, it does authorize the judge to proceed against the offender in some cases without any affidavit, complaint, or process whatever. If his view is correct, then, also is void the provision which authorizes any person to arrest another whom he catches in the perpetration of a crime, or who is recent and warm from its perpetration. But the fact is that these provisions were never held to apply to judicial proceedings for the enforcement of the criminal law, except incidentally and in certain cases. They were never held to apply in cases of contempt, any more than in cases of contempt the provisions of the constitution were held to apply which provides that in all cases one accused of crime is entitled to a trial by a jury of his peers. Now, we all know that a person who is accused of contempt is not entitled to a trial by jury. He is tried summarily by the magistrate. The necessities of society require that the courts shall be rendered respectable, and that at the same time the wheels of justice shall not be stopped or clogged in punishing offenses of this kind by the ordinary

formal instrumentalities of judicial procedure. And I ask Senators upon this floor not of our profession, to appeal to other Senators who are of our profession, whether it is not the law, and has not always been the law, that in regard to contempts, these ordinary constitutional maxims, as to the right of trial by jury and as to process, have no application whatever, and I shall show you by authority that they do not, for a very grave constitutional reason, as I proceed.

I shall now assume, for the purposes of this discussion, that the statutes of Minnesota, upon this subject of contempt, are valid statutes, and I shall undertake to show from a fair construction of these statutes that this act with which Stimson was charged was not an act which, under the statutes, required any complaint to be made as a condition precedent to the issuing of a warrant.

I refer to 2d Bissell, page 940, section 2, and I ask the attention of the Senate for a few moments while I give my exposition of this statute. The statute goes on and describes what acts shall constitute contempts. It provides:

"Every court of justice, and every judicial officer, has power to punish contempts, by fines or imprisonment, or by both; but when the contempt is one of those mentioned in the first or second subdivisions of the last section, it must appear that the right or remedy of a party to an action or special proceeding was defeated or prejudiced thereby, before the contempt can be punished by imprisonment, or by a fine exceeding fifty dollars.

"Sec. 3. When a contempt is committed in the immediate presence of the court, or officer, it may be punished summarily, for which an order shall be made, reciting the facts as occurring in such immediate view and presence, adjudging that the person proceeded against is thereby guilty of a contempt, and that he be punished as therein described. When the contempt is not committed *in the immediate view and presence of the court*, an affidavit or other evidence shall be presented to the court or officer of the facts constituting the attempt.

"Sec. 4. In cases other than those mentioned in the last section, the court or officer may either issue a warrant of arrest, to bring the person charged to answer, or without a previous arrest, may upon notice."

Now, my exposition of that statute is this: That when a contempt is committed in the immediate presence of the court, the offense may be punished summarily *without a trial;* where it is not committed in the immediate view and presence of the court, he cannot be punished unless an affidavit *or other evidence* shall be presented to the court or officer of the facts constituting the contempt; and that in all other cases, viz.: cases "not in the view or presence of the court"—I am stating the exact language of the statute—in all other cases, which other cases are cases which are not in the view and presence of the court, as *this* was not, the magistrate has the right to do, under the statute, exactly what the Judge did—either issue a warrant of arrest, to bring the person charged to answer, or without a previous arrest upon notice or order to show cause, by the sheriff, grant a warrant. The affidavit or other evidence is not a condition precedent to arrest, but as condition precedent to punishment. Such is the statute of this State which the legislature has laid down for the guidance of this magistrate, and it told him plainly and distinctly that when the contempt is not committed in his immediate view or presence, he may either issuea warrant in the first instance, or he may, after an order to show cause, grant a warrant. Such is the statute; such is a fair construction of it, easily arrived at; laid down for the judges of the State, to be a shield to protect themselves and their courts, and not a snare in their paths.

This is the construction which this respondent testifies he put upon it after anxious and careful deliberation:

Section 11 provides:

"That when the person arrested has been brought up or appeared, the court or officer shall proceed to investigate the charge, by examining him and the witnesses for and against him."

After being brought before the court, the court is to proceed to investigate the charges.

Now, gentlemen of the Senate, here was a contempt not committed in the immediate view and presence of the court. The statute presented to this court two lines of action, either of which might be adopted. He could either issue a warrant to have Stimson brought up without a complaint, or he could issue an order to show cause and a warrant after citation. He adopted the first course, and Mr. Stimson appeared and went to trial without objection or exception. Mr. Cameron appeared for Stimson and asked the court if a complaint had been filed. The respondent informed him that he did not deem it necessary. Mr. Stimson made no objection, Mr. Cameron made no objection, took no exception; did not call the attention of the judge to the fact which is now adduced against him as impeachable error, but went on with the hearing, submitted to adjournments, gave bail and accepted the discharge.

As an illustration of the power of courts in cases of this kind, I desire to cite the 3rd volume of Minnesota Reports, page 274, to show with what tolerance the Supreme Court of this State has regarded the action of a judge who erroneously took extreme measures in a case where he deemed his court affronted by the action of an attorney:

"It seems from the statute that this court is to review the decisions of the district courts made in such matters as the one at bar, and it necessarily follows that our investigation must be confined to the record alone, which is sent up from the court below. It appears from the record herein, that the only act complained of, or charged by the judge to have been committed by the attorney, was the reading of an affidavit, and moving thereon for a change of venue. The affidavit was made under the act of 1858, which allows a change of venue when either party shall fear that he will not receive a fair trial on account that the judge is interested or prejudiced therein, &c. The affidavit used in this case was couched in the exact language of the statute, alleging that the judge was prejudiced, without stating any facts upon which the affiant based his charge of prejudice. We fully agree with the view taken by the court that the affidavit was insufficient to procure a change of venue in the case in which it was used, but should have set out the facts and circumstances upon which the prejudice was alleged to exist, and to have arisen from. Yet it does not by any means follow that the reading such an affidavit is *per se* a contempt of the court to which it is presented. It may be done innocently and in full faith that it was simply necessary to use the language of the act in making the application. While we are clear that the presentation of the affidavit is not *per se* a contempt, we can readily see how an act innocent in itself, may become a violation of the dignity and decorum of the court, by the manner in which it is done, or the motive which actuated the mover, and had any such thing been charged, we would have regarded the matter in a different light from the one we have been compelled to accept.

"The high estimation in which this court holds the judge who made this decision, as well for his legal attainments, as for his spotless honor, his integrity, and his universally conceded amiability of disposition and courtesy of deportment, we think there must have been some fact accompanying the reading of this affidavit, or circumstance attending it, which does not appear upon the record, which formed the gist of the contempt, although it has been attributed in the record to the simple

reading of the paper. We are strengthened in this view by the known ability of the attorney who has been suspended, who is not to be presumed to have ignorantly framed such a paper. Still, as we are confined to the record, such matters cannot one way or another influence our decision.

"While we will go as far as we can to support that proper respect which is due the administration of justice in the courts, our first duty to entitle ourselves to receive that respect, is an adherence to well settled rules of decision.

"The suspension is vacated—not being sustained by the record."

Now, it happens that the judge who suspended that attorney for reading an affidavit to him for a change of venue, was no other than as cautious, temperate, upright and mild a man as judge, now Senator McMillan—a man who wrongfully, intentionally never harmed any person. He was compelled to choose what line of conduct he should pursue in regard to an attorney who read before him an affidavit for a change of venue, couched in the language of the statute. The Supreme Court held that he erred in the reason and the manner of his act, and yet no person ever thought of impeaching him.

I desire to cite some other authorities upon this point. First, the 16 of Arkansas, page 384. The substance of the decisions which I am about to cite is this: That the legislature of a State cannot by statute enact as to courts of justice, what acts and what acts only, shall constitute contempt. In other words, that the judiciary is an independent department of the government; that among its inherent powers it has the right of self-preservation, and that if a legislature is entitled to enact and limit the powers of the courts in regard to what shall or shall not be contempt in one respect it has in all, and can strike if it pleases decisive and overwhelming blows at the very existence of the courts. In all the cases which I am about to cite, parties have committed contempts which were not within the inhibition of the statute law, and the question has been fairly raised whether the statute can be a limitation upon the courts; and it has been fairly and fully decided that it cannot be for the reason that the legislative and judicial functions of the government are independent of each other, and that the legislature, by statute, has no more authority to say to the courts in what manner they shall preserve their existence, than the courts have the right by rule to say to the legislature in what manner it shall perpetuate itself. 16th Arkansas, page 384 reads:

"This court has the constitutional power to punish as for contempt, for the publication of a libel, made during a term of the court in reference to a case then decided, imputing to the court officially, *bribery* in making the decision—such power being inherent in courts of justice, springing into existence upon their creation as a necessary incident to the exercise of the powers conferred upon them.

"The legislature may regulate the exercise of, but cannot abridge the express, or necessarily implied powers granted to this court by the constitution.

"The statute, (*Digest, chap* 36, *sec.* 1) so far as it sanctions the power of the courts to punish, as contempts, the acts therein enumerated, is merely declaratory of what the law was before its passage; the prohibitory clause is entitled to respect, as an opinion of the legislature, but is not binding on the courts."

"The publication thus having been brought directly to the notice of the court, by a member of the bar, expressing that interest in the preservation of public respect, for the decisions of a tribunal of final resort, which the worthier members of the profession, as well as all orderly and law abiding citizens, usually manifest, the court concluded that it was due to the honor and dignity of the State, and its own usefulness, not to pass the matter by without some official action, but to institute an enquiry whether its constitutional privileges had not been invaded by the publication aforesaid. Accordingly an order was made, reciting the publication, and directing that the defendant be summoned to appear before the court, at its present term, to show cause why proceedings should not be had against him, as for criminal con-

tempt. No attachment, but a mere summons, was issued in the outset, bacause the constitutional power of this court, to punish as for contempt in such cases, had not been determined and was supposed to be not altogether free of doubt.

"The language of the article would seem to indicate, by implication, that the court was induced by *bribery*, to make the decision referred to. It is not an attack upon the private character or conduct of the members of the court, as men, but seems to be an imputation against the purity of their motives while acting officially, as a court, in a specified case. Had the publication referred to them as individuals, or been confined to a legitimate discussion of the correctness of their decision, in that or any other case, no notice would have been taken of it officially,

"The statute on the subject of contempts, declares that Every court of record shall have power to punish, as for criminal contempt, persons guilty of the following acts and no others:

"*First.* Disorderly, contemptuous or insolent behavior, committed during its sitting, in its immediate view and presence, and directly tending to interrupt its proceedings, or to impair the respect due to its authority. *Second.* Any breach of the peace, noise or disturbance, directly tending to interrupt its proceedings. *Third*—Willful disobedience of any process or order lawfully issued, or made by it. *Fourth.* Resistance willfully offered, by any person, to the lawful order or process of the court. *Fifth.* The contumacious and unlawful refusal of any person to be sworn as a witness, and when so sworn, the like refusal to answer any legal and proper interrogatory."

"It is conceded that the act charged against the defendant in this case, is not embraced within either clause of this statute.

"It was argued by the counsel for the defendant that the court must look to the statute for its power to punish contempts, and not to any supposed inherent power of its own, springing from its constitutional organization. That it is controlled by the statute, and cannot go beyond its provisions. In other words, that the will of a coordinate department of the government is to be the measure of its power, in the matter of contempts, and not the organic law, which carves out the land marks of the essential powers to be exercised by each of the several departments of the government.

"In response to this position, we say, in the language of *Mr. Justice* SCOTT in *Neil vs. The State*, 4 *Eng.*, 263, that: 'The right to punish for contempt, in a summary manner, has been long admitted as *inherent in all courts of justice*, and in legislative assemblies, founded upon great principles, which are coeval, and must be consistent with the administration of justice in every county, the power of self-protection. And it is where this right has been claimed to a greater extent than this, and the foundation sought to be laid for extensive classes of contempts not legitimately and necessarily sustained by these great principles, that it had been contested. It is a branch of the common law, brought from the mother country and *sanctioned by our constitution*. The discretion involved in the power is necessarily, in a great measure, arbitrary and undefinable, and yet, the experience of ages has demonstrated that it is compatible with civil liberty, and auxiliary to the purest ends of justice, and to a proper exercise of the legislative functions, especially when these functions are exerted by a legislative assembly.'

"And in the language of Chief Justice WATKINS in *Costart vs. The State*, 14 *Ark.*, Rep 541:—'The power of punishing summarily and upon its own motion, contempts to its dignity and lawful authority, is one inherent in every court of judicature. The offense is against the court itself, and if the tribunal have no power to punish in such case, in order to protect itself against insult, it becomes contemptible and powerless, also, in fulfillment of its important and responsible duties for the public good. It is no argument that the power is arbitrary, though indeed settled by precedents, or limited by them, as rules for the future guidance of the courts. While experience proves that the discretion, however arbitrary, has never been liable to any serious abuse, it would be a sufficient answer to say, that the power is a necessary one, and must be lodged somewhere; and it is properly confided to the tribunal against whose *authority* or *dignity* the offense is committed.'

"Had the legislature never passed the act above quoted, or any act at all on the subject, could it be doubted that this court would possess the constitutional power to preserve order and decorum, enforce obedience to its powers, and maintain respect for its judgments, orders and decrees, and as a necessary consequence, punish for contempts against its authority and dignity, without which it could never accomplish the useful purposes for which it was established by the framers of the constitution?

"If the General Assembly were to repeal the act, would any lawyer seriously contend that the courts were thereby deprived of the power to punish contempts? One of the counsel for the defendant frankly admitted that they would not, and the admission concedes the position to be here, that the power of this court to punish contempts, is inherent, springing into life along with, and as an incident to, those great judicial powers carved out for its exercise by the constitution.

"The legislature may regulate the exercise of, but cannot abridge the express or necessarily implied powers, granted to this court by the constitution. If it could, it might encroach upon both the judicial and executive departments, and draw to itself all the powers of government; and thereby destroy that admirable system of checks and balances to be found in the organic framework of both the Federal and State institutions, and a favorite theory in the government of the American people.

"As far as the act in question goes, in sanctioning the power of the courts to punish, as contempts, the "*acts*" therein enumerated, it is merely declaratory of what the law was before its passage. The *prohibitory* feature of the act can be regarded as nothing more than the expression of a judicial opinion by the legislature, that the courts may exercise and enforce all their constitutional powers, and answer all the useful purposes of their creation, without the necessity of punishing as a contempt any matter not enumerated in the act. As such it is entitled to great respect, but to say that it is absolutely binding upon the courts, would be to concede tha tthe courts have no constitutional and inherent power to punish any class of contempts, but that the whole subject is under the control of the legislative department; because, if the general assembly may deprive the courts of power to punish one class of contempts, it may go the whole length, and deprive them of power to punish any contempt.

"Mr. BLACKSTONE (book 4, page 245) says: 'The contempts that are thus punished, are either *direct*, which openly insults or resists the powers of the courts, or the persons of the judges who preside there; or else *consequential*, which (without such gross insolence, or direct opposition) plainly tend to create an universal disregard of their authority.

"Some of these contempts may arise in the face of the court, as by rude and contemptuous behavior; by obstinacy, perverseness or prevarication; by breach of the peace, or any wilful disturbance whatever: others, in the absence of the party, as by disobeying or treating with disrespect the King's writ, or the rules or process of the court; by perverting such writ or process to the purposes of private malice, extortion or injustice; by speaking *or writing contemptuously of the court or judges, acting in their judicial capacity;* by publishing false accounts (or even true ones, without proper permission) of causes then depending in judgment; and by anything in short, that *demonstrates a gross want of that regard and respect, which when once courts of justice are deprived of, their authority* (so necessary for the good order of the kingdom) is entirely lost among the people.' "

The court considered this case, as I said before, upon the proposition that the judicial department of the government is independent and distinct. Because it is a department of the government, it has the power to preserve its existence; it has the right of self-preservation., It has that right to the full extent necessary for that object. The great weapon offensive and defensive of the court for that purpose is its power to punish for contempt.

By the constitution of this State the legislature is prohibited from impairing or interfering with the powers of either department. If the legislature can say what acts shall and what acts shall not constitute a contempt, it is perfectly apparent that it can annihilate the judiciary.

It can by insidious legislation, lopping off a prerogative here, abolishing a power there, make the courts its abject tools and slaves. I believe this decision to be a sound, as it certainly is a very logical piece of reasoning. I think it is based upon principles of which every man will recognize the force upon a moment's reflection.

In 3d New Jersey, page 403, is a general decision in point, but not sufficiently important to warrant more than citation. The question

was considered in 63 North Carolina Reports, page 397. I wish to read this for its special bearing upon the objection that there was no affidavit:

"The other objection, that the rule was made without affidavit, or other legal proof of the facts upon which it is based is clearly untenable. It is admitted that where the proof is furnished by the senses of the judges, it may be acted on. Here there was such proof. We know by our senses that a newspaper containing the paper referred to, purporting to be signed by Mr. Moore and others, had been extensively circulated and was then in the court room; and the want of a disavowal on his part that he had signed the paper, or consented to its publication, furnished *prima facie* proof, not for *final* action, but all sufficient as a ground for the rule. On his application he was at liberty to deny the fact without an oath, and the denial, like the plea of 'not guilty,' would simply have put the fact in issue, and he would have been entitled to have the rule discharged, unless the fact was proved by *direct testimony*. Instead of that he *admits* the fact. So this is no legitimate ground of complaint. In short, all the preliminary objections were waived and the reference to them can answer no useful purpose."

That was a case where certain officers of court proceeded against the Supreme Court of North Carolina, very much in the same way that the respondent was informed that Stimson was proceeding against him. They published a newspaper article, signed by the attorneys, reflecting upon the conduct of the court. The judges were informed that parties saw it in circulation if they did not see it in the hands of these men. They brought the offenders up, just as the respondent brought Stimson up, without a warrant. It was objected that there should have been a preliminary affidavit. The court announced that the statute did not apply to a fact so notorious and patent as that contempt was. And, furthermore, that if it did apply, it was waived by the party appearing in court, not objecting to the illegal defect, going to trial, putting in no plea and admitting the fact.

I cite also the 3d of McLean and the 7th of Cranch upon that subject.

But it may be urged that if the statute in this case does not solely govern, the power is illimitable. Not at all. It is a power well-settled, and definitely limited at common law. I appeal to the experience of every one of you, how rarely you have heard of courts being called into question for any unlawful exercise of their powers in matters of contempt. There is such a profound respect for judges, such a desire on the part of the entire community that they shall be permitted to exercise their judicial functions in dignity, peace and respect, that the community sustains, respects and admires a judge who has the courage to maintain the dignity of his tribunal.

Nearly all of these articles of impeachment are so trivial as to seem, at first view, scarcely to warrant the serious discussion they have received. But as we have proceeded in our duties we have become pursuaded that the danger in the charges is not what they allege, but lies in the principle upon which they are based; that the danger is not to this respondent but to the public itself—for the spirit which inspires them all is the spirit of revolt against constituted authority. It has appeared in that most dangerous form of an attack upon the judicial department of the State, upon its integrity, upon its independence. There is, after all, a wise conservatism in the people, and while they make and unmake with a breath the executive and the legislature, they instinctively re-

frain from subjecting the judiciary to the attacks of prejudice or disaffection. They do not require a judge to be popular. They require him to be honest and as firm as the system of law which he administers. They recognize the fact that there must exist in all forms of government an ultimate principle of absolutism and permanency, an impregnable barrier against the fitful mutations of the hour, an inexorable expounder of those laws of self preservation which precede the formation of states, which preserve property, which secure liberty, which bear with uninterrmittent force upon the concerns of society with all the power of gravitation. In our system the judiciary is this principle. It is this cohesive principle of our system which is this day attacked, in the person of a judge whose integrity has not been questioned even by his enemies. Our entire policy is thus assailed at its strongest point. If you destroy that which is most permanent, the efficacy and independence of the rest of the structure will fall in ruin without further attack, merely as the logical consequence of such a process. Is it not well for us to pause? Rude usurpers, aggressive kings have paused at this decisive point. Shall we be less wise than they?

It is the prerogative of Shakspeare that whatever he stoops to touch becomes authoritative in quotation. He is the magistrate of both imagination and reason. There is scarcely a topic in the universe of human thought which that marvelous mind has not compassed in its cometary sweep. He has walked in the abyss of human nature and seen the thousand fearful wrecks, the unvalued jewels, and all the lovely and the dreadful secrets which lie scattered in the bottom of that illimitable sea. The maxims of policy, the rules of war, the subtleties of love, the patient forecast of hate, the pangs of remorse, the ready wages which jealousy always pays to the miserable being it employs—all things over which the mind or the nature of man has jurisdiction, receive from him their definition and expression, excepting those awful topics of the hereafter, which, of all the children of men he, the greatest, has been too reverent to touch. He knew of the circulation of the blood. In instance after instance he has not only used the terms of the law with the strictest precision, but has stated its abstrusest principles with entire correctness. So wonderfully true is this assertion of his despotic empire, that conjecture in its baffled extremity, has declared that the hidden hemisphere of this world of thought, must be Francis Bacon, who, in his youth "took all knowledge for his province," as if it were his heritage. Shakspeare has created an immaterial universe which will, like him, survive the bands of Orion and Arcturus and his sons.

He peculiarly knew the limitations of power and authority, and enforced them by many constitutional illustrations. And in that respect he has presented no finer exposition than that one where he magnifies the sacredness of judicial authority in the scene between Henry V., lately become King, and the Chief Justice, who had formerly committed him for contempt.

The old magistrate stood trembling before the young King, whose life had given no warrant of wisdom or integrity; for he had in his reckless days been the boon companion of Falstaff and his disreputable associates.

Referring to his humiliation by the judge, the King asked,

"Can this be washed in Lethe and forgotten?"

The judge interposed this memorable defense:

"I then did use the person of your father;
The image of his power lay then in me;
And, in the administration of his law,
While I was busy for the commonwealth,
Your highness pleased to forget my place,
The majesty and power of law and justice,
The image of the king whom I presented,
And struck me in my very seat of judgment,
Whereon, as an offender to your father,
I gave bold way to my authority,
And did commit you."

It prevailed, for the King replied:

"You are right, justice, and you weigh this well;
Therefore still bear the balance and the sword;
And I do wish your honors may increase,
Till I do live to see a son of mine
Offend you, and obey you, as I did.
So shall I leave to speak my father's words—
Happy am I, that have a man so bold,
That dares do justice on my proper son:
And not less happy, having such a son,
That would deliver up his greatness so
Into the hands of Justice You did commit me
For which I do commit into your hands
The unstained sword that you have used to bear:
With this remembrance: That you use the same
With the like bold, just and impartial spirit
As you have done 'gainst me."

Of all the illustrations which Shakespeare has given to authority, in its highest and best estate, I know of none finer than this. Not Richard sitting upon the ground and telling sad stories of the death of kings when all his fleeting glory seemed but a pompous shadow; not Prospero, the ruler of two realms, who by virtue of his sway over his immaterial kingdom looked upon the great globe itself as a phantasma merely, which would vanish with all its cloud-capped towers, and gorgeous palaces, and solemn temples; not Lear invoking from the elements themselves the abdicated regalities of his sovereignty, seem to me so imposing as this semi-barbarous youth respecting the majesty of the law in the person of its faithful servant.

You can bow before this mob. You can lead an attack which will be repeated upon every department of our government by all the blatant and riotous law breakers of time to come, who may rise up in rebellion against statutes enacted for their condemnation, against magistrates who condemn them. Or you can can make enduring the endangered functions of the State. You can quell forever that arrogant spirit of insubordination, before which no judge is sacred, no constitutional provisions are obstacles. Say to this respondent—

"Therefore still bear the balance and the sword;
* * * * * * * *
The unstained sword which you have used to bear
With this remembrance: That you use the same
With the like bold, just and impartial spirit
As you have done."

and this proceeding will live memorable in our history as one of its preservative events.

Now, gentlemen, I have gone through these articles. I am loth to leave them even now, exhausted as I am, and late as the hour grows to me. Standing here and looking back over the path which I have trodden so wearily to me, and I know to you, I can see how a better man and a more attentive understanding might have grasped this case more rigorously than I have done. I have endeavored fairly, honestly, and conscientiously, with no legerdemain or jugglery of intellect, or sophistication of your understandings, to state the law as I honestly believe it to be, to state these facts, so far as my weak recollection serves me. If I have erred you will correct me. I besought your correction as to facts early in my argument. No Senator made any, and I presume I have been in the main correct. But there is one thing of which I do wish to treat before I take a last farewell of this case. Whence comes this prosecution? Are we not now in this stage of the proceedings, after we have torn to shreds calumny after calumny, entitled to ask the Senate of Minnesota and the public of this State, for whom these proceedings are instituted, and for whom this expense is made, whence comes this impeachment which has swallowed up so much of the public money to so little purpose? I have now ceased to speak for the acquittal of Sherman Page; I speak now for his vindication. I propose to bring into court the men not now in court. I cite before this bar Ingnundson, French, Cameron, Crandall, and the rest. I assert, and I propose to demonstrate within the short time which I have imposed upon myself, that this is a conspiracy to ruin and break down the character of a just and worthy man. I do not say that judge Page is the most lovable man in the world. He is a man of angular disposition of character. He never mixes much with men; he is a man of the closet and of books. That he is a man of strict integrity it is unnecessary for me to say; that, no man has come here to doubt or to dispute. Then whence, I say, comes this little angry cloud so full of thunder to blast him?

Permit me to go back over the testimony for a moment and show from the evidence in this case, whence it comes. It has transpired in the testimony, that before Judge Page went upon the bench, a man named Smith was treasurer of that county. It has come out in these proceedings that the respondent, while at the bar, in the name of the county, instituted a suit against him and his sureties for defalcation. The records of the supreme court have been referred to, and it appeared in evidence that the county in that suit, prosecuted by this respondent as attorney, recovered a judgment of $17,000 for moneys embezzled from the county treasury of Mower by this treasurer Smith—for whom, as Mr. Gilman pathetically remarked, "the silent grave has yawned." That case came up on a motion for a new trial before Judge Waite, and it was denied. It was removed to the supreme court of this State; it was reversed upon the mere technical fact that certain written memoranda were not evidence—not upon the merits; was sent back for a new trial, and during the time that these conspirators have held this man crucified that suit has aborted, under the administration of French. Mr. Cameron testifies "that the respondent has raised the devil ever since he came to Austin," to use his language. But when Mr. Cameron is interrogated as to what particular respects the devil was raised by this respondent, it is found that he attacked an old, rotten and corrupt ring which has existed in that county from the time they stole the records

from Frankford; from the time one man burned portions of those records in the stove and afterwards fled, a counterfeiter.

It appears that the respondent attacked one of Mr. Cameron's friends and that man resigned under charges preferred to the Governor. It appears that the respondent, leading an honest public sentiment then attacked for official malversation, another citizen of Austin, a county commissioner, and he resigned and got out of the way. To bring a suit against a defaulting treasurer in that county, is a crime, worthy of impeachment; and when the sureties of Smith saw that they might be compelled to disgorge the amount which the attorney general of the State felt warranted to call upon them for, they immediately arrayed themselves in opposition to the respondent. In the meantime he became judge. That he is an active, vigorous man, who hates a thief, and does not fear him, sufficiently appears. He never has been arraigned for tampering with the money of the public; so far as his conduct has passed under your scrutiny, he has always been on the side of right, and the only criticism that can be made is as to his manner of performance of his duty. In the meantime, as I have said, he became judge. He is placed in a status of legal monasticism. He cannot retaliate, he cannot keep up the fight. The suit which he has brought as an attorney he cannot try; it goes off into another district; it comes before my honored friend Judge Waite in an incidental way. He is placed with his hands tied by the proprieties of his position. He can no more strike back than a penitent can strike back when his hands are raised in prayer. He is in a sacred place and these men keep up that unholy war against him. I do not speak outside the record which they have given. It is so. He no sooner takes his seat upon the bench than this man Mollison, under the instruction of Davidson and Bassford and somebody else, accuse him of judicial corruption, in deciding a case in favor of the Southern Minnesota Railroad Company, and charged that he had given away $50,000 of the money of the county of Mower. Shortly afterwards, Mr. Ingmundson, Judge Page, it appearing, not having been in a convention or caucus since he was judge, goes into a county convention after he had received a nomination, and denounces the respondent to an excited people. In the meantime came up the whiskey riots at Austin, threatening the public peace, and the sheriff of that county and the others jeered at the man who by the laws of this State is the prime conservator of the peace over four counties. He left his home to attend to his judicial duties, and when the lion had gone the jackalls all came out and bayed around his house, calling forth that order to Baird that he should protect his property, his family, and the peace of the other citizens. In the meantime the voice of calumny, printed and written, is continually lifted up against him. The most outrageous charges are made, to go forth upon the wings of the wind. I have known Sherman Page for years, gentlemen. I know him well, probably better than any other man upon this floor; and I must confess that those charges were repeated with such an acerbity, presistence and reiteration, that I was afraid my friend might have gone astray. I knew he would not, unless goaded beyond the power of human endurance to resist. I am rejoiced to find that my own fears were untrue. He resorted to those remedies which the law gives every man. He invoked the process of the court. It only had the effect of widening the confederation against him, and of bringing to bear upon the legislature of this State those powers which were thought necessary for his final and effectual ruin.

What prejudices have not been adduced in his case? What miserable prejudice of nationality or caste or feeling or party has not been appealed to here? It has been particularly attempted to be made to appear that a man by the name of Riley was called an "ignorant Irishman;" that is for the benefit of somebody. Ingmundson has been paraded here as a martyr; that is for the benefit of somebody. It seems that Judge Page is a temperance man; that is lugged in for the benefit of somebody. Every prejudice that can move minds, however unworthy, has been industriously plied in his case. I know, and you know, senators, that some of you have been approached in a way in which no judge should be approached. You have not been able to shut your ears to this persistent clamor, that this man shall be wrecked and ruined forever in this world, and that the acts, the hopes, the ambitions of a life-time shall be made ashes and dust. The arguments of counsel have been belittled in advance; the character of men has been wantonly run down and crushed. It is assumed that this man must be guilty, because some one has accused him, and yet when you come to sum it up, who are the accusers?—Tollison, the libeler; Riley, the man who attempted that steal upon the treasury, subpoenaing ninety witnesses in a case which the defendants themselves said would never be tried. Mandeville, angry because of a decision made against him in a matter of some six or fifteen dollars, I forget which; Stimson, a deputy sheriff caught in peculation; Ingmundson, angry because a grand jury had the audacity to even inquire how he managed his office; French, a man utterly unfit to be entrusted with any public duties in his profession, as his own testimony and that of Mr. Kinsman demonstrated. This man, who, before Judge Page, when Stimson was being examined in a contempt, volunteered those statements about a newspaper published in this city—volunteered the statements, and now says that the court extorted them from him!—Where is the man of substance in the county of Mower who represents this overpowering sentiment, as it is called' French, sitting here by the ear of counsel, like the toad "squat by the ear of Eve," (Great laughter.) Cameron, with his forehead of brass and unflinching eye; Harwood, flitting in and out of this hall like a disgusted ghost, fearing to be worn (renewed laughter;) Ingmundson, with his baleful glare; McIntyre, with his manly hate! Pooling in money! Pooling in money! One hundred dollars! Fifty dollars! They have levied assessments on each other for the purpose of private prosecution, through public processes. And the unparalleled spectacle has been presented to this court, never before known, of private prosecutors coming in with private counsel, paid by private means, and taking entire charge of a public case! Instances have occurred where the State has had managers with eminent counsel; but I say that this is an instance of unapproached and unprecedented infamy, where a private mob has been allowed to invade a proceeding like this, and conduct and direct the prosecution. This conspiracy finds its last expression here in that act. Why, what a community the town of Austin must be! What a community it has been from the beginning! When did you ever hear in this State since any of you have lived here, that the devil himself was not roaming up and down that town, "seeking whom he might devour?" (Laughter.) It has always been a contentious and troublesome place, full of turmoil. That community takes sides on every question. They are rancorous, senseless, hateful. Look at these witnesses that come here. Man after man—Hall. French and the rest, one filling out where the other fails. If one of them goes out to get

his meal, the other takes his place. The everlasting and endless chain of misrepresentation runs smoothly on. It is a bad generation:

"They are all gone out of the way; they are together become unprofitable, there is none that doeth good, no, not one.
"Their throat is an open sepulcher; with their tongues they have used deceit; the poison of asps is under their lips;
"Whose mouth is full of cursing and bitterness;
"Their feet are swift to shed blood;
"Destruction and misery are in their way;
"And the way of peace they have not known;
"There is no fear of God before their eyes."

Gentlemen, from my earliest days I was brought up, as the respondent doubtless was from his early youth, to look forward to that time when I should enjoy the confidence and esteem of my fellow men in official station. It is the natural dream and aspiration of every American citizen, whether by birth or adoption.

Here we stand, all of us, some to the manner born, and some of you from the lands which you never more shall see. You may talk about the enjoyment of life, of riches, of social or domestic intercourse, of freedom of person—all of these yield to the wide unbounded and beautiful prospect which is spread out before every man worthy of it, of the esteem of his fellow citizens, and promotion at their hands. It is what we all live for, disguise it as you may; each of you occupies a seat here by virtue of some laudable ambition in that respect. I think I might be resigned to any one who would take my life—I certainly might be resigned to any one who might take my property, but if any man proposed to close before me forever the way to the honor and respect of my fellow citizens, so help me God, I would rather die. That is what is proposed to this man. I make no plea here for mercy. He would rebuke me if I did. He feels that he has done right in this matter. I have read somewhere, or heard some man say, that if you remove him from office you need not necessarily say that he shall be forever disqualified from holding office of trust or profit under the laws of this State. That is true—in a pettifogging sense that is true. But if you remove the respondent from office, because you judicially say, by a two-thirds vote, that he is a felon, does not the consequence follow from which the author of that evasion fears you will shrink? Indeed it does.

Is he a felon? Does he deserve, if he had been a common criminal, to wear manacles, and to be incarcerated for years? I say the same result will follow your simple vote that he be impeached and removed from his present office. There is no mountain top so high, no vale so secluded, no ocean's deep so unwhitened by a sail, that wherever he may go on this earth, the disqualifying and attainting consequence of conviction will not follow him.

Gentlemen, you yourselves are on trial here, or will be by posterity, as judges, as this man is on trial as a judge. This record will survive in imperishable print, to be read by your children and your children's children. You yourself, like Lord Bacon, must appeal to the foreign nations and the next ages for your vindication in this respect. You yourselves will be on trial long after you have passed away, and all concern in you and recollection of you will be lost, except as preserved in

precedent you are about to make. Place yourselves in the position of those who are to come after you. Endeavor, if you can, to read this record in the clear, calm light of after times. So reading it, can each of you, any of you, under the obligation of your oaths as judges sitting under the law of God, and accountable to God Himself, say that this respondent shall be deprived of the office which he has adorned and be fixed in the death in life of civic annihilation'

I thank you for your kind attention, and rely with most implicit faith upon your justice. [Great applause.]

On motion the Senate adjourned until 10 A. M. to morrow morning.

Attest:

CHAS. W. JOHNSON,
Secretary of the Senate and Clerk of the Court of Impeachment

## THIRTY-FIFTH DAY.

ST. PAUL, THURSDAY, JUNE 27th, 1878.

The Senate was called to order by the President.

The roll being called, the following Senators answered to their names:

Messrs. Ahrens, Armstrong, Bailey, Bonniwell, Clough, Deuel, Drew, Edgerton, Edwards, Finseth, Gilfillan C. D., Gilfillan John B., Goodrich, Hall, Henry, Hersey, Houlton, Langdon, Lienau, Macdonald, McClure, McHench, McNelly, Mealey, Morehouse, Morrison, Morton, Nelson, Page, Pillsbury, Remore, Rice, Smith, Waite, Waldron and Wheat.

The Senate, sitting for the trial of Sherman Page, judge of the district court for the tenth judicial district, upon articles of impeachment exhibited against him by the House of Representatives.

The Sergeant-at-Arms having made proclamation,

The managers appointed by the House of Representatives to conduct the trial, to wit: Hon. S. L. Campbell, Hon. C. A. Gilman, Hon. W. H. Mead, Hon. J. P. West, Hon. Henry Hinds and Hon. W. H. Feller, entered the Senate Chamber and took the seats assigned them.

Sherman Page, accompanied by his counsel, appeared at the bar of the Senate, and they took the seats assigned them.

Mr. Manager CAMPBELL. The Managers desire to know if the respondent has closed his argument. Under the rule there were two allowed to speak, and we have not yet been notified whether or not they desire further argument.

Mr. LOSEY. We have concluded to let our case be decided upon the argument of Gov. Davis.

Mr. Manager HINDS. Mr. President and Senators: The time and the circumstances under which I now proceed to address you are unfortunate to myself as well as to the Senate; unfortunate to the Senate because you must already be to a greater or less extent tired of hearing evidence and arguments of counsel upon law and facts; unfortunate to me that I have to speak to a tired Senate at all, and particularly after you have been entertained and instructed by counsel whose eloquence and ability are known and acknowledged of all men, and whose flights of rhetoric and logic you and I have experienced to be captivating.

But having been called upon by the House of Representatives to act with my associate managers in the prosecution of this impeachment, I was assigned by them to the duty of closing the case. After listening for days to the able and eloquent arguments of counsel who have preceded me, I am convinced I cannot perform this duty satisfactorily to myself, or with sufficient justice to the interests I represent, and I would gladly be relieved from any attempt to discharge it. With the certainty of falling far short of the occasion, I shrink from the responsibility that attends it, and invoke your patience and indulgence that I may not fail altogether in the undertaking. It is true, the able manner in which one of my associates opened this case to your consideration, and the skillful review of the evidence made by another of my associates, and the masterly exposition of the law and facts made by the counsel of the managers, have largely supplied the deficiencies of the closing argument. But at the same time they covered the whole case and have left a harvest field with little more than the stubble standing for me to gather. In fact my associates and our counsel have reaped the whole field of argument, and gathered all the golden wheat, and left for me only the gleanings.

Mr. President and Senators, the duty in which you are now engaged —the scene now before you, is grand and imposing. A judicial officer of the state, elevated to his high and honorable position by the votes of a free people, is brought before you upon the command of the representatives of the people, to be tried for his fitness to continue in his high office.

High office too often corrupts otherwise honest men, and official station too often transforms selfish men into tyrants. This is shown by experience in all ages. But with us, under a government by the people, for the public good, he that sits in the highest office is not beyond the reach of the people who placed him there.

The exercise of delegated power has always been a temptation to arbitrary men to grasp after power they do not possess and to usurp powers not delegated to them. But under our government a tyrant cannot long lord it over the people who placed him in power and trust.

The learned counsel for the respondent who opened his case, has portrayed in eloquent terms and in sympathetic appeals, the consequence of a conviction of the respondent, to himself and to his posterity even to the third and fourth generations.

And the counsel for the respondent who closed his case, also adverted to the effects which are to attend, not the public, but this respondent in case your decision is a removal from office. He portrays to you the forlorn condition in which he will be placed in the future, the shame which he will have to endure, the humiliation which he will suffer, and he told us that there was no ocean so deep, no vale so secluded, no mountain top so high, to which he may resort to conceal his humiliation. But, Sena-

tors, he might have added that there is no sinkhole in the desert and no stump in the wilderness into which he could crawl to hide from the fangs of a guilty conscience. Having listened to both of these able and eloquent counsel, we are almost made to believe, if we did not know to the contrary, that the sins of Page would have the same effect upon himself and upon his posterity, that the sins of Adam had upon all human kind. I have no doubt, gentlemen, that these counsel have had a pleasant task to perform in the defense of their client, and they certainly are entitled to the sympathy as well as the gratitude of the friends of the respondent. But while the duties of the managers are in themselves stern and unyielding to the calls of sentiment, they have for their support the prayers of twenty thousand people asking relief from the tyranny of one man, and their groans are proof of the misery they have to endure.

Senators, the duty you are now engaged in is not a matter of sentiment, but of right. The stern realities of official duties you cannot and ought not to put either to the right or to the left for either fear or favor, but to perform this duty as the public interests require, without regard to the wishes or interests of any private individual, be he great or be he small.

With these preliminary observations, Senators, I might proceed to the consideration of the points of law that have been raised during the progress of this trial, but it occurs to me that there are other collateral matters to which counsel have adverted that had better be noticed at this time than instead of at a later time.

The counsel who closed this case for the respondent, adverted to the degree of punishment which the Senate has the power, under the constitution, to inflict. We insist that removal from office is not designed as punishment for past misconduct of the respondent, but solely as protection of the public from its repetition in the future. But notwithstanding that position there is a very slight degree of punishment within the reach of the Senate. Punishment would be merely a prohibition to hold office in future; no other can you inflict. You can remove from office, but that is not punishment, for office does not belong to any individual. It is the public right and not a private claim. You may remove from office wholly, or for an hour, a day, a week or a year. You cannot extend beyond the prohibition to hold office in the future. But even though your decision may be guilty of the charges in either or all of these articles of impeachment, you may, as that determination, only hold that he shall be removed from office, or rather suspended for a day or a month, as in your judgment the enormity of the offense, as proven against him, may warrant. That is all there is of punishment within your power.

The counsel who closed the case for the respondent has also adverted to the fact that the managers appear before you with a counsel, and while he concedes that it is not unusual for managers in cases of impeachment to be supplied with counsel to aid them in their investigation and prosecution of the case, yet he says it is unheard of that counsel should appear to assist in the management of an impeachment, or under the pay of private individuals. No instance of the kind, he tells us, is known. If such were the fact, if there were no precedents for it, new circumstances may change the practice. When a particular locality

has its feelings harassed until it feels an interest in the prosecution of an impeachment over and above the interest of the State at large, where is the impropriety of their taking the proper steps and using the proper means to present their grievances to the only power that can furnish them relief? The very fact that there is that condition of things here, shows that there is something wrong, radically defective in the management of the judicial office in the southern part of the State. But the managers are not altogether without precedent. The counsel is mistaken in his assertion that it is unheard of. It is as common for private individuals, and for private interest to furnish counsel to assist managers of impeachments as it is for the State to do so. In the case of the impeachment of Judge Barnard, of New York, which has been adverted to here before, the prosecution was managed and conducted by private individuals—the bar association of the city of New York. That association took upon itself the whole management of the case from the very beginning of the agitation against that unrighteous judge until its final close by his final removal from office; and when the managers appeared before the court of impeachment in that case, the counsel for the respondent there adverted to the same fact and almost in the same manner that the counsel for the respondent now before the Senate has referred to the same thing.

A very eminent lawyer was the counsel for the respondent in that impeachment,—Mr. Beach, then of Troy, I believe—and in summing up the case, or in his opening to the Senate after the prosecution had rested, having produced their evidence before the Senate which was there sitting as a court of impeachment to try him, made this statement:

"I advert to one other circumstance; the assembly of this State appointed nine managers, selected from its body for their ability and firmness to conduct the impeachment. They have sat through this trial as mute as dummies and delegated its control to the bar association of the city of New York. And when I hear that this association are at this hour engaged in the circulation of a subscription to provide a fund for the prosecution of this case, and when I see the spirit of malignity and hate which animates it, I cannot but feel that we are placed in unusual circumstances, worthy of the grave attention of the public."

Notwithstanding the fact that private counsel for the managers continued to manage that case, as everybody who is at all acquainted with the current news knows, the result was the removal of that judge from his high office.

The counsel who closed the argument on behalf of the respondent, made what I think an unfair attack on the people of Austin. He does not, in his attack, single out here and there a man and accuse him of unfairness, of a spirit of revenge, but he takes the whole body politic of that city and accuses them of high crimes; of misdemeanors; of stealing records; stealing fees, or what amounts to the same thing, aiding a few to do so—and thus makes up a record of ignominy that ought to sink any community into contempt at their own weakness.

I might retaliate upon the counsel by calling attention and reversing the picture that he has here drawn. You, gentlemen, will recollect that when Mr. Losey was presenting the case to you that he illustrated his argument with that true and beautiful picture representing to our minds the formation and building up of public opinion—the birth and growth we may say of corrupt public opinion—he pictured to you a little spring

upon the Rocky Mountains so shallow that a handful of mud might dam it up, or which might be scooped dry with the palm of the hand; but still it flows on and takes in a driblet here and a driblet there, a branch upon the right side and a creek upon the left; and still farther on river upon river pours into it, until finally it becomes the mighty Mississippi, which no mountain range could dam up or impede in its progress to the Gulf of Mexico.

While I admired the counsel's illustration of the mode in which public opinion is formed, or rather corrupted, until it became irrisistible, I could not avoid the reflection that his similie was also a beautiful illustration of the judicial career of Judge Page. Under a skillfully executed legislative act, Judge Page became a little fountain of justice away down in the wilds of Mower county. At first this little fountain of justice throws out a stream of judicial power of so little force that a handful of mud would dam it up, and of so small a volume that the fountain of justice itself might have been scooped dry with the palm of the hand. But as this little stream of judicial power passes along, it takes in a driblet here and a driblet there. On the right hand the judicial office forces a little power out of Mollison, and on the left scares a little out of Stimson. As the stream of judicial power flows onward, and downward too, it becomes corrupted and turbid, and lashed into turmoil and fury. It steals a little power from sheriff Hall, usurps a little from county attorney French, scares a little out of the county auditor, and entices the board of county commissioners to surrender its power to swell the stream of judicial corruption until it becomes a raging torrent, overflows its banks and deluges the whole county of Mower. It then overrides the grand jury, demolishes the forces of the "anti-crusaders," and rushes headlong down cascades and over precipices, and with a malicious will breaks down all opposition. Thus the little fountain of justice, by stealing and usurping a little power here and a little there, became a vicious monster in the likeness of the judicial power as commander-in-chief of the military forces of Mower county. Finally, this monster of judicial depravity is now pouring its Mississippi of corruption into the Gulf of Impeachment.

The counsel has also stated that the judiciary is the embodiment of the public conscience. Such it is, but the judge is not the embodiment at all. It is because the judiciary is the embodiment of a public conscience that this impeachment is brought here for trial—because that public conscience has a monitor unfit to occupy that position.

The counsel also compared this proceeding with the proceeding in ancient times under bills of attainder, and *ex post facto* laws. Senators, the managers in this case ask you to administer the law as it exists, not as you may wish to make it. The times were but are not now, when any man on English ground or upon American soil could be punished by a different law than existed at the time he committed the offense. We ask you to take the law as it exists and make no new conditions, attach no new penalties, require the performance of no duty that was not obligatory upon him at the time that these charges originated.

We are told, also, that it would be an absurdity for a judge to be indicted for misconduct in office by the grand jury of his own court. Granted, such it would be—or by a grand jury of any other court. Judges acting within their jurisdiction are not subject to indictment

at all. They are not even subject to a civil action for damages while acting in that sphere. No matter how erroneous their decision may be, how mistaken they have decided a case, they are not responsible either civilly or criminally; but, Senators, this is an additional reason why impeachment should be held with a firm hand. They are not subject to punishment for misdemeanors done in the line of their official duty, but they are subject to impeachment. Impeachment is a remedy for such acts, and not indictments or civil actions. In this connection the counsel referred to a case which originated in Massachusetts and went from the courts in that State to the supreme court of the United States. He cited it for another purpose, but it is so applicable and such a full and convincing answer to the position he assumes in this matter that I cannot avoid referring to it. The point is this: The case was one which originated against a judicial officer for misconduct in the office in the suspension of an attorney. The attorney brings a civil action against the judge for damages. The higher courts held that the action was not maintainable; that as the court had the power of jurisdiction over such cases, no matter how erroneous their decision might be, a civil action could not lie for damages. It being within the line of his duty he was protected from either civil or criminal prosecutions.

With these preliminary observatives I shall proceed immediately to the consideration of those principles of law which the counsel for the prosecution and the counsel for the respondent have from time to time contended. The principles of law to which I now refer, are preliminary to all of the articles of impeachment. They raise great questions of constitutional law, of the power of this court, of the extent of the jurisdiction and of the mode in which the proceedings are to be conducted. I have endeavored to reduce these principles to certain propositions, and have drawn them out in order that I may present to you a series of propositions that lead to the articles of impeachment; and I shall endeavor to do this in as concise and logical a manner as I am able to do in the time allotted, and with the authorities at hand.

The question was raised in the commencement of these proceedings, and which has frequently been adverted to since, as to the nature and attributes of this tribunal, whether you are sitting here as a court or as a senate; whether you are now engaged in a criminal trial or in an inquest of office, or merely in the exercise of a political power conferred on you by the constitution. If this is a court, then it is a court without possessing any judicial powers. If it is a senate, then it is a senate without possessing legislative powers You sit here under the solemnity of an oath never administered to a judge, or to a senator as such. Your oath of office is peculiar to this tribunal, that you will do "justice according to law and evidence." But the law by which you are to mete out justice is not the civil law, the common law, nor the criminal law of the State, but all of these, and also the law of the constitution, and parliamentary law, each within its own jurisdiction. If crimes or public offenses are charged as the impeachable acts, you will look to the statutes and the common law for the constituent elements of such crimes and offenses, but nevertheless you do not administer justice under your oaths according to the criminal code. If the impeachable act charged is the official violation of a private right, you will look to the common law and the statutes for the constituent elements of the violated right, but nevertheless you need not conduct your proceedings according to either.

But the law that determines your jurisdiction is the constitution.—The law that regulates the mode of your proceedings and bounds your field of action is the parliamentary law of impeachments.

A senator is not disqualified or exempt from service on this tribunal, (as you have rightly determined,) by reason of bias, nor would he be disqualified, according to law, by reason of favor, relationship or interest. We consult an English dictionary to learn the meaning of English words. For the same reason we consult the parliamentary law of impaachment to learn the extent and limit of impeachable offenses, under the provision of our constitution providing for impeachment "for corrupt conduct in office or for crimes and misdemeanors?"

But the question remains unanswered, is this tribunal a court? Your committee that reported rules for the government of your proceedings, calls this tribunal the "High Court of Impeachment." The constitution provides, section 14, article 4, that "all impeachments shall be tried by the senate," and on the "trial of an impeachment of the governor, the lieutenant governor shall not act as a member of the court." By the constitution, then, you are called a senate and you are called a court.—Yet as a court you possess no judicial power.

Section 1, article 6, of the constitution provides that "All judicial power is vested in a supreme court, district courts, courts of probate, justices of the peace, and such other inferior courts as the legislature may establish." While you are a court in the restricted sense of a deliberative tribunal, with sole power to try all impeachments, yet you possess no judicial power whatever. You are therefore not a court in the judicial sense of the term, but still a court within the parliamentary sense and usage of the word. A recollection of this distinction will prevent us from running into many perplexities in the course of this investigation, and keep us out of many of the difficulties with which Gov. Davis has attempted to invest the case. You are a court in a restricted sense, possessing no judicial power whatever. Yet you are a court for the trial of impeachments, possessing unlimited power within that jurisdistion. But the trial of impeachments is not the exercise of judicial power. The duties in which you are now engaged is a trial, a trial by an extraordinary court, a court from whose decision there is no appeal. Not a criminal court, for the trial of persons charged with the commission of crime; nor yet a civil court for the trial of causes of a civil nature; but a court for the trial of public officers, not for the purpose of punishment, but to determine whether they are proper persons to hold their offices. Possessing no judicial power, you can exercise none. Possessing the sole power to try impeachments, your decision within your jurisidiction is the supreme law of the State. No other power under heaven can question your judgments. You have no power to punish for past official misdeeds, but you have full power to protect from their commission in the future.

Senators, I now assume that I have fully refuted the theory of Gov. Davis, that this is a judicial proceeding before a judicial body. I confidently conclude that you are sitting here as a political court, governed by parliamentary law, engaged in a political trial, for political offenses, and to be followed only by political judgment. Judicial in none of its features, political in all. Political in the high sense of State policy.

But here party spirit and political schemes have no part. The power of impeachment under our constitution is exercised for the protection of the public, not for the punishmens of the offender. The rule that gives a defendant the benefit of any reasonable doubt has no place in an impeachment trial, because that rule belongs only to criminal law, and can be invoked only in a criminal trial. The exercise of the power of impeachment is not a criminal trial, but only a political trial for political causes and for political purposes.

While engaged in the trial you are in an exalted sense the high court of impeachment. Though limited in the extent of your powers, you are supreme within your jurisdiction. You exercise the functions of a jury, and will determine the facts and truth from conflicting evidence. You possess the prerogatives of the court, and will determine the law and apply the law to the facts, and you will decree the judgment upon the facts and the law of the case. And there can be no appeal from your judgment, no suspension of the execution of your decree, no commutation of sentence, and no pardon of the offender, because you can inflict no punishment. Your decision will be final in all matters of fact and of law pending before you; final as it may affect the political rights of the respondent, and final as it may affect the welfare of the people. This court may well be denominated as the high court of impeachment, for within its sphere of action it is over and above all courts, all officers, and all powers within the State. It orders its own organization, sits upon its own motion, determines its own rules of action, determines the facts and the law of the case, and is necessarily the sole judge of what acts are impeachable under the constitution. By your decree you may remove the highest executive and judicial officer of the State. This tribunal, then, be it court or senate, is august and supreme in all questions of impeachments sent here for trial by the House of Representatives. Before your judgment seat the people, in their political capacity, may send their judges, their governors, and officers of State to be arraigned, not for trial for crimes, or for the punishment of crimes, but merely to determine their fitness to continue in office.

Such a trial as this in which you are now engaged, will mark an epoch in the history of the State. It is not the respondent alone that awaits in anxious solicitude for your verdict as to the facts and your decree as to the law, but the whole people of Mower county stand in breathless suspense for your decision, and the people of the whole State are looking down upon your deliberations with a watchful eye. The decisions which you have made in the progress of the trial will be precedents in the future in all impeachment trials, not only in this State, but throughout the Union. The final judgment which you shall decree will constitute a part of the history of the State.

### THE OBJECT OF IMPEACHMENT.

From what has already been said, it will be seen that impeachment is a kind of inquest—an investigation of how official duties have been performed, to determine whether the officer is a fit person to be continued in office. Hence, none but actual officers ought to be impeached; hence, if an actual officer has been impeached, and resigns before trial, there is scarcely no object for a trial. He is not tried for the purpose of punishment, and if the offender has removed himself from office, there can be

little or no object whatever of a trial. The sole object of the impeachment is to relieve the people in the future, either from the improper discharge of official functions, or from the discharge of official functions by an improper person. The act impeached may constitute a crime for which the offender may be prosecuted as any other citizen, by due course of law in the criminal courts; or the impeachable act may consist merely of misconduct, either in or out of his official functions.

As the sole object of impeachment is to secure in the future the proper discharge of official duties, the private interest of the offender has no part in your consideration. You cannot punish for past misconduct; you can only protect the future from its repetition. Judge Story, in his Commentaries on the National Constitution, vol. 1, sec. 803, states:

"There is also much force in the remark that an impeachment is a proceeding purely of a political nature. It is not so much designed to punish an offender as to secure the State against gross official misdemeanors. It touches neither his person nor his property; but simply divests him of his political capacity."

Therefore, the effect of a conviction as punishment of the respondent on himself and his posterity is foreign to the objects of this trial. No consideration personal to the respondent ought to influence your decision. No man has an inalienable right to office, but all men have an inalienable right to protection. It is the province of this high court of impeachment to maintain the supremacy of the law over public officers, and secure rectitude in the performance of official duties.

We agree with Gov. Davis that upon the purity and integrity of the judiciary rests the best hope of the citizen for protection from arbitrary power. The exercise of arbitrary power by a judge, therefore, cannot be endured by the citizen. A judge who usurps power is odious, and when he uses usurped power to oppress the weak or to wreak revenge upon those who come within his grasp, he is pronounced a tyrant. A tyrant is unfit to be a judge.

The all important question for your determination is, has the respondent's official oonduct in the past been such as to justify confidence in the future? But this question we are not ready to consider.

### WHAT IS THE LAW OF IMPEACHMENT?

Having shown that this tribunal has no judicial powers whatever; that the powers which you are here exercising as a high court of impeachment are essentially political in their nature for political purposes; having shown that the object of this trial is not the punishmeut of the offender for the past misconduct, but protection of the public in the future, it now becomes important to consider what is the law of impeachments.

The learned counsel for respondent (Mr. Losey) in his opening argument laid down this proposition. I read it from Senate journal of June 5th, page 17:

"Gentlemen, our claim is that the respondent cannot be impeached, except for corrup: conduct in office, and that that is what is meant in contemplation of law by the several provisions of your statute, and by the constitution of your State, that he cannot be impeached except for corrupt conduct in the performance of his official duties."

In the closing argument Gov. Davis asserts that the language of our constitution is such as to constitute a limitation upon impeachable acts, and ends his argument upon that branch of the case with the conclusion that our constitution means to make only indictable crimes and misdemeanors impeachable. Upon this subject I will let Gov. Davis answer himself. On May 28th, the meaning and intent of this constitutional provision was before the Senate, (Senate journal, page 14,) when Gov. Davis said:

"Now, clearness of apprehension and definition is very important in such discussions as this. To assume, as my learned friend did, that the respondent is impeachable for a course of conduct, is to beg the very question in controversy. Article thirteen of the constitution provides that 'officers may be impeached for crimes and misdemeanors, and corrupt conduct in office.'

"To any one at all familiar with the history of impeachments, the meaning of that phraseology is very plain. In constitutions which read merely that officers may be impeached for crimes and misdemeanors, it has long been a vexed question, sometimes decided one way, and sometimes the other, whether such crimes and misdemeanors must not be offenses indictable at common law, and so the framers of the constitution of this State provided that not only shall an officer be impeachable for crimes and misdemeanors, but also for corrupt conduct, for corrupt acts, which may not sink to the depravity of crimes and misdemeanors."

It is fair to assume that Gov. Davis' first argument is a sufficient answer to his last argument. But as Mr. Losey and Gov. Davis both found their argument upon the language of our constitution, I deem it desirable to further examine them both by eritical examination of the terms and meaning of our constitution.

Section 1, article 13, provides: "The governor, secretary of state, treasurer, auditor, attorney general, judges of the supreme and district courts, may be impeached for corrupt conduct in office, or for crimes and misdemeanors."

Mark well the language of the constitution: "May be impeached for corrupt conduct in office." Here we have one case of impeachable offenses, "Or for crimes." This is another class of impeachable offenses. "And misdemeanors." This is a third class of impeachable offenses.—There is no other constitutional provision defining impeachable offenses. Taking the words of the constitution as our guide, what acts are impeachable? What do these words of the constitution mean? It will never do to take part of those words of the constitution and find what acts would be impeachable under them and then drop the other words out of the constitution. The language of the constitution must be so construed as to give force and effect to every word.

"CORRUPT CONDUCT IN OFFICE."

A judge is impeachable for corrupt conduct in office. But our constitution gives no definition of "corrupt conduct in office." Neither are these terms defined in our statutory law. In fact these words do not appear in our statutes at all, though the term "misbehavior in office" does appear in our statute.

Section 8, chapter 91, of the general statutes, provides that every misbehavior in office, where no special provision is made for the punishment of such delinquencies or malfeasance, is a misdemeanor punishable by fine and imprisonment.

But "corrupt conduct" and "misbehavior" do not mean the same

things. Neither of these terms have any technical meaning at common law. Our State constitution differs materially and essentially, as to what are impeachable acts, from the national constitution. Under the constitution of the United States impeachments, if indeed there is any limitation, are for treason, bribery, or other high crimes and misdemeanors. There the crimes and misdemeanors to be impeachable must be not only of a "high nature," but must be such, as, when compared with treason and bribery, can be called "other" high crimes and misdemeanors. The impeachable misdemeanors under the express terms of the constitution of the United States, must be of a like nature in enormity to treason and bribery. There is no such limitation or qualifying words in our constitution. With us no deep turpitude in an act is necessary to make it impeachable. Under our constitution any and all corrupt conduct in office is impeachable. But what is corrupt conduct? These words have no technical common law meaning. They are not known as law forms. Their meaning must be sought for in the common usage of the English language. When applied to official acts, "corrupt conduct" may mean bribery, but as bribery is a well known common law term, that word would have been used in the constitution instead of corrupt conduct, if only bribery was intended by corrupt conduct.—"Corrupt conduct," then, must mean more than bribery. Corrupt conduct means depraved conduct; tainted with wickedness, debased, impure conduct, vicious, infected with errors and mistakes. Perverted—as we speak of "corrupt language," "corrupt judge." "Corrupt," then, means in our constitution, debased and perverted. Perverted means turned from proper purpose or use—misinterpreted from evil motives or bias. A corrupt judge, then, is one who perverts his office to improper uses, or is debased in conduct. Therefore, any acts and any conduct of the respondent affected by any of these qualities are impeachable.

Judges may be impeached for corrupt conduct in office.

Does the term "in office," restrict the impeachable conduct to official acts? The counsel for respondent so contends. "In office" does not necessarily mean while in the discharge of official duties, nor does "in office" mean official.

The fair and obvious meaning is, that any corrupt conduct of a judge while in office is impeachable. The corrupt conduct need not be an official act, but any corrupt act done by a judge while in office is impeachable as corrupt conduct in office. The only limitation or qualification to the corrupt conduct to be impeachable, is that it must have been done while holding office.

To illustrate the various kinds of corrupt conduct in office which would be impeachable, let us suppose an example or two. If a judge should be influenced in his official duties by a bribe, or from bias or favor or ill will towards a suitor in his court, this would be corrupt official conduct in office of a criminal nature. If he should invite corrupt females to sit with him upon the bench, the act would not be the discharge of an official duty, but it would be corrupt conduct in the sense of depraved, debased, impure and vicious, but not in the criminal sense of corrupt. If he should publicly and openly associate with abandoned females on the streets and in the society dance of their class, this would be corrupt conduct while in office, of an equally debased, depraved and vicious kind. In either of these cases, such conduct would be equally

impeachable, as corrupt conduct in office. All that a judge does in or out of court ought to be consistent with the honor and dignity of his high office. The term "corrupt conduct in office" would cover every judicial act done through vicious motives, or in an arbitrary manner; every wilful omission to perform a judicial duty, and all acts done in or out of court, so depraved, debased, impure and vicious in their tendencies as to bring reproach upon the judicial office. Under our statutes, the court is always open, its doors are never closed. Whether sitting upon the bench or walking in the streets, the judge carries with him the judicial power of the State, and holds the judicial honor in his keeping. Whatever he does, wherever he goes, *every* act is conduct in office from the beginning to the end of his term. A judge sober on the bench and drunk in the streets—a judge honorable on the bench and debauched in society—is corrupt, debased, impure and vicious, and brings reproach upon the judicial office.

"OR FOR CRIMES."

The second class of impeachable acts under our constitution, is crime. "Crime" in its legal sense covers every unlawful act done, whether in or out of office. There is no limitation of the class of crimes that are impeachable, no qualifying words as to the degree of turpitude to be impeachable. High crimes and petty crimes are alike included in the term "crimes." The impeachable crime in a judge may be a high crime, as bribery in his official capacity, when it would be corrupt conduct in office in its criminal sense; or it may be a petty crime in or out of office, when it would also be a misdemeanor in the criminal sense of that term. Since the term "crimes" includes all criminally corrupt conduct in office, and all criminal misdemeanors, the constitution, in using all these terms —corrupt conduct, crimes, misdemeanors—must have intended to make acts impeachable that were not crimes. If only crimes are impeachable, then there is no force or effect given to the words corrupt conduct and misdemeanors.

"AND MISDEMEANORS."

The third clause of impeachable acts under our constitution is misdemeanors. It is not merely misdemeanors in office that are impeachable, but any and all misdemeanors, whether in or out of office. The term "crimes" includes misdemeanors in its legal or technical sense, and all criminal misdemeanors would be impeachable as crimes. As force and effect must be given to every word used in the constitution, something more and different from crimes must be intended by the use of the term misdemeanors. Misdemeanor in its restricted legal sense is merely a class of small crimes; in its ordinary sense it means misconduct. All crimes are misdemeanors; but all misdemeanors are not crimes.

Under our statute, already cited, every wilful neglect to perform an official duty, and any misbehavior in office, is a misdemeanor and punishable as such, and of course a crime Under our statute many criminal misdemeanors are not indictable, though punishable by fine and imprisonment. But under our constitution all crimes, and all criminal misdemeanors, are impeachable, whether indictable or not. Hence it follows, that the argument of the learned counsel for respondent, that no act, no crime, no corrupt conduct, no misdemeanor, is impeachable, un-

less of such deep turpitude as to be indictable, has no foundation in our constitution. And it will not be difficult, as you will hereafter see, to prove that it has no foundation in the common law of impeachment. To confine and limit impeachable offenses to indictable crimes, as insisted on by the argument of respondent's counsel, would make the language of our constitution: "may be impeached for corrupt conduct in office or for crimes and misdemeanors," mean no more than if it read merely, "may be impeached for crimes." In fact, it would make the constitution mean less, because all crimes are not indictable. Such a limitation of the meaning of the words of the constitution is too narrow. Force and effect must be given to every word in the constitution. Corrupt conduct in office means more than, and something different from crimes. By misdemeanors something more than, and different from either crimes or corrupt conduct in office, is intended. We can give force and effect to each one of these three terms, only, by taking the term corrupt conduct, not only in its criminal sense, if it has any such, but in the sense of depraved, bebased, impure, vicious and perverted, and these qualities in a judge are as vile and unfitting for the performance of judicial duties, as criminal conduct would be. We must, therefore, conclude that the terms corrupt conduct and misdemeanors are used in the constitution, not in a technical or legal sense, but in the ordinary and proper sense.

To illustrate. If a judge should steal a chicken, the act would not be official corrupt conduct in office, but it would be a crime—a petty crime, a criminal misdemeanor. It would not be indictable, but a chicken thief would, nevertheless, be impeachable. Take the illustration already given. If a judge should openly and publicly associate with abandoned females on the streets and in the society dance of their class, he would by so doing commit no crime, would be guilty of no misdemeanor in its criminal, legal sense, but the act would, in fact, be a a misdemeanor of high order. In the first case, he would be impeachable for a crime which is merely a misdemeanor; and in the other case, he would be impeachable for a misdemeanor which is not a crime. While all such acts as these are impeachable under our constitution, yet this High Court of Impeachment is by the same constitution made sole judge whether they are or are not of such deep moral turpitude in a judge, and were or were not perpetrated and persisted in with such guilty purpose as to render the judge an unfit person to exercise the judicial power of the State.

This court is sole judge of what falls within its jurisdiction under the constitutional provision, and within it is of sufficient magnitude to warrant the application of the remedy. This court is hampered by no restricted or technical meaning of the terms, used in conferring upon this court jurisdiction over impeachments. By the constitution all judicial power is vested in the ordinary courts of the State. As a court, you possess no judicial power whatever. You neither try criminals nor punish crimes. You merely try a man's fitness for office. From his past conduct in and out of office, you determine his fitness for office for the future. While no criminal is fit to exercise the judicial power of the State, it does not follow that all other persons are fit to be judges, no matter what their deportment may be, provided it is not criminal. It therefore could never have been intended by the terms used in our constitution, that this court, in trying a man's

fitness for continuance in office, should be cramped by any legal definition of corrupt conduct, or by a restricted and criminal meaning of misdemeanors, so as to restrict their application to only criminal acts or indictable offenses. Without their use in the constitution, all criminal acts in a judge are impeachable; by their use in the constitution something more than criminal acts must have been intended. Crimes are defined by statute or by common law, and are tried and punished by the judicial tribunals of the State, whether committed by public officers or by those not in office. But crimes, corrupt conduct and misdemeanors, when committed by public officers, are impeachable for the sole purpose of removal from office. And this court is sole judge whether the conduct and demeanor is so depraved, vicious or arbitrary, as to render a removal from office necessary for the public good. In reaching that end, as has already been shown, the constitution has given you supreme and unlimited power, and as you will hereafter see, you are not hampered by any other rules than such as the ends of justice, reason and public utility prescribe.

* * * In the natural order of argument, the next question presented is: What are impeachable acts? In other countries impeachments are instituted for the purpose of punishment of the offender, as well as removal from office. In England, under impeachment decrees, punishments the most cruel and inhuman known to history have been inflicted. These impeachments have been maintained against the private subject as well as against public officers. Under the English constitution there is no definition of impeachable offenses. What are impeachable offenses has always rested in the sound discretion of the House of Lords, sitting for the trial of impeachments. When the constitution of the United States was framed, expressed impeachable offenses under it were confined to treason, bribery, and other high crimes and misdemeanors, and in terms was extended over only public officers. The constitutions and statutes of some of the original States had limited impeachments to public officers before the national constitution was framed. In later times the constitutions of new States have differed largely in the provisions relating to impeachments. But no constitution and no statute has ever declared what acts are impeachable. This seems always to have been left to the sound discretion of the impeachment court to determine within certain constitutional classes. We believe the language of the constitution of Minnesota is more general in its import than perhaps any other written constitution. But no constitution has ever been held to embrace only indictable crimes as impeachable offenses. No writer on constitutional law has ever taken such a narrow view of impeachments, and no writer and no court has ever set a limit to the number or kinds of impeachable acts, or prescribed the degree of moral turpitude to render an act impeachable. Prof. Dwight, cited by Gov. Davis, is the only writer who seems to give a coloring to that position. But Prof. Dwight was a lawyer only in theory, not in practice. And he was writing only a newspaper article against the articles of impeachment of President Johnson, and I might cite a hundred just as able newspaper articles in support of those articles of impeachment against Andrew Johnson.

Mr. DAVIS. [Interrupting.] If you will allow me a moment. That was an address, as I understand, to the students of the law school of Columbia College.

Mr. Manager HINDS. I understand that it was a newspaper article, written for the benefit of lawyers. Though it may first have been read as a lecture to law students, yet it appears only as a newspaper article and a piece of fine composition written by that professor; I don't understand that it has any authority in the law whatever. But certainly, the deductions which the counsel drew from that article of Professor Dwight, are right against him. It was written in reference to the impeachment of President Johnson, Mr. Dwight taking the position that no act of the President could be impeachable unless it was an indictable crime—just the position that the counsel for the respondent here assumes. But the decision in that case was directly the reverse; and it is a sufficient answer to Prof. Dwight that the United States Senate by a large majority held right adverse to his newspaper criticism. The Senate heard the evidence to sustain the charges of personal misconduct of President Johnson, aad voted 35 to 19 in support of an article charging merely a personal misconduct.

But Prof. Dwight was writing only in reference to the constitution of the United States, which by the very terms used makes nothing but crimes and misdemeanors impeachable, and does not make even all crimes impeachable. But our State constitution by the very terms used makes impeachable not only all crimes and all misdemeanors of all degrees of moral turpitude, but also all corrupt conduct, whether criminal or not.

Rawle in his Commentaries on the National Constitution, pages 199 and 200, already cited in full by Manager Gilman, declares that the causes for impeachment are too artful and too various to be anticipated by positive law.

Story in his Commentaries on the National Constitution, vol. 2, sections 746-764; vol. 1, pages 797-800, declares that personal misconduct as well as gross neglect of duty and usurpation of power, is impeachable. To have reached such a conclusion under the federal constitution it must have been considered that there was no prescribed limit to impeachable acts, or the term misdemeanors must have been taken to mean personal misconduct as well as criminal conduct. Judge Story says many offenses not definable by law are impeachable, even though purely of a political nature. Up to the times when Judge Story wrote his Commentaries on the Constitution, he says in not a single case of impeachment under the national constitution did the charge rest on any statutable misdemeanor. Vol. 1, S. 799.

Curtis in his Commentaries on the Constitution, page 260, explicitly declares that impeachments may be had where no offense against law has been committed, as for immorality or imbecility.

If the use of the term "misdemeanors" in the national constitution, does not confine impeachable acts to criminal acts, but will allow such a construction as these learned jurists have given to it, there can be no question that our State constitution was intended by the more general language used, to cover all I have insisted on in my previous argument.

The PRESIDENT. The Senate will take a recess for five minutes.

AFTER RECESS.

Mr. Manager HINDS. [Resuming.] That the Senate may fully understand that the position I have assumed is supported by high authority I will read a few paragraphs from Story's Commentaries on the Constitution of the United States. Section 797, the author says:

"Again, there are many offenses, purely political, which have been held to be within the reach of parliamentary impeachments, not one of which is in the slightest manner alluded to in our statute-book, and indeed, political offenses are of so various and complex a character, so utterly incapable of being defined or classified, that the task of positive legislation would be impracticable if it were not almost absurd to attempt it. What, for instance, could positive legislation do in cases of impeachment, like the charges against Warren Hastings in 1788? Resort, then, must be had either to parliamentary practice, and the common law, in order to ascertain what are high crimes and misdemeanors; or the whole subject must be left to the arbitrary discretion of the Senate for the time being. The latter is so incompatible with the genius of our institutions, that no lawyer or statesman would be inclined to countenance so absolute a despotism of opinion and practice, which might make that a crime at one time or in one person, which would be deemed innocent at another time, or in another person. The only safe guide in such cases must be the common law, which is the guardian at once of private rights and public liberties. And however much it may fall in with the political theories of certain statesmen and jurists, to deny the existence of a common law, belonging to and applicable to the nation in ordinary cases, no one has, as yet, been bold enough to assert that the power of impeachment is limited to offenses positively defined in the statute-book of the Union, as impeachable high crimes and misdemeanors."

Justice Story also says:

"There is also much force in the remark, that an impeachment is a proceeding purely of a political nature. It is not so much designed to punish an offender as to secure the State against gross official misdemeanors. It touches neither his person nor his property, but simply divests him of his political capacity."

The learned author gives many instances under the parliamentary practice in England of impeachments for acts that were not criminal. Among such I will mention that impeachments were had for giving the King an illegal opinion, introducing arbitrary power, giving medicine to the King without the advice of physicians, preventing other persons from giving counsel to the King except in their presence, putting good officers out of office and bad ones in office.

In the United States there are many acts which have been impeached in public officers, that were not criminal acts, or misdemeanors in the criminal sense of that word. Thus in 1797 William Blount was expelled from the United States Senate and afterwards impeached for high misdemeanor in writing a letter to an Indian, interpreted to induce him to disregard his duties to the government. This was no crime nor a misdemeanor in the criminal sense of the term. *Story on Const.*, sec. 799 *note*.

Judge Pickering was impeached for drunkenness and profanity on the bench. *Article* 4.

In 1862 Judge Humphreys was impeached for advocating secession in a public speech.

Judge Addison of Pennsylvania, who is conceded to have been a just and impartial judge, was impeached in 1802 for arbitrary conduct in leaving the bench, and thus irregularly adjourning the court, for the purpose of preventing an associate justice, who was a layman, from charging the grand jury.

Andrew Johnson was impeached (1 John. Trial, p. 8, art. 10,) for

making speeches derogatory to the honor of Congress, a co-ordinate branch of the government of which he was chief magistrate. This article refers to the speeches while "swinging around the circle." Article 11, to which Gov. Davis referred in his closing argument, was for making a speech in Washington declaring that the 39th Congress was not legally organized, and its legislation not legal, and for contriving and devising means to prevent carrying into effect the civil service act. Gov. Davis was mistaken in his assertion that article 11 was considered so weak as to be unworthy of a vote.

Mr. DAVIS. [Interrupting.] You must have misunderstood me. I said that articles two, three and eleven were voted on, and none of the rest. If I didn't say so, I meant to.

Mr. Manager HINDS. The learned counsel stated that article eleven was considered of so little importance that it was not brought to a vote.

Mr. DAVIS. I said that article ten and all the rest, except articles two, three and eleven were not considered of sufficient importance to be voted upon.

Mr. Manager HINDS. You mentioned article eleven; you might have intended article ten.

Mr. DAVIS. Perhaps so.

Mr. Manager HINDS. [Continuing.] Article eleven was founded on a speech made by President Johnson in Washington, and a vote of the Senate was taken on this article first, and he was so near conviction for making that speech, although it was no crime, that he came within two or three votes of being removed from office for that cause. When this article had been voted upon, the United States Senate adjourned for ten days before voting upon any other article. Having been brought to a vote first, and out of its natural order, it must have been considered a very strong article, though not the slightest crime was charged in it. Then, after a ten days rest, the Senate, as a court of impeachment again convened, and voted on article two with the same result as on article eleven. Then a vote was taken on article three with the same result. The Senate, as a high court of impeachment became little demoralized and then adjourned without day. No other articles were ever voted on. See 2 Johnson Trial, pp. 484, 485, 486, 487, 496, 497.

The impeachment of Andrew Johnson and the vote of the United States Senate, on article eleven, is decidedly in favor of the position which the managers of the impeachment of Judge Page assume, as to what acts are impeachable. The principle deducible from articles ten and eleven of President Johnson's impeachment is clear and distinct. It applies with greater force to the office of a judge. The office of judge, as well as of president, belongs to the people. It was created for their use and to their honor. He that brings the office by act or word in contempt or disgrace, or degrades it to purposes of revenge, dishonors the office and is guilty of a misdemeanor in office, and under our constitution is impeachable.

Judge Pickering was also impeached for refusing to hear evidence and still giving judgment without evidence, article two. For refusing to allow an appeal, article three.

Judge Chase was impeached for restricting counsel in the citation of authorities to the jury, to establish the law and illustrate his position in a trial for treason. For prohibiting counsel from arguing the law of the case to the jury, article one. For giving an opinion before trial, article one. For rude and contemptuous expressions, and vexatious interruptions of counsel. Article four.

Holding the grand jury, after they had investigated a case, to induce them to indict a certain seditious printer. Article seven.

So in England no limit has ever been prescribed to impeachable acts. In 1667 Lord Chief Justice Kelynge was impeached for illegal and arbitrary proceedings in his court.

Chief Justice Scroggs was impeached for discharging a grand jury before they had finished their business. While conviction was not had on some of these various specifications, yet the court of impeachment retained jurisdiction and heard the evidence relating to them.

In striking contrast to the various impeachable acts under the constitutional law in this country, I will cite two of the most famous impeachment trials in modern times.

Charles Stuart, Charles the First, King of England, was impeached by the House of Commons, upon the charge that out of a wicked design to erect and uphold in himself an unlimited and tyrannical power to rule according to his own will and to overthrow the rights and liberties of the people.

He answered that his impeachment was not warranted by the law of God, for God clearly warranted and strictly commanded obedience unto kings, that according to Eccleseastes, "where the word of a king is, there is power, and who may say unto him what doest thou?" The House of Commons did not dare to trust his trial to the House of Lords, but created a commission to try the impeachment. The trial lasted eight days, and on the ninth day the king was found guilty and beheaded.

In England, in 1788, Warren Hastings was impeached for the murder of princes and the plunder of empires in the Indias. The trial commenced before seventy-one Lords, lasted seven years. Many Lords having died, their successors took the vacant seats, and when the trial ended, not one-third of the Lords who commenced the trial, participated in rendering the final decree of not guilty.

It will thus be seen that the law of impeachments has its root in the great principles of right, and is not limited by the definitions of the criminal law, nor hampered by fixed rules of interpretation.

Senators, the arguments which I have already made, and the authorities which I have cited, have been given, not merely in answer to the position assumed by the counsel for respondent, but mainly to convince you of three propositions:

*First.* That as a court of impeachment, you possess no judicial powers, but upon the contrary, you are acting as a political tribunal, governed in your deliberations by parliamentary law.

*Second.* That the object of impeachments is not punishment of the offender, but protection of the public.

*Third.* That neither under our constitution or under parliamentary law, are impeachable offenses confined to criminal acts, much less to indictable crimes.

This brings me to the consideration of the various articles of impeachment that have been exhibited against Judge Page. I propose to take these up one by one, and in as critical and logical manner as I am capable of, presenting to you, first, the issues of law presented by each one of these articles, and then the issue of fact for your consideration upon the evidence. I have deemed it advisable to commence, not with the first one, but with the fifth. Not because the fifth is stronger or weaker than the others; not because the act therein charged against Judge Page is of a slighter offense or deeper turpitude than either of the others, but because that article stands out prominently and alone from all the other articles as being not affected in any degree by a conflict of evidence.

The fifth article has no evidence to refute it, no evidence to support it. It stands admitted by the answer so far as its allegations are material. The answer takes no issue upon it whatever. Admits that the order which is the foundation of that article, was given; that the letter which accompanied it was written. That article, then, stands upon its merits, independent of all other articles, and from it I propose to deduce two principles. And I take this article first for the very purpose that we may have those principles to aid us in our deliberations upon the remaining nine articles before us.

It will be noticed that the article charges an act upon Judge Page, and that the act was committed. That act, we insist is impeachable. I think there can be no doubt of it whatever. There is no frivolity in this article at all; there is no contradiction of evidence to harrass your minds. You will take it upon the broad principles of law that govern that case without any influence from evidence whatever. The principles that I intend to deduce from it I say are two-fold; 1st that Judge Page is a man that is capable of usurping power that does not belong to him. Now, every one of these ten articles of impeachment charge in substance, that fact upon Judge Page. The usurpation of power, or the misuse of power that does not belong to him. The other principle that I intend to deduce from this article is that it proves conclusively that Judge Page is a man that is capable of making official threats.

You will notice that in all of these articles of impeachment, from one to last, is charged, first, the impeachable act against Judge Page, and then it is asserted that that act was performed under circumstances that constituted hardship or threats towards those against whom he was operating.

Although the foundation of this article has been read and re-read to you, I will repeat it:

STATE OF MINNESOTA,
TENTH JUDICIAL DISTRICT.

To GEORGE BAIRD,
Sheriff of Mower county:

You are hereby ordered and directed to disperse any noisy, tumultuous or riotous assemblages of persons numbering thirty or more, or a less number, if any of them are armed, found anywhere within the limits of your county; and for such purpose you are authorized to call to your aid any number of persons, and arm with fire arms any number of men not exceeding twenty-five. Such armed force to be under your charge and who will obey your orders.

In your proceedings you will be guided by the provisions of chapter 98 of the General Laws of this State. You are especially directed to disperse in the manner above indicated any assemblage of persons whose evident design and purpose is to violate and prevent the execution of the laws of the State and the ordinances of the city of Austin.

Witness my hand this 2d day of June, 1874.

SHERMAN PAGE,
Judge of the District Court,
Tenth Judicial District."

There, Senators, is a military order, issued by the judicial power. It is a usurpation of power that does not belong, never can belong to the judiciary. It is just as clear and pointed a usurpation of military power as it is possible for any person to reach. No act can any man perform that is more clearly a usurpation than that.

In the opening argument, Mr. Losey makes this remark: "Every district judge is *ex officio* a conservator of the public peace, and for that purpose sheriffs and other officers of the court are subject to his orders."

The answer of Judge Page also attempts to justify the issuance of that order. His counsel comes in here and builds an argument in support of its justification. The counsel has cited several provisions of our statutes as the authority. First, he says, "that the district judge is *ex officio* a conservator of the peace," and he cites us the well known section of our statute, (which I will read again), section one of the Gen. Stats., page 632: "For the apprehension of persons charged with offenses, the judges of the seveal courts of record in vacation as well in term as out of term, and all justices of the peace, are authorized to issue process to carry into effect the provisions of this chapter." That is the authority that he says makes the judge of the district court *ex officio* commander of the officers of his court and the citizens of his county.

Now, what is this chapter? It says that he is possessed of powers for the purpose of carrying into effect the provisions of this chapter.

This simply means that upon complaint being made before any magistrate or judge of the district court that a crime has been committed, the judge or justice shall issue his warrant to bring the accused party to be tried for an assault and battery, or for an assault with a deadly weapon, or for any other charge of a criminal nature. That is what it means and nothing else. The judge of the district court under that provision of law has no different or higher power than the justice of the peace; and as a matter of fact, the justice exercises that power a thousand times where any judge of the district court exercises it once. In my county, for twenty years it has never been exercised by the judge of the district court but once, where the judge has entertained a complaint, caused the arrest and examination before himself,—and that was a case of alleged murder.

Justices of the peace are in the constant practice of issuing warrants under this section. It gives the judge of the district court no power to call out the militia; it gives him no power to arm the citizens; it gives him no authority to control the action of the sheriffs and his deputies. But if a complaint is made before him, he has the right to issue his warrant and bring the accused party before him to have a trial or an examination. And that is all there is of that provision of the law.

But the counsel has also read, as indicating the power that the judge of the district court may exercise *ex officio* as a conservator of the peace, section 1 of the General Statutes, page 616. I shall have to ask the careful attention of the Senate to the provisions of this and other sections in that chapter, because the right to do what Judge Page did do, they attempt to find in these provisions of law, and we are investigating it for the purpose of ascertaining whether or not they are correct. The question is whether those sections of law give the judge of the district court, as such, any such power whatever over sheriffs or over the militia of any county.

"Section 1. If any persons, to the number of twelve or more, any of whom being armed with any dangerous weapons; or, if any persons to the number of thirty or more, whether armed or not, are unlawfully, riotously, or tumultuously assembled in any city, town or county, it shall be the duty" of whom? *They* say of the judge of the district court, but what does the law say? "It shall be the duty of the mayor and each of the aldermen of such city, and of the president and each of the trustees of such town, and of every justice of the peace living in such city or town, and of the sheriff of the county and his deputies, and also of every constable and coroner living in such city or town," now these are the persons whose duty it is to do something. The judge of the district court is not named under that section; he has got no duty to perform; there is no power in that section conferred upon him, but these persons have the duty "to go among the persons so assembled, or as near them as may be with safety, and in the name of the State of Minnesota, to command all the persons so assembled, immediately and peaceably to disperse."

There is no duty required of a judge of the district court there; it is these other officers that are directly named to proceed to the place where the riot is, and there to command, in the name of the State of Minnesota, the riotous persons to disperse. And that is all the duty that section one confers upon anybody, excepting the closing paragraph:

"And if the persons so assembled shall not thereupon immediately and peacefully disperse, it shall be the duty of each of the magistrates and officers to command the assistance of all persons there present in seizing, arresting and securing in custody, the persons so unlawfully assembled, so that they may be proceeded with according to law."

Now that is the whole section, and there is no power, no duty whatever conferred upon the judge of the district court.

The counsel also cites section 3 of that chapter; but it has nothing whatever to do with the subject of a riot, but is a collateral matter which I will not detain the Senate by reading. But the counsel does not cite section 4, and yet that section has a particular bearing upon the duties of somebody in cases of riot. That duty as described in section 4 is this:

"If any persons who shall be riotously and unlawfully assembled, and who have been commanded to disperse as before provided, refuse or neglect to disperse without unnecessary delay, any two of the magistrates before mentioned"—who? The judge of the district court? Not at all, because the judge of the district court is not among the magistrates "before mentioned." But, "any two of the magistrates or officers before mentioned, may require the aid of a sufficient number of persons in arms or otherwise, as may be necessary, and shall proceed in such manner as in their judgment is expedient, forthwith, to disperse and suppress such unlawful, riotous, or tumultuous assembly, and seize and secure the persons composing the same, so that they may be proceeded with according to law."

That section gives the power of arrest, the power to disperse the mob. if they do not disperse upon the command of any two of the magistrates before mentioned. No power and no duty whatever is conferred upon the judge of the district court.

The counsel has cited section 5 of that act, and I suppose that it is in that section that he finds the power he claims for the judge of the district court, because in section 5 the judge of the district court is mentioned.

Now I invite your careful and attentive consideration to the provisiong of that section: "Section 5. Whenever an armed force is called out"—who shall call it out? There is another provision of law that says the Governor may do it. These previous provisions of law provide that any two of the magistrates may do it; not the judge of the district court. But "whenever it is called out by any lawful authority, for the purpose of suppressing any riot or tumult, or dispersing any body of men acting together by force, with intent to commit any felony, or to offer violence to persons or property, or with intent by force or violence to resist or oppose the execution of the laws of this State, *such armed force*, when they arrive at the plaee of such unlawful, riotous, or tumultuous assembly, shall obey such orders for suppressing the riot or tumult, and for dispersing and arresting all the persons who are committing any of the said offenses, *as they have received from the Governor, or from any Judge* of the court of record, or the sheriff of the county, and also such further orders as they shall receive from any two of the magistrates or officers mentioned in the first section."

Now, there is the only place in the whole statute where there is any reference made to obeying an order of the judge of the district court.—Mind you, it gives him no power to call out an armed force, or power to command it, no authority to control or direct the sheriff, though the sheriff is commanded by the statute to perform his duty, without waiting for orders from anybody. Every magistrate has a command from the statutes? It says, "when this armed force has reached the place of the riot that they shall obey such orders "as they have received from the governor, or from any judge of the court of record, or the sheriff of the county." Now, why obey any orders from the judge of the court? Because the order or process of the court may have been the occasion of the riot. And the riot may have gained such force that the militia of the state has to be called out to aid in the execution of the order or process of the court and to suppress the riot. Then, the armed force, when it reaches the ground is required to obey the orders that the governor has sent out.

It may be a little mob in the county or in the village where the mayor has called out the police forces, armed; and then when they reach the ground, they shall obey such orders as he has given them. It may be that the sheriff has been unable to execute a process in his hands, he has had to call out a force to enable him to perform his duty, they shall then obey such orders as he has given. They shall obey also, it says, such orders as a judge of the district court has given; but when, and where, and under what circumstances, has the judge of the district court to issue any orders whatever. There are no military orders for him to issue, because a judge of the district court has no power to issue

a military order, to call out the militia, or to direct the sheriff to call out the militia and arm them. No word of the statute gives that power to a judge of the district court; but a riot may have originated in a resistance to an order made by a judge of the district court in his judicial capacity. He may have issued an order to put one man into possession of a piece of land, and another man out of possession, and it may have created a mob. It is the decree of that court and that order must be executed. If the order or decree of the court is resisted an armed force may be called out by the sheriff or by the governor sometimes, to execute the order of the court.

Whenever it is called out for that purpose, it is then the duty of the armed force when they reach the place of the riot, to obey, to execute, to carry into effect, the order of the judge of the district court, or of a court of record.

The order that is there referred to, is a judicial order made in the usual or ordinary course of judicial proceedings. As I suppose in a case of ejectment, it might be an order to arrest an individual for contempt. He may have issued his warrant or his order for the arrest of Mr. Stimson, and he (Stimson) may have gathered a force around him so powerful that it would be necessary, before that order could be carried into effect, that the militia should be called out and armed. When that armed force reaches the ground, then the order of this court is to be obeyed. Not an order calling out the armed force, not an order commanding the sheriff, not an order bringing the military arm into play, but merely the mild, civil order that a judge of a district court in his judicial capacity has the power to issue, and which may be resisted and be the cause of riot. And that is *all* the power of the court in such cases. The court or judge can derive no power from this section, but this section merely alludes to the circumstances, that there may be an order of the judge of the district court that is to be obeyed by that military force. When they have accomplished obedience to that order of the judiciary then they can disperse. That is to be executed; it is to be obeyed; and I say again, it is the only order that a judge of the district court has any power to issue. It is a judicial order that is here referred to, and not a military order, because, as I have shown you, this section only confers this power of calling out and arming of men upon the usual executive magistrates of the county, under the charge of the executive department of the county and city government and not under the judicial department. A military order issued by the judicial power is a monstrosity unheard of, unknown; and yet this order of Judge Page is nothing but a military order. It commands; it does not merely advise and instruct the sheriff, but it orders and directs him to call out and arm men. That is a power that is usurped. The judiciary has no right to meddle with the military force at all. He has the right to make his judicial orders in the line of his jurisdiction unlimited, unrestricted, and it is the duty of the sheriff or the city organization, and executive department of state and county, to see that those orders are executed. If they cannot be executed except by calling out an armed force, an armed force must be called out to carry them into effect. But the judicial power possesses no authority whatever over the militia.

I think, then, Senators, that the first proposition that I referred to is clearly established by this article. That Judge Page *is* capable of

usurping power that does not belong to him. This order of his is issued as judge of the district court, in his official capacity, commanding the calling out of an armed force and giving authority to the sheriff to arm them.

You will notice from section one that I read, that all the power that the statute gives anybody is given by that section right into the hands of the sheriff; and not to the judge at all. It is the sheriff that may call out the armed force, it is the mayor that may call it out. It is their duty to see that the laws are executed and not the judicial power. The judicial power will investigate and punish violation, but it is these other officers that must execute its decrees. The judiciary must rely upon the other powers of the government to enforce its own orders. It issues an order to the sheriff but the court never goes itself to execute that order. It gives no commands to the sheriff excepting the order that is placed in his hands;—the writ, the process for the sheriff to execute. But here, Judge Page does undertake, not only to call the attention of the sheriff to the law which might control and govern his actions in case of a riot, but "you are hereby *ordered* and *directed*" to disperse and call out and arm the force; and this is done by the judicial power, operating directly to call into effect and operation, the military forces. It is a military order issued by a judicial officer. The proposition then is fully proved, that he is capable of usurping power that does not belong to him. Of reaching out and grasping for more and more. It is more than mere meddling with other officers' duty. We have shown clearly by a dozen of these facts that have been detailed to you week after week, that he is willing to grasp after and get a little power from one man, from one officer and another officer. But this is not the question of grasping, it is a reaching right out with the strong hand of the judicial power to get hold of the military power—a palpable usurpation, beyond any chance of refutation.

The second proposition that I wish to enforce is, that while he is capable of usurping powers in his official capacity that do not belong to the judicial department, or of transgressing and going beyond and outside of the line of his official duty, that he is also a man capable of accompanying those transgressions with official threats.

The letter which accompanies this military order is couched in this language:

"PRESTON, June 2d, 1874.

"GEORGE BAIRD, Esq., Sheriff:

"I have this day heard with shame and regret that another noisy assemblage of riotous men have been allowed to parade the streets of Austin at night, defying the law and disturbing peaceable citizens. I send you herewith an order of a positive character."

He does not merely call the attention of the sheriff to his duty, but he sends him "an order of a positive character," wherein he commands him to do certain acts, and then he adds the threat:

"Rest assured you will not disobey any further order with impunity."

There, Senators, is a threat in his official capacity, just as strong and with just as deep a hue of moral turpitude as can be passed from a judicial officer to an executive officer.

"Rest assured you will not violate any further order with impunity."

The inference is that that sheriff had already disobeyed some of his military orders, and I believe the evidence partially shows that fact. The sheriff and the judge had had a talk the evening before, or some evening previous, in which the sheriff had informed him that he guessed he understood his own business and how to manage it, and hence the judge undoubtedly alludes to some other disobedience of his commands by the sheriff:

"And now, Mr. Sheriff, rest assured that you will not disobey this or any further order with impunity."

These two propositions which I have deduced from this article, are important to aid us in considering the character of this judge. They are all-powerful in that regard, because, having been established, they enter into every one of the remaining articles of this impeachment. It shows that he does usurp power; that he loves it; that he gloats over it; and that when he gets his victims within his grasp, he will not only grind them, but he will also issue his official threats to frighten them into submission.

Senator NELSON. I move that the court take a recess until half past two.

The motion prevailed.

AFTERNOON SESSION.

Mr. Manager HINDS. (Resuming). I am nearly through with article five, and it only remains to consider the question whether the fact set up in that article constitutes an impeachable offense.

The impeachable act that is there charged is not the writing of the letter It is not the threat, although that threat is officially delivered. It is the usurpation of power that does not belong to a judge; going outside of his own jurisdiction; grasping after power to exercise what does not belong to him.

It will unquestionably be conceded that every illegal act is not necessarily impeachable. While our constitution makes crime impeachable, it does not necessarily follow that every criminal act would, in the judgment of the trial court, be sufficient to apply that remedy. The court undertake, as a right, to consider the surroundings and determine from them whether the act, criminal though it may be, was perpetrated under such circumstances, and accompanied with such persistency, as would render the officer unfit to continue in his office in the future.

Now the question is, whether the issuance of this order, is of itself sufficient to constitute an impeachable offense. We have no consequences that followed this order to judge by it. So far as the case is here presented there was nothing done under the order; but the right of the judge to issue that order, implies the duty of the sheriff to obey it. If the sheriff had obeyed that order, had armed a populace, called them out and sent them into that riot, (concede that it was a riot, which we do not), and under that order had shot down the people, then we would have some of the effects by which to judge the enormity of this assumption of power in Judge Page.

Notice that this order is a direct command to the sheriff to disperse hat body of men by armed force. Now it was the duty of the sheriff o obey that command if it belonged to the judge to issue it. . A military officer that issues his command expects implicit obedience from those to whom it was directed. They neglect or refuse to obey it at their peril. The sheriff, it seems, did not obey this command, but if he had done so, we might have had the results of that obedience following the order, upon which to judge the enormity of the assumption of power which Judge Page made. It is a clear usurpation of power beyond any question, because it does not belong to the judicial branch of the government to even call out forces to execute its own orders. As I insisted this morning, it would be, under certain circumstances, proper that even military forces were called out to enforce an order of the court. But these orders that the military forces will enforce are judicial orders issued by a judicial tribunal, and not military orders issued by a judicial tribunal. The court, as a court, has no power to call upon the military arm, or rather to command the military arm to execute its own orders, even though those orders are made deliberately and properly in the progress of any litigation pending before it.

The execution of the law belongs to the other department. If a proper order of the court is resisted by force, it belongs exclusively in the first instance, to the sheriff to carry it out if it is possible. If the power against him becomes so great, and the numbers are so many that he is unable to accomplish the result intended by the judicial decree, or the order of the court, then there is a higher power for him to call upon for assistance, and the whole power of the State may be called out to carry into effect the judicial decree or order of the court. But the court itself never commands these forces. He issues no orders to the sheriff, or to the military as to how they are to accomplish it; that belongs to them.

Now, it it is true that in this order the judge in express terms commands the sheriff to disperse the rioters, as an order officially issued by the judge, and then directs him to call out, if necessary, the military force of his county in order to execute his order. This order was made in no litigation pending before him at all; it was an outside affair. picked up independently by the judge himself.

Now, it does strike me, Senators, that this act is an enormous assumption of power, most unwarrantedly. It is directed to an officer whose duty is, under the law, to disperse that riotous assemblage, if there is any such within his jurisdiction. It is addressed directly to an officer who is acting in a city incorporated with its own police forces and its head, whose duty it is, under the law, to see that riotous assemblages are not allowed to have their sway. It is issued by the judge as a right not an advice, not a suggestion, that an officer might find the law and act under it, but a command to him to do these acts. I say, if it had resulted in killing some of the people down there, we would have the fruits, such that could not be the slightest doubt in the mind of any man, but that that act was of sufficient enormity to warrant his impeachment without anything else.

The counsel for the respondent, in his closing argument, has insisted that as the Senate is to take this article without proof, that, therefore. the Senate is to take the respondent's answer as established, without

proof. Such, however, does not follow. You take the allegations in the article without proof, because the answer admits them to be true. Simply because the House of Representatives has charged Judge Page with having made that order, it does not follow that it is true; but because Judge Page comes in here by his answer and already admits that he did make that order, you, therefore, are to take its statements as true, that he did do it.

He explains, in his answer, the circumstances which he claims existed, that warranted and authorized him to issue that order, and the counsel insist that we shall take them as facts in this case. Not at all. If those facts, thus alleged in the answer, had been sufficient in the law to constitute a justification for the issuance of that order, then, and then only, it would be very proper for them to be proven. But in law those facts that are alleged in his answer do not constitute a justification.

The charge against him in this article is of such a high order of enormity that there is no possibility by which the act can be justified. In no degree has the judiciary the right to issue a military order. It is entirely impossible to justify them, and that I understand to be the reason that no proof would be admitted under the circumstances that are alleged in the answer. They do not constitute a defense in any degree; it is a naked usurpation of power that does not, and never did, belong to the judiciary, and never will, under any civilized government, belong to the judicial department. I must conclude that this article states not only an impeachable act, but an act so enormous in moral turpitude, in usurpation, that it ought to be conclusive upon the Senate.

I stated to you this morning that I had two reasons for calling your attention to article five first. One was that it showed that Judge Page was a man capable of usurping power that does not belong to the judiciary, and, therefore, as a matter of inference, that he is capable of using in an *arbitrary* manner those powers that properly belong to him in his official capacity.

The second proposition that I desire to establish by this article, is the fact shown by this letter—although the threat made in this letter is not an impeachable offense standing alone by itself, yet it shows that Judge Page *is* capable of making official threats. The threat is used in these articles of impeachment from one to last only as a matter showing malice, not an impeachable offense by itself, but to show what was done through evil motives for unworthy purposes.

These two propositions will throw abundant light upon all these articles of impeachment, because from first to last they commence either with an entire usurpation of power that does not belong under the constitution to him, or in the arbitrary use, the *arbitrary* exercise of judicial powers, which he had a right to exercise.

Having gained this much in favor of the other article, I shall not undertake to establish those two propositions by any of the evidence that has been introduced in relation to the other articles, but shall hold them throughout the consideration of these remaining articles as fully established.

Before proceeding to the consideration of the other articles, there is one other matter to which I wish to call the attention of the Senate. You will notice that there is considerable contrarity of evidence here; one class of witnesses have sworn one way concerning certain transactions, another class of witnesses have sworn very slightly or largely different. So that there is, upon some of the collateral points, much conflict of evidence. Of course it will be incumbent upon the members of this Senate to form a conclusion, at least in their own minds, as to which of the witnesses, or which class of witnesses, they are to give the greatest credit.

You will notice that there is one article (nine, I think) in which it is charged that Judge Page held an investigation before himself upon a charge of contempt for circulating a libel, and that a large number of witnesses was called before him, not for the purpose of establishing the fact that a contempt had been committed by the party before him, but in order to fish after evidence against other parties, for that is the point in that article. That his object in calling on a large number of witnesses whose evidence was not material to the point before the court, was to find evidence for other purposes, to be used in other actions, which were either contemplated or then pending, in which he then was or intended to be a party.

And you will notice that it appears in evidence that Judge Page had before him there under his own employ, a short hand reporter, who took down word for word the evidence of those witnesses. Those witnesses were Mr. French, Mr. Camerson, Mr. Davidson, Mr. Stimson, and many more. Their evidence was all taken down, for the purpose, manifestly, to be used for some other purposes. Now, those same witnesses are called into this court; they are examined on the part of the managers upon what they testified there, because it was important, and incumbent upon the managers to show what those witnesses were compelled to swear to at that time; and they do detail to this Senate, from beginning to end, their testimony before Judge Page at that time.

Now, Judge Page had it within his power, if these men were not competent to witnesss a transaction and detail it correctly afterwards, to show that these witnesses did not recollect accurately or that they were untruthful. They were required to go over before the Senate, the evidence that they gave down there a year ago, from beginning to end.—The defense has not been able to contradict them in one single sentence that they have here testified to, with their short-hand reporter here. He has not been called upon to read his notes of the evidence that they gave before Judge Page down there. If they could have contradicted them, showing that their recollection was not to be trusted, or that their honesty was defective, they certainly would have done so.

Now, I shall assume, as a matter of credibility of witnesses, that the testimony of that class of our witnesses is to have full credit given to it whenever they come in conflict with the respondent's witnesses, because we have this ocular demonstration that they are men capable of receiving proper impressions, and truthful men, honest in their intentions to exhibit them in their true light before this court.

We must, then, consider the remaining part of the articles, with these three propositions before the court. That Judge Page is capable of ex-

ercising arbitary power, that he is capable of malice, by making official threats, and that wherever there is a conflict of evidence, we have tried, truthful and honest witnesses here to support our side.

Before proceeding to an exposition of the law and facts in relation to article one; I shall briefly notice some of the statements made by the counsel for the respondent. You will recollect that article one charges that a man by the name of Mollison was indicted for libel against Judge Page, and that he was held in court there for four years and a half without trial. That is, in substance, the charge in article one. The defense to that article is simply that Judge Page did faithfully and honestly endeavor to procure another judge to try the case. The merits of this issue I shall not now consider, but will call your attention to certain statements made by the opposing counsel. As an excuse, counsel says that Mollison might have had a speedy trial or a dismissal of the action; that is, under the statute, if he had not been brought to trial on the first or second term without any cause for a continuance, that he might then move for a dismissal and it would have to be granted. Perhaps he might; I will not undertake to refute that proposition; but that was not what Mr. Mollison wanted. He wanted a trial, not a dismissal. He had been charged with committing the offense of libel. He did not believe he was guilty. He was ready for his trial; he wanted to be tried, and not a dismissal.

The counsel says again, as an excuse, that he might have had a change of venue. He could not have had a change of venue without an application on his part or on the part of the county; besides that, he did not want any change of venue. He was ready to be tried in his own county, by his own acquaintances, by his own friends, and not to go among strangers. He did not believe that he was guilty, and he did not believe that his fellow-citizens would find him guilty. Although it may have been his privilege to have sought a trial in some county in some other district, it was not his duty to do so. He considered it a privilege to be tried at home.

The counsel states that Judge Page, under the circumstances, this being a libel against himself, had no right to try the case. With this I agree. It was not charged in this article, as an impeachable offense that he did not try the case himself. The allegation in the article is merely preliminary to the other charge that he unreasonably neglected to procure another judge to try it. I will go further than the counsel did. I think if Judge Page had assumed to try that case, that he would then have been committing an impeachable offense, and of course we don't charge his refusal to try the case as *the* impeachable offense in this action.

As a further excuse, the counsel assumes that Judge Page had no right to call upon another judge excepting in an adjoining district, and he read the statute to prove that proposition. The statute he read, however, did not prove it. The statute that he read says that another judge in an adjoining district *shall* appear and try such cases. That is, the judge in an adjoining district has an official duty to perform, and that duty is incumbent upon him by the command that he *shall*, upon a request, go and try the cases in a district adjoining him. The judges of all other districts in the State *may* do so, and often do go far beyond

their adjoining districts to try cases. The one class of judges *must* do so, the other *may*, if requested.

The counsel has also stated that this was a most attrocious and infamous libel—this newspaper article that was published by Mr. Mollison against Judge Page, and upon which this indictment was founded. I take entire exception to that statement. I believe it, substantially, a very innocent article. It is very doubtful whether the language there used could be construed as a libel at all. The indictment that was found against Mollison does not undertake to establish it as a libel except by throwing in innuendoes, and telling what the article means; a meaning, it is very true, of what the article is susceptible, but not necessarily so.

Now, as I shall use this very article for the purpose of showing malice in the heart of Judge Page in his proceedings in that trial, I shall call your attention to some of the statements in it, and I premise my remarks with the assertion that that newspaper article, in no part of it charges Judge Page with any judicial misconduct. Not one solitary syllable of that article, long as it is, charges Judge Page with any judicial misconduct. But it does charge him with a great deal that you and I would not like to have said of us.

Now, this article is mainly a libel upon the "purifiers" and the "head leader" of the purifiers, not the Judge. Not acts done after he became judge even, but acts done before he became judge, and even then the writer is not writing of him, but speaking of the clique to which he belonged, and a clique that this newspaper article claims was instrumental in putting him into office. It says: "Let us see how their purity will stand an examination in Mower county. The head leader said in a stump speech *three years ago*"—(now they say that what is meant by "head leader" is "the said Sherman Page")—"at the stone school house south of Austin; that they were sifting out the pure element from the corrupt in this county, that the people might rely with confidence on the men who were to run the different offices of this county." This is a part of that indictment. Not merely a part of the newspaper article, but is put into the indictment as a part of the libel against Judge Page; and there certainly is no reference to him in a judicial capacity whatever.

Then it continues: "Now let us see: The first act was against G. W. Bishop, county commissioner. He had some six or seven hundred dollars in his possession that belonged to this county, so *they* said. But their action proved only a blind to the people, for they withdrew the action upon Mr. Bishop resigning his office." Now, that is a very unpleasant charge, it is true, against the "head purifiers," but still it has no reference to Judge Page in his judicial capacity. "They (meaning the said Page) let him go with the money that belonged to the county, and bribed him with as much more, that their dear purifiers might have full sway." That was three years before, and Judge Page had then been a judge only six months.

"Now that they have the reins in their hands, how comes it that our taxes are no lighter than they were four years ago? A large amount of back personal property tax was collected last year, and there is one-fifth more taxable property in the county and yet there is no reduction. What is the matter? Are they salting it down in the bank so that the

Mower county purifiers shall have sufficient funds on hand for the fall election?" It is an unpleasant reflection, it is very true, but it is nothing with reference the Judge officially.

"The next time: The salary of the superintendent of public schools is doubled * * * Now all this increase of salary was brought about by the pliant tools in the shape of county commissioners, who dare not disobey their head purifier (meaning the said Sherman Page)"—so the indictment reads: "who now acts as district judge, resting from his arduous labors in purifying this county and recuperating his exhausted strength at the expense of the dear people, whom he sympathized with so much three years ago." There is certainly no reference to him yet, in his judicial capacity, excepting merely a statement of fact that he then was acting as judge.

Now, we come, I suppose, to the part of the article that they attempt to "ring in" as a reflection upon his judicial decisions: "But what are his" (meaning the said Sherman Page) "acts as judge? There was an act passed by the Legislature last winter, taxing certain railroad lands, and every honest thinking man will say 'amen' to it. But as our righteous judge" (meaning the said Sherman Page) "has been plowing with the railroad heifers of this State; he has issued an injunction forbidding the officers, whose business it is to collect such tax, from doing so in this district. Now, this same judge, by this one act, has robbed this county of more than he can bring against Mr. Smith in his seven years service, and he (the judge) has been about only six months in office. When you take into account the amount that will be lost to this district, will fifty thousand cover the loss?"

Now, that is all that this indictment has charged against this man Mollison, as a libel; and there is no allusion to any official act as judge, done by him, excepting the making of that decision upon the injunction. They do not charge that the decision upon the injunction was made through any bribe, or through any false motives, at all; they merely allude to the prior existing fact, which they seem to have publicly known, that he had, prior to that time, prior to the time he became judge, had influence and connection with railroad companies, in one capacity or another, and that is what they call his "plowing with railroad heifers." Not that they had brought any influence upon him since be became judge, but that previous to the time that he became judge, his associations were such that they could raise that charge of having plowed with the railroad heifers; and by a course of deduction, that he brought with him upon the bench or had an influence bearing upon his judicial decision. It has a bearing upon every judicial decision made by any judge. His course of education, his manner of thought, his custom of application, he carries with him upon the bench, and it there has an influence. He had had such transactions with railroad companies, in the opinion of this man Mollison, at some prior time, as that their influence was carried with him upon the bench and gave coloring there to his judicial action. Now, that is all there is of this monster of a libel,—a criticism, gentlemen, that no well-meaning man should have ever raised any breeze over at all. It is a criticism that you and I are in a constant habit of making against, not only our own citizens, but the judges of the very highest court. It is a criticism that the public, who have these interests and who suffer these losses, have a right to raise

under proper circumstances. And it certainly was a very mild criticism for such an act. Notice the very enormity of the act. Suppose that the Supreme Court had held that these taxes should have been paid, I say, suppose it had held *differently*. Here is a judge setting aside a recent act of the Legislature, passed with all the forms of law, requiring certain railroad companies to pay taxes upon certain railroad lands. It goes through the House, it passes the Senate, it goes to the Governor,—meets the approval of these three bodies, each acting in its own proper sphere.

It goes to the courts, and the court acts within its jurisdiction in making its decision. Wasn't it a matter in which the people might raise criticism upon the judicial conduct of the officer that first strikes down such a large amount of public taxes? I think it was not unreasonable criticism at all; but it does show the very fact that these matters are put into that indictment as an offense to Judge Page, and as nearly all of them relate to his capacity down there in Mower county as the head purifier, it shows that he had a feeling and pique to punish some body for thus reflecting upon his conduct. It is not the charge that he had been plowing with the railroad heifers, it is the fact that he had had these other matters thrown into his teeth more than that little matter and it is there that we find the malice in his heart in attempting to prosecute the publishers of the paper as well as the writer of the article.

ARTICLE I.

I have already stated, gentlemen, that the charge in this article is simply and briefly the fact that this man Mollison was indicted in September term, 1873, and that he was not brought to trial for four years and a half; up to the time that this impeachment was exhibited against him. In other words the charge is that he delayed to procure another judge to try that case, unreasonably. Now that is all there is in this charge in regard to the impeachable acts.

I might say here in the outset, for it will save my saying it afterwards on other occasions, that I shall attempt to consider these several articles of impeachment under three separate heads. I shall first consider separately what the impeachable acts are that are charged against Judge Page, not the collateral surroundings that go to show the enormity under which they were committed, but what are the impeachable acts themselves. After that is done then I shall attempt to group together the facts and the acts, and the evidence proving them that go to show malice, the purpose for which these impeachable acts were committed. I shall follow that order through these remaining articles.

First, what is the gist of these articles? The article now before us is what I have stated merely charges Judge Page with having neglected, for an unreasonable length of time, to procure another judge to try Mr. Mollison, very simple in itself, and the evidence relating to that act is also very brief.

The defense to this article, as I have already stated, is that he did faithfully endeavor to procure another judge.

Now if that defense is true, he is exonerated from the charge. Cer-

tainly you and I will all agree that a man detained in court upon a criminal charge for four years and a half without any fault on his part, is unreasonably waitiug for a court to try him. It is agreed on both sides that the duty of the judge, if he could not try the case himself, (and he ought not to do so,) was to find another judge to do it. He says that he performed that duty faithfully by endeavoring faithfully to procure another judge to try it.

Now what is the evidence in relation to this charge, so far as the prosecution is concerned.

Mr. Losey, in his opening argument, declares that Mr. Mollison never wanted to be tried. I assert here that that is just what Mr Mollison did want. He had entire confidence in his innocence. He knew that he had written that newspaper article through the best of motives, without any malice; without any feeling that he was attacking a class of purifiers merely in pretence and not in fact. He knew that he had no malice, no wrong intent, and he was ready to put himself instantly on trial, for he said so just as soon as the indictment was read. And yet, we are told here by counsel, that he never wanted to be tried. I assert, that it was Judge Page that never wanted it to be tried.

He knew very well that there was nothing of the indictment, the numerous charges, and that no one of them would be held by any jury under heaven to be a libel,—and juries in this country are the exclusive judges of what constitutes a libel; they are the judges of the law and the fact; and no jury can be called upon anywhere that would hold any part of that indictment to constitute an indictable offense. And Judge Page, most certainly, was wise enough to see it. He is the one that never wanted it to come to trial.

On page 30, of the journal of June 5th, the counsel for the respondent, Mr. Losey, says: "that they (the managers) have paraded the fact here that, when Mollison was finally brought to trial before Judge Brill, he was acquitted. You have read that libel, Senators; you know that it was as gross a libel as was ever perpetrated upon a human being."

That is no greater an exaggeration of the fact, than many others that have been presented. "It is acknowledged here, by Mollison, who perpetrated the libel, that it was a lie, and the supreme court of this state, by their decision, stamped it as a lie; and Mollison knowing this, never wanted to come to trial." We have already answered that statement.

The counsel continues: "It has appeared in proof here, gentlemen, that Mollison was acquitted. It is a sad comment, Senators, upon the action of jurors in this country, that a man guilty of publishing a libel, as gross a libel as is here shown to be, could have been acquitted as Mollison was acquitted. It shows such gross prejudice, it is such an outrageous act of injustice, that it seems to me it should have been the last evidence the managers should offer for the purpose of showing corruption on the part of the respondent."

The article, I say, so innocent in all of its features, is thus magnified into a libel of such great enormity. Not one single charge of judicial corruption, but all relating to acts that transpired, and which were a public interest in that community before Judge Page took his seat, ex-

cepting that he carried with him upon the bench his theory as a "head purifier."

Now, what are the proofs? There has been a great deal given in evidence here in regard to Mr. Mollison's attorney, or as to whether or not he had any attorney. It matters not, so far as this article is concerned, whether he had or had not an attorney. If he wanted an attorney he had a right to procure one; if he did not have, I dont think he is entitled to any greater privileges, than though he did have. It was the duty in either case, for the judge to procure another judge to sit in his place and try the case, whether Mr. Mollison had or hadn't an attorney. And that is the charge, the impeachable act made against Judge Page,—that he did not do so.

Now, our evidence is very short upon this point, and a good deal of it is negative. The fact appears that no other judge had tried the cause for years. It also appears that no one ever asked any delay on the part of the defendant. He never asked it, his counsel never asked it. That, it is true, is negative, but it shows that the cause of the delay did not originate in him. He always appeared in court ready for trial. Whenever his case was brought into court he was there every term of court, appeared, waited, to have his case brought to trial. Never asked delay at all.

In Senate journal, May 27th, page 5. Mr. Mollison's testimony is given:

"Q. State what you said in court to Judge Page with respect to whether you were ready for trial or not?

"A. I can't remember the precise words that I stated to him, but I remember that I wanted my trial, that is all that I stated, or something to that effect—that I was ready for trial, that I proposed giving no bail."

Now, did Mr. Mollison propose to lie in jail there for four and a half years? All the witnesses agree that he said he did not want bail. He was ready for trial. The reason he did not want bail was that he was ready for trial. If he had been put in jail and kept there four years and a half, under these same circumstances, is there a Senator on this floor that would not say that Judge Page had committed an impeachable offense? And yet, the fact that Mr. Mollison did procure bail does not change the offense one iota. The impeachable act charged, is that Judge Page unreasonably neglected to procure another judge to sit in his place and try this case. If Mr. Mollison had languished in jail year after year, term coming and term going, for nine terms of that court, I say that there is not a man in the State that would not cry out that Judge Page had, by that one act, committed an impeachable offense. And yet, the fact that he was at liberty under bail, allowed to go whence he pleased, does not change the impeachable character of the offense in the slightest degree.

On May 22d (page 9 of the journal), this question was put to him:

"Q. State whether you were ready for trial?
A. Yes sir. I have always been ready for trial."

On page 10, this question was asked:

"Q. State whether or not the court or Judge Page ever asked you, during the terms of court whether you were ready for trial?
A. He never did, sir."

Nine terms of court come and go, and never once did Judge Page ask that man, languishing under indictment, whether he was ready for trial. All witnesses agree to this. On the same page of the journal, the examination continues:

"Q. State whether or not the county attorney, during any of these terms, ever moved the court for a continuance of that case?
A. Never to my knowledge, never heard it.
Q. Did any attorney employed by you, or at your request, ever move for a continuance in this case, at any of these terms that I call your attention to?
A. No sir, not to any knowledge of mine."

Now, that completes the proof of the prosecution upon this article. Of course it is not all of the evidence (because we have a volume of evidence, almost, relating to this article), but it is all the proof that goes to the question of merits of this charge. Not as to the question of malice, for that is a secondary consideration. It shows that the indictment was found, and that he himself never asked for delay, and that Judge Page never asked him if he was ready for trial. The defense, then, is what I will now consider.

Judge Page, in his answer says, that he did faithfully endeavor to procure another judge. Now what are the facts in proof? They are these: On February 21, 1874, that is, some five months after the indictments were found, Judge Page wrote to Judge Mitchell to see if he would come and try some of the cases in his county. He did not come. On June 27th, 1874, Judge Page writes another letter to Judge Mitchell to see if he can come and try a case at an adjourned July term of his court. In answer to that request, Judge Mitchell appears and holds a term of court.

That is; about seven months after this indictment was found. There, then, was an opportunity, if the circumstances were such as warranted, at which Mr. Mollison could have been tried, because I think the evidence does show that a jury could have been had, even if it were not actually called in court. It does appear that a venire had been issued, and undoubtedly returned, and a jury *might* have been called, although it was not called.

Now, why were not the cases brought to trial? Judge Mitchell may have been ready to proceed with them and try them. The reason is this,—as shown by the evidence of Mr. Davidson and Mr. Bassford, (who were also under indictment as the publishers of the newspaper that contained this alleged libel), they had put in demurrers to their indictment. Now the county attorney did not want to try, Judge Page did not want to try the cause under a doubtful indictment.

Mr. Mollison had plead "not guilty," having no attorney. The other two men having attorneys, to the same kind of an indictment, put in demurrers. Those demurrers were upon the calendar. And the county attorney did not want to try Mr. Mollison upon an indictment that might be set aside for insufficiency. The county attorney, then, upon his own suggestion, neglects and refuses to bring the case to trial; Mr. Mollison, having, at all events, no active attorney, did not know of those proceedings between Judge Mitchell and Mr. Wheeler, the county attorney.

Now, the demurrers upon those indictments against Bassford and

Davidson, were heard by Judge Mitchell. He discharged the jury without ever calling them, because there were a large number of law cases to be heard; these demurrers were to be disposed of, and there was no wish on the part of any one to hold that jury, when, in all probability there would be no case for them to try. And poor Mollison was allowed to have his case passed by without even himself knowing the reason why, awaiting the decision of the legal points upon the other two indictments which were made at a later day in the term, after the jury had been discharged. But I insist that it would make no difference whether he might have had a lawyer at that time or not, he ought to have had a trial unless there was a good reason for the delay. There was a delay in fact, and we must assume that there was a reason for it. He was entitled to a speedy trial, but if there was a reason why he should have a delay he was entitled to it. The county was in duty bound to bring it to trial, but if there was a good reason why they should not, then that was a good reason why it should be continued. So all parties agree that it was not tried at that term.

Now, from that time onward, what did Judge Page do to procure another judge? He says in his own testimony, on page 65, of June 7th. that he wrote one letter to Judge Lord, to which he got an answer, and another to which he received no answer. That one of these letters were written before Judge Mitchell held his term; that is, before July, 1874.

The other one is in doubt when it was written; at all events, there was no answer to it. Now, what did Judge Page do from July, 1874, down to the time that these articles of impeachment were exhibited against him, towards procuring another judge, for his defense hangs upon that point, and nothing else? He says that he "faithfully endeavored to procure another judge." But what did he do, and when did he do it? Judge Mitchell held a term of court there in July, 1874; there is no evidence that Judge Page did one single thing to try to get another judge there until a year and three months afterwards, and then he merely writes a letter to Judge Dickinson, of Mankato, dated November 22, 1875. There is a year and three months that passed by without his making the slightest effort to procure another judge. And in that letter to Judge Dickinson, he makes no allusion to urgency at all. He merely calls Judge Dickinson's attention to the fact that there are several cases in his court which he (Page) cannot try. He don't mention Mollison at all though he does allude to the Sylvester Smith case. He has no anxiety for Mollison whatever; speaks no word of urgency to Judge Dickinson to hurry him up, to bring him there to try it. Not at all. Judge Dickinson did not come.

Then in October, 1876, (another year passes by before he makes another effort, according to his own testimony, to procure another judge to try the case) he writes another letter to Judge Dickinson, and asks him if he can come and hold a special term on the 4th Tuesday of the coming month. Gives Judge Dickinson no other time to come and hold a term excepting that one day, the fourth Tuesday of the coming month. Does not leave it discretionary with Judge Dickinson to fix some other time, if that time is not convenient. Now, there are two years and a half, and simply the writing of two letters to Judge Dickinson.

Another year passes by, and on Nov. 19, 1877, Judge Page addresses another letter to Judge Dickinson requesting to know whether he can

hold a term of court on the third Tuesday of March,—giving no discretion to Judge Dickinson to fix upon some other time if that was not convenient.

Now, there, Senators, is all the evidence of what Judge Page did in his "faithful" efforts to procure another judge to hold that court to try Mr. Mollison. The question, then, is fairly presented to you, is that reasonable diligence? And those efforts such as ought to have been made? Was not the occasion one that called for more diligence, a greater degree of activity to procure some other judge to come and try the case? Not only the Mollison case was hanging there, but there were numerous other cases in his court. But this is all that he did; it is the whole of his defense. All other matters that have been given in evidence in regard to this charge merely relate to the question of malice. The question for you to determine will be; is the charge an impeachable offense? Four years and a half delay you certainly will concede is an impeachable offense. It is a negligence of an official duty for too long a time to suffer it to pass by unnoticed. If you so hold, then you will come to the other matter—has he shown a sufficient excuse for it—has he "faithfully endeavored to procure another judge to try the case?" You have got before you all that he ever did do after July, 1874, up to the time that these articles of impeachment were exhibited. Three letters he wrote to Judge Dickinson and wrote to nobody else. In two of these letters he prescribes the very day that Judge Dickinson must come or not at all. Makes no allusion to Mr. Mollison or any criminal case as a matter of urgency. Is that a proper performance of the official duties incumbent upon the court? It seems to me that it is not a sufficient justification.

There was a little effort made but it was not in the direction of this particular case, and we do not insist that it must have been in the direction of this case. Judge Dickinson, it appears, did come upon this last request and held a court there. I suppose it was on the third Tuesday in March, according to request. It appears that Judge Dickinson did come, but Mollison's case was not tried. Why not? It was for this reason: In the meantime Judge Page, Mr. Davidson, Mr. Bassford and Gen. Cole had got their heads together with county attorney French, and they had all come to the conclusion that these indictments should be set aside, dismissed without trial. All parties agree that that was the understanding in the Davidson and Bassford cases. These cases were on the calendar at Judge Dickinson's term. They were not brought to trial because that agreement had been entered into between those parties right then and there. Now, why was not Mr. Mollison's case brought to trial? Simply because Mr. Mollison and Mr. Davidson and Mr. French and all the others, supposed that his case was to be dismissed as well as these cases. But Judge Page, finding that he had an opportunity to still more strongly turn the screws upon Mollison, continues to hold him in court and refuses to consent to the county attorney dismissing the Mollison case. Recollect that the Davidson and Bassford cases were not to be dismissed then, but were still to remain upon the calendar as a "blind" until the next term of court, and then they were to be dismissed, after the retraction had been published.

Now, that is the reason that the Mollison case was not brought to trial—because all parties interested understood that he was in the arrangement, and that on the next term of court, his case would be dis-

missed, instead of being brought to trial, under that retraction. That, gentlemen, covers the whole case, so far as the merits are concerned.

And now I desire to call attention to the question of malice, and I have grouped together the evidence which the managers present to the Senate as proof that Judge Page delayed in the procurement of another judge there, for the purpose of oppressing and harassing Mr. Mollison,—that was the ruling motive in his mind. And we start out with the proposition that we have already made, that he had then before him an indictment that he did not dare to bring to trial: that it related to such public matters that every jury would justify Mr. Mollison in writing just such an article under existing circumstances. Hence there was a reason operating upon Judge Page's mind to induce him to so arrange that the trial should never be reached.

It appears, also, that this man Mollison did not belong to the same clique in politics that Judge Page did, although he belonged to the same political party. He did not belong to the "purifiers," against whom he was writing. Now, there was a feeling of ill-will rancoring in Judge Page's breast against Mr. Mollison because he did not belong to his household.

It appears also in evidence that Judge Page was manifestly offended at that article. He goes, after its publication, to Mr. Davidson and insists that there shall be a retraction; that it was a gross, outrageous libel upon him, and Mr. Davidson very innocently did not see where it was: denied that it was a libel, told him that he did not understand that it was a libel,—no reasonable man reading it over carefully, would consider it was a libel,—but Judge Page insists it was a terrible libel upon him, and that there must be a retraction. To mollify his feelings, the newspaper comes out the following week in a mild retraction. That was not strong enough to suit the judge, and then he writes him that letter, sending it by a messenger, threatening him that if there is not a better retraction—that if the retraction which he himself writes is published, it will be satisfactory; if it is not published, to get ready for a law suit. There was unquestionably a feeling then rancoring in Judge Page's bosom.

Now, what is the evidence? In regard to this, Mr. Davidson testifies, May 27th, page 30 of the journal:

"Q. You say prior to this indictment against Mr. Mollison, you had an interview with Judge Page?
A. I did, yes sir.
Q. About how long before the commencement of the term of court which found the indictment, was it?
A. I think about two weeks.
Q. Where was that interview?
A. In my office.
Q. State whether that interview was concerning the letter written by Mr. Mollison which was the foundation of the indictment for libel?
A. It was.
Q. What did he say concerning that letter?
A. He wished to know if we were aware that the portions of the letter—he pointed out portions of the letter, wished to know if we were aware they were libelous. I told him I was not; and he went on to say that we must make a retraction or he would make us suffer."

Now, Judge Page was in a condition to make somebody suffer; and of course his feelings would be materially more excited against the

writer of the communication than against those that innocently let it slip into their paper without sufficient care.

Page 31 of the journal:

"Q. State whether subsequent to that publication and before the indictment was found, you had any communication or other interview with Judge Page?

A. I received a communication from Judge Page.

Q. What was it?

A. It was a day or two after the publication of the explanation in our paper. Mr Meigs, postmaster at Austin, brought us a letter from Page. The contents were substantially these: that the retraction that we had published was not a retraction, and that it was an insult to him, and he proposed that we should publish one which he had sent us, which alone would be satisfactory, and by publishing it at the head of our columns it would be all right; if not, he should prosecute us. And he signed the letter, 'Yours in earnest, Sherman Page."

I say that there is malice plainly exhibited through all this evidence. The matter comes into court. Some of the witnesses deny that Judge Page ever charged the grand jury anything in regard to the libels; others testify pointedly that he did. One of them, Mr. Kimball, who was a grand juror, makes this statement (pages 45 and 46 of the journal of May 28th):

"I cannot remember the words that the judge used at that time; I know, however, he did charge us, *and a great portion of his charge was on the matter of libel I remember that distinctly; it was the first grand jury I had ever been on, and I remember it well.* I remember it, because I heard some talk on the street before this of this matter, that had been published in the Austin Register and written by Mr. Mollison; heard some talk on the street, that *they would probably get into trouble about that, because it was probably a libel on the judge; and I remember the judge charged the jury, at that time particularly on libel cases; I should judge nearly half of his charge was made up of that matter—of that subject of libel.*"

Now, that evidence shows, if true, that the judge had a feeling upon that subject after the expiration of two weeks; and well his feeling might continue, for if there was a reason for his having it when he wrote that letter to Mr. Davidson, there had nothing occurred between that time and the holding of court to modify that feeling.

Now, what is Judge Page's conduct in court? (This is still upon the subject of malice.) When the indictment was being read and Mollison was arraigned, this transaction took place in court. The judge interrupts the proceedings, and asks, "What are you nodding your head for?" That is addressed to Mr. Mollison, the criminal, trembling, perhaps, before him. He stops the reading of the indictment; is not willing to let his feelings subside until that duty is performed, but interrupts the county attorney and demands:

"'What are you nodding your head for?' I thought for a moment, and said I, 'I don't know that your honor has any right to ask such a question.' He asked me then in a still louder voice, 'What are you nodding your head for?' Said I, 'I think my head is my own, your honor, sir, and I have a right to nod it if I please.' He repeated it with still more force. Said he, 'I will put you in the hands of the sheriff, if you don't answer me, sir.' 'Your honor, I am there already.'"

Now, certainly all of the witnesses agree that the most of that part of the transaction did take place there in open court. Judge Page introduced it himself. Whatever improper there was in the questions or answers, it was brought about by Judge Page, for Mr. Mollison did not introduce the conversation at all.

The next question that appears here as showing malice, is the amount

of bail. I presume that all Senators will agree that a very ordinary sum would have been sufficient to secure the attendance of Mr. Mollison from term to term, under that charge—one hundred and fifty or two hundred and fifty, or some other small sum. But Judge Page put him under bonds in the amount of $1,500, for writing just such a letter as that upon matters of public concern.

This is the testimony concerning the transaction, after the arraignment had taken place:

"I asked him if I might speak, and his reply was, most peremptorily, "*Not a word, sir.*" I then sat down in court, and remained there until the court adjourned. I then was put in jail, and kept there until evening."

There has been considerable evidence as to whether Mr. Mollison wanted to make any explanation there. He explains and says that he wanted to insist upon a trial, that he did not want to go to jail, that he desired to have a trial there, and he got up and civilly asked if he might speak. Judge Page and his counsel and some of his witnesses, undertake to magnify that into a desire on Mr. Mollison's part, to make a stump speech there. The very fact that they have that desire to press such a result from such an innocent occurrence as that shows that there is some malice lingering somewhere yet. Nothing can be more natural from a defendant, having been arraigned and plead, and being taken off to jail, than to wish to be heard. And he was told, "*Not a word, sir, sit down!*"

I have already explained the transaction of the dismissal of these cases, and we insist that it is strong evidence of malice that Judge Page continued this Mollison indictment in court. He had received all the satisfaction that he wanted, all that he claimed by the retraction, and we insist that he was not entitled to that; he still holds the Mollison case in his grasp and will not permit the county attorney to enter a dismissal. He held it there from the time Judge Dickinson left until after this impeachment case was exhibited against him, and it is only since then that Mr. Mollison has been tried and acquitted.

Now what was Judge Page's manner before that court, while he was attending to this indictment? Mr. French says:

"I thought that Judge Page was excited; he was decidedly stern.
Q. What did Judge Page say, if anything, when Mr. Mollison desired to speak, asked him the privilege of speaking?
A. He told him, no, sir; to sit down."

This is not all of the evidence produced by the managers in regard to the question of malice on this article. Page after page of it is rolled out in the record of this court, showing in detail, showing these transactions that I have referred to. Is there anything in the record of the evidence, given upon the part of the defense here, that confirms the evidence of the prosecution? There is.

In the record of June 12th, on page 4, E. O. Wheeler, who was, prior to this occurrence, a law partner, I believe, of Judge Page, and then county attorney, testifies on the part of the defense, as follows:

"Judge Page says: 'Mr. Mollison, what are you nodding your head for?' then he asked him if he was intending by that to assent *or re-assert*, so to speak, the truth of the allegations in that indictment."

Now, so much, certainly, their witnesses say took place; but they say also, more than what any of our witnesses have detailed. According to Mr. Wheeler's testimony, Judge Page was trying to pick another quarrel with Mr. Mollison;—wanted to know, if, by nodding his head, he was intending to re-assert the libel. He wanted to get a chance to commit him for contempt. He was looking ahead there for a greater degree of spite, for no other purpose could such a question have been asked. Stops to pick a quarrel with this man, so that in case it was effected he might turn him right into jail then—not for libel but for contempt of court. There is malice, gentlemen, manifestly, in that testimony of Mr. Wheeler, their own witness.

On June 12th, the same witness (on page 6) gives this testimony:

"Q. Didn't he say to the court, 'may I be permitted to speak a word,' or something to that effect?
A. My impression is that there was something of that sort; the idea that he conveyed to my mind is that he wanted to make a speech there.
Q. Do you remember of his saying anything except this, addressing the court: 'May I have permission to speak,' or 'may I be permitted to say a word,' or something to that effect; did he go beyond that point?
A. I don't know whether he got beyond that point or not; I don't think he made any particular speech before the judge told him to stop; that it was not a proper time for him to make any—"

It does show that Mr. Mollison was interrupted there, at all events, and commanded to silence. No opportunity to insist upon a speedy trial, without going to jail.

"Q. Since you have been county attorney, have you heard Mr. Mollison ask for a continuance?
A. No, sir; I don't think I have."

Page 22:

"Q. Now, after the July term, did you hear Judge Page say anything again, about obtaining a judge to try the Mollison case?
A. It was his *usual practice* on the call of these cases, to say that he was endeavoring to obtain a judge, yes sir."

His usual practice then, was; when these cases were reached upon the calendar, to deceive Mr. Mollison right there to his face. "*His usual practice*" was to say "that he was endeavoring to get another judge."—When whole years passed by without a solitary effort. Putting Mr. Mollison off his guard, keeping him hanging in court there, and deceiving him under the supposition that certainly at the *next* term he will have an opportunity to be tried. Isn't there malice in that "usual practice" to state there in court, when Mr. Mollison was waiting for his trial, that he was making an effort to have another judge? The record before you here, Senators, shows what sort of an effort had been made.

Page 23:

"Q. You state that Judge Dickinson was there to hold a term of court?
A. Yes sir.
Q. Was any jury present at that term of court?
A. I don't think there was any jury at that time."

This is their evidence. Of course there could be no opportunity for trial; and he was still hung in court there and not dismissed. There was no jury called, because, undoubtedly, all parties supposed that the case was to be dismissed. Davidson's was to be dismissed, (that had been

agreed upon before, or during that term), but Mollison's was not, and there was no jury to try it.

On June 11th, page 94, Sterling Chandler, another witness on the part of the defense, gives us this testimony upon the question of malice:

"Q. State whether or not Mr. Mollison was prevented from making an explanation?
A. When?
Q. At the time he was arraigned.
A. He was prevented when the indictment was read.
Q. You may state what further occurred?
A. He plead not guilty.
Q. Well, what further occurred?
A. He then took his seat in the audience, back from the bar a few seats, and sat down; and got up and wanted to make an explanation, and the judge would not allow it."

That is *their* testimony, confirmatory of the malice that we charge against him. Now, I say, Senators, that every one of the facts that we have adduced here on the part of the prosecution, to show that this delay in the court from term to term, for the purpose of proving malice, is admitted by either one or more of the witnesses on the part of the defense. They confirm all of the charges of malice that we insist upon. Their own witnesses detail it and you have it before you; and I submit then this question, this article of impeachment to your consideration. without any further observation on my part.

ARTICLE II.

The second article is what is known as the Riley article. The first question is, what is the impeachable act charged in this article? It is this: That Riley claimed to be entitled to $43.10 as fees earned as deputy sheriff in serving certain subpœnas for defendants in criminal cases. and that Judge Page, in his judicial office, prejudged his right to receive pay from the county for such services.

Now, what is the defense upon this? As I understand it there is really no defense whatever; they admit the fact, but justify it.

The PRESIDENT. If there is no objection, the Senate will take a recess for five minutes.

AFTER RECESS.

The point in article two, upon which the impeachment is founded, is simply that Judge Page, in the case of Mr. Riley, prejudged his case, without and before a trial. His other acts in connection with that matter are simply used for the purpose of showing that he prejudged it out of ill-will towards Riley or towards sheriff Hall.

Before I proceed to the evidence upon that point, there are certain statements made by the respondent's counsel, to which I wish to give a brief answer. It will be noticed that these fees were claimed for having served certain subpœnas issued on the behalf of certain defendants in criminal cases by the clerk of the court. The counsel says that the issuance of these subpœnas was illegal, and he cites us to section 11. page 596 of the statutes, in proof of that position. That section reads: "that the clerk of the court at which any indictment is to be tried." Now he says that "at which any indictment is to be tried," determines the time when the clerk shall issue the subpœnas. That he can issue

them only at a term of court at which the indictment is to be tried; that he cannot issue them at any other time. Now such is not the reading of the statute at all. "The clerk of the court at which"—*at which* determines what clerk is to issue the subpœnas, not the time of issuing them at all. The clerk of that court, and no clerk of any other court except that clerk at which the indictments are to be tried can issue the subpœnas. For instance, if an indictment is to be tried in the district court of Mower county, the clerk of the district court of Fillmore county cannot issue a subpœna; it must be issued by the clerk of the court at which the indictment is to be tried; but when can he issue them? Why this same section says: "the clerk of the court at which any indictment is to be tried shall *at all times*, upon the application of the defendant, issue the subpœnas. "At all times" determines when the clerk is authorized to issue subpœnas. At the term of court at which the indictment is to be tried determines only what clerk is to perform that duty. But the clerk who may perform that duty is not only authorized, but by the very terms of the statute is required "that he *shall* at all times," upon demand, issue the subpœnas.

The counsel also asserted that the Riley bill was not before the board at the January session, 1875. In that, undoubtedly, he is mistaken, because the very bill itself bears date on January 6th, and was sworn to on that day. So that at all events, the bill was made and verified for the purpose of being presented. And there are plenty of witnesses that show that it was.

It is also asserted that county attorney French (and this assertion is made as a reflection upon the county attorney because he was our witness,) advised the board of county commissioners to pay the bill. He advised both ways. At first the trial of the indictments had not taken place, and while the case was pending he advises the board that under these circumstances, they were not obliged to pay the bill; because the statutes so provide. The county could be called upon to pay such bills only after the trial had taken place, not during its pendency. So that, while the trial was pending he advised them not to pay the bill. But, after the trial had taken place, and there had been an order made, prohibiting the payment by the county, then he advises them in the absence of such an order, that there was no alternative excepting for the county to pay the bill.

It is also asserted that the county attorney French stipulated away the rights of the county. Now, it is in testimony here by numerous witnesses, that county attorney French and the board of county commissioners all were instructed by Judge Page upon what ground he opposed the payment of the bill. And that was, because the subpœnas were issued before the demurrers to the indictment had been heard, and that at the time they were issued there was no issue of fact requiring the attendance of witnesses. Upon that theory county attorney French stipulated the facts, supposing that this statement of the judge was in accordance with his own understanding.

It has also been asserted that sheriff Hall probably served subpœnas for the prosecution in those cases, on a hundred or more witnesses.—Now, the fact is, that sheriff Hall never served a subpœna upon a solitary witness, and there is no evidence that he did do so. The clerk had merely issued the subpœnas for the state, but they never were served,

and of course there was no service paid for or claimed. It is not true, either, that the defendants subpœnaed ninety witnesses, as has been asserted so often. It would only be thirty in a case, in any event, for there were three cases. But the bill of Mr. Riley shows upon its face that he had served only fifty-four subpœnas for all these cases.

It has been asserted that deputy sheriff Thomas Riley served a subpœna upon himself and charged for serving it Now, that remark is made out of the fact that in the bill presented, there was a charge for serving a subpœna on F. Riley, not upon Thomas Riley, the deputy, at all. I need not have delayed the Senate to have called their attention to these outside matters, which in themselves are really so trivial They have been advocated and refuted by counsel on both sides; and whenever I do delay the Senate to touch upon such collateral matters, it will only be very briefly done.

Now, to the merits of this charge. The substance of it is that Judge Page prejudged this Riley claim. Has a judicial officer a right to do that? That is the question that is raised here. We don't care whether Riley was entitled to pay or not; we don't care whether the clerk of the district court performed his duty in issuing those subpœnas or not. It does not matter one iota whether Riley was entitled to receive pay from the county or whether he was not, for that is not the charge in this article at all; that is merely collateral, a circumstance that attends the judicial mal-performance of duty. The official misconduct that is here charged is simply that Judge Page prejudged Riley's right to have pay, not that he judged it wrongfully. That he gave his judgment upon it, ascertained for himself the facts before he was ever called upon to act in his judicial capacity at all.

I referred to you this morning a case where a judge was impeached for giving an opinion before the trial of a case. Here we have a charge against a judge for not only giving an opinion, but in fact of prejudging the rights of a party before he was ever called upon by litigation in any shape whatever, to determine the rights of the parties that were claiming this $43.10. Upon the one side, of course, the county of Mower claimed adversely to Riley; Riley claiming that he was entitled to those fees from the county, and the county claiming that he was not entitled to them from it. In that condition, with that feature of the case presented to Judge Page, he then assumes the right there, without being called upon by the county, without being requested by Riley, upon his own voluntary act, he prejudges and determines that Riley shall not receive pay from the county of Mower.

Now, if a judge can be impeached for merely giving an opinion before he tries a case, how much stronger is the necessity for administering this right of the people, impeachment, on a judge who will prejudge the rights of the citizen before there is any case before him at all. Is there any evidence to support this charge? We think there is abundance of evidence.

Before proceeding to the evidence, I will answer a portion of the argument made by Mr. Losey upon this point. Mr. Losey, in his opening argument, on page 37 of the journal of June 5th, on the law relating to this article, says:

"What bodes it, whether the respondent loves or hates Riley, I would like to know? What difference does it make as to the guilt or innocence of this respondent under this charge in this specification? Who cares whether he hated Riley or not. I don't nor you don't. His decision was a correct decision under the laws of the State. It affords sufficient protection to defendants, and, gentlemen, what is much more important, it affords protection to the treasuries of the counties of the State. *His decision was a correct decision under the laws of the State.*"

What matters it, I ask you, Senators, whether it was correct or incorrect? He wished to know "what bodes it whether Judge Page hated Riley or loved him." I say it matters not, only as a question of malice. But now I fling the words back, what bodes it whether Judge Page's decision was right or wrong? That is not the question, that is not the ground of impeachment; we don't charge as the impeachable act that he made a wrong decision. But we charge as the impeachable act that he made a decision which prejudged the case, that he made a decision under circumstances and at times voluntarily, without being called upon by the county of Mower, and without being called upon by Riley to meddle with it at all. "What matters it," whether his decision under such circumstances was right or wrong? If it was wrong, it might be reversed upon appeal. If it was right, there would be no ground for appeal. We don't charge that it was wrong, only as an incident that attended the transaction. We know it was as a matter of law wrong, but that is not the gist of the accusation here. The point is, and I repeat it, because I desire that the Senate should understand my position upon each one of these articles, as to what you are sitting here for, what points you are to try as the impeachable offense that is charged. The point is that he judged the rights before there was any case before him for his judgment. It is under this article that Judge Page prejudged Riley's claim against the county. Not that he made a wrong decision when he afterwards took it up. Now what is the proof to this charge? Perhaps I can detail this charge quicker by stating the evidence that proves the charge than in reading it, and I believe there is very little dispute about it. It appears that these subpœnas were issued by the clerk of the court at a time when a demurrer to an indictment was pending, upon the request of the defendant's counsel for the defendant's witnesses. It also appears that these subpœnas for the defendant were not issued until after the county had issued subpœnas for the witnesses on the part of the State. When the defendant's counsel saw that the State was getting ready for a trial by issuing subpœnas to bringing in witnesses, then he had subpœnas issued for their witnesses. It is very true that the demurrer to the indictment was pending, but it is also true that after that decision had been made, if the indictment had been upheld, these parties would have been required to have plead forthwith. After a demurrer is overruled, the defendant under the statute may be required by the court to put in his plea instanter, and if the parties wanted a trial, most certainly they would do so immediately.

The clerk, at all events, issues the subpœnas, and we are not to try the questions whether he did so rightfully or wrongfully, because that is a mere incident. Deputy Sheriff Riley served the subpœnas. We are not to try the question whether, he did that rightfully or wrongfully; that is but a mere incident. But let me say to you, Senators, that if Riley had neglected to serve these subpœnas, and the witnesses had been called for in court by the demurrer being overruled, and the parties put to their trial, Judge Page is the very man that would have commit-

ted Riley for contempt of court in not executing the subpœnas that was placed in his hands, The officer don't go to the clerk to see whether he had a right to issue the process or not; he looks upon his subpœna, sees what it tells him to do, and he obeys it,—as every honest officer will, without an *if* or an *and* from anybody.

He don't take his directions outside of the process that he has. The process commands the sheriff to serve those subpœnas and to have the witnesses returned at a certain time. He goes about his business and performs it.

Now if these defendants had called for subpœnas when it was necessary, then, perhaps, it might have been the duty of the court, at the proper time to have made a proper order, that they should pay the sheriff instead of the county. But Riley certainly was entitled to pay either from the defendants themselves, or from the county. It made no difference to him; he had performed the services, and he was entitled to his compensation. That is not the matter we are to try, it is simply a collateral incident that falls into the case. The real point is that at this stage of the proceedings, Judge Page seeing that these subpœnas had been issued, anticipating that Riley would make a claim upon the county for pay for that service, "like the toad at the ear of Eve" whispered it to the clerk and told him that the county should not pay for that service. All parties, *pro* and *con*, agree that that conversation between the judge and the clerk, was so private that nobody else heard it. It was in a low tone of voice, but they all agree that it was while court was in session. It was a mere conversation. But let us take it just as Judge Page puts it, that he did then and there make an order. If he had made the order under proper circumstances it certainly was binding upon all parties claimants, but that is begging the question. Did he make the order at a time when he had the judicial right to meddle with it at all? We say, No. Was he asked by the county attorney to do it? Certainly not. Had anybody brought a suit in his court for him to try? for there is a matter that is going to effect the legal rights if the order was binding. Nobody had set the court in motion. There was no suit pending; there had been no claim introduced by Riley whatever; there had been no resistance on the part of the board of county commissioners, or on the part of the county attorney against the charge, but Judge Page, without being requested by any body, volunteers into that matter, prejudges, makes an order, by whispering to the clerk, that effectually, if valid, bars Riley from ever receiving pay from the county.

Now, it may be that decision was right if it had been made at a time when the court had any right to meddle with it. I am not going to argue the question whether Riley was or was not entitled to recover pay from the county. He was entitled to receive it from the county or the defendants, and it was the duty of that court, at a proper time, and the question being raised in a proper manner, to determine whether the defendants themselves should pay Riley for that service, or whether it should be paid out of the public treasury. He did not do it, however, under circumstances in which he had a right to act at all.

Now, when a judge will volunteer to place himself in between the rights of parties, he has performed an arbitrary act. It is misconduct in office. A judge that is to decide upon the rights of parties, should

keep himself aloof from meddling with their affairs. He should under no circumstances make a judgment that cuts off the rights of private parties without a hearing. He should not do it upon a hearing at all unless it is a hearing brought before him upon proper showing by the different parties in interest. He had no more right to cut off Riley there without a hearing than he had to have said that those defendants themselves should pay, or that the county should pay those fees. He saw in advance that Riley would claim those fees from the county, and in order to cut Riley's claim off, he then and there makes an order voluntarily, without notice to either party that prejudged his rights. That is the impeachable act that is charged in this article of impeachment, and there you have the evidence that applies to that act without any dispute, because I surrender it to your hands in precisely the shape that the evidence on the part of the respondent places it. Supposing, as I do, that Judge Page did make an order (which he did not), he merely intermeddled with it; verbally stated that the county should not pay it; simply prejudged it without entering a judgment in fact. But he says that he not only prejudged it, but that he also entered it of record, for he insists that everything he said and did in the court there, was a matter of record, even though the court did not write it down. And it is upon that theory, when he had the trial of the case brought before him upon appeal from a justice of the peace, that he insisted that the verbal statement made in court to the clerk was a binding order of the court, and he so held. So that the conclusion of this article is that he not only prejudged the case, but that he also entered up a binding judgment against the rights of the parties without ever having any claim made to him by anybody for any such decision. That is the substance of it. It is all of this article so far as the merits apply, and there is no defense to it whatever.

The only question upon the merits is, is it sufficient to warrant an impeachment? Perhaps you might say that it would not be if it was unaccompanied with malice. I think that judges should keep themselves aloof from the quarrel of individuals: to be ready at all times and under all circumstances to make a fair and honest decision of the rights of parties after they are properly brought before the court for that purpose, and not to prejudge. A single act of that kind does not commit any great wrong either public or private, but it is a principle that cannot and must not be sactioned. This prejudging the rights of parties is a public wrong as well as a private injury. Though a small matter, yet as Judge Page sets up as his defense that he had a right to act as he did, it thus becomes an important principle.

Now the question remains in this article "what were the motives of Judge Page in prejudging this case?" It being an illegal act, official misconduct on the part of the court, that part is disposed of. And it certainly is impeachable, justly so, if this was done, not accidentally, casually, thoughtlessly, but through premeditated design, and of malice. We insist that it was, and here we base the proof.

Setting out with the proposition that the act was wrongful, which cannot and will not be denied seriously, we have the fact that sheriff Hall had been accused of making a corrupt bargain with certain parties to secure their support for his election as sheriff. The corrupt bargain appears to have been, as charged by Judge Page (I am not asserting it

as corrupt, because I do not so consider it) that sheriff Hall was elected by a corrupt bargain by which he secured certain temperance votes or whisky votes, or democratic votes, (I don't know which, and perhaps there 'ain't much difference) [Laughter] by promising to appoint Riley and others as his deputies if they would advocate his election. Now that is the corrupt bargain that is alleged. It is that which picked the quarrel between Judge Page and Sheriff Hall. This is Judge Page's own evidence upon that point, that after he had voted, and voted for Hall, in returning from the polls he heard of this corrupt bargain, and he could not endure the thought of it, and he talked about it in the streets and in the stores, talked of it to Mr. Hall, talked of it to his neighbors, gabbed it all around, was worried immensely from the fact that Sheriff Hall had secured electionering help or votes from somebody by promising them an appointment. It turns out afterwards that this Riley and this Mandeville and some other parties were the persons that were alluded to as participants in this corrupt bargain. Now, we have there, a feeling on the part of Judge Page engendered by his own ill-will against everybody, and this time pointing particularly against Sheriff Hall, and whoever his appointees might be. There is a point which shows the reason why Judge Page desired to cut Riley off from that compensation.

It also appears that Judge Page had had a quarrel with Riley at the time they had that disturbance in Austin one evening, which they call the whisky riot. It does not appear what it was, but that there was a little spat of words between the Judge and Riley on that occasion, which would seem to have very much offended Judge Page.

Now what is the evidence of the witnesses in regard to this question of malice? Sheriff Hall testifies May 29th, on page 38 of the journal.

"I met him one day, this was before I had taken the oath of office, and he says to me, "I understand that you propose to appoint Tom Riley deputy," and he went on to state there was great objections to his being appointed, and wanted to know if I dared to do such a thing in the face and eyes of all this opposition.

Now, there was a feeling against Riley as well as against Mr. Hall. We cannot explain it in any other manner than by this talk between Judge Page and Riley at the time of that disturbance, and from the further fact that Judge Page considered it a corrupt bargain.

"Q. Give his language?
A. Well, he says, after telling me that there was a tremendous opposition to his being appointed, and we had a considerable conversation about it, he says, 'Do you dare to do such a thing in the face and eyes of such an opposition?' Shall I give my answer?
Q. Yes sir.
A. My answer to him was, I dared do it and would do it if I lived until the time came."

There was an issue between Judge Page and the sheriff. It seems to be the first and only one, excepting the point at the whiskey riots when the sheriff refused to obey his orders—and that I believe was another sheriff.

On page 38 the examination proceeds:

"Q. State whether or not at any time Judge Page refused to allow Thomas Riley, deputy, to be in court?

A. He did so refuse.
Q. State what he said in relation to the matter.
A. He wouldn't have him in his court room.
Q. State whether that was before or after the bill came up.
A. Before.
Q. State to the court what reason he gave, if any, for the reason that he would not have him in court.
A. Well, he had spoken to me upon that subject more than once, and I can't give all the reasons; he did not consider him fit, a fit man; he would not have him in his court room."

**Now, we allege against Judge Page, as proof of malice on his part, the fact that he appeared before the board of county commissioners, and there, through the power and influence of his judicial office, although he disclaimed of wishing to assert it, prevented the county commissioners from paying that bill of Riley's.**

**This is upon the question of malice, Thomas Riley's testimony, May 28th, page 49. This was the first time that the bill was before the board.**

"The reason that he assigned at that time that I remember, was that there was no issue of fact joined at that term of court; that a demurrer had been interposed to the indictments, and hence that there was no need of any witnesses being subpœnaed; he then made some allusion as to this officer being appointed under a corrupt agreement between the sheriff in which he connected himself, that is, stated that I was knowing of it. I stated to Judge Page that it was false; and he stated that it was true; and that I was a party to that agreement, that is that this officer was a democrat, and in consideration of supporting the sheriff who was a republican and working for his nomination, etc., that he was to receive the appointment of deputy sheriff, that was the agreement, and there was a good deal loud talk between Judge Page and myself; a good deal of anger manifested both on my part and on the part of Judge Page."

**That was the first appearance of this bill before the board of county commissioners; the second time, Judge Page says:**

"I understand that this bill of Thomas Riley's is before the board again;" and some one told him that it was. 'Well,' he says, 'I supposed that matter had been disposed of a long time ago;' and he went on to state that the charge was illegal, that he had had a similar case over in Houston county, or Fillmore county that had come before him, and that he had examined the law very carefully with reference to that matter: and that the bill ought not to be allowed."

"Some of the commissioners then stated to Judge Page that they wanted to do what was right in the matter; they did not intend to allow any bill but what was just and proper, but they had got my opinion that I thought it was correct, and that I had also got the opinion of the attorney general with reference to the matter Judge Page said "that he did not care for the opinion of a little man with no brains, or a big man with small brains." Mr. Kimball, one of the commissioners, asked him the grounds for disallowing the bill, and he replied the same as he did before. He said that there was no issue of fact joined; that there was no need of any witnesses being subpœnaed; that a demurrer had been interposed and there was no need of any witnesses. And he stated that he understood that these subpœnas were issued to make services for a deputy "that he would not have in his court room."

**It all points to a feeling that had been engendered in some manner against Riley.**

"After Judge Page had said what he did to the commissioners I did not propose to engage in any discussion in regard to the matter myself, and I told them, "You can disallow the bill if you see fit, but Mr. Kinsman informs me that he proposes to sue the county." I think Mr. Kinsman so stated that he proposed to sue the county in case the bill was disallowed. Jndge Page says, "Let him sue the county if he wants to—let him sue."

Of course alluding to the fact that when sued, the case would come before him in some shape, and he could manage it then.

"Mr. Kimball asked Judge Page if an order had been made, and if he had made an order.
Q. What kind of an order?
A. For the payment of the costs; that is, if he had made an order directing that the costs should not be paid by the county. Some talking about an order, and Judge Page said that he had not made any order yet, but that he might do so.
Q. Any conversation had at that time, if so, state what it was, between Mr. Hall and Judge Page?
A. Yes; he then branched off into "corrupt agreement" between the sheriff and his deputy, Thos Riley, and Mr. Hall remarked to the judge that he wanted to make some explanation or something to him, or wanted to know if he alluded to him, [the sheriff,] and the judge told him "if the coat fitted to put it on."

Now the question of malice is further elucidated by the testimony of other witnesses concerning the transaction. On page 5, of the journal of May 29th, the county attorney again has his attention called to this matter:

"I had advised them that the bill was a legal charge, at that time. Before that I advised them that it was not; before Judge Page filed his order sustaining the demurrer, before the prosecution failed. I advised them at that time, that the bill was an illegal charge—that was in June, 1875.
Q. But afterwards you advised them it was.
A. Yes, afterwards I so advised them—after the prosecution failed. I told the board that the statute provided for the payment of costs unless otherwise ordered by the court, when the prosecution failed; that the prosecution had not failed; that Judge Page had not made an order and that they could not allow the bill, until we found out the disposition of the case."

Mr. Kinsman also confirms this same proceeding of Judge Page; (and I only still press this matter before the court because there is no dispute about the act itself at all.) The only question is whether it was done through justifiable motives; that is, whether it was a mistake, an oversight on the part of Judge Page in prejudging the case, and I will therefore read you the evidence of the witnesses in regard to malice more largely than I otherwise would.

On May 29th, (page 22 of the journal) Mr. Kinsman testified:

"County commissioner Kimball asked Mr. Page if they were not obliged to allow the bill, there not having been an order made, otherwise by the court; and asked him if he had made an order He said he had not, but he didn't know but he might. The commissioners stated to respondent, after he came in, that Riley would sue the county unless the bill was allowed. He remarked: "Let him sue." He said that there was no necessity of the witnesses; and he said something about the subpœnas having been issued, and the witnesses subpœnaed to make work for a deputy sheriff, that he would not have in his court or around his court; I think that was the substance of the language used."

William Richards on May 29th (page 31) says:

"The judge accused Lafayette of "selling out the party," or something, "with a promise of appointment for that contemptible Irishman, the deputy sheriff, providing he done so and so to help elect certain parties," and called Mr. French corrupt; and I think Mr. French called it back to him, and conversation went on so loud that I called the attention of the chairman of the board two or three times to call order, and finally he called order."

Now you may ask the question "still, notwithstanding all this exhibition of malice on the part of Jude Page, did it have any influence upon the county board?" We have testimony in support of that by county commissioner Richards himself. He says:

"Q. State what the reason of rejecting the bill was; state why it was that the county commissioners rejected that bill?
A. It was: we thought Judge Page was the best judge.

It appears that after this Riley did sue the county, that he obtained judgment in the justice court, and the county appealed. County attorney French appealed for the purpose of having it judicially determined, not whether the judge had made an order, but whether, as a matter of law, the county was obliged to pay those fees incurred while the demurrer to the indictment was pending. No other question did the county attorney have in view but the determination of that. That was the only position that Judge Page had placed his opposition to the bill upon. That it was illegal, not that he had made an order, that it was a judgment which forever barred any recovery, but that no recovery ought to have been had under those circumstances.

It appears that when the case came into the district court, it came there by the stipulation of the respective attorneys setting forth the facts as they understood them, and as Judge Page had advocated them. But during the meantime, Judge Page had upon reflection thought that he could effectually cut Riley off by insisting that an order had been made. And this appears to be the first time that Judge Page had ever insisted that he had made an order, when the case came into his court upon appeal for trial. He then began to reflect that perhaps the position he had assumed before the county board was not good law. That it was the privilege of defendants to have their witnesses subpœnaed at any time, in any stage of the proceedings, in order to be sure of having their attendance; and in order to defeat that probable result as a matter of law, he then for the first time, to the surprise of Kinsman, and to the surprise of the county attorney, says: "Why, I did make an order that the county should not pay." You understand what that was. This is the evidence upon that point in court,

Thomas Riley says:

"Judge Page stated there was an order made, and my attorney asked the permission to subpœna the county commissioners to prove that he stated before the county commissioners that he had made no order, but might make one, and he said you can't do it; you can subpœna the clerk of the court if you want to.
Q. State what the judge did in relation to the matter.
A. He asked my attorney to strike out the stipulation, and my attorney didn't say much. I think he said that he would not, and the judge takes his pen and took the stipulation and scratched it out."

I believe there is no other witness that has testified to this circumstance any different from this excepting Judge Page himself.

May 29th, page 20, on the cross-examination:

"Q. Didn't he consent to this being stricken out before it was stricken out by the judge at all?
A. He did not.
Q. Did the district attorney demand that it be stricken out?
A. He did not in my hearing.

Mr. Cameron says:

"Judge Page said he made an order in open court, directing that these costs should not be paid by the county. I was a little surprised at the way the thing came up and I didn't know how to proceed for a moment, but I finally contended that this was the stipulation of facts that was made by the attorneys for the parties and that the court must receive it for what it was worth.

"He stated he could not do it. He knew it was not a fact himself and he should not receive it at all, and he requested me to strike it out. I told him I didn't care to strike it out, or I would not—I don't recollect exactly what I stated, but he struck it out himself; he stated I could subpœna Mr. Elder to prove whether he made an order or not. I told him I didn't care as the case stood, to prove whether he had made an order. I asked to subpœna the commissioners and the persons who were present, or call them before him to settle that question, that it was a misunderstanding between us, not claiming that it was a material issue in the case. He said he could not allow it, or would not."

Mr. Kinsman says:

"Q. Do I understand you to state that the judge sent for Mr. Elder?
A. Yes sir.
Q. Who examined Mr. Elder when he was sworn in as a witness?
A. The judge asked him some questions.
Q. Did you go on then and introduce proof as to what the fact was in relation to that point—that order?
A. Judge Page called Mr. Elder and had him sworn on that."

So you see from this testimony that Judge Page, having previously prejudged the matter, then undertakes to defend his prejudgment himself, calling the witnesses and asking them questions. These parties became offended at the course the proceedings had taken and refused to call witnesses either for or against the proposition. Judge Page sends for the clerk, calls him before him, examines him himself as a witness in the case, acting the partisan to establish his theory as to the evidence.

Now, the question remains, is this matter of malice as detailed by our witnesses confirmed by the witnesses on the part of the respondent? We say that it is confirmed. Every one of the charges that we here set up as proof of malice is fully and amply confirmed by the testimony of the respondent's own witnesses.

On June 12 (page 27), J. P. Williams testified thus:

"The county attorney soon after came in, took part in the conversation, and the thing was carried along, and some words were said in regard to the county officers being corrupt. I don't know now, I can't say just what those words were. Mr. French accused or charged Judge Page of being corrupt in conduct, or something of that kind.

Q. Wasn't what Mr. Lafayette French said about corruption, in reply to what Judge Page said about corrupt officers?
A. I rather think Mr. French took it upon himself, rather shouldered it.
Q. Didn't it come in in response to what Judge Page said?
A. Yes sir, I rather think it did."

Recollect that they charge Mr. French insulted Judge Page there by saying that Judge Page was corrupt. Their witnesses say that Judge Page first insulted county attorney French by calling *him* corrupt. *Our* witnesses show it fully; their witnesses confirm it by their own testimony. So it reverses that charge of corruption entirely.

A. G. Tanner (page 38), says:

"Q. And Judge Page apologized for what he had said?
A. Yes sir.

Q. So there was something that Judge Page said there, that he thought he should apologize for?
A. Well he apologized to the board.
Q. Mr French did not say anything, did he?
A. No sir, not to my recollection, he did not.
Q Mr. French did not make any apology at all?
A. I don't think he did."

It is shown, then, by the testimony of their own witnesses, that Judge Page had insulted, in the presence of the board, one of the subordinate officers of the county, and that he deemed the language that he had used that he ought to apologize to the board as an offense to them, and did so.

A. J. French, another of the respondent's witnesses, testifies:

"Q. Now, as he read along, would Judge Page object to any items?
A. He would state that he thought such an item was illegal; he would probably state his reason on some of them. I think Mr. Williams checked them off."

This was before the board of county commissioners; not only objecting to the bill in whole, but objecting to it in detail, item by item.

F. A. Elder (on page 62) testifies:

"Q. State what that direction was.
A. Judge Page asked me if I had issued any subpœnas in the riot cases: referring to those three cases, I told him that I had; he said, 'you have done wrong, you should not have issued any subpœnas in those cases, neither you nor the officer serving them will receive any pay from the county for what you have done'
Q. Was that conversation which was commenced by Judge Page, or had between you and Judge Page, in a loud tone of voice, so that all the bystanders could hear?
A. I don't think it was."

On June 12th (page 59) Mr. Elder also testifies:

"I have not received any pay for issuing subpœnas for the defendants in those cases.
Mr. CLOUGH. But have for those you issued for the State?
A For the State, I presume I have."

Now, while Judge Page has a malice against Riley to interfere to prevent Riley from getting pay, he suffers the clerk of the court who issued the subpœnas for the State, under precisely the same circumstances, to go and draw his pay, because it don't appear that he has malice there.

Mr. Engle (page 69) testifies:

"Q. What was Judge Page's manner towards Mr. Hall?
A. Well, his manner towards him was as it had been towards me, in the conversation; the conversation was pleasant and agreeable, with the exception, at the close of the conversation Mr. Hall remarked to Judge Page, that he was very sorry that anything should come up between them: as he had hoped there should be nothing unpleasant between himself and the court."

It appears, then, that their own witnesses understood that there had something unpleasant been done by Judge Page that had justly caused a feeling on the part of sheriff Hall.

This witness further says (page 70), in answer to another question:

"Employing parties to help vote for a man was what we considered improper conduct, that was opposed to the man that was running as a candidate as pertaining to temperance matters; that was really the subject of consideration; it was employing persons that we considered not temperance people to assist in the election."

That was the animus, more than simply politics that he had against Riley.

A. J. French, another of his witnesses, says:

"Judge Page came in, and said that the bill was illegal, and read the law to us stating how much of the bill should be paid.

On June 8th, (page 2d) we have this testimony. This is Judge Page's own testimony; we quote himself as proof of his own malice:

"On my way from the polls, I was informed that Mr. Hall, then a candidate for sheriff, had secured votes for his election by promises of appointments to office; on my way from the polls, I met Mr. Hall, and I asked the question, I think, if that was so; he made no reply of a definite character; admitting really, as I understood it, that it was the fact, I was sorry that I had voted for him, for I considered such matters as illegal."

I have now, Senators, covered all the points of malice that are alleged as proofs of ill-will and the malicious purposes that Judge Page had in view by prejudging this case. I have not pretended to group together all the evidence relating to these items, but merely gathered from the different witnesses so much of the evidence as to place upon the record, proof that malice existed, and then have taken from the evidence of the respondent, such portions as confirm the evidence upon those points as given by our own witnesses. I think that the proof of malice has been full; that there was an ill-will on the part of Judge Page towards Riley, and that he took this course through a malicious feeling, to prevent Riley from receiving that little compensation for the service of those subpœnas. We raise no question as to Riley's right, upon a fair trial, to have had his pay; we leave that wholly for the authorities to settle themselves. It should not weigh at all in the consideration of the Senate. Right or wrong, it was wrong in Judge Page in adopting, *judicially*, such a course of action as to prevent these parties from having an honest trial and settlement of that claim of Riley's.

Senator NELSON. Mr. President, I move the Senate adjourn until nine o'clock to-morrow morning.

Which motion prevailed.

Attest:

CHAS. W. JOHNSON,
Clerk of the Court of Impeachment.

## THIRTY-SIXTH DAY.

ST. PAUL, FRIDAY, JUNE 28th, 1878.

The Senate was called to order by the President.

The roll being called, the following Senators answered to their names:

Messrs. Ahrens, Armstrong, Bailey, Bonniwell, Clement, Clough, Deuel, Doran, Drew, Edgerton, Finseth, Gilfillan C. D., Goodrich, Hersey, Lienau, McDonald, McClure, McHench, Mealey, Morehouse, Morrison, Nelson, Page, Remore, Rice, Shaleen, Smith, Swanstrom, Waite, Waldron and Wheat.

The Senate sitting for the trial of Sherman Page, Judge of the District Court for the Tenth Judicial District, upon articles of Impeachment, exhibited against him by the House of Representatives.

The Sergeant-at-arms having made proclamation,

The managers appointed by the House of Representatives to conduct the trial, to wit: Hon. S. L. Campbell, Hon. C. A. Gilman, Hon. W. H. Mead, Hon. J. P. West, Hon. Henry Hinds and Hon. W. H. Feller, entered the Senate Chamber and took the seats assigned them.

Sherman Page, accompanied by his counsel, appeared at the bar of the Senate, and they took the seats assigned them.

### ARTICLE III.

Mr. Manager HINDS. (Resuming the argument.)

Article third of the impeachment will now be considered.

This article as corrupt conduct on the part of the respondent, charges him with prejudging the right of one Mandeville, to compensation for services claimed by him as a court deputy during a term of court, without any one calling upon him to decide the questions as to his right to compensation at all. This is in substance the charge which the House of Representatives made against Judge Page in this article. And strange as it appears, considering the volume of evidence that has been adduced concerning this charge, the answer does not take issue upon a single charge made in this article, a single material charge. It is true that the answer does not state, or rather denies that Mandeville had performed any services which entitled him to fees, but we claim that whether he did perform services which in law entitled him to fees or not, it is sufficient that he had performed certain services upon which he claimed compensation. And whether he had the legal right or not, it was misconduct on the part of Judge Page to prejudge his claim, his right to compensation, without its ever having been submitted to him for decision. There being no conflict of evidence whatever in regard to the leading features of this charge, it will not be necessary for me to detain

the Senate upon that branch of this article. We claim that whether Mandeville was entitled to pay or not matters very little. That he claimed pay for his services is sufficient; and that the court is performing an illegal act when it volunteers to decide the claim made by a party, or intended to be made by a party, for compensation; without the matter being before him for his decision. We insist that it is sufficient upon our part if we show this court that there was a reasonable foundation for Mandeville to base a claim upon.

The evidence upon this is found in Senate Journal of May 29th, on pages 55, 56 and 57, in the testimony of Sheriff Hall. He gives this testimony in regard to Mandeville's claim, and out of which it grew.

"Q. What time did you engage Mr. Mandeville as your court deputy?

A. Well, previous to the sitting of the court he spoke to me, and wanted to know if I wanted any one to help me; and he said he would like to help me. I told him to be there on the morning of the first day of court. He was there. That is all the engagement there was.

Q. On or about the commencement of said term did Judge Page notify you in any manner as to the number of deputies that would be required to serve during that term?

A. He did not, sir.

Q. On or about the commencement of said term, did the judge authorize you by an order or otherwise, to appoint any deputies at all?

A. He did not.

Q. Which of the deputies did he appoint first?

A. My impression is that Mandeville was the first appointed, still I think they both spoke to me about serving in the court room, prior to the sitting of the term."

It afterwards appeared by their evidence that this other claimant for this same compensation, Mr. Allen, did not commence his services as court deputy until, at least, as late as the second day of the term, and in all probability not until the fourth day of the term. On the first day of the term he was called and sworn as a juror to try the case then on trial. He was challenged and released. It shows most certainly that if he was there as a juror, he could not have been performing services as special court deputy. It then appears that upon the second day of the term this same Mr. Allen was appointed a general deputy, and was sent out into the far back country with a process, to serve a venire, to bring in a jury to try that very case. How long it took him to serve that process does not appear in the evidence; but from the testimony that these venires were long delayed (one or two days it has been asserted and shown, before the jury was empannelled) it is fair to presume that he could not have been back from the performance of that service for one or two days at least, which would have taken him until the fourth day of the term before he could have commenced his services upon which he founded his claim for compensation for services as a special deputy.

The special deputy performs his duty in the court room; the general deputy in the country anywhere that the process takes him. It is for his services while in the court room that he claimed compensation.

Mr. Mandeville says on page 48 and 49, of May 29:

"Q. What duties did you perform during the trial?

A. Well, I built the fires, swept the court room, arranged the seats and chairs, waited upon the court generally, raised and lowered the windows, went out and brought in witnesses, went to the post office after the judge's mail, went out and brought in prisoners into court, adjourned the court in the absence of the sheriff, and spent a greater portion of the time in the passage way of the court room pressing the crowd back, which was very large at that session. When the judge came into the court room Mr. Hall and myself were there, and Mr. Hall spoke and says: "I

have set Mr. Mandeville at work as court deputy." The judge passed right up to the desk and took his seat, and motioned with his finger to me and said, "Step this way;" said he, "Lower those windows around there four or five inches and change the air in the room here."

Now, there is in brief, the evidence that the managers have produced here to show the foundation of Mandevill's claim of right. It is, also, in brief the foundation of Mr. Allen's claim for the same service, for, mind you, that the evidence here shows on the part of Judge Page, that only one deputy, according to his theory, was entitled to pay at all. It is shown that there are two men claiming that same pay, for the same service.

It belongs under the law that has been cited here several times already, for the judge of the court to determine the number of deputies that are necessary to perform those duties during the session of the court.

It is claimed on his part that he performed that duty by limiting the number to one, and yet it appears conclusively that two were engaged. It belongs to the court under the law to fix the per diem compensation; but it nowhere belongs to the judge of the court to determine who shall have that pay, and that is the point in this article of impeachment. It belongs to the sheriff, and the sheriff only, to appoint the deputy, to determine who shall draw the compensation. The judge may fix the number, and there is no avoiding his determination upon that point; he may fix the rate of compensation; and there can be no fault found upon that. But he has no power to determine who shall receive the pay; and certainly when there are two parties standing before him claiming that they had each performed the services, for which only one of them could receive pay, it is a usurpation of power upon his part to undertake to take that matter out of sheriff Hall's hands and say that Mr. Allen shall have that pay and Mr. Mandeville shall not. There is one way, and one way only, in which that question could be brought to Judge Page for a decision. Mandeville claimed pay for this same service that Allen claimed for. Sheriff Hall was the man to determine who he had appointed, if there was to be but one, and the judge could never gainsay that determination any more than sheriff Hall could gainsay the number of deputies that were to serve there. If Mandeville and Allen both claimed the pay for the same services from sheriff Hall, then it was a matter of right claimed by one and resisted by the other, for sheriff Hall to decide. If sheriff Hall decides it contrary to what the truth was, then there is a foundation for a suit, If Mandeville is rejected by sheriff Hall, he has a right to bring a suit. If Allen is refused the privilege of being that one deputy, then he had a right to sue him. When the suit is brought the matter is carried through the courts and brought before Judge Page upon appeal from a justice court, or from a decision of the board of county commissioners upon that question giving the pay to Allen, or refusing it to Mandeville. Whenever it is brought in any manner judicially before the court, then and not till then has the judge of the court the right to decide which of those men is entitled to the compensation as that one deputy, for that double service.

But he did decide, and that is the foundation of this article of impeachment—when it was his duty to determine the number of deputies to be had—he goes further and says that Mr. Allen shall be that one man. Recollect that this written order was made after the services had been performed. Page claims that he had made a verbal order that there should be one deputy only, before the services were performed.

If he did, then there were two men who, either through mistake or otherwise, had performed that same service, claiming the same compensation. But Judge Page, when he makes the written order, undertakes to rule Mandeville out, by saying that Allen shall have that pay and that Mandeville shall not. He was not called upon to decide this matter between Mandeville and Allen,—both of them expected that pay; both of them went forward expecting they were going to receive an order, showing that two deputies were entitled to pay, and each of them expected to take their claim to the board of county commissioners and have it passed by the board. If there they were refused pay by the board, and if there was only one deputy appointed or authorized to be appointed, the board should have allowed only one of them pay. Whichever of them had been defeated before the board had the right of appeal to the court, the court hearing evidence as to who Sheriff Hall did in fact appoint, would then make the proper decision. That would be a legal adjudication of the rights of the parties. But instead of that, he volunteers in advance, and announces to Mandeville, that Allen should have that pay that was in dispute, so that Mandeville never had a chance to assert his right to it; never had an opportunity to be heard, because the judge cuts him right off then and there, by deciding, not the number of deputies, but that whoever Hall had appointed it made no difference, that nobody but Allen should have the pay.

Now, I say that it is an arbitrary assumption of the court to decide the matter in an arbitrary manner when it was not judicially before him for a decision at all. That, certainly, is an impeachable offense. If, however, it was done through hasty action or mistake that might not be so, for I don't say that a judge is to be impeached for every illegal act which he may do even though it may be wrong. The action in that respect largely depends upon the motive and the intention.

This brings us then to the question of motives. We noticed that Judge Page intermeddled with the rights and took the matter out of the hands of the sheriff, and that is the question of malice. We first set out on proof of malice, that the act which Judge Page did was wrongful. That is always evidence of malice. The performance of a wrong act is always evidence from which to presume malice, although it is not always conclusive. The circumstances that surround it, may be such as to make it excusable. It is not always conclusive but still it is always evidence of malice.

We have shown in other articles as well as this, that there was an ill-feeling existing between Judge Page and sheriff Hall as to certain deputies that had been employed by sheriff Hall, because the Judge said that sheriff Hall had made a corrupt bargain. There was then an ill-feeling on the part of Judge Page rancoring through all of his proceedings in reference to these deputies, to defeat them from pay whenever an opportunity offered. This opportunity offered in this case, to defeat Mandeville by usurping the right to decide who shall be the deputy, and determining that Allen should be the man to receive the pay, because that was the order that Judge Page made, that Allen should receive the pay, not that one man should receive the pay, but that Allen should be that one man. There was then that ill will against certain men that had been appointed to perform services for sheriff Hall, that runs through all of Judge Page's conduct towards those deputies. He wants to defeat them.

As further evidence of malice we have this order that Judge Page made. This order was made after the term of court was over, after the services had been performed; at a time when he knew that there were two men claimants for the same services. There is malice in that. He should have let the proper person determine who the man was that was entitled to that pay.

There is malice in the conversation between those deputies and the judge when they come forward to receive an order, each of them expecting an order for their services, showing that they had performed services. The conversation, you will recollect, was in substance by the judge inquiring of Mandeville what dirty work he had done for sheriff Hall that had induced sheriff Hall to appoint him. Carrying back the old grudge that he had had, and manifested so frequently towards those deputies, and using it there.

Now, it is very true that some of the witnesses on the part of the respondent here claim that the judge merely asked him what work he had done in the court room. Now that is preposterous. It did not matter what work he had done in the court room if he had been properly employed to perform services. And these parties could not mistake such use of language as that, and you will find that Mr. Allen, the only other witness to this transaction, admitted out of court, that Judge Page did ask him (Mandeville) what work he had been doing for sheriff Hall that he received the appointment at all, but did not use the word "dirty." He may not have heard it; he might have heard it and not recollected it; it may not have taken the same hold upon his mind that it did upon the mind of other men to whom the *dirty* part of the language applied. There is malice there.

The testimony in regard to this conversation is on May 29th, page 49 of the journal. Mr. Mandeville says:

"Immediately after the court adjourned, Mr. Hall came along and spoke to Mr. Allen and myself, and he says, 'come up to the judge's stand, and I will have him give you an order for your pay.' We passed up to the judge's stand with him, and he says to the judge, 'I have brought my deputies to get an order for their pay.' The judge replied, that he was then busy, that he could not attend to it just then, but come in sometime in the afternoon."

The second time they come up is found in the same place.

"I remained there in the court room until some time between four and five o'clock in the afternoon, I should judge it was; Mr. Allen and myself were down at the end of the room by the stove, and the judge says; 'Boys, come up this way.' And we passed up to his desk.

Q. What was then said?

A. The judge says: 'Mandeville, how did Hall come to appoint you court deputy? What dirty work did you do to help elect him that he appointed you court deputy?

A. I replied to him that I wasn't aware that I done any dirty work. He went on to say, that Mr. Hall did not need any court deputy; he could have done the work himself, and he considered it a steal upon the county, and he did not propose to sanction any of these steals. Well he went on and talked for some five minutes and finally he says: "I shall take time to consider this matter; I shall not give any orders to-day."

If that testimony is true, and it seems to be candid and fair and probable, the decision of Judge Page had not then been made, whether one or two deputies should receive compensation, and he could not go beyond that to determine which one—he was then deliberating, and

took time to deliberate as to whether two men or one should be entitled to pay for services there. We care not whether it was two or one. If it was two, then Mandeville ought to have had his compensation; if it was only one, the judge ought not to have decided that between them. He should have waited until there was a litigation pending, and brought before him for decision.

We find malice also in the departure of Judge Page from what had been his previous conduct in this regard at other terms of court. You will remember that it was in evidence that ever since Sheriff Hall became sheriff there, Judge Page had adopted the plan of waiting until the end of the term before a written order as to the number of deputies, and in those written orders at the end of the term, he put in the names of the very men that were to have the pay. This we say was a general evidence of malice against Mr. Hall and all his deputies. He was then exercising a power to prevent Sheriff Hall, to prevent these men being brought into the court as special deputies to perform court duties there. Previous to the time when Sheriff Hall entered upon the discharge of his official duties, the judge made orders merely determining the number of deputies that were to be employed, and did not make the orders showing who the men were to be.

We have here in evidence, on page 65 of the journal of May 29th, one of these orders made before Sheriff Hall became sheriff. It is:

"EXHIBIT "D."

*State of Minnesota, County of Mower—General Term District Court—March 2nd*, 1875.

Two special deputy sheriffs are hereby authorized to be employed by the sheriff of said county, for said term of court, each to receive three dollars per day for the period of twelve days.

SHERMAN PAGE,
District Judge.

Now, that is a proper order. It embraces the whole judicial duty in regard to that matter, to determine the number and the rate per diem. He did it; he did not say who the men were to be that were to draw it: that was none of his business. It belonged to the sheriff to determine that. This was, then, his practice before sheriff Hall came into office. But after sheriff Hall came in, then he departs from his previous practice in order to cut out these men that sheriff Hall wanted to serve him, and which the judge wanted to defeat because they were not temperance men, or because they were democrats and had helped to elect sheriff Hall. The order he makes after sheriff Hall came into office is as follows:

"District Court, Mower county, general term, March 7th, 1876. The sheriff of said county is hereby authorized and empowered to appoint two special deputies, to-wit: W. F. Allen and Mr. Hunkins, to serve during said term, and the pay of said deputies is hereby fixed at a sum of two and 50-100 dollars per day each. Sherman Page, Judge District Court. Filed March 7, 1876. F. A. Elder, Clerk."

There is another matter to which I wish to call the attention of the Senate, and we insist upon it as evidence of malice. This was the July adjourned term; the regular terms are in September and March. At the March term, 1876, as we have seen, the judge had made an order determining that two deputies should be employed during the whole term. Now, the business of the term did not end with the month; it was adjourned over until a future day, but it was the same term continuing. When the term commenced the judge had made an order de-

termining that two deputies should be employed. The adjourned term was the same term just as much as the next day would be a part of the same term. Sheriff Hall, under the orders that the court had made at the commencement of that term, authorizing two deputies, did employ those two men. They were not the *same* two men that had served the preceding part of the term, because one or two of them had gone, and other men had been brought in to take their places. But the sheriff had there the record of the court, the order made by the judge at the beginning of the term, that there should be two deputies. And yet the judge departs from the previous order made by himself and changes it to one deputy in order to spite Mandeville.

Now is there anything in respondent's evidence confirming the position of the prosecution in regard to this question of malice, and in regard to the main facts, for there is very little dispute about the main facts. On June 12th, (page 76 of the journal,) F. W. Allen gives this testimony:

"Q. When did you first understand that he was there as a deputy?
A. I say that Mr. Mandeville was there during that term; but how much of the time, nor in what capacity he was acting, I could not state."

He was there, then, during the term. "The judge told me that I could call, I think, at his office."

That confirms Mandeville that the judge did not decide the matter then when they were before him, both claiming compensation, but that he did defer it until some other time.

"The Judge told me that I could call, I think, at his office.
Q. Didn't he say so to both of you?
A No.
Q. Didn't he say so to Mr. Mandeville?
A. No, I don't think he did.
Q. Didn't he tell Mr. Mandeville, and didn't he tell both of you, to come at such a time?
A. No. I was standing al his side, and he turned and he says; 'You can call at my office,' or something to that effect."

Thus, Judge Page was deceiving Mandeville there; he supposing that the judge was going to hold the matter open for further consideration whether two deputies should be appointed, and the judge slyly and to one side, speaks to Mr. Allen, "You come to my office and I will attend to it there." And there is where that order was made, deciding and foreclosing Mandeville's claim for pay for that same service. Is that the proper performance of a judicial duty. I submit that the malice is completely shown by their own tsstimony.

The court will also remember that it appears fromJudge Page's own testimony that he had always refused to appoint a general deputy as a court deputy, for the reason, as he said, that the general deputy was often called into the country and thus neglected his duty in the court-room;—a very good reason, I think, if such was the practice. But when a man is appointed court deputy, his business is to be there and nowhere else. But that is the very reason that we attribute malice in Judge Page for his conduct on this occasion, because Mr. Allen was general deputy, appointed, and his appointment on record with the register of deeds there, and he had been sent out into the conntry with a venire to bring in jurors during two days of that very term, in the presence and view of Judge Page;—performing the duties of a general deputy, and not of a special court deputy. While upon the contrary, Mr. Mandeville was

not a general deputy, had never been appointed by sheriff Hall a general deputy, was there for the special service and for no other purpose.—Thus the judge not only does as he has in regard to Mandeville's rights, but he violates his own previously established practice to defeat Mandeville of his claim to a little compensation because sheriff Hall had received some help in his election from that source.

We have this evidence from W. M. Howe, the register of deeds, page 84 of the journal of June 12th:

"Q. Look through your record and state whether there is any record there of the appointment of W. T. Mandeville as deputy.
A. I have looked it through.
Q. Is there any such appointment?
A. No such appointment from R. O. Hall.
Q From whom?
A. There is one from George Baird.
Q. How long ago?
A. March 21st, 1873.
Q. Since then there has been no appointment of Mr. Mandeville?
A. Not on record.
Mr. CLOUGH. Now, the date of this appointment is March 21st, 1873; on the margin of this record is this entry: 'The within appointment is this day revoked. Dated August 20th, 1873. George Baird, sheriff.' "

So that while Mandeville had some years before been a deputy, his appointment had been revoked upon the same record that appointed him and only a few days after his appointment. So that it was clearly before the court that Mandeville was not a general deputy.

ARTICLE IV.

I will now proceed to the consideration of article four:

The charge of corrupt conduct in this article as the impeachable offense is, briefly, that Judge Page prejudged the right of one Stimson to compensation of five dollars and a half, for services rendered by him under an execution in a cause that had been issued upon a judgment rendered by his court. The charge is that Page prejudged the right of Stimson to that compensation.

There is no substantial issue taken in the answer to this charge. The truth of the statements are admitted. The question of malice and ill-will only, are direct, and the only defense to that is set up in the answer, is what it asserts, that Judge Page, as he thought, adopted a legal mode to correct the error of an officer. What that legal mode which Judge Page adopted was, was unknown to the managers until the counsel came to develop it in the course of the trial. The managers could imagine no legal mode whatever, in such a proceeding. As they understood the law there was no mode of that kind prescribed by the common law or the statute law, to cut any man, who claimed compensation for any services, out of his right to receive it, in that manner.

It will be admitted on the part of the defense, that Stimson had performed some services upon which he founded at least a claim for the five dollars and a half. Without reading the evidence that proves his claim or right to compensation, I refer the Senate to it. It is found in the journal of May 29th, page 71, where Mr. Stimson himself, details the services that he rendered. On page 73 it is continued.

Now, while these services had been rendered that are detailed fully by the witnesses, there is no dispute whatever, that they were rendered. They did entitle the officer to pay beyond any kind of doubt.

When you look into the process under which these services were rendered, you will find that it was an execution issued in a cause in which the State was plaintiff, and a certain Mr. Weller and others defendants. The execution in terms commanded the sheriff to collect the amount of that execution from the defendants with his fees. Mr. Stimson, as deputy sheriff, takes the execution. goes and performs his duty under it. Now, he was doing just what the process told him to do. He could not rightfully have done differently. If he had not collected his fees under that process he never would have been entitled to have received that from any source whatever, because the process and the judgment upon which it is issued provided that they should be paid. Whether that judgment was rightfully rendered, whether an execution of that kind ought to have been issued or not, is a matter of very small importance here. Stimson had a foundation for a claim, and this Senate does not sit here as a court having judicial powers for the purpose of determining whether his right was a complete legal claim or not It is sufficient for our purposes to say that he had a foundation for a claim. If he had, then it was the province of that court to give him a legal trial of that right in a mode known to the law, and not to prejudge him in the manner that it was done.

It is hardly necessary for me to repeat to you the manner in which it was done. It was gross misconduct on the part of the judge to do as his own testimony and that of the witnesses concede that he did do. He was taking a deputy there that was new in the business it appears, and holding him up as a contempt before the suitors, jurors and spectators of the court. Humiliating him, wounding the pride of the officer as well as of the man; so that the only question that I have to consider in this article is the question of malice. As to the legal right of a judge to proceed in such a manner as pointed out by the counsel in their closing argument, I shall consider it at a later time, in connection with articles eight and nine. As I understand, the legal mode that they point out, they claim that it was a proceeding in contempt, and that portion of the subject I shall defer until I reach article eight.

Upon the question of malice, we start out with the fact that such proceeding on the part of the court was wrongful and implies malice in the judge that did it. But it might be under such circumstances that it would be excusable, perhaps would be so excusable if it was not accompanied with evil motives and evil designs. Was it so accompanied? Mr. Stimson, in his testimony of May 29, on page 73 of the journal, details the circumstances that transpired in court, and continued on pages 74 and 75:

"Q. Now, you may state what transpired in court in regard to that $5.50; state when it was, as nearly as you can recollect.

A. I think it was in the March term, 1877. Judge Page asked the sheriff if he had a deputy by the name of D. K. Stimson; the sheriff told him that he had; he asked him if he was in the room; I was in the rear end of the court room; I rose in my seat and the sheriff said, 'There he is.' The judge told me to come forward; I came up to the railing, and he said (I can't remember all the language he said) The first thing—he went on and said, 'He understood that I was holding money that belonged to the State,' said 'that in such cases as that it belonged, when a fine was imposed that I should pay the money in the treasury and put my bill into the county.' And I told him I would like to explain; and he told me he didn't want any explanation Said he, 'Young man, you step up here before this grand jury and pay the fees over to the clerk of the court, so they can see it is paid, and if I catch you doing this thing again I will punish you to the full extent of the law,' is about the words he used. I stepped up to the clerk of the court and paid him my fees, $5.50. After

he told me to pay over the fees, I told him I hadn't got the money. I would have to go to the bank and get it. He says, 'perhaps you can borrow it of the sheriff.' The sheriff spoke up and said, 'I am in the same fix,' and there was a gentleman there, a friend of mine, he loaned me the money to pay over."

That is in substance the transaction that took place in court. The testimony of Judge Page himself and of his witnesses only vary it a very trifle, and that is as to the implied threat, "Young man don't let me catch you doing so again."

We have already established under article five that Judge Page is a man capable of making judicial threats. Here was an occasion to vent his hate upon this same sheriff, through another deputy, that had existed in regard to other deputies. And it is probable, at least, without any testimony, that he used his opportunity. Our witnesses, many of them, say, that he did use that opportunity to make the threat. His witnesses confirm it in part.

R. O. Hall confirms this testimony, on May 30, page 1. He says:

"Judge Page remarked to him that it had been brought to his notice that he had retained a portion of money which he had collected on a certain execution, referring to Mr, Weller. He asked him if that were the fact. He told him that he had. He told him to step forward and pay it over to the clerk of the court."

Gives him no opportunity to assert his right to that money. No witnesses on either side claim that the judge ever gave Stimson a chance to set up his claim or right to that five dollars and a half, but instanter he was required to pay it over, under the threat of the grand jury standing there for further action for the little trifle of five dollars and a half, and through terror Stimson did pay it over. Never had his right to retain it been investigated at all, and yet he had done nothing but what the process of Judge Page's court had ordered him to do, to collect his own fees upon that execution. Of course he had a right to retain the fees: there can't be any question about that at all. Under that process he was obeying the judgment of the court, the execution of the court, and was entitled to do just as the court had ordered him to do, to collect his own fees; and it must be conceded that he had a right to take his own fees out, as he earned the fees, after he received the money into his hands, as the officer has to be paid always. If he has collected only a dollar and has earned a dollar, he keeps the whole of it—collects the rest when he can; that is always the practice. It is unquestionably the law, but the point here made by this article is, not that Stimson was entitled to those fees, but that he had a claim of right to them which Judge Page prejudged without ever having an opportunity to have a trial. Judge Page had no right to foreclose Stimson on that claim of fees unless there was a suit pending, brought before him for the purpose of investigation and determining the right.

If the execution was wrong, the judge or those parties that were interested in it, ought to have made their application to the court and had the execution modified, and not having the execution commanding the officer to do a certain thing and the judge publicly reprimanding him in court for doing it. If the execution was wrong, an honest judge intending to deal fairly with the officers of the court, would have called upon the county attorney to recall that execution that it might be modified, that it might be corrected. We do not concede that the execution was wrong. Upon the contrary it was shown by Mr. Clough in his exhaustive argument upon that subject, that no other process could have been issued. The law provides under that state of facts no other

means of enforcing this collection. This was an appeal from a justice court; the judgment of the justice had not been re-tried in the district court, it was simply affirmed upon the defendant's default. There was no new sentence passed whetever in Judge Page's court; no order made for the sentence, but simply that the old sentence of the justice of the peace be affirmed. When such is the case, the law requires that the judgment be entered against the defendant and his sureties in the appeal. That was done. No other judgment could have been entered. When that judgment has been entered it stands as a judgment record of the court like all other records. It is a judgment against these parties. They are liable upon the judgment and the execution issued upon it; and the officer collected the amount and his own fees, instead of arresting the defendant, did just as he was commanded to do. He would have been liable to proceedings for contempt if he had done any differently.

Now, does the testimony of Judge Page's witnesses confirm this question of malice? For it all hinges upon the question of malice. The il-legal act of Judge Page must stand confessed. Did he do it maliciously? C. C. Kinsman, one of Judge Page's witnesses, testifies this way: "Judge Page stated it was an unlawful act." There he decided the question without any hearing or opportunity to be heard, according to the testimony of his own witnesses. "He stated that he had no right to retain his fees out of an execution of that kind." A false statement right then in court (the testimony of his own witness), because the execution did tell the officer to retain his own fees, to collect and retain them, "*and he directed him to pay over the money in the presence of the grand jury.*" There is a judicial threat of Judge Page made right there, in court, for the purpose of humiliating one of sheriff Hall's deputies. Their own witnesess say that threat was made. "Do it here, do it now, do it in the presence of this grand jury!" He had committed no offense, done no wrong, obeyed the process of the court; and yet he was to reverse all that he had done under the process of the court upon peril of having the grand jury handle him under Judge Page's manipulations.

This witness further says:

"The respondent then stated to Mr. Stimson (I don't know whether it was at that time or at another time that it was an unlawful act) that if he committed another act of the kind, he would punish him to the full extent of the law."

G. M. Cameron also testifies upon this question of malice, May 30th.

"Judge Page ordered him to walk up to the clerk's desk and pay over the money. Mr. Stimsom said something about an explanation, and the judge did not wish to hear any."

Upon his cross examination, on page 5 of the journal, the witness says:

"Q. When the court stated the facts to him, what did he say?
A. When he stated a part of the facts to him, he assented that he had the money; that he had collected and retained some money; he assented to that: further than that he did not assent to anything.
Q. Further than that he did not dissent to anything?
A He did not assent or dissent either one.
Q. But the court went on and made a full statement?
A. The court went on and made a few remarks, not a full statement, Stimson did not say anything to that."

He had been humiliated to silence up to that time.

Q. Then Stimson made that request?
A. He requested to make an explanation.
Q. What did the court say?
A. The court refused to allow him to.
Q And directed him to do what?
A. Directed him to walk up to the clerk's desk and pay over the money."

This is further confirmed by the testimony of Mr. Crandall; (the same page.)

"After this had been done, Judge Page remarked 'that this was his first offense, but that if an offense of that kind was repeated, he should punish him to the full extent of the law.'
Q. Was there any reference made by Judge Page to the presence of the grand jury, if so, about what?
A. He requested Mr. Stimson to pay the money over to the clerk in the presence of the grand jury.
Q. Did Mr. Stimson make any explanation, or ask to make an explanation, of the circumstances under which he received the money?
A. I think an explanation was attempted, but he was stopped by the court."

As the whole question under this article hinges on the proof of malice. I continue that proof more largely upon this article than I have on others. W. S. Root confirms the previous testimony, on May 30th, page 16.

"Well, go on, anything else that you recollect?
A. I think that he (Mr. Stimson) asked me to make an explanation, or something of that kind, and the court told him that he would pay it over to the clerk, and as it was his first offense, if he repeated it he should give him to the full extent of the law. I think those were the words, or the substance of the remarks."

It is these continued threats, the terror of the grand jury alluded to that called that money out of Stimson, trifling as it was, and it is the same influence in the judge that shows malice, that compelled it.

N. M. Hammond confirms all that the previous witnesses have said, and then adds this on page 17, of the same date:

"Judge Page told him then that he wanted him to step forward and to pay it to the clerk of the court so that the grand jurors could know that it was paid.
Q. What did Mr. Stimson say to that?
A. Mr. Stimson said he would like to make an explanation on it. The judge told him there was no cause of an explanation.
Q. Was the money paid over?
A. It was."

Mr. Woodard, one of the grand jurors, then sitting in the presence of the court, gives this testimony:

"Judge Page ordered him to pay it over there before us, and Mr. Stimson wanted to explain, and the judge told him he didn't want any explanation, and Mr. Stimson went up and paid the money over in the presence of the grand jury."

This evidence of malice is confirmed by the record that the clerk there made up showing what the report of the grand jury was.

The grand jury had simply reported the fact that upon that execution Stimson had collected so much money and retained five dollars and a half as his fees; made no reflection whatever on Mr. Stimson for doing so. The grand jury did not consider that he had done any wrong, but as Judge Page had ordered them to investigate that matter and report the facts, the grand jury had done so. They found no wrong against Mr. Stimson, they could not have found any wrong, because, with the evidence before them they must have seen that Mr. Stimson, as an officer, had done just what the execution commanded him to do!

That record is found in the journal of May 30th, page 19.

In confirmation of this malice we have the testimony of these numerous witnesses, and we also have the testimony of the respondent's witnesses confirming every material part of this evidence of malice. On June the 12th, one of the respondent's witnesses, F. A. Elder, testifies this way:

"Q. Did he come forward of his own motion?
A. I think Judge Page asked him to step forward."

You see how easy they change words. All the other witnesses say it was an order; this witness of Judge Page modifies the harshness in that respect and says that he "*asked*" him to come forward.

"Q. He did step forward in front of the judge's desk?
A. He stepped forward I think before the bar.
Q. How far did he stand from the judge when the conversation between himself and the judge occurred?
A. Ten or twelve feet, I should judge.
Q. Stood up in the presence of the entire assembly?
A. Yes sir.
Q. Then what did the judge say when Mr. Stimson came there and stood up in front of him; what was the next thing that was said?
A. He stated to him the substance of the report."

We have shown what the report was.

"It is my recollection now that the report stated the facts of the case; that the execution had been issued in this case; placed in the hands of Mr. Stimson; that he had recovered thereon $20; had paid over $14.50 to the clerk; retaining $5.50 as his fees.
"Do you remember anything else that was contained in the report except what you have stated?
A. No, I do not.
Q. You have stated just about what the substance of the report was, haven't you?
A. As I recollect it.
Q. And the substance of the report Judge Page stated to Mr. Stimson?
A. I think he did.
Q. And asked him if those facts were true?
A. Yes sir."

* * * * * * * * * * * *

"It is my impression that some remarks were made, but just what they were I could not remember."

Now, that certainly is confirmatory evidence on the part of the principal witness of Judge Page, that there were threats made then and there.

On June the 13th, page 5 of the journal, Harlan Page, another of Judge Page's witnesses, gives this testimony:

"I think it was in that connection that he said something about his presuming he was inexperienced and he must be careful for the next time and not to repeat it."

That certainly is a threat, and if a threat, it is ample proof of malice.

O. W. Case, another of Judge Page's witnesses, (page 12 of the journal) says:

"Q. Did Mr. Stimson say anything about that he thought he was entitled to fees?
A. Well, 'tis my impression that he did.
Q. Did the judge tell him that he was not entitled to fees?
A. Yes, he told him that it was an illegal transaction."

Prejudging his right to the fees; that it was an illegal transaction for the purpose of humiliating him. When the truth was that the evidence was ample before the judge that he had merely obeyed the process; and there was nothing illegal so far as Stimson was concerned, not a shadow of wrong on his part; if there was any wrong it was in the officers of the court that had entered up a wrongful judgment, it was in the officers of the court that had issued a wrongful process; not in Stimson, he had done no wrong; nothing improper to him could have been attributed whatever. And yet the judge, because he was one of Sheriff Hall's deputies, attributes to him the evil (if there had been any done) that had been done by these other officers, for the purpose of whipping Sheriff Hall over Stimson's back, and thus makes no reflection upon those who had done the wrong, according to Judge Page's own understanding of the case. So that, Senators, we have before you a very gross and arbitrary use of judicial power, for the purpose of oppression. Using power when nobody had called upon Judge Page to determine whether Stimson was rightfully entitled to those fees or not. There is only one way that that could be legally done. He had retained the fees according to the order of the execution. If the defendant in the execution claimed that he was not bound to pay those fees, he had the right to bring the matter before the court to have the execution modified. He then had a right to have the court between him and Mr. Weller in court, in a lawsuit; the judge then, upon a fair hearing between both parties and the circumstances, could have corrected if any thing was wrong, and also have adjudicated the rights of the parties, but he dont take that course. For the purpose of humiliating and oppressing a deputy of Sheriff Hall, he adopts the illegal mode, and it is because he has adopted this illegal and oppressive mode to reach that end and to accomplish that purpose, that he is impeachedin this article.

It is not necessary, it even is not proper for this court to undertake to determine whether or not Stimson was legally entitled to those fees. It is sufficient that there was a claim of right to them existing there that Judge Page had no right as a judicial officer to prejudge either in that manner or in any other. He must wait until somebody sets the court in motion, by moving to vacate the judgment, to modify the execution, to have the fees refunded or in some other way—and there are many modes in which it might be brought about. That is not the mode.

I stated to the Senate that as article 4 as to the defense, is the adoption of the legal mode to accomplish what Judge Page did was under the proceedings for contempt, and as article 8 is justified under the law of contempt also, I shall now proceed to the consideration of article 8, passing by articles 6 and 7 for the present, in order not to break the connection.

SENATOR NELSON—I move we take a recess for five minutes.

The motion prevailed.

AFTER RECESS.

ARTICLE VIII.

The misconduct charged against the respondent in article eight consists in issuing a warrant of arrest of Mr. Stimson upon the charge of having committed the crime of libel against Judge Page, without having any complaint or sworn evidence produced before him that Mr. Stimson was in any way guilty of the offense charged. That is, briefly, the sub-

stance of the charge made in this article. It consists of issuing a warrant for the arrest of Stimson without having any complaint under oath made upon which to found that warrant. It is a direct invasion of the rights of the citizen by the judicial power.

It is conceded by the answer and by the evidence that no complaint was ever made, that there was no oath ever taken by any one, showing that Mr. Stimson had ever made or published the libel charged against him. Without any fact judicially appearing before Judge Page, that could set him in action, he issues a warrant, as it has been ably argued by the counsel for the managers, in which it is shown that this unwarranted ursurpation of power on the part of Judge Page was not only without any foundation upon which to rest, but also, as he has shown, that it was done by him under circumstances in which he knew that Stimson was not guilty of any offense, having directly, in his argument charged Judge Page, and proved by the record that he issued this warrant, knowing that the recitals contained therein were false. And this charge and the proof of it has been passed by, unanswered on the part of the respondent's counsel. Indeed, it could not be answered. There was no complaint showing the truth of the charges before Judge Page when he issued that warrant, and there has been no proof adduced before this Senate showing in any way that Stimson had ever written or published or circulated that libellous petition. So that while the counsel did not undertake to refute the charge, it of course must have been because it was unanswerable. We then assume, as already shown by the argument of the learned counsel for the managers, that this was done by Judge Page, knowing that it was untrue at the time that he issued that warrant. It is true that he has picked up here and there in the street a rumor to the effect that somebody had written and was circulating this petition for his resignation. That part is true and undenied; but there is no proof showing that Stimson had anything to do with the circulation of that petition or its writing.

The only question then in this branch of this article for us to determine is very briefly, (in order to complete the record more than anything else) the evidence showing this state of facts.

First, showing that there was no complaint. F. W. Kimball, the present clerk of the court testified this:

"Q. I will ask you if you have ever seen on file in the office, or elsewhere, any complaint or affidavit upon which this complaint purports to have been issued?
A. I have not."

Mr. Cameron, in his testimony of June 4th, (page 55) makes this statement:

"Q. Do you remember what the proceedings were the first evening?
A. Mr. Stimson was arrested, and he came into my office and I went with him before the judge, and asked Judge Page to see the complaint that had been made against Mr. Stimson, and he said that there was not any complaint; I asked him if any affidavit or information had been filed.
Q. Judge Page said there had been no complaint made?
A. Yes sir; he said none had been filed; I asked him who made the complaint; the said there had not been any made."

Mr. Stimson, June 4th, (page 17), says:

"Q. State whether at the March term of 1877, of the district court of Mower county, you had attended the term of court as deputy sheriff?
A. I did not."

Upon his cross examination, (page 21) he says:

"Q. When you had the petition that was first read, in your possession, and at the time you had the meeting with Mr. French and Mr. Kinsman, was the court then in session?

A. No sir.

Q. How long had the term then gone by?

A. I think the term of court closed in March, and this must have been in the first of April, or the first of May, somewheres about that time."

Now, this completes all that at this stage of the proceedings I deem necessary to show to the Senate in proof of this charge. The fact of issuing this warrant without a complaint is admitted, and that is the very charge of the indictable offense, the management holding that the warrant could not be rightfully used unless a sworn complaint had been filed with the judge. Just the same as the issuing of a warrant by a justice of the peace. In fact the law that authorizes a judge of the court or a magistrate to issue a warrant for the arrest of offenders to bring them before them for the purpose of examination, requires in express terms that a complaint under oath should be made; that a complainant should come before the judge or justice, and be put under oath and be examined by the judge or justice; and that his complaint should be reduced to writing by the judge or justice before a warrant is issued

This charge, upon which this warrant was issued, is set out in our record, and appears upon its face to be a libel against the judge, like any other libel against a citizen; it is not a libel in reference to any act the judge had done or thing pending. It is general in its nature, accusing him of being officially incompetent for his position.

This brings us to the question that the counsel raises in their defense. Judge Page in his answer to article eighth, sets up the doctrines of contempts of court, as a foundation for this proceeding, claiming that under those circumstances, Stimson being an officer of the court, that he had a right to issue this warrant for the arrest. We say whether he was an officer of the court or not, Judge Page had no right to issue a warrant, unless a sufficient complaint had been made, and even then not in case of an offense committed against himself. But in no event could he do so as a contempt of court, but only as prescribed under the general statutes for the examination of any offender. That is the claim of the managers.

The claim of the defense is, that without any complaint, the warrant might issue by the judge. This they found, first, upon the common law, as they say, in regard to contempts, established long years ago, in courts of common law, and also under the statute. And you will recollect that the counsel have read portions of our statutes in order to satisfy your minds that the judge had a right to issue the warrant. We say that a warrant, under the statute of contempts, the judge had no right to issue, even if a complaint had been made, because it was a general libel, (and as a general libel not relating to a case then pending) the judge must proceed as any justice of the peace would, by a complaint and warrant, and if he found it supported by evidence, bind him over to appear before the grand jury to be indicted, and if indicted, then brought into court for trial. That is the proceeding for libel which the managers insist upon. The prosecution insist that it must be under a statute that authorizes the judge of the court, when a contempt has been committed, to issue a warrant for the arrest.

That chapter of the statutes upon contempts provides that the judge when an offense has been committed in his presence, which is a contempt, may issue his mandate then and there, command the officer to make the arrest, bring the offender up to the bar, pronounce judgment upon him there, without witnesses at all. That is founded upon the ground that the judge has witnessed the contempt himself, that he has taken judicial notice of it, that he has seen the offense committed with his own eyes. Then, no proof is necessary, in such a case as that, no complaint is necessary, for the judicial power there having witnessed the offense, issued its mandate, and if the offender is in court he don't wait even for a complaint to be made, nor a warrant to issue, but tells the officer, "Arrest that man and bring him to the bar," and when he is under the arrest of the officer without complaint, without a warrant, the judge pronounces judgment upon him, convicts him, unless there is some excuse for his misconduct. But this can be done only when the offense has been committed under the eye, the living eye of the judicial tribunal, that such punishment can be inflicted in such a manner. And it is because it needs no proof, because it needs no complaint, and needs no warrant, that the law permits it to be done. The record is simply made up, the judgment given, the proof rests within the judicial knowledge. In no other case, either at common law or under our statutes, can a citizen be arrested for a contempt of court without a complaint first being made, or an order to show cause issued.

There are two modes which may be followed: one is, if the judge of the court has witnessed a part of the contemptuous conduct, to issue an order, founded upon that part, for the defendant to show cause why he should not be proceeded against for contempt. A case of this kind was cited by the counsel for the respondent, when a petition or a newspaper publication of some kind, that was libellous upon the court, had been circulated in the presence of the court, with the names of attorneys printed or written upon it. This came before the eye of the court, the court witnessed a part of the contempt; that is, the contemptuous publication was in court under the eye of the court, exhibited there where the court could see that part of the commission of the offense. But he did not know who published it; he did not know for a certainty that those men whose names were printed upon it ever signed it, but it was sufficient evidence to authorize the court to issue an order, (not a warrant), upon the parties whose names were to it, to show why they should not be proceeded against for contempt; and that was the course that was adopted in that case that the counsel so long and ably argued as an example for this court to follow in this case. It is not parallel at all. There, the court had seen a part of the contempt committed, but not enough to convict upon; yet enough to issue an order to those parties to show cause why they should not be proceeded against, and he issues the order to show cause, founded upon the knowledge as far as it went. They were, upon that order to show cause, *never arrested*, but served with a process and *invited* to come into court and purge themselves from the contempt which the court had seen. Some of them came forward and purged themselves,—made the excuse;—others came forward and were unable to put in an excuse by which they could be defended, and were convicted, convicted upon the proof of living witnesses brought into court to prove, not that the newspaper publication had been circulated in court (because the court had witnessed that part

of it) but to prove that these men had signed it; that they had malicious purposes in signing it. And upon a full hearing, the order to show cause resulted in a final judgment against them. No warrant was ever issued in that case.

But the counsel has gone still further than our statutes, and claims this as a common law right to proceed for contempts, claims that there is such a common law right, and strangely enough cites a case from the Arkansas Reports, in which he claims that the court holds that it is not in the power of the legislature to modify the common law practice of contempts applicable to courts. It certainly is a strange decision if it is to that effect, that it is not within the power of the legislature to change or modify a crime. I don't believe there is any such case holding to such an extent. If there is such a decision as that, that can bear that interpretation, it must be founded upon something peculiar in their constitution, that gives the power over contempts of court, to the court itself and takes it from the legislature, and if the constitution does in terms give the power of contempt as it existed at common law to the court, why of course then the legislature cannot modify that any more than they can modify any other constitutional provision. But unless there is some such provision in the constitution of Arkansas, the decision is an absurdity. I will then proceed to what I conceive to be the real doctrine of the law of contempts at common law, as their argument finally results wholly in the common law doctrine.

THE LAW OF CONTEMPTS.

Article 5 charges Judge Page with the exercise of arbitrary judicial power to compel deputy sheriff Stimson to pay over to the clerk of the court $5.50, held by him as his fees. The answer of Judge Page attempts to justify such use of the judicial power of the State under some doctrine which he denominates "a legal method of correcting the errors of officers."

The answer to article 8, which charges Judge Page with illegally arresting Stimson upon a trumped up charge of circulating a libellous petition requesting Judge Page to resign, attempts to justify such conduct under the law of contempts. Such being the answer of the respondent to these two articles, his counsel has attempted to maintain the answer by a review of the common law and statute law of contempts.—We are by no means satisfied with the exposition of the doctrine of contempts as given by the learned oounsel:

The statutes of Minnesota contain a whole chapter defining what acts are contempts, and regulating proceedings for their punishment. But the learned counsel is not content to rest the defense of his client upon the positive laws of Minnesota, but goes back of our statutes into the shade of Arkansas to learn that the legislature cannot modify the common law of contempts. Thus he attempts to justify tyranny in Judge Page. Let us follow him in his explorations of the doctrine of contempts at common law.

The doctrine of contempts has an *ignominious origin*, whether its roots spring from the practice of judges at common law, or have taken nourishment from legislative acts. In the reign of Richard the Second. the statute of *Scandalum Magnatum* was enacted by parliament. This

statute authorized punishment to be inflicted by the King's privy council at their own good pleasure, for slandering judges and other great officers of state. But under so great contempt was that statute held that no prosecutions dared to be instituted under it for more than a hundred years. Times changed, the statute was forgotten, arbitrary power was exercised by officers of state, and fearless criticisms followed. Arbitrary power is only exercised by tyrants in high or in low degree. *Tyrants can not endure criticism.* In the reign of Henry VII, the statute of Richard Second was revived, and the privy council of the King became the detestible court of Star Chamber. This court of Star Chamber took upon itself the punishment of contempts. Under the despotic rulings of this court of Star Chamber, it was governed by no law, and was controlled by no evidence. The Star Chamber made the law to fit the case, and for its enactment there was no veto. It judged the act and from its decision there was no appeal. It inflicted punishment and there was no mercy to pardon. Any and every act or word of disrespect or criticism on the King or his prerogatives, or of the Star Chamber, or of any judge or officer of state, was a contempt and met sure and condign punishment without law and without trial. The tyranny and barbarity of this court of Star Chamber rendered itself contemptible to all mankind for all future times. Like Judge Page, it was the accusor, the prosecutor, the jury and the judge. Like Judge Page it tried its victims without witnesses and condemned them without a hearing. It decided innocent acts to be public crimes, and like Judge Page, it scourged its victims from the halls of justice. It had its origin in tyranny, and punished all imaginary acts as contempts of somebody's authority or prerogative. The power of the Star Chamber, like the *inflated vanity of Judge Page*, gloated over the victims of its power. Like Judge Page, it became an engine of oppression, and a living terror alike to those in official station and private life. And, (we trust, like the power of Judge Page) it went down in a whirlwind of popular indignation, which its own contempts of right and justice had raised.

After the abolition of the ignominious court of Star Chamber, and the destruction of its arbitrary power, no court of England presumed to assert jurisdiction as for contempts of its authority over persons for scandalous words written or spoken of or to the faces of the judges, unless so written or spoken to them while in the actual exercise of their judicial duties, and so as to interrupt or interfere with the actual performance of their judicial functions. Though during all that time such offenses as libels on the court were punished by indictment, trial and conviction by due course of law in the criminal courts, but never as contempts. The existence of such a power as this over the liberty and property of the citizen is not warranted by our system of government. The exercise of such a power, even in a mild form, would be felt as the keenest tyranny the citizen could endure.

After the Star Chamber ceased to exist, the courts of common law exercised jurisdiction over all libels, whether upon individuals, the sovereign, public officers or judges of the court. The common law courts exercised this jurisdiction over libels in the same manner as they exercised jurisdiction over any other crimes—by indictment and trial by jury.

The difference between proceedings for libel against a judge, by in-

dictment and by contempt, is so positive and the contrast so great that it must not be overlooked. Proceeding for a libel against a judge by indictment is the same as for any other crime. The grand jury acting under oath, hear witnesses under oath. They report an indictment to the court. If the judge is prejudiced, he may be set aside. In court, questions of law are argued by counsel and decided by the court. A jury is selected, and if impartial, are sworn to do justice. Witnesses are sworn, and the defendant is entitled to the benefit of every reasonable doubt. Every step is contested with the right of appeal, and a new trial if injustice has been done.

But in proceedings for contempt for a libel on a judge, the defendant does not have the benefit of these safeguards of liberty. No grand jury sits upon his case. No impartial judge decides the questions of law. No impartial jury is called. He can insist upon the benefit of no doubts. But, upon the contrary, both questions of law and fact are tried by the irritated feelings or the wounded vanity of the judge who has received a real or a fancied injury.

For these reasons, proceedings for contempts ought to be and to a large degree, by both the common law and by our statutes, are in fact limited to cases of actual necessity. The general rule, both at common law and under our statute is that whatever act, whether done by a citizen or officer of court, which tends to obstruct the due course of judicial proceedings, is a contempt of court and may be proceeded against in a summary way.

As, any violence, or noisy demonstrations in the court room, or immediate vicinity, refusing to be sworn as a witness or juror, an assault by word or act upon the judge while in the exercise of his judicial functions, disobedience by an officer of court or by a private citizen, of the process of the court. An assault on the judge in the streets while on the way to hold court, by which he is delayed or prevented from holding court, has been held to be a contempt. Libellous writings and publications upon the action of the court, parties or witnesses, made *while a cause is on trial*, have also been held to be comtempts, as tending to obstruct the due course of proceedings in that case. But a general libel upon the judge of the court, without reference to any case on trial, has never been held to be a contempt. The general character of a judge, and his official proceedings generally, are always open to criticism and condemnation, just as fully as those of any officer of the State. If a malicious libel is published of him, he is entitled to the same protection under the law, as any other officer or citizen of the State. The offender may be indicted and tried and punished, by due course of law. But he cannot be proceeded against as for a contempt of court, because the libel is not an actual or even a constructive obstruction of judicial proceeding. If, however, the libel should be taken into the court room, while the judge was in the actual performance of his judicial duties, and held up to public view so as to disturb the proceedings, this offender, who did this act, would be subject to the law of contempt, while the writer and publisher of the libel out of court, would only be liable to indictment. The one act would disturb judicial proceedings, while the other in no degree interferes with them.

If a sheriff refuses or neglects to serve a subpœna, or refuses or neglects to collect an execution, or in any manner wilfully disobeys the process of the court, he is liable for a contempt of the authority of the court. But the world has never heard of but one instance where the claim has been made that a sheriff was guilty of contempt for obeying the commands of the process in his hands; and that case is the $5.50 case of Sherman Page against D. H. Stimson, in the district court of Mower county.

It will thus be seen that the law of contempts has its origin in what is supposed to be a great law of necessity. When the progress of legal proceedings is actually obstructed or impeded, the court it is said ought to possess the power to instantly remove the obstruction. Without the removal of the obstruction, the court cannot proceed with judicial business. The imperious law of necessity therefore requires the obstruction to be removed. Therefore to justify the exercise of the power to punish as for contempts, there ought to be an actual obstruction of the proceedings of the court. Because this power does not rightly extend beyond the actual necessity of the occasion. If the business of the court is obstructed by force or noise, remove it. If it is obstructed by disobedience to its process, remove the obstruction. The right to punish contempts is at best the exercise of an arbitrary power, and it can be justified by nothing short of actual necessity. Let the exercise of this summary power extend beyond the actual necessity of the occasion, and every citizen who happens to offend the dignity of a judge, holds his liberty and property at the arbitrary will of every judicial tyrant who sees fit to scourge him from the halls of justice.

Even the Star Chamber itself did not take jurisdiction over libels on the judges of courts as a *contempt* of the judges, but as a contempt of the King's government. It was not punished as a contempt of the Star Chamber, but as a crime against the King.

So with the proceedings for contempt by Judge Page against Stimson, they were not instigated by any indignity or contempt of the court, but because the *malignant vanity of King Page* had been wounded by the severe criticism of that petition.

Is the irritated judge a fit person to try the case of a libel against himself. Senators, suppose during your late session a bill had been put on its final passage providing that any person who should publish of and concerning a judge of the district court, any false and scandalous libel, should be liable to be arrested for contempt, that whenever the irritated judge heard a rumor in the street that a citizen had circulated such a libellous petition, he, the offended judge, should issue a warrant without oath or complaint for the arrest of the alleged libeller; that the alleged libeller should be tried by the offended judge without a jury to pronounce on the truth or falsity of the charge, and should be punished by the judge whose anger had been infuriated by his passions. How many votes would such a bill have received? Yet this is just what the answer of the respondent sets up as the supposed law of Minnesota. And Judge Page attempts to justify his efforts to bring down the vengeance of just such an imaginary law upon the innocent head of Stimson.

The trial of a case of real contempt by a judge against whose court or process the contempt has been committed, is at least only an outrageous mockery of justice. But the English language has no word of scorn or malignity vile enough to characterize the injustice of such a trial, as the case of Judge Page against Stimson. By the tumult raised by the passage of the alien and sedition laws by Congress, the fiction of the common law, that the greater the truth the greater the libel, was exploded. Since then it has become the common law of the American States, that the truth of the libellous matter might be pleaded as a perfect defense, either to a criminal or civil action for libel. Now, what did Judge Page undertake to try. That petition which Stimson was charged with circulating, was a libel of deep malignity, if false; and no libel at all, if true. The trial of the case of Judge Page involved the trial of *the truth of the statements* made in the petition. Look at the petition then and see what Judge Page undertook to try:

"*To S. Page, Judge of the District Court, Tenth Judicial District, Minnesota:*

"SIR—Knowing you, and believing that your prejudices are stronger than your sense of honor, that your determination to rule is more ardent than your desire to do right; that you will sacrifice private character, individual interests, and the public good, to gratify your malice; that you are influenced by your ungovernable passions to abuse the power with which your position invests you, to make it a means of oppression rather than of administering justice, that you have disgraced the judiciary of the State and the voters by whose suffrages you were elected; therefore, we the undersigned, citizens of Mower county, hereby request you to resign the office of judge of the district court, one which you hold in violation of the spirit of the constitution, if not of its express terms."

He undertakes to try whether his own prejudices were stronger than his sense of honor—whether his determination to rule was more ardent than his desire to do right—whether he would sacrifice private character, individual interest, and the public good, to gratify his malice—whether he was influenced by his ungovernable passions to abuse power with which his position invested him, whether he had disgraced the judiciary of the State and the voters by whose suffrages he was elected.—What a contemptible farce such a trial must be in a land of liberty! A judge whose passions were irritated by the truth or falsity of the libel charging the offender! Such a trial violates all our notions of human right, and is against every principle of civil liberty: and if persisted in would soon bring the judiciary in universal contempt and abhorrence.—The great principles of human right are obligatory on judges as well as on individuals. A judge is entitled to no other remedies for offended dignity than the Governor and other officers of state.

A judge who uses the judicial power to appease his excited vengeance, or to protect his official dignity, is an object of public abhorrence and detestation. The fact that Judge Page did so use the judicial power and undertake to try the question of his own vindictiveness, is proof positive that HE IS A JUDICIAL TYRANT. The counsel for Judge Page has echoed the poor plea of necessity for exercising arbitrary powers to protect the court, but remember, Senators, that necessity has been the tyrant's plea in every age.

The law provides ample and proper ways and means for the protection of judges from libel, as well as of other public officers and private citizens. A judge is entitled to no sharper remedy for insulted dignity than other officers of state.

Senator DORAN. I move that the court take a recess until two o'clock.

Senator NELSON. Make it half past two.

Senator DORAN. I accept the amendment.

The motion prevailed.

AFTERNOON SESSION.

Mr. Manager HINDS. [Resuming.] Before closing my remarks upon article eight, it may be advisable to call the attention of the Senate to our statute in regard to arrests, for the reason that it is very easy to confound the right and the privilege of making arrests with the right and privilege of issuing warrants. We asserted this morning that there was no provision of law that would permit a warrant to be issued excepting upon complaint under oath. We do not wish to be understood that there is no provision of law that would prohibit an arrest from being made without either a warrant or complaint, when as a matter of common experience, in cities particularly, citizens are arrested daily, charged with the commission of offenses without complaint, and without warrant, but they are not taken by the court. It is made the duty by statute, of police officers to make arrests whenever they have seen the commission of the offense without waiting for a warrant; it is made their duty by statute to make an arrest without a warrant when they have resonable cause to believe that an offense has been committed by a particular person. But when they make the arrest either from their own observation or by information from any other party, the law makes it their duty forthwith to take the party arrested to some court or magistrate, and there to enter a complaint against him, and bring him to trial. *That* complaint must be under oath; he cannot be detained in custody after he is arraigned before a magistrate without a complaint under oath being made against him.

This right of arrest is conferred upon officers and upon a private citizen by chapter 105 of the general statutes. Section 11 provides that an arrest by an officer without a warrant may be made in the following cases:

> "A peace officer may, without a warrant, arrest a person:
> *First.* For a public offense committed or attempted in his presence
> *Second.* When a person arrested has committed a felony, although not in his presence.
> *Third.* When a felony has in fact been committed, and he has reasonable cause for believing the person arrested to have committed it."

So he may do it upon the information given him by a third party; but the law further provides that when he makes the arrest he shall inform the party the cause of the arrest, and proceed to take him before a court or magistrate where a complaint can be made under oath charging him with the commission of the crime for which he is arrested. A magistrate or court cannot do that. It has no power to go into the streets and arrest a man for the commission of offenses, and then bring him before himself for trial. If he made the arrest, he would not be permitted to hold the trial.

Section 17 confers this same power that is given to officers, to private individuals:

An arrest by a private person may be made in the following cases:

"*First.* For a public offense committed or attempted in his presence. *Second.* When a person arrested has committed a felony, although not in his presence. *Third.* When a felony has in fact been committed, and he has reasonable cause for believing the person arrested to have committed it."

The same power of arrest exists in the private individual that does in the public officer. They may act upon their own sight if they have seen the offense committed; if the felony has in fact been committed; for instance a robbery or a murder, any one in the community, be he officer or private citizen, may scour the country to hunt up the malefactors, and if he has reasonable cause to believe that a particular individual has committed that felony, may make the arrest, bring the supposed offender before a magistrate for examination. When he brings him, a complaint has to be made, the cause of the arrest has to be specified. Trial then commences and proceeds in the ordinary way.

This arrest of Mr. Stimson without a complaint was quite a different matter,—a warrant was issued. It is the issuance of a warrant without a complaint that is complained of. That is the offense charged. If Judge Page had seen Mr. Stimson, or any one else, circulating that libel in the street, considering it a public offense, he would have a right forthwith, to have made the arrest, taken the offender before a magistrate and entered a complaint against him under oath charging him with the commission of the libel upon himself, and had the magistrate before whom he brought him investigate the charge. But that is not what Judge Page did. It is not what he is charged with.

ARTICLE IX.

I will now pass to the consideration of article nine. Article nine grows out of eight. Eight, you will recollect, charges the issuance of this warrant without a complaint, by Judge Page against Stimson, and bringing him before him upon a trumped-up charge of having circulated a libel. Article nine charges Judge Page with this offense: That when he had Stimson before him, instead of investigating the charge against him, that he called before himself a large number of witnesses and examined them, not for the purpose of finding evidence against Stimson, but for the purpose of fishing up some charge against other parties,—Harwood, Davidson, and others,—whom he considered to be the enemies of that community. That he perverted his office in the capacity of a judge sitting for the trial of Stimson as to whether Stimson had circulated that libel for the purpose of finding some charge against some of those other men. That he was looking for other parties and not Stimson, thus perverting the judicial power to a purpose of private revenge. That is the charge in article nine, and it is a very serious one.

A judicial officer, considering that he had the case before him in a proper way, has the power, and it is his duty, to investigate it by the oath of witnesses. He hasn't any right to go beyond his case no matter what grievances others may have given him. He cannot investigate them upon the pretense that he is seeking public justice against one that is accused before him of committing the offense.

The evidence in support of this serious charge is very voluminous. It was given by numerous witnesses. Stimson himself, was a witness in regard to that, and the only way that this charge against Judge Page could be proven, would be by showing what he required those witnesses to swear to, whom he called before him. Recollect that upon that ex-

amination Judge Page was the prosecutor himself; he was the complainant, the prosecutor and the court. He conducted the trial, subpœnaed the witnesses, asked them questions. He gave judgment.

Mr. Stimson says, June 4th, on page 15.

"State if any other petition than the one which has just been read, figured before the court the second day?

A. It did, sir.

Q. I will ask you to look at this paper and see if that is a copy of the other petition

A. I think it is a copy of it."

"To S. Page, judge of the tenth judicial district: It is the sense of the undersigned citizens of Mower county, that the public interests will be promoted in a great degree by your vacating the honorable office which you now hold, and we, therefore, ask you to resign the same without delay."

On page 16, Mr. Stimson further testifies:

"Judge Page in the evening turned to me, and he says to me: 'Mr. Stimson, I don't think you are wholly to blame in this matter; you have been led into this by designing men; such men as attended these conspiracy meetings; men of no character.' And he looked at the testimony that was before him and he says, 'such men as A. A. Harwood, Ingmundson, French'—said he, 'men that are no better than the Younger Brothers,' and said 'they should be behind the prison bars.' And he said, 'I could or would put them there;' he says, 'I do not act hastily in these matters.' And then he told me in this conversation that if I did not keep out of their society, that I would land in State's prison."

All of this evidence you see was forced out of Mr. Stimson before this lecture was given by Judge Page to Stimson, showing by his own words that he was seeking other parties.

Mr. Smith also testifies in regard to this fishing for evidence against other parties (June 4th, page 33):

"He asked me what my business was, how long I had lived there. He then presented or held up two blank petitions, and asked me if I had ever seen those. I think I replied that I did not believe that I ever had; he then asked me if I had a petition similar to those with names, and handed me the two. I answered that I had seen one of them; he then asked me in whose possession it was, and how many names were attached to it. That was all the questions that I remember he asked me."

No reference to what Stimson had done at all. Seeking these other parties.

Lafayette French (on pages 35 and 36 of the journal) testifies:

"After being sworn, I commenced to give my testimony, and Judge Page told me to sit up nearer to the reporter, so that he could take my statements. I did so. Judge Page asked me if I was an attorney at law, and I told him that I was; he wanted to know if I had been engaged in the practice of my profession for the last three years; I told him I had; he asked me if I was county attorney of that county, and I told him that I was. He asked me if I had written any *communications to the Saint Paul Pioneer Press company;* I told him I had, He wanted to know what the subject of those communications were, and I told him they were on matters of business. He asked me what they were, and I told him they related to his libel suit—Page's libel suit. He wanted to know if I was acting as counsel for the Pioneer Press Co., and wanted to know if I had preparod a collection of facts; I told him no; I told him I had been very busy; he says; "Yes, I *understand* you have been very busy."

Not one word was asked in reference to what Stimson had done, but Mr. French was an attorney of his court, and he was pressing him to see if he could not get something out of him to show that he had been circulating this petition; as under his rule, being an attorney of the court, he would have had him in limbo forthwith.

On page 36 Mr. French's examination is further given. Recollect

that all these questions and answers are drawn out by Judge Page himself; no attorney appears in this contempt proceeding for the prosecution. Nobody but Judge Page.

"Then the judge asked me if I had written and sent a communication to the St. Paul Pioneer Press Co., or to any person connected with that company, in which I stated that money would be raised to defray the expenses of defending their suits, and that there was sufficient evidence in the hands of the attorneys, to impeach Judge Page."

The talk of impeachment had commenced down there for his oppressive acts, and he wanted to find out who was doing it.

"I told him I had not. He asked me if I had circulated, for the purpose of obtaining signatures, any such paper writing. I told him that I had done this—that at one time, while I was in the postoffice, A. A. Harwood had handed me a letter, and requested me to get the signatures of some parties to that letter; that I put it in my pocket, and that one morning while I was in the auditor's office, I happened to think of it, and I took the paper out and asked R. O. Hall, the sheriff, and P. T. McIntyre, the county auditor, to sign it. Hall said that he could not sign anything of that kind; that I then read it, and tore it up while on the sidewalk. He said 'you tore it up, did you,' and I told him I did.

"He then asked me if I had attended any meetings in my office—if there had been any meetings in my office—or the office of Crandall & French, with reference to getting up a petition asking him to resign. I told him there had been some meetings there; he wanted to know what the substance of the conversation was at those meetings. I told him I did not recollect all that was said; that the bond question had been discussed, and as it was a place for political headquarters, that political matters were discussed, and that this malter was discussed. He then asked me if I had taken an active part in getting up that petition asking him to resign—this petition here that he sets up in his answer—I told him I had not; he asked me if I had seen it; I told him I had not. I told him I had refused to sign it; he asked me where I told him it was in my office, and that C. C. Kinsman was in there, and that he said to me, 'French, stop and listen to this,' and that he told me that the petition was ready, and that I stated at that time that I would not sign any such petition as that: that I did not think that that was true.

"He says, 'you said it wasn't true.' I says yes. He says 'in what particular is it not true.' I says, 'in that last clause there that you were ineligible to office, that I did not believe any such thing. I said you were eligible to office. He says, 'is that all that you believe is false.' I told him, no sir. He says, 'is that the only reason you had for refusing to sign it.' I told him no, it was not."

On page 37 he continues:

"At the time he was inquiring about my writing communications to the Pioneer-Press Company; Mr. Cameron interposed an objection as to its being irrelevant and immaterial. Judge Page told him that he wanted to get at the facts in the matter."

That is substantially the testimony of Mr. French as to what he was compelled to testify to before Judge Page, and not one word of it has the slightest reference or bearing to anything charged against Stimson. It is all a fishing effort on the part of Judge Page, a perversion of his judicial power there for the purpose of finding something out upon which he can hinge a prosecution, either criminal or civil, against some other parties, and that is the substance of this charge against him. This is misconduct in office of a very high order.

On page 41, Mr. French further testifies in regard to a matter to which I have already called the attention of the Senate:

"Q. Did you make any memorandum of what was said by Judge Page at that time? you have stated he said certain things you have testified to?

A. No sir; I have testified from my recollection; his reporter was there, and you can see how near I got it."

This was upon his cross examination by Mr. Losey. He wanted to find out whether Mr. French had made any memorandum of what the judge said down there, but he had not; he was testifying from his recollection.

It appears that Judge Page had his short hand reporter there to take down verbatim, what these witnesses had testified to; for the very purpose of using it, if he found anything upon which he could hinge a prosecution, civil or criminal, against somebody else. This evidence of Mr. French and of these other witnesses in regard to this article nine, has not been contradicted by a solitary witness, and cannot be. They did not contradict it by bringing their reporter upon the stand, who had every word of the testimony as given in that court before Judge Page; hence it must stand confessed that these witnesses did testify, and were compelled to testify by Judge Page, before him on that occasion, exactly as these witnesses swear now that they were then required to testify. He has not contradicted their testimony, he has not tried to do it, because he knew that the short hand reporter had it there word for word as they did swear, and it would only corroborate their testimony, instead of contradicting it.

I use this as an argument that wherever Mr. French, Mr. Cameron, Mr. Stimson and these other witnesses have testified before you, you are in duty bound to take their evidence as true where it differs from the testimony of Judge Page and of other witnesses; because, by this fact it shows that they are men capable of seeing and hearing correctly, and of correctly recollecting what transpires, and of honesty of purpose sufficient to give testimony to the truth. You have got no such tests as this to support the testimony of either Judge Page himself or any of the witnesses produced by him.

Mr. French was asked by the cross-examining counsel this question:

"Q. *His* reporter, or the reporter of the court?
A. The reporter said that Judge Page had paid him; he was not acting for the court.
Q. He is the official reporter for that district?
A. He is; but he says that Judge Page paid him personally."

So he was Judge Page's reporter, and that is not contradicted and could not be. Judge Page was prosecuting that examination for his own private purposes, because he had animosity against other men that were not before him, and he was seeking the means of wreaking that revenge upon them. Thus perverting his judicial duties for that low and mean purpose.

But this is not all of the evidence. Joseph Schwan on June the 4th, gave testimony (pages 42 and 43 of the journal) in regard to what he was compelled to swear to. And you recollect that Mr. Schwan is one of the men that Judge Page swore here upon the witness stand had told him in the streets of Austin that he thought that Stimson had circulated that petition. So we may say that Mr. Schwan was really Judge Page's witness. Judge Page subpœnaed him and brought him before himself there in Austin upon that examination, but Mr. Schwan contradicted the statements of Judge Page. He swore there, and swears here, that he never told Judge Page any such thing.

"He asked me if I signed this petition for him to resign. I told him I did. He also asked me where I signed the petition. I told him I thought it was at Crandall & French's office. He asked me also about the meetings, don't know what he meant

by that, and he put the question in a different light; he wanted to know what the sense of the parties present were; and I told him as I took it. I told him that I understood that the public at large were dissatisfied at his doings."

On page 44 he says:

"Did he connect Mr. Stimson's name with the petition at all when he questioned you as a witness?

A. He did not.

Q. In no manner?

A. No sir.

Q. You didn't hear the name of Stimson mentioned at all?

A. He never asked me in regard to Mr. Stimson at all, anything about him at the time he examined me.

F. W. Kimball was also sworn here to show what he was required to swear to before Judge Page. He says:

"That is, in substance, I remember it. I don't know as I can give the exact words that he used, but only in some parts. I remember some parts distinctly and I can state those. Judge Page, after I was sworn, asked me my residence, and so forth. He asked me, holding up a petition, I don't know but he did two, before him, if I had ever seen them; I told him I had seen petitions similar to those, and he asked me, I think, in the first place, where I had seen them; I told him in regard to the petition, the one that I had seen, the one that had the most printing, that I saw it in Crandall & French's office. I think that was the statement I made He asked me in whose hands it was—and I told him it was in no one's hands, that it was lying on their desks. He said to me, 'did you sign that petition?' and before I had a chance to answer, he said, 'you need not answer that, you are not bound to criminate yourself;' then I refused to answer. Then he says, 'If you signed this petition, when did you sign it?' I told him I could not answer that question. He then asked me if I had been present at any meeting when this petition had been talked of, and I told him; and he asked me where it was, and I told him that it was in Crandall & French's.

"He asked me if it had been discussed, and I told him that I had heard the petition read over. He asked me who read it, and I told him that I could not state positively; that there were several parties between me and the party that was reading it, and I could not see the man. He asked me if it was not Judge Harwood who read it, and I told him I could not say whether it was or not. He asked me who were present at that meeting, and I told him as near as I could. I think there was some twelve or fifteen people there that evening. He then asked me a question that I can't just tell in what manner he put it. I remember the answers and what it brought out, but it was something in regard to the people of the city of Austin, discussing his acts, and I remember I told him. He asked me why people wanted him to resign, he put that question to me. I told him that they thought him too prejudiced to sit on the bench. I remember this part distinctly. He says to me, 'you have no reason to be prejudiced against me, you never had any suit before me.' Says I, 'no sir, I never have, never want to.' He says, 'If you do, sir, you will get justice.' Those were about his closing remarks. I remember that distinctly."

Now, the whole evidence of this witness has a bearing that points at somebody else,—to himself and Mr. French, Mr. Crandall and Mr. Harwood, and that class of men there, that it seems, are his haters. He was seeking to find something for which to prosecute them. Thus perverting, constantly, his judicial office for private revenge, instead of for the purpose of the matter under investigation.

June 4th, R O. Hall was sworn:

"There was a paper handed to me in the Auditor's office, and I was asked to sign it."

Q. Well was it one of the petitions in controversy in that proceeding?

A. No sir.

Q. Well, what was that he enquired about?

A. Well, I took it to be a letter.

Q. To whom?

A. I think it was to the Pioneer Press.

Q. That is what Judge Page interrogated you about?
A. Yes sir.
Q. What did he ask you about it?
A. He wanted to know what name was on it, and the substance.
Q. State if this paper about which Judge Page interrogated you was the same paper about which Mr. French testified in his examination?
A. It was.
Q. Now you may go on and state what Judge Page interrogated you about at that time.
A. Well, he drawed my attention to a paper in the auditor's office, and I told him I saw a paper there; it was presented to me and I looked it over, and he wanted to know what names were on it, and I told him I could not tell. There were names in the bottom of the paper, but I did not look at them to know who they were. I read the paper down and satisfied myself that I did not want to sign it, and laid it down.
Q. Did Judge Page ask you what the contents of that paper were?
A. I think he did.
Q. Did you tell him?
A. I think I told him, as near as I remember.
Q, Now what did you tell him the contents of the paper were, as nearly as you can remember now?
A. That there would be money raised to prosecute a suit, and that there were attorneys ready to do it."

**The testimony of Mr. Cameron is given on page 55 of the same date:**

"Q. Well, state how these objections came in, and what occurred, as near as you remember them?
A. Well, questions were asked that I deemed impertinent, and I objected to them as being irrelevant, and there was not much notice taken of the objections. The examination proceeded just the same.
Q. Was any notice taken of the objection, did you say?
A. Nothing more than they were not listened to. The objections were not listened to by the judge. The question was made to the witness Chapman. The question was: "Now sir, don't you know that A. A. Harwood wrote that petition and handed it to you to print?" I objected to that as being irrelevant, and as being unauthorized by law, and without precedent. At that time the judge said he could not listen to objections, that he was running this, or words to that effect.
Q. Now what proportion of that examination as conducted by Judge Page was addressed to the question as to whether Stimson had circulated that petition, and what proportion was addressed to outside matters?
A. About one-fifth of it was pertinent to the issue, perhaps, the other four-fifths of it related to irrelevant matter. I should say so."

**Now, it would hardly be necessary for me at this stage to undertake to prove that all this was done by Judge Page through malice. The very fact that such a series of questions of irrelevancy, brought out and forced out by so many witnesses against objection, is of itself malice from the first word to the last. Nothing but malice. But still we have the question of malice presented in a more compact form. Mr. Stimson, page 14, of the journal of June 4th, says:**

"A. I know, at one time, he made some objection, and the judge told him that he did not care to hear his objections; "He was running that case." I was put under $500 bonds for appearance the next morning.
Q. Judge Page required you to give bonds?
A. Yes sir.
Q. Was any prosecuting attorney present to conduct the prosecution?
A. No sir.
Q. Who conducted the prosecution the next day?
A. Judge Page.
Q. Did he examine the witnesses on the part of the State?
A. He did."

**June 14th, R. O. Hall:**

"My impression is, that he was examining A. A. Harwood at the time, and in re-

gard to his (Page's) official conduct; Mr. Cameron arose, and raised objection, and objected to the examination, as being irrelevant to the cause. The judge put his hand out in this manner: [witness indicates,] and said: "I can't listen to your objection, I am running this court."

Lyman Baird testified on the same day, (page 27):

"'Mr. Stimson, I find that you are not wholly to blame in this matter. You have been led into it by designing men.' He says, 'men have no principle.' He says, 'Just look at the men who were at those conspiracy meetings.' He then put the paper, the testimony—that is, I supposed it to be. It was a little piece of foolscap paper, in front of him, and he looked it over.

"He says, 'just look at the men who were there.' He says, 'there is Harwood, French, Ingmundson and others.' He says, 'such men are no better than the Younger brothers, and ought to be looking through or behind the prison bars.' He says, 'I could'—it was either 'I could, or would, put them there.'"

His malice is further shown against these parties by his conversation with Joseph Schwan, before the examination commenced. This is the testimony of Mr. Schwan in regard to that private interview:

"He asked me if I had seen a petition circulating asking him to resign; he also asked me how many names there were on it, and who signed it; also, asked me if I signed it. He also made remarks to me, motioning with his hands—'Schwan, I have paid you a good deal of money the last five years, and how dare you sign a petition of that kind?' I picked up my hat and walked out. [Laughter.] As I had my hat in my hands and walked through the door, he made the remark, 'You will hear from me, sir.'"

Mr. Cameron, on page 59:

"Q. Who did he name?

A. He named Ingmundson, McIntyre, Kimball, Harwood and French. I think he named all of them, and spoke of them as being very reprehensible characters, and in speaking of Harwood and French—'There's A. A. Harwood and Lafayette French, I'll tend to their cases hereafter; the proper place for them is behind the prison-bars along with the Younger brothers.'"

I have stated that the defense introduced scarcely no evidence in regard to this matter at all, simply because they could not contradict it. But Thomas F. Stevens was examined in regard to one point by them, and they so utterly failed in his testimony to change the effect of the testimony of the witnesses for the prosecution, that they there ceased the attempt. This is Mr. Stevens' testimony in regard to the question of malice (June 15, page 17):

"Judge Page lectured Stimson, and then said that he had been influenced evidently by other parties, and drawn into this thing by parties who were conspiring to drag him down, or something to that effect, and that such persons were very dangerous to the peace and welfare of the community, and that the enormity of such an offense—of such a crime, was equal to that committed by the Younger brothers, or would be characteristic of the Younger brothers, or something of that kind, and that he thought that Mr. Stimson had been in bad company, and had better get out of it, and if he got into trouble through doing this work, those parties who had inveigled him into it would not help him out. They had deserted him and would always do so."

Now, you will remember that Judge Page utterly disclaimed comparing these parties there to the Younger brothers, but his own witness comes on here and substantially confirmed that part of the testimony of our witnesses. It cannot be otherwise than concluded that this charge against Judge Page is not only fully supported by evidence, because it is uncontradicted, but that the offense that he there committed was of so deep a hue that there is scarcely no word applicable to a judicial proceeding that will express it. It is a perversion of his judicial office. No

act could he do of a greater enormity than to use the judicial power that honestly belongs to the court, to force other parties who were not before the court into difficulty.

ARTICLE VI.

Article six will be the next to be considered.

The impeachable act, the official misconduct, that is charged in this article against Judge Page, is, that he used the judicial power that rightfully belonged to the court, to coerce the grand jury to return an indictment against the county treasurer against their judgment. That is, in substance, the impeachable act that is charged against him; that is the matter to which this evidence that has been given here applies, and from it you are to determine whether he did thus pervert the judicial power for that purpose. These other questions that have been brought into this case, are for a different purpose; probably they are all pertinent to one thing or another. For instance, some of this outside evidence will go to show the state of mind of the witnesses; it will go to show what was pending before the grand jury that would induce any charge or any effort, in drawing the attention of the court to the jury of outside matter. It would show the feeling of witnesses towards Mr. Ingmundson, towards Judge Page; it all has its bearing upon those matters, but not upon the real point in issue, that is whether Judge Page did pervert the judicial power that belonged to the court for the purpose of forcing an indictment from the grand jury against the county treasurer against their own judgment. If he did that, he certainly was perverting the judicial power. That is the point at issue here. He says, in his answer, that he did not; we say in the article that he did.

Now, what did he do from which this inference, this conclusion is to be drawn? You have had the evidence before you and it is hardly necessary for me to repeat it. The counsel for the respondent has very ably reviewed the whole of it, and the questions of law that relate to it. Briefly, however, I will state it.

At a prior term of the court, the grand jury had had their attention called to the county treasurer's office. They had investigated it,—under the charge of Judge Page. They had found and reported to the court that they had investigated the office and that they found no manner of wrong-doing in it. It is claimed by Judge Page's counsel here, that that examination took place before this Clayton order matter came up. I believe such is the fact. That investigation, then, related to other matters—to his having deposited money in bank; to his drawing interest. All of these matters the grand jury had investigated, and reported that they found no wrong-doing in it.

The counsel has very lengthily adverted to that which is no part of this case at all, and has charged the county treasurer of violating his public duties, and the constitutional provisions in that regard, which, he says, prohibited him from depositing public funds in bank. Certainly such is not the constitutional provision That says, that the legislature shall, by law, do certain things. They have done nothing of that kind; they have never made a law that prohibits the county treasurer from keeping his public funds wherever he pleases. He may keep them in banks; he may keep them in his cellar; he may keep them wherever, in his own judgment, he feels that they will be the safest. So far from carrying out that injunction, or the inference to be drawn from that injunction of the constitution, the legislature have, in fact, passed a law

by which they legalize the deposit of public funds in bank at interest. Well they may. Would not each citizen, would not each county treasurer in this State, as an officer, feel that the funds are safer in the vaults of a good bank, than in the county treasurer's office in a safe! If they were kept there in these county office safes, that are generally away from any habitable point, no one living in the building, no one there nights or Sundays, generally located out of the ordinary view of people that are passing by, I say, are they not safer in the vaults of a secure bank? Since that statute was enacted by the people of this State, there has a worthless class of beings grown up such as the Younger Brothers, whose business is depredations upon banking institutions and county treasurers. The south and west have been full of just such scenes as was enacted at Northfield. The whole people believe that the funds are safer in the vault of a good bank than they possibly could be in the safe of the county treasurer's office.

Now, the law prohibits a grand jury from indicting a public officer for any violation of the technical reading of a statute, unless the violation has been done through evil motives, as I shall show you before I finish this article.

It has not been my purpose to argue the questions of law applicable to this article, and particularly when they have been fully argued by the counsel on both sides; but it does strike me that the main issues in this county treasurer controversy may have been buried up in a cloud of statutes that have very little bearing upon the real point in contest. I will therefore cite to the Senate two or three provisions of law which I think cover the whole legal points.

The question of the right of county treasurers to receive town orders for any purpose, excepting on payment of town taxes, has been strongly adverted to and insisted upon by counsel upon each side; counsel upon the side of the prosecution claim it right and proper, the other counsel claiming that the law prohibits it. We have in the General Statutes of 1874, page 47, section 92, this provision:

"He shall receive county orders in payment of county taxes, also the orders of any town or city for the town tax of such town or city, without regard to the priority of the numbers of such orders, except when otherwise provided by law."

Certainly that section of the law cannot be received as a prohibition against the county treasurer receiving town orders whenever he pleases. It merely provides that he shall receive them when presented in payment of town taxes. He cannot refuse them then.

There is no prohibition upon his receiving them at any other time, in any other manner that he pleases, excepting what is found in Bissell's Statutes, section 68, page 230, and I will read the substance of that provision. I claim from this section that it expressly or impliedly authorizes a county treasurer to receive town orders whenever or wherever, and for whatever purpose he pleases, provided he receives them at par.

"No county treasurer shall either directly or indirectly contract for, or purchase any order at any discount whatever upon the sum due on such orders, and if any treasurer or deputy treasurer directly or indirectly contracts for, purchases, or procures any such orders at any discount whatever, he shall not be allowed on settlement the amount of said orders or any part thereof, and shall also forfeit the whole amount due on such orders, and shall also forfeit the sum of $100 for each and every breach of the provisions of this section, to be recovered in a civil action at the suit of the State for the use of the county; and the treasurer is hereby prohibited from receiving from any county treasurer any orders in payment of taxes collected by him,

unless with said orders, said county treasurer shall file his affidavit stating therein that all such orders were received at their par value."

Now, that is the only prohibition in the statute; and that simply prohibits the county treasurer from speculating in town orders. It does not prohibit him from taking them just as he pleases. He can take them from the man who has them, and pay him money for them out of his own pocket, or he can pay him the town money from which they would otherwise be paid. If, however, he does take them at a discount, then he cannot be allowed those orders upon his settlement. Implying that if he takes them at par, he may be allowed upon his settlement for the orders. When he takes them at a discount, then the prohibition attaches that he shall not be allowed them upon his settlement or any part of them. And he shall forfeit the whole amount due on such orders, "and shall also forfeit the sum of $100 for each and every breach of the provisions of this section." That is, takes the orders for less than their face. "And the town treasurer is hereby prohibited from receiving from any county treasurer, any orders collected by him, unless with said orders, said county treasurer shall file his affidavit stating therein that all such orders were received at their par value.

Now it is very true that when the town treasurer comes to get his town money from the county treasurer, and has a town order presented to him instead of money, that he can require the county treasurer to make an affidavit that he received it at its face. If he makes that affidavit, then the town treasurer is bound to receive the order upon that statement. Of course the town treasurer can receive them if he pleases without the affidavit.

You will remember that when the grand jury were required by Judge Page to report the facts in regard to this Clayton town order, that Judge Page charged them that those facts warranted them, and in substance required them, to report an indictment against the county treasurer. I will not relate to you the circumstances of that town order, because it is not material. The point is, that Judge Page instructed them that they should return an indictment, if the facts were as they were represented to be. In other words, the Judge charged the jury, that no matter how honestly, the county treasurer had declined to pay over that money, yet they must indict him.

The grand jury acted wisely. It is the common law provision that there must be a manifest intent in his neglect or refusal to perform a duty, before he can be criminally liable. If there was no wrongful intent, the county treasurer was guilty of no crime.

Let us see what the statute says; page 606, statutes of 1866, chap. 95, section 29: "The refusal of an officer to pay any sum demanded of him, where there is reasonable doubt as to his duty or authority to pay the same, on such demand, or where such refusal is not with a wrongful intent, shall not be construed to be an embezzlement according to the intent and meaning of the 26th and 27th sections of this chapter."

Now there we have it right in the statute; and yet they charge the county treasurer with embezzlement, because he refuses to pay town money twice to the use of the town. But suppose that he had refused to pay it only once, supposing that it was his duty to hold it; suppose that there was no wrongful intent. The very words of the statute say that it shall not be embezzlement if there was no wrong intent in his withholding it. This effort, then, of Judge Page, to force an indictment against the county treasurer, was a perversion of his judicial duty. He should have instructed that jury when they reported the facts in re-

gard to that Clayton town order, that even if it was his duty to have paid over that money a second time, yet if they found that the refusal was made without any wrongful motive, that they should not indict him.

Now it has been insisted upon urgently by counsel here, that it is the duty of the court to instruct the grand jury as to the law, and the duty of the grand jury to obey the instructions of the court. That if upon a certain state of facts, the court tells the grand jury that the facts constitute an indictable offense, that they, the grand jury, are in duty bound to return an indictment upon those facts. Such is not the law, Senators. Such a theory as that upon which Judge Page has acted, to force an indictment against the county treasurer out of that grand jury, is a perversion of his judicial duty. He should have instructed that grand jury that it was *their* judgment as to the sufficiency of the facts, and not his judgment, that they were to follow. But he insists, and his counsel insists, that that grand jury should have obeyed his judgment as to the sufficiency of those facts, and not their own judgment upon the facts.

We have heard a great deal in this testimony in regard to Judge Page instructing that jury to find an indictment if they could upon the facts, and it they could not find an indictment, to make a presentment, and if they could not make a presentment, then to report the facts.

Counsel have gone upon the theory that the report the grand jury made was a presentment. Such is not the case. A presentment cannot be found by a grand jury, unless they find that a public offense has been committed. When they determine that a crime has been committed by somebody, and they are unable to find out who did it, then they can make their presentment to the court in order that the court can further investigate and find who committed the offense. For instance, a grand jury may be able to prove to their satisfaction that a murder has been committed by somebody. They cannot find who committed it, but still they have the evidence to satisfy them that it is a murder. They then make a presentment to the court showing that at a certain time and place, or under such and such circumstances the crime of murder was committed, but that they do not know who did it. Then it is the duty of the court and its officers to further investigate that crime.

This is the provision in regard to a presentment:

"A presentment is an informal statement in writing by the grand jury, representing to the court that a public offense has been committed which is triable in the county, and that there is reasonable ground for believing that a particular individual, named or described, has committed it."

They must find that a crime has been committed, that there is reasonable ground for supposing that somebody that they name (or if they cannot name him, somebody that they describe) has committed that crime. Then further investigation takes place.

Now there is no provision of law that authorizes, much less requires the grand jury to report a state of facts against any public officer or private citizen charging him with acts that look like a crime. That very fact that Judge Page required this grand jury to report a series of facts against the county officers which did not appear to their minds to be a crime, was a misdemeanor in Judge Page; it was a perversion of his office to require facts to be put upon the records of his court that

did not constitute a crime in the opinion of the grand jury. I say that that was an ignominious act in the judge. The grand jury can make a presentment only when they conclude upon the evidence that a crime has been committed.

Section 35, of chapter 107, page 639, Statutes of 1866:

"The grand jury ought to find an indictment when all the evidence taken together is such as in *their judgment* would, if unexplained or uncontradicted, warrant a conviction by a trial jury."

When the facts, taken all together, would "in *their* judgment (unexplained or uncontradicted,) warrant a conviction by a trial jury." Not when those facts, taken all together, would, in the judgment of the judge unexplained, warrant a conviction. But when in their judgment it warrants a conviction, they should report an indictment. Under no other condition of circumstances are they warranted in reporting an indictment.

The grand jury had examined this county treasurer matter; they had concluded from the law, if it was his duty to pay over that money, which they did not believe it was, that there was no evil motive, in his declining. That if the town of Clayton had a right to have it paid twice they should resort to a civil action and recover it. That it was the privilege of the treasurer, even if there was only slight doubt about the matter, to hold on to the money until the law had compelled him by an action brought against him, to refund it, to pay it a second time. I say pay it a second time, because there is no question before the Senate at all but what he had once paid it. He had paid it into the hands of the town treasurer. Under such circumstances the law expressly says that the grand jury shall not indict for embezzlement if they think the with holding of the money was for no evil purpose, that it was not from wrongful motives and evil design.

I will refer to the evidence by which the facts are proven. The evidence in regard to the first grand jury, the grand jury of the September term, 1876, as found on pages 28, 30, 36 and 56, of the journal of May 30th. The second grand jury, (and this is the grand jury that it is charged he undertook to force an indictment from), was the grand jury, I believe, of the March term, 1877. I will refer to J. D. Woodard's testimony. He was a grand juror, a plain spoken man, and to all appearance a very honest-minded man; an old man, who did not manifest any ill-will towards Judge Page at all.

On May 31st, page 40, in regard to the first charge of Judge Page at the March term, this witness says, and mind, we find no fault whatever with his first charge—it was very proper for the judge of the court to present that matter to the grand jury and to have them investigate it:

"Judge Page said there was transactions brought to his notice in the county treasurer's office; that an order came from the town of Clayton, that the treasurer had received an order and paid it, that the order was not cancelled, and in some way—he did not pretend to know how it was—that that order had been paid twice, and that the town of Clayton was out that amount. The order was for $114.00 and I think fifty-two cents, I am not certain; and he read some portion of the law to us and told us to retire and examine into the facts, and if we found them to warrant an indictment in our judgment, that we should do so.

"Then we retired and examined cases, and examined this one the first of any, as you may say, and found that nothing indictable or presentable, as you may say, was

done by the county treasurer. I mean to say that the facts were referred to a committee of five, and we took a recess. Some of them went into the treasurer's office to examine the books. They found nothing whatever, except he had taken this order, but it was all explained to us so that it was satisfactory to quite a majority of the jurors. We considered that was the end of it, and had no difficulty in making a report to the judge."

It has been charged over and over again here that the grand jury, in the opinion of Judge Page, had neglected that duty day after day. He waiting in suspense, anxious for an indictment to be returned; and that the grand jury intentionally neglected it for the purpose of screening Mr. Ingmundson, and yet the grand jury say it was the first thing that they attended to, and that they came to the conclusion that there was nothing indictable or presentable in the matter.

May 31st, page 41:

"We reported from time to time on different matters, and I think it was the second week, perhaps Tuesday or Wednesday, I won't say positive which, he wanted to know if we had investigated that matter."

Judge Page had no right to ask that question. He had given it to them as a duty for them to perform, and he should have taken it for granted that they had performed it; and if they had found an indictment, their report of an indictment to him would have been information of that conclusion. If they had found upon the facts no indictment, that no offense had been committed, it was none of his business, or anybody else, to know why they had not found an indictment, nor to make any inquiry into it.

May 31st, page 41, he continues:

"Q. The matters that you are telling about now, that he asked you if you had investigated the matter, was that the matter of the county treasurer?

A. Yes sir. The others he didn't seem to refer to at all after that, he considered that we were able to dispose of them amongst others, if we didn't see fit to make a presentment why he let it drop, but this he seemed bound to take more notice of than any of the other. I was not acquainted with him or the county treasurer at that time, except that I was in the county treasurer's office when I paid my taxes. We went back on this matter and was put again in the jury room, and no definite conclusion came to us as you might say. We reported, I think, two or three times—two or three different times that he charged us on this point. Once we reported that there was, but not sufficient to warrant an indictment; that there was some irregularities that was presented to him, there was also some paper presented to him, that had the evidence in it, but it was not signed by the foreman; and he stated that that was an informal way of proceeding, and sent us back again.

Q. Is that all he stated—that was just informal? What was his manner?

A. His manner, from time to time, increased, that is, his anger, when he seemed to be angry—increased from time to time.

Q. You reported back that there was nothing against the treasurer, and he seemed to be angry, did he?

A. He did."

On May 31st, page 42:

"We carried in the facts, he then sent us back again and told us if those were the facts, and they could be proven, that they constituted an indictable offense, as much as to say we should go and indict the treasurer.

"We went back and deliberated on it, and went in again and presented the facts as they were, and at this time he seemed to be quite angry and spoke in a loud, harsh tone; I don't know but it is his common way of speaking. I am not acquainted with him, but I never heard any such language used by any one else to any persons who were considering they were doing their public duty. His language was very harsh and strong. He told us we had violated our oaths or perjured ourselves; that it was a good thing that there was a higher power than grand jurors, and then ordered the

county attorney to draw up a statement of facts that a warrant might be issued for the arrest of the county treasurer, and have him indicted or something to that effect. He then turns to us and told us we were discharged."

C. J. Short also testifies substantially the same as the first witness, in this regard:

"The next time he referred to the statement that they had brought in, and told them that it was not such as the court would accept, and directed them once more to investigate the matter, and if they found that the facts were such as to warrant them in finding an indictment, to find an indictment, or if a presentment, to find a presentment; otherwise, to simply state the facts; they brought in that time a statement of facts, I supposed; they brought in a paper. That was presented to him. He stated to them that if the facts were such as they had found, it was their duty to find an indictment upon those facts, and stated that there must be something that was keeping them back, that they hadn't done it, and directed them to consider the matter again; he seemed earnest and somewhat angry."

Richard A. Jones also confirms the testimony of all these witnesses. (May 31, page 3:)

"Q. State, Mr. Jones, if you heard him charge or instruct the grand jury on the subject of the county treasurer, more than once, if so, how many times.

A. Three different times during that term of court. The second time I heard him instruct the grand jury at that term, was, perhaps the third or fourth day of the term, I could not be particular as to the day. The grand jury came into the room and handed him some paper, I don't know what that was, at any rate, he then went on to instruct them that the facts in relation to the county treasurer's office, which he had represented to them, were open and notorious and were not in dispute, and, as a question of law, he instructed them he was guilty of a felony and ought to be indicted, and that it did not make any difference, that the treasurer did not *mean* to do wrong, that he was supposed to know the law, and the intent followed the act, and if they found the facts as they existed, as was not in dispute, under their oaths it was their duty to find an indictment That charge, I should think, occupied ten minutes, and possibly fifteen."

On May 31st (page 3,) he continues in regard to the third charge:

"The third time that I heard him he was instructing the grand jury when I went into the room, holding a paper in his hand, and stated to them nearly as he did the second time, that the facts were not in dispute; that the county treasurer had no business to be there before them to explain his acts; but that even if he had explained them, it would not affect his liability for what he had done; that under their oaths it was their duty on the facts as they existed to find an indictment; that their oaths were of course in the keeping of themselves and their consciences, but it was impossible for him to see how under the state of facts and their oaths as grand jurors, they could fail to find an indictment."

C. C. Crane testifies to the same state of facts:

"Q. State if you were called into court again.

A We came into court twice, I think on points of law, to receive information from the court; after that we brought in an informal statement in reference to the matter.

"Q. What do you mean by informal statement?

A. Well, it was a statement as to the opinion of the grand jury; what they thought of the case of Mr. Ingmundson.

Q. Why do you term it "informal?"

A. Well, I think it was what the judge called it, when he called our attention to it; I think he called it an "informal statement," when he called our attention to it; he read the statement over, and stated that that was not what he desired; that he instructed us that we should find an indictment if the case warranted it, and if there was not sufficient evidence for an indictment, we should proceed by presentment; and if we couldn't find either, we should bring him in the facts in the case.

We then retired again and brought in a statement made out by one of the grand jurors, and presented it to the court. The judge examined it, looked it over, and

said if these were the facts in the case, and they were substantiated by evidence, that it was an indictable offense. I think he read some law to us at that time, too, if I remember correctly. We then retired after that again, and came in and asked to be discharged."

On May 30th, page 59, Mr. Cameron testifies:

"At that time he read some law, and stated what their duty was in regard to it, and wound up that conversation to the grand jury by stating to them that if the facts would warrant it, it would be their duty to find an indictment; that if they could not find an indictment, to find a presentment; that if they could not find either a presentment or an indictment, that he wanted them to report the facts as found by them to the court."

Lafayette French testifies fully in regard to the transaction that took place there.

Mr. Ingmundson, on June 3rd, page 34, gives the whole particulars in regard to that town order.

I have but one observation to make in regard to the town order. It figures here only as a collateral matter. It is not the privilege or duty of the court to try the question whether that town ought to receive that money from the county treasurer a second time or not. You are to presume, as the court there ought to have presumed, that the grand jury as a jury were satisfied that there was no wrongful intent, or that they were satisfied that it was no wrong at all, either of which was sufficient for them to refuse to find an indictment. If in their judgment the town of Clayton had no right to that money a second time, then it was their duty upon that conclusion not to find an indictment. If, however, they did conclude that the town of Clayton was entitled to that money a second time, yet if they found in their opinion that the county treasurer had no wrong motive in declining to pay it over a second time. they then should have refused to find an indictment. Either case would have been sufficient. Of course, if it was his duty to pay it over, the town of Clayton has the right to sue him and recover it. If it is a disputed matter we are not to convict men of crime when they have a good foundation for a claim of right. And that is just what the statute provides. that if there was, in the opinion of the grand jury, no wrong intent in his refusing to pay it over, it was not embezzlement. It could not be embezzlement, because to be embezzlement the money must not only be wrongfully detained, but it must be detained from a wrongful motive. And yet Judge Page refused to instruct the jury in that regard. He not only did instruct the jury that as a matter of law the town was entitled to that money a second time (which is not the law) but he refuses to call their attention to the fact that it was the law that if they found it was not retained from the town upon a wrongful motive, but upon a claim of right, that they should pass it by.

One word in regard to the right of the town to that money a second time. The town treasurer called upon the county treasurer for some money. The learned counsel for the managers ably argued, and I think, conclusively showed to this Senate, that it was not only the privilege, but the duty of the county treasurer to pay over town funds whenever he was called upon by the proper town authority for them, namely, the town treasurer. But that at the end of six months when there was a final settlement between the town and the county by the county auditor, then it was the duty of the county treasurer to pay over all town

money. At other times he may pay it over, and if he has it, it is his duty to pay it over; but at these stated periods he is obliged to pay it over *nolens volens*.

We have shown you by the statute that the county treasurer may buy all the town orders that he pleases; he may pay his own money for them, but he must buy them at par. He may pay out the town money in his hands and receive them in that way, but if he does he must take them at par. If he takes them at par the statute impliedly says that he shall be allowed all such orders in his hands upon those settlements.

The county treasurer, when he paid this $114.52 to the town treasurer, either paid it from his own pocket or he paid it from money in his hands. The town treasurer applies it to the payment of a debt of the town. Now the town had received the benefit of that payment once, but the county treasurer had no voucher to show, excepting a mere receipt, perhaps not that, it matters not. He should have had a receipt showing that he paid it. He had paid it; if he did it unlawfully when he was entitled to have credit for it, then it was still his money; if he paid it to the town treasurer, the town could not take the benefit of it and call upon him to pay it over a second time even though he had paid it irregularly; the town must refund that money to him first; because, if he had no right to pay the town money out, although the town did receive it, and get the benefit of it, yet it has no right to hold it. And before they can call upon the county treasurer to repay it, they must refund it to him. If the county treasurer had no right to pay it to the town, the town had no right to hold it. The money went to the town treasurer's pocket, and from the town treasurer's pocket into Mr. Coleman's hands, to pay a town order which he held. The town order was simply turned over to the county treasurer as a voucher. If, however, it was the county treasurer's own private money, if he must pay it out a second time, it was in the presumption of the law, still in the treasury. If it was still in the treasury in the theory of the law, there was the town order that it represented. The debt of the town had been paid with that money, and there was no wrong to anybody, but an accommodation to all. And that is all there is in regard to the town order.

And this takes us to the question of malice and the motives of Judge Page under this article.

The PRESIDENT. The Senate will take a recess for five minutes.

AFTER RECESS.

Mr. Manager HINDS. [Resuming.] Before finishing this branch of the subject in regard to the law and duty of county treasurers, I will call the attention of the Senate to the law of 1861, page 42, section 30, which reads in a very positive manner:

"That it shall be the duty of the county treasurer of the county to pay over to the treasurer of any municipal corporation or organized township, or other body, on the order of the proper officers, *at any time*, all moneys received by him arising from taxes levied and collected belonging to such municipal corporation, or organized township, and immediately after the settlement in February and October in each year, pay over all moneys and deliver up all orders and other evidence of indebtedness of such municipal corporation," &c.

I am told that this provision of law has never been repealed, and every provision of law in the revised statute confirms this idea, because there is no prohibition of the treasurer of the counties paying over other men's money whenever and however the owners of the money call for it. But here is a provision that then existed, and probably still exists, that makes it imperative upon the country treasurer to do so.

Senator NELSON. Please read that again.

Mr. HINDS. [Reading]:

"That it shall be the duty of the county treasurer of the county to pay over to the treasurer of any municipal corporation or organized township, or other body, on the order of the proper officers, at any time, all moneys received by him arising from taxes levied and collected belonging to such municipal corporation or organized township."

Senator NELSON. It is still the same in Bissell's compilation of the general statutes.

Mr. HINDS. [Resuming.] The only question still remaining in regard to article sixth is whether Judge Page took this course in reference to the grand jury, innocently, ignorantly, erroneously, or through malicious motives; whether he had any malice to feed by doing as he is charged with doing, and as the evidence clearly shows that he did so.

As to the question of malice, wo have already established the first proposition, that the act done by Judge Page was wrongful. He concealed the law from the grand jury, and charged them falsely in regard to the law, the plain statutory provision of the law. That wrongful act would imply malice, evil motives and design. But we have positive proof that such was the case.

The county treasurer himself, I. Ingmundson, gives this testimony:

"Q. Give us your expression in connection with that phrase—one-man power?

"A As near as I can recollect it—and I think it is almost my exact language—it was like this: I said that I had often worked with the opposition in the county because I did not believe in the one-man power in politics. It might not be the exact language, but it was very nearly so."

Up to that time, the evidence shows that Judge Page and I. Ingmundson were on friendly terms, though perhaps not intimate; and that remark was made by Mr. Ingmundson at a public speech. Immediately after that, an ill feeling grew up and was continued to be harbored by Judge Page toward Mr Ingmundson.

It appears that in regard to the investigation of the grand jury in 1873, the jury reported that they found nothing irregular, or any appearance of wrong doing in the office of the county treasurer. The preceding term, then, Judge Page had charged them in reference to the county treasurer's office; they had examined it, reported to the court that they had investigated the matter, and that they had found no manner of wrong doing there. It was then the duty of the court to presume that up to that time, at least, there was nothing wrong in the county treasurer's office that needed an investigation for the purpose of indictment. He ought to have taken it for granted, but after that report had been made, after some other town order came up we can see that there was a little foundation for Judge Page again calling the attention of another grand jury to other matters. And it does not appear that

e did call the attention of the grand jury to the old matters about epositing money in bank at interest, etc., "mixing up the funds" as he alled it, taking in town orders and paying out the money on them, his thing and that, it don't appear that he did specially charge these ld matters again upon the grand jury in his first charge, but he did and we say properly) call the attention of the grand jury to the new natter, namely the town order. So we find no malice in the first harge. But in regard to the three charges taken together, I will read ou upon this subject of malice, the evidence of Richard A. Jones, on May 31st, page 9.

"Senator GILFILLAN J. B., submitted a question in writing, which was as follows:

Q. Please describe particularly and definitely the appearance, manner and tone of Judge Page in charging the grand jury respecting matters in the affairs of the county treasurer and county auditor, at each of the three several times, as to which you have testified?

A. During the first charge of Judge Page to the grand jury, as I have already said, his language so far as I recollect, or the impression made upon my mind at the time was unexceptionable; there was nothing I would have taken exception to His manner was quite excited; he was very white; his eyes looked anger, if I may so express it.

He was *very* emphatic—his tone of voice was decidedly loud. During the second time the same characteristics appeared; except in a much more exaggerated form. And the third time it was—I don't know what to say. [Laughter.]

Mr. LOSEY. O, say it.

A. I don't know how to express it, Mr. Losey. It was—well—perhaps "terrific" would be too exaggerated a word, and yet I think there is none that supplies the place of it."

We draw malice from these charges of Judge Page to the grand jury from the testimony of other witnesses as to his conduct towards them.

C. C. Crane testifies the same date, one page 31:

"Did you notice whether his tone was any louder than usual when he finally addressed you in court?

A. Well, I can't say it was very loud, particularly; it was very emphatic.

Q. Was it any louder than usual?

A. Well, it was more sarcastic than loud."

We also draw malice out of this transaction, from the fact that after the grand jury had finally asked to be discharged, without finding any indictment, that he then, in an insulting, overbearing manner, ordered the county attorney to officially draw up a complaint and have a warrant issued, and bring Mr. Ingmundson before himself. And, also, from the further fact that Judge Page takes upon himself in that examination that follows the discharge of the grand jury, the whole burden of the prosecution of Mr. Ingmundson. Judge Page himself subpœnas the witnesses, examines the witnesses, conducts the prosecution as a prosecuting officer as well as a judicial officer.

Mr. French testifies, May 30th, page 37:

"Judge Page said it would be necessary to adjourn it; that he could not look after it then, bnt in the mean time he would give me the names of the witnesses."

Mr. French was the county attorney. The judge proposes to determine who the witnesses are to be, indicating that he was already posted privately in regard to the transaction, and knew when and where, and how, and what witnesses were necessary. On page 34, this same witness says:

"In the meantime I asked the judge for the names of the witnesses, and he said he would see to that himself, so I paid no more attention to it, until the day that Mr. Ingmundson was to have his examination. On that day I appeared, Mr. D. B. Coleman, and Soren Haralson were there as witnesses for the prosecution, the judge informed me.

Q. Who procured the attendance of witnesses?

A. I don't know; they were there, I never issued a subpoena for one, or never asked an officer."

We further draw the inference of malice from the conduct of Judge Page in the investigation, from his dictating to the county attorney the kind of a complaint, what matter should be inserted in the complaint. This is the testimony in that regard:

"Q. State what part of that Judge Page caused you to put in after the complaint was made?

Witness reading: 'And then and there demanded of the said town, that they take a receipt and voucher for the amount named therein, as having been paid by him the said Ingmundson, for and on behalf of said town, and then and there refused to pay said town the sum of $114 52 of the funds and moneys belonging to said town by reason of holding said order as aforesaid.'"

None of this matter appeared in the report of the grand jury even as a fact, because it was not true; but the judge caused the county attorney to insert it in the complaint upon which Judge Page afterwards issued the warrant.

We further draw the inference of malice from the testimony of N. M. Hammond found on page 65 of the journal, of May 30:

"He talked to us quite a little while; I can't tell the words that he said, and finally he told us, 'according to the law, that we had, each and every one of us, violated our oaths by not finding an indictment against the county treasurer.'"

We also infer malice from the fact of the judge charging the grand jury that the question of intent as to why Mr. Ingmundson withheld that money had nothing to do with their duty as grand jurors, falsely so charging them.

May 31st, Mr. Ingmundson testified:

"After the witness had been examined, my attorney, Mr. Cameron, made a short plea, in which he stated substantially that he could not see by the witnesses examined, that there had been any irregularities committed in the office, but if there had, that it did not show any intent on the part of the defendant to do wrong; but the judge answered him that it was no difference as to intent; that a man was supposed to know the law."

Omitting to make any reference to the statute that in positive terms provides that if the withholding of the money was not with a wilful intent, it is not embezzlement; that if it was without wrongful intent it was no embezzlement to withhold it, even though wrongfully withheld:

"Judge Page also stated that he had been informed that the defendant had been talking about him, and said that he had been informed *that* by a citizen of Le Roy; that he was down there, that he got excited, very much excited, and was talking very angrily about him."

Now, this, in connection with the other matter we have given, is substantially the evidence that the managers bring you as to malice, against Judge Page. This is all confirmed by the testimony of Judge Page's own witnesses, as I will now show you.

On June 13, page 27, E. R. Campbell testified on the part of the defense:

"I had a very strong impression that it was a moral impossibility that there should be any necessity for investigating the Ingmundson matter."

He was a grand juror and a member of the first grand jury that investigated him.

W. Litchfield, page 30:

"Q. Who sent for Mr. Ingmundson?
A. I think Mr. Ingmundson was sent for by—I won't be positive—by a vote of the grand jury.
Q. He was sent for with the knowledge of the grand jury?
A. Yes sir, with the knowledge.
Q. He didn't come with his own motion?
A. No sir, he did not.
Q. Did he bring his books?
A. I think he brought, I won't be positive—I think he brought one book with him.
Q. He didn't refuse to bring any books—to show you any books?
A. No sir."

This testimony shows that so far as Mr. Ingmundson was concerned, there was no cause in his mind, no desire to avoid an investigation as has been charged against him. To avoid the inference of malice this charge was made against Ingmundson; and yet their own witnesses testify that Mr. Ingmundson was free and willing to do anything that the grand jury wanted, to aid them in the investigation; that he was making no effort to cover up his tracks.

F. A. Elder, another of their witnesses, on page 37, testifies:

"It is my recollection now, that when the grand jury were discharged, his manner, and tone perhaps, were a little different from that in the first charge. He was more earnest and positive in what he said.

"It is my recollection that, when the jury came in finally to be discharged, that the judge stated to them that they had been prompt in the discharge of all their business that had come before them, except this matter which they reported on; that there was something about it that he could not understand; that they had taken an oath to present things truly as they came to their knowledge, without fear, favor or affection or reward; that if they had been influenced by any of those motives it was a violation of their oaths; that their consciences were something that he could not control."

He would have been very glad to have done it if he could. This is their evidence in regard to his treatment of the grand jury.

Andrew Knox, the foreman of the grand jury, the man that was acting for Judge Page in persecuting the county treasurer, says on pages 57 and 58 of the journal:

"I think it was at that time that the court stated—said there was something strange in our actions in regard to this matter. It was a matter he had laid before us in the first charge, and that we had been prompt and clear on all other matters except this, and he could not understand why there was such a disposition manifested to delay or put it off—'evade,' I think he used the word 'evade'—the facts, as he, the judge, turned to the jury on that occasion, and stated that if the jury had been influenced; that the facts as they had been furnished them, if they had been substantiated by evidence, and the jury had been influenced by improper motives, either by fear or favor, or anything of that kind, of any person, that it was a violation of their oaths,—their action—and he made a remark then: 'As to you individually, or to your own conscience, I have nothing to say.'"

June 13th, page 77, D. B. Coleman testified, (and he is the man who received the money on that wonderful town order):

"Judge Page said if we had been influenced by any improper motives in our actions, that we had been guilty of a violation of our oaths."

G. W. Case, June 14:

"Q. Did he say to you that you were to indict the treasurer?
A. No sir, in that charge he did not.
Q. Did he at all use that language?
A. I think at one time."

At one time, it appears then, by their own testimony, that Judge Page did directly charge them to find an indictment, no matter what their opinion was at all,—positive instructions to return an indictment against the county treasurer.

E. J. Phillips, another of their witnesses (page 23), testifies:

"Q. Did he say to them that there was a higher power than grand juries?
A. Well, I could not remember his words; the way I understood him, in my way of telling it, would be, that they didn't stop the proceedings from being investigated further, or something to that effect."

Of course an insult to the grand jury. On June 14fh, J. M. Greenman, one other of Judge Page's witnesses:

"My recollection is, that he said something in regard to their having been influenced by improper motives, and if so: that it was a violation of their oaths; and then he followed by the statement that their oaths were in their own keeping and consciences; ttat he had no control or had nothing to say about it, or something of that kind; I don't recollect the exact language that he used."
Q. Did he tell the jury that they had violated their oaths?
A. Well, not direetly. Only as I have stated."

On page 32, the same witness upon cross examination further testifies:

Q. Did he say anything to the grand jury on that occasion about the grand jury not being able to stand between the punishment of crime and criminals?
A. Well, nearly that—not just that.
Q. What was his exact language in that particular?
A. Well, I won't attempt to give his exact language: my recollection is that he said that it was not the province of the grand jury to stand between—criminals—I think of crimes, and the full investigation of these matters."

We fufther draw confirmation of malice from the testimony of other witnesses in regard to his instructions to the county attorney. On June 14 (page 33) Mr. Greenman testifies:

"Q. When he was giving instructions to the county attorney, didn't he say that the county attorney should have Mr. Ingmundson arrested and brought before him (the judge.)
A. I would not undertake to say that he said that.
Q. Well, what is your recollection upon that subject?
A. My impression at the time was, that a warrant was to be issued, and my impression was that Mr. Ingmundson was to be taken before the judge, but I won't undertake—
Q. You understood the direction of the judge to be so?
A. That was the impression that I had.
Q. And you so testified before the judiciary committee.
A. I think so."

This is the testimony of one of Judge Page's particular witnesses; he calls him for the purpose of resisting the inference of malice from the testimony of the prosecuting witnesses that Judge Page ordered the

county attorney to make a complaint and have himself (the judge) issue a warrant; in order to make it appear by inference that the county attorney was at liberty to bring the complaint before any magistrate he might choose. But, on the contrary, his own witnesses testify that the impression left upon their minds was that the arrest was to be made and the defendant brought before the judge himself.

J. D. Rugg, page 43, says:

"Q. Did he seem to be excited?
A. More earnest; I don't know that he was excited, but it was more earnest, and I should think a little louder tone of voice than it was in the first charge."

Frank Tichnor, another of the witnesses, testifies:

"Q. What occurred between the court and grand jury at the time.
A. Well, he reprimanded them a little, I believe."

Now, Senators, nearly all of the evidence that I have laid before you in regard to the question of malice, comes from the testimony of their own witnesses. I have cited to you only small portions of the evidence of malice given by the prosecuting witnesses, because the transaction itself accompanied with the testimony of their own witnesses in regard to the question of malice is ample. It shows that Judge Page was not subserving his duties as a judicial officer; that there was something back, prompting him to move forward out of the line of his judicial duty—hatred towards Mr. Ingmundson.

ARTICLE VII.

The seventh article of the impeachment is drawn from the facts of the sixth. In substance, the impeachable offense, the corrupt conduct that is charged against Judge Page in the seventh article of impeachment is that he insulted the grand jury; that the judicial power exercised by him was perverted to the purpose of wreaking a spite that he entertained towards that grand jury because they had not found an indictment against the county treasurer. He insults them there openly and publicly, and that, we insist, is a high misdemeanor in the court; claiming on our part what cannot be refuted, that the grand jury is a co-ordinate part of the court; that the grand jury, operating upon their own oaths, are just as independent of the court in performing their duties, as the court is independent of the grand jury, when the court is attending to its duties. That the grand jury acted under an oath administered to them, in which they are required to use their own judgment upon all matters that are before them, and not the judgment of the court. The statute so in terms requires that they should not find an indictment unless in their judgment the facts will warrant a conviction. That makes them an independent body, acting under an independent responsibility, in which the judge of the district court, while he has a right to instruct them as to the law regulating their duties and the mode in which they are to proceed in doing it, to lay before them the theory of the law in regard to public crimes, as to what they are, or whether they relate to public officers or private individuals, yet when the court has done that, it is the province of the jury by themselves to consider the sufficiency of the evidence brought before them as to whether it will warrant them in indicting one of their fellow citizens. And when, in their good judgment, acting under the solemnity of their own oath, they

come into court having discharged their duty, made their report in the court according to their own consciences, to have the court openly and publicly insult them, is an extreme perversion of judicial power.

You will notice that, in the sixth article, I have given you very little evidence concerning Judge Page's conduct on the occasion when that grand jury were finally discharged. It is because it has nothing to do with that article. There was nothing said at that time by Judge Page to induce them to further investigate Mr. Ingmundson. His conduct before them at that time relates wholly to the seventh article only so far as it shows malice towards Mr. Ingmundson, and we used it only for that purpose. But so far as it was an independent matter, there was no intent by what the judge said in that final lecture to the grand jury, to induce them to take any further proceedings against Mr. Ingmundson, because the judge had then despaired of being able to force them to do so. So that after being disappointed in that matter, he works his spite and revenge that he then entertained, upon the grand jury itself.

Now, in regard to the indignity that he then offered to the grand jury, which is the foundation of this article, on May 31st, page 34 of the journal, Levi Foss testifies:

"Q. Well, when you made your report, what did he say to you?

A. I think he said he was astonished—he seemed to be a little astonished that we hadn't reported favorable to what he wanted.

Well, he said as that paper stated the facts, he couldn't see why that we didn't find an indictment, he certainly thought that that was sufficient for indictment, and that we had violated our oaths in not finding the same. He said we must be led by some—something as though we had been bribed, or some way brought in there that we had been bribed some way, to clear Ingmundson from crime. He said that we had perjured ourselves.

Q. What did you do when you came the next time?

A. Well I believe we reported then the facts of the case, just as it was; that some little irregularity in the county treasurer's office—but not through the county treasurer—by his clerk concerning an order—and that we didn't find an indictment; there wasn't proof enough to form an indictment.

Q. What did he say to you then?

A. Why then he went on and stated that we had violated our oaths, and that we wasn't what he expected we were When he first commenced he was very indignant in his talk at the time, and he spoke to us about it, and I felt as though that—he seemed to be indignant over the matter to think that we did not find an indictment, and turned around to the county attorney and told him to make out a paper for the arrest of Ingmundson, as the law directed, and have him arrested, and turned to the grand jury and says: 'You are discharged'

Q. Well now, Mr. Foss, what was his manner after the first charge?

A. His manner, in my way of looking at it, was very indignant, and I felt it at the time. I thought his voice was loud. I thought he seemed to be angry at the time."

C. C. Crane, on his cross-examination, says:

"He took the paper that we had brought in previously, and stated that if those were the facts in the case and they were sustained by evidence, it certainly constituted an indictable offense.

Q. Go on?

A. And that we had violated our oaths as grand jurors in not finding an indictment under those facts, but ——

Q. Did he not state—well, go on?

A. But that he could not dictate to our consciences; that our oaths were our own, and that no grand juror that the law was such that no grand juror could stand between justice and the punishment of crime; that was about the words that was used. He then discharged us and told the county attorney to make out a complaint against Mr. Ingmundson, from the facts as reported by the grand jury."

Mr. Crandall, on page 50, of May 31st, says:

"At the time of the final dismissal the grand jury came into court, and their foreman, I think, handed to the court a paper on which, I judged from the remarks of the court, related to the Ingmundson investigation. He stated to them that the facts found in that report, constituted an indictable offense; that it was their duty to have found an indictment, and that in not doing so that they had violated their oaths. He said, fortunately, for the grand jurors that were not the final arbitrators in matters of that kind, that there was a higher power, and he then turned to the county attorney and directed him to make a complaint embodying the facts found in this report, that a warrant might be issued, and Ingmundson arrested.

Q. What was his manner at the time of discharging these grand jurors compared with the others?

A. Well sir, it was very violent, in my judgment."

John Rawley testifies, (page 56):

"Then—then——the next, gentlemen, was something like this; "You took an oath to leave no man unpresented through fear, favor or reward; your conduct in this matter—you have *violated* your oaths; you can't conspire with the county treasurer in the *violation* of law, and commission of fraud;"—turned to the county attorney, ordered him to make out a complaint that a warrant might be issued, and Mr. Ingmundson arrested;—turned to the grand jurors and says, "Jurors you are dismissed."

Q. What was his manner?

A. His manner was accordin' with the words I have given you."

Lafayette French, May 30th, page 32:

"He said that they had taken an oath to inquire into all public offenses within the county, and to leave no man unpresented, through fear, favor or affection, that the facts found by them and reported to him constituted an indictable offense, and that, in not finding an indictment, that they had violated their oaths.

He then said, "Gentlemen, I cannot account for this. I do not see here why you have been so loth to investigate this matter."

Mr. Cameron on page 60, of May 30th, says:

"He then addressed himself to the grand jury and stated to them that they had failed to perform their duties as required by law, under their oaths; that in doing this they had been guilty of a violation of their oaths as jurors; that they could not place themselves between crime and its punishment by refusing to indict men who were guilty of crimes. He said it was a fortunate thing for the interests of justice that they were not the final arbitrators in matters of this kind; that there was a higher authority; that notwithstanding they had refused to do so, the court had the power to present the matter to another grand jury."

W. L. Stiles, May 30th, page 69:

"Judge Page told us that if that was the facts we should have found an indictment against Mr. Ingmundson. He said that 'either through fear, or we had been bribed, we had tried to place ourselves between criminals and the law, to prevent the punishment of crime, and we couldn't do it,'—that is what he said. Then he turned to us and talks. He said, 'gentlemen'—for he generally did—'you have violated your oaths; you have perjured yourselves, every one of you,'—that is what he said."

In addition to this there is very little to be said in regard to the question of malice. Those are the facts, proven by numerous witnesses. Grosser indignity by one branch of the court to another could never have been committed. It is hardly necessary to refer to the question of malice, because every word of it is malicious.

On May 30, Levi Foss testified as follows:

"Q. Well, what did he tell you?
A. After we took the oath, I think he told us that we was a nice looking body of grand jurors; he supposed we would do everything right."

J. D. Woodard says:

"He thought we looked as though we were intelligent men. I thought he was not acquainted with me."

We add as a final proof of malice, the defendant's answer. In his answer, Judge Page admits that he did rebuke the grand jury. We have seen from the testimony of living witnesses what kind of a rebuke he gave them. We learn from this testimony what Judge Page means by his answer when he admits that he did rebuke them.

I will not delay the Senate with any further observations upon this article, and the only remaining article for consideration is article ten.

ARTICLE X.

Article ten has raised more discussion before this Senate, probably, than any other article except five. Evidently the defense feared it more than any other excepting perhaps that article.

Article ten is the embodiment of all the malicious conduct of Judge Page, upon which the House of Representatives relied for the purpose of accomplishing this impeachment. And that is what article ten is. It simply attributes to Judge Page, a general course of conduct during his official career, such that shows he is an unfit person to wield the judicial power, and as proof, in support of this tenth article we lay before the Senate, the seven matters specified in that article, and the nine specifications in articles one to nine inclusive. They are all grouped together. They might have been all embraced in one article, and these nine given under it as particular specifications. Probably that would have been the best way to have proceeded: it would have been a proper way to have proceeded to have placed before this Senate just one article of impeachment, and given these nine specifications under it.

Now the object of this tenth article is manifest. Counsel for the defense have had no more doubt about its object than the managers have. It is manifest that it is for the purpose of grouping all misconduct of Judge Page together as one offense, showing generally that he was a man so constituted, that his malice was so supreme, that his motives were so selfish and vile, that he was unworthy to be a judge of the district court.

I will not go over it at all with the proof. You have it all before you. If article one taken alone, should not in your judgment be sufficient, being only one act, and the motives not sufficiently developed, perhaps you might conclude that some other was. If not, then taking one, two, nine and ten together, certainly there can be no question but that they do constitute a general course of misconduct sufficient to prove that Judge Page is not a proper man to hold that office.

The object of an impeachment—to which I have already fully referred, and I think fairly shown you—is merely to subserve the public utility, not for punishment to get rid of a man that is unfit to perform the particular duties of the high office which he holds. He may be a good man to command a military force, but good for nothing as a judge. He may be good in in one capacity and not in another. We give that kind of conduct,

which we attribute as corrupt conduct, relating principally to his official duties, as disqualifying him from holding that position, not disqualifying him from holding any other, if he is competent for so doing. And all we claim now, finally, in regard to all of these articles is, that taken as a whole, putting them all together, shaking them up, taking what there is of them as one, with ten different specifications, (or seventeen as you might call it) that they all constitute a course of misconduct in the past, sufficient to show that he is not to be relied upon as a judge in the future.

The object of impeachment is merely to investigate past conduct, —not one act but general past conduct,—for the purpose of proving that they are sufficient to discourage any hope for being better in the future. That has been successfully done by the evidence that the managers have laid before you, and there is but one remaining question for me to consider, after I have corrected another mistake that the counsel for the respondent, Gov. Davis, has fallen into.

I do not attribute to Gov. Davis any evil motive in making the mistake that he did, but you will remember that he referred as proof of the eminent qualities of Judge Page, to a very eminent author—Shakespeare. It appears that away back, long years ago, a judge of the court of England, had been insulted by a son of a reigning king, in open court for some provocation, perhaps, that the judge had given to the prince, whereupon the prince up and slapped the judge in the face. The judge instantly ordered his arrest and imprisoned him for so doing. The reigning monarch took no notice of it, I believe, publicly, but privately thanked the judge for what he had done, claiming, as all British kings did, that the king was the fountain of justice, and that the prince was just as much a subject as anybody else; and that the prince must respect the king's dignity as exhibited by the fountain of justice just as much as any other citizen. Years afterwards this prince became king, and the judge had good reason to suppose that he would be removed from office. But he was not, the prince had grown wise, and he took the same view of the matter of this arrest, that his father took, and he too, then approved of what the judge had done. Now, upon this historical fact, Shakespeare has founded the dialogue between the new king and the old judge, which Gov. Davis read to the Senate. It is according to my understanding, an apostrophe to judicial fairness, not to any particular judge. But it seems, according to Gov. Davis' view, that Shakespeare had the honor of an acquaintance with Judge Page, for he applies it to him. This, I think, is where Gov. Davis is mistaken. If Shakespeare was really acquainted with Judge Page, then he was clearly mistaken in the man. But then, Shakespeare was very careless in dates, times, places, circumstances and persons, but very accurate in the delineation of character. In proof of that mistake of Gov. Davis in supposing Shakespeare meant Judge Page, I will read from a later writer,—perhaps not so eminent as Shakespeare,—but, if Shakespeare was really acquainted with Judge Page and meant him, my author is certainly more accurate, more truthful.

I read an extract from a newspaper, that was published down in Grant county, Iowa, in the Grant County Herald eighteen years ago, in which there is a reference made to this same Judge Page, then a professor; and in the reference to his qualities (which you will recognize as being more accurate and appropriate to Judge Page than the qualities that

Shakespeare attributes to the embodied conscience of judicial rectitude), is this:

"The professor loves quarreling, especially with his friends. He carries as much venom as a ton of rattlesnakes, and can scold equal to the old lady whose fatal nose was bitten in Milton's Paradise Lost. He knows all my faults and can swell them into crimes. He can write my funeral which will entitle me to the benefits of that resurrection which is promised to all who die, the just and the unjust."

Further on he describes his character, (for it is only the descriptive part of the man that Shakespeare is mistaken in.)

"The character of which I am to treat is truly represented above, as being more ready to open a quarrel about small matters than to heal one. His usual weapon, the pen, and his vehicle, the post office, are also represented, and by such means the town of Lancaster, ever before his arrival one of the most sociable and harmonious places in the country, has been kept in almost continuous uproar."

* * * "The professor, though indiscreet as a goose, vindictive as old Satan, incapable of forgiv ng a trifling offense, possessing no judgment of human nature, and no tact nor wisdom."

Now, I think, my author, who wrote at a later date, though eighteen years ago, is more accurate in his description of Judge Page, than Shakespeare was; but in order to carry out the theory that Shakespeare was really mistaken, I will read to you another author—Milton's Paradise Lost—in which, I am satisfied that this writer was really acquainted with Judge Page. While Milton was pretending to be describing sin itself, recollect that he was really blind and undoubtedly mistook sin for Judge Page, when drawing a picture of it:

"———Black it stood as night,
Fierce as ten furies, terrible as hell,
And shook a dreadful dart; what seemed his head
The likeness of a kingly crown had on.
Satan was now at hand, and from his seat
The monster moving onward came, as fast
With horrid stride; hell trembled as he strode."

There is only one remaining question to which I wish to call the attention of the Senate. It has figured somewhat from the beginning to the end of this argument. It does not relate to one any more than it does to all the articles. It has been adverted to as relating to all, and that is what the respondent has called "honest intentions and good motives" of Judge Page, and that is the only remaining subject that I have to consider.

### HONEST INTENTIONS AND GOOD MOTIVES.

In these articles no error of law or mistake of fact is charged against Judge Page as a ground of impeachment. Many errors are specified in these articles, but they are not placed there as the ground work of the impeachment. These errors are the outgrowth of the impeachable acts, but they are not the acts complained of. The ground work of nearly all of the charges against Judge Page, is the arbitrary exercise of judicial power, where no one called for its exercise and where he had no jurisdiction over the parties or subject matter to act at all. The judicial power of the State lies dormant in the court until some one who has a right to assert, or a wrong to redress, calls it into action. When a judge volunteers, upon his own motion to make orders and pronounce judgments affecting the rights of others, he usurps the judicial power

of the State and wields it as a scourge. It matters but little what his objects were, for good motives never work by illegal means.

Sir William Blackstone, in his Commentaries upon the Common Law, book 3, page 25, says:

"In every court there must be at least three constitutional parts, plaintiff who complains, of an injury done, a defendant who is called upon to make satisfaction for it, and the judicial power which is to examine the truth of the fact, to determine the law arising upon that fact, and if any injury appears to have been done, to ascertain the remedy, and by its officers to apply the remedy."

This proposition of Blackstone asserts that in every proceeding in court there should be three constitutional parts, a plaintiff who calls the court into action, a defendant who resists the plaintiff's claim, and the judicial power to decide between the parties.

Take the action of Judge Page concerning the Riley claim of $43.10 article two, for serving subpœnas issued by the clerk of his court for witnesses on the part of certain defendants in criminal actions. The subpœnas were placed in the hands of deputy sheriff Riley to serve upon the witnesses. Under the law it was his duty to serve them. If he had failed to serve them he would have been liable to damages to the party injured, and to a criminal prosecution for neglect of official duty. He did serve them, and was entitled to fees for so doing. These fees should be paid either by the defendants themselves, or by the county. Riley claimed they should be paid by the county. Judge Page knowing this, privately tells the clerk the county should not pay these fees, and this he calls an order sufficient to prevent Riley from ever getting pay from the county. He prejudged Riley's claim upon his own motion, without evidence, without giving Riley a hearing, without parties. This is followed up by his action before the county commissioners to prevent their allowing the claim, and his trying the appeal, when he had already prejudged the case.

The Stimson claim, article IV., of $5.50 for fees as deputy sheriff on an execution, he prejudged and disposed of in the same arbitrary manner.

So Judge Page disposes of the claim of Mandeville, article III., by volunteering an allowance to Allen, when he knew if only one deputy was to be paid that Mandeville claimed the pay as well as Allen.

To arbitrarily exercise judicial power as shown in these articles of impeachment and proven by the evidence, is always illegal and out of place in a judge, at all times and under all circumstances. Good faith, on the part of the respondent, is impossible, for there can be no excuse for volunteering to exercise arbitrary power. Where no action is called for, any action on the part of the judge is arbitrary and malicious. There is not and never can be any excuse for it. It is always intentional and always malicious. The very nature of the judicial office is deliberation upon evidence between adverse parties upon adverse rights. Judicial power is brought into action upon adverse rights, by the motion of one party and the resistance of the other party; never by the voluntary action of the court without any party claimant. The existence of judicial power by which adverse interests are determined, not only requires adverse parties, but always evidence to sustain the claim, and deliberation upon the evidence. Every decision of a judge upon adverse rights upon his own motion, without parties, without

evidence, and without deliberation, is ILLEGAL, ARBITRARY AND MALICIOUS. The plea of good faith and honest intentions can have no place in such case. The act itself is intentional, and not a mistake. In these cases of the exercise of arbitrary power by Judge Page, whether the decisions he made are right or wrong makes no difference. As no action on the part of the judge was called for, any decision made by him, whether right or wrong, is the arbitrary exercise of judicial power. If the decision is right, only one party can complain that his rights have been prejudged without a case in court, without a trial, without evidence and without deliberation. If the decision is wrong, then the other party in interest has had his rights prejudged without a hearing, without a trial, without evidence, and without deliberation. The wrong is the same in either case. The party wronged is only changed. The wrong done is not that an erroneous decision has been made, but that arbitrary power has been usurped by Judge Page to make a decision where he was not called upon by any one to act. There is no question about any mistake of fact or error of law. The whole case is the exercise of judicial power, for purposes of revenge, where no action was called for by any one. This is misconduct, usurpation, judicial oppression—in short, judicial tyranny expresses the whole idea.

It has been asserted by respondent's counsel, and reiterated, that Judge Page's motives were good, and that all he did was done with honest intentions. In support of this position, Mr. Losey, in his argument, Senate Journal, June 5th, page 16, says:

"Why is Sherman Page impeached? Has it ever been known before in the annals of history in this country, that a man was impeached for scourging out of the halls of justice a gang of thieves, as he has scourged them—defamers of character as they have been proven to be here on this trial? Thieves! as the proof shows. The managers stand here presenting articles of impeachment against a man for bringing to justice a horde of dishonest malefactors and violators of the law; nothing more, nothing less."

From the argument of respondent's counsel, the inference to be drawn is, that Judge Page has done a good thing in usurping arbitrary judicial power, because he has used it as a scourge to drive the Mower county thieves from his court. We trust he has had his last opportunity to wield the judicial power of the State as a scourge. It is true Judge Page has acted upon this principle. His counsel asserts he has scourged from the halls of justice a gang of thieves, and Judge Page is willing at least to have it go forth to the people of the State that he has done so. This is the motive upon which he has acted in doing what he is charged with doing. That he has treated the public officers of Mower county, and the officers of his court and leading citizens of his county, as though he considered them a gang of thieves, is true. That he has scourged them with the exercise of judicial power out of and in court is also true. That he has done this intentionally and with premeditated design is proven to be true, and his counsel confesses it to be true. He pronounces the leading citizens of Mower county a gang of thieves, and he violates the law intrusted to his hands to be administered, and usurps the judicial power of the State to scourge those men from the halls of justice. Who placed the judicial power of the State in his hands to be used as a scourge upon the officers and suitors of his court? Be they thieves or honest men, makes no difference. Even Mower county thieves are entitled to a fair hearing instead of being scourged from the halls of justice. They are entitled to have their

rights tried in court instead of being prejudged and scourged from the halls of justice by the arbitrary exercise of the judicial power of the State. Such conduct is *judicial tyranny*. It is this scourging process, this arbitrary exercise of the judicial power, which Judge Page is charged with in every one of the ten articles of impeachment exhibited against him. Mollison may have been guilty of writing and publishing a libel. It matters not. He was entitled to a speedy trial instead of being detained in court four long years under an uplifted scourge. Riley may or may not have been entitled to pay from the county of his fees for serving the subpœnas for defendants in a criminal case. It matters not. He was entitled to a fair trial instead of being scourged from the halls of justice. Two special deputy sheriffs may or may not have been entitled to pay for attending court. It matters not. It was an arbitrary exercise of judicial power in Judge Page to scourge Mandeville from the halls of justice by taking the right of selection from the sheriff, and issuing the certificate to Allen as the *one* deputy entitled to pay. Stimson may or may not have been entitled to the $5.50 as fees, collected on the execution. It matters not. The exercise of the judicial power by which he was scourged from the halls of justice, in the presence of the grand jury, was *the act of a judicial tyrant*.

Senators, it is a dangerous usurpation of arbitrary power to pronounce judgment and determine others' rights without a trial.

If we had no other knowledge of Judge Page than these three official acts upon the rights of Stimson, Riley and Mandeville—if we knew nothing more of these acts than their justification in his answers and his own evidence here on the witness stand, he would be set down as a judicial tyrant, worthy only to administer the lash of the slaver's whip instead of the laws of a christian people.

And so we might go through all the articles of impeachment exhibited against Judge Page. The gist of every article is that he wielded the judicial power of the State to scourge the officers and suitors of his court and leading citizens of Mower county from the halls of justice. Even harmless acts, which in a mere citizen might be overlooked by society at large, or even by those offended, cannot be disregarded in a person holding a high judicial station. But how much more intense must be the feelings of abhorrence when the very judicial power itself is being perverted into an engine of oppression! The act charged against Judge Page in almost every article is THE USURPATION OF ARBITRARY POWER for purposes of revenge. Revenge, it is true, is an unworthy motive. But the purpose and the motive make no difference. If arbitrary power is used by a judge for the purpose of good deeds or christian charity, it is judicial tyranny all the same. A thief who steals a chicken for the purpose of placing the proceeds in the charity box, is a chicken thief all the same as he would have been if he had placed the chicken in the pot.

The House of Representatives asks no judgment at the hands of this court for any mistakes or errors in judgment on the part of Judge Page. Give him advantage for every good motive that can be gleaned from his arbitrary acts, if any there be. Set down nothing against him that is not warranted by the proofs. He is not charged with erroneous decisions in matters pending in his court. For such errors the parties have a remedy by appeal to a higher court. He is not charged with mistakes in the exercise of his judicial powers. He may have committed errors and made mistakes, but such is not the charge against him.

He is charged with usurping power not possessed by a judge, and of exercising powers which he does possess in an arbitrary manner for the purpose of OPPRESSING THOSE HE HATES. We insist upon no act charged against Judge Page that was not premeditated. We ask you to consider no misconduct that does not arise from malice aforethought. The offenses charged in these articles of impeachment are such as arise from passions which are criminal in a judge to harbor. These impeachable acts spring from an insolence and malignity of temper which in a judge are in themselves corrupt conduct when carried on the bench. We all revere an upright judge, but all mankind abhors a malignant heart in a judge.

The acts charged against Judge Page are shown to have been committed upon deliberation, from vicious motives and for evil purposes. We father upon him the deliberate exercise of arbitrary power for the judicial oppression of Stimson, Riley, Mandeville and Ingmundson, committed of malice aforethought, for the purpose of low revenge. Moral turpitude of the darkest hue lurks in each one of these misdemeanors. For deputy sheriff Stimson to ask leave to explain why he retained $5.50 as his fees, was an implied criticism upon his tyranny. Then his puffed up vanity became a furious passion. "Not a word, sir." Stimson was scourged from the halls of justice, and *cowered into silence and submission* in the presence of the judicial power. Yet human feelings would struggle up in his heart, and in sixty days he even got courage to read a petition, which somebody had written, to request Judge Page to resign; and for this the scourge of judicial contempt is again inflicted upon them.

For Ingmundson to say that he had sometimes worked with the opposition party because he was tired of the one-man power, was an offense to his inflated vanity, a sin to be remembered but never forgiven. For the grand jury to fail to bring in an indictment when he had instructed them the facts constituted an indictable offense, then the judicial power ran riot over the grand jury. "You have violated your oaths and you shall not stand between crime and its punishment."

In the case of Stimson, Judge Page became the prosecutor, the witness, the trial jury, the judge and the executioner of his own sentence, with the grand jury held over the head of the victim to fill him with terror and force him into silence and submission. Judge Page voluntarily laid the plan for the degredation of Stimson, and then deliberately executed it publicly in court. Such a power as was exercised over the private rights of Stimson, Riley and Mandeville, would make the judiciary *so odious and contemptible* to the people of the State, that like the star chamber, having become a monster of depravity, it would be swept out of existence. Well might the people of Mower county rebel when they have forced down their throats such a vile decoction of gall and vinegar, as this from the fountain of justice. Success over the victims of his rage had made him bold to assert his supreme will on all occasions and to take affront at the slightest criticism. For three years the people of *Mower county lay trembling* before a judicial tyrant. But impeachment is the people's remedy, it is the people's process for the removal of public officers that misconduct themselves. Let impeachment be a solid reality and not the scare-crow of the constitution. It concerns every man in this State, whether the judicial system is to remain pure or whether it be corrupted to purposes of revenge, to gratify the malignity of the judge.

Good motives and honest intentions never produced such bitter fruit as is gathered in the Mower county vineyard. Judge the two from the fruit it bears. The turmoil in Mower county could never spring from good motives, but it is the natural fruit of judicial tyranny. A little tyranny here and a little there, oft repeated, soon ferments turmoil, in every officer in the county. "How dare you appoint such a man," is a challenge that startles Sheriff Hall.

"You had better not take illegal fees again," is an insult to Stimson. "If you have done so and so, you have violated your oaths," startles a whole grand jury. "Mandeville, what dirty work did you do to elect Sheriff Hall that he appoints you his deputy?" These, and such as these, are only sarcastic words, but they have a poisonous sting that humiliates the heart. Judge Page could easily forget them. But once heard, Hall and Mandeville, Riley and Stimson could never forget them. They are burning words whose light reveals the political bully in Judge Page, as well as the judicial tyrant.

Is such a character fit to wield the judicial power of the State? The managers are responsible for the manner in which this impeachment has been conducted. The Senate alone, will be responsible for the judgment. Senators, the managers concede and insist your duty is not a matter of sentiment but of public right. You hold this great power of impeachment in your hands not to be exercised according to your own wishes or feelings. The House of Representatives has brought the respondent to the bar of the Senate, and produced ample evidence of his unfitness to wield the judicial power of the State. The House of Representatives ask that you bestow upon the subject the united wisdom of this august tribunal. The end in view is THE RELIEF OF THE PEOPLE, and this calls for the exercise of your best judgment. Let not the honored judges of this State any longer bear the reproach of an unworthy associate. Give the people the relief they ask and so sorely need. Teach all future judges that arbitrary power is no part of the judicial system of this State, and that judicial powers are not to be used by a judge to gratify private animosity, and that in no case is he a commander of military forces. A judge lives but for a day, but the principles of judicial rectitude endure for ever. The judge dies, and by the next generation is forgotten, but the judicial power lives on and is everlasting. Senators! protect it from dishonor, that future generations may revere it. The judge is but a speck in creation, but the judicial office is the *crowning glory of a free people*. Senators! the judicial office is worthy of your reverence. It is the foundation of justice.

I repeat the question. Is such a character as Judge Page is shown to be, fit to sit at the fountain and mete out justice to the people of Mower county. A perpetual stream of turmoil flows from that fountain of justice. The fountain of justice ought to be as pure as the heart of a new born babe. The streams that flow from the fountain of justice carry with them the magistry of the State and the rights and liberty of the people. These streams of justice ought to be as clear as the unclouded rays of the noon-day sun.

Justice requires conviction; conviction requires his removal from office. Justice to the people, whose feelings he has so cruelly outraged, requires *his removal from office*. The honor of the judiciary of the State requires his removal from office. The cause of law and order demand the removal of this self-willed tyrant from the bench. Suitors ought

to have a court before whom they can stand with confidence, and a judge whom they can esteem and respect.

The evidence clearly shows that Judge Page is a man whose natural disposition is arbitrary and vengeful—that he is possessed of a malicious will to bear down all opposition to his views and wishes. Shere intolerance is the main spring of all his motives. The exercise of domineering power over others is the daily ambition of his life. He sets his official person up as a sacred shrine worthy of the adoration of all beholders. Those who will bow down and worship his official dignity, find a ray of little sunshine in his heart; those who doubt his divinity, realize a hell in his presence.

Mr. Edgerton offered the following:

Ordered, That the Senate proceed at 7½ o'clock P. M. this day to vote upon the articles of impeachment preferred by the House of Representatives against Sherman Page, judge of the 10th judicial district.

Mr. Doran moved to amend, that the Senate proceed forthwith to vote upon the articles of impeachment.

Which amendment was lost.

And the question recurring upon the original order, it was adopted.

Mr. Edgerton offered the following:

Ordered, That the Senate, sitting as a court of impeachment, adjourn *sine die* at 12 M. on Monday, July 1st.

Mr. Macdonald moved to lay the order on the table.

Which motion prevailed.

On motion, the Senate took a recess until 7½ o'clock P. M.

EVENING SESSION.

Upon reassembling, Mr. Donnelly offered the following, which was adopted:

Ordered, That Senators shall have the right to submit their opinions in writing upon the final question, by delivering the same to the clerk within fifteen days hereafter, who shall cause them to be published with the proceedings of the court.

Mr. Edgerton offered the following, which was adopted:

Ordered, That the reading of the journal not now printed be dispensed with, and that when approved by the President of the Senate, the same shall stand as the approval of the Senate.

Mr. Donnelly moved a call of the Senate.

The roll being called, the following Senators answered to their names:

Messrs. Ahrens, Armstrong, Bailey, Bonniwell, Clement, Clough, Deuel, Donnelly, Doran, Drew, Edgerton, Edwards, Finseth, Gilfillan C. D., Gilfillan John B., Goodrich, Hall, Henry, Hersey, Houlton, Langdon, Lienau, Macdonald, McClure, McHench, McNelly, Mealey, Morehouse, Morrison, Morton, Nelson, Page, Pillsbury, Remore, Rice, Shaleen, Swanstrom, Waite, Waldron and Wheat.

Absent, Mr. Senator Smith.

Mr. Gilfillan J. B., offered the following:

Ordered, that in proceeding to vote upon the final question upon the several articles, the Senate will vote upon the same in the following order, that is to say, 8th, 9th, 6th, 7th, 1st, 2nd, 3rd, 4th, 5th and 10th.

Mr. Donnelly moved that the rule be suspended to permit debate, and

Mr. Gilfillan J. B. withdrew the order, and the vote upon suspending the rule was not taken.

Mr. Gilfillan C. D. moved that the Senate proceed to vote upon the several articles of impeachment, in their order.

Which motion prevailed, and the names of the Senators were called.

ARTICLE ONE.

Each Senator as his name was called, rose in his place, and the President proposed to him the following question:

Mr. Senator—how say you, is the respondent, Sherman Page, Judge of the Tenth Judicial District, guilty, or not guilty, as charged in the first article of impeachment.

Senator Clough voted guilty.

The Senators who voted not guilty were—

Messrs. Ahrens, Armstrong, Bailey, Bonniwell, Clement, Deuel, Donnelly, Doran, Drew, Edgerton, Edwards, Finseth, Gilfillan C. D., Gilfillan J. B., Goodrich, Hall, Henry, Hersey, Houlton, Langdon, Lienau, Macdonald, McClure, McHench, McNelly, Mealey, Morehouse, Morrison, Morton, Nelson, Page, Pillsbury, Remore, Rice, Shaleen, Swanstrom, Waite, Waldron and Wheat.

Whereupon the President announced that the respondent, Sherman Page, Judge of the Tenth Judicial District, has been declared guilty upon the first article by one Senator.

Thirty-nine Senators have declared him not guilty.

Having been pronounced guilty by less than two-thirds of the Senators present and voting, he stands acquitted upon this article.

ARTICLE TWO.

The President directed the Secretary to call the names of the Senators.

Each Senator, as his name was called, rose in his place, and the President proposed to him the following question:

Mr. Senator—how say you, is the respondent, Sherman Page, Judge of the Tenth Judicial District, guilty or not guilty, as charged in the second article of impeachment?

The Senators who voted guilty, were—

Messrs. Clough, Henry and Lienau.

The Senators who voted not guilty, were—

Messrs. Ahrens, Armstrong, Bailey, Bonniwell, Clement, Deuel, Donnelly, Doran, Drew, Edgerton, Edwards, Finseth, Gilfillan C. D., Gilfillan John B., Goodrich, Hall, Hersey, Houlton, Langdon, Macdonald, McClure, McHench, McNelly, Mealey, Morehouse, Morrison, Morton, Nelson, Page, Pillsbury, Remore, Rice, Shaleen, Smith, Swanstrom, Waite, Waldron and Wheat.

Whereupon the President announced that the respondent, Sherman Page, Judge of the Tenth Judicial District, has been declared guilty upon the second article by three Senators.

Thirty-eight Senators having declared him not guilty.

Having been pronounced guilty by less than two-thirds of the Senators present and voting, he stands acquitted upon this article.

Mr. Edgerton offered the following:

Amend rule 33 by inserting the words "or clerk of the Court of Impeachment" after the words presiding officer, in the second line.

Which was unanimously adopted.

Mr. Gilfillan J. B. offered the following:

Amend rule 33 by adding at the end thereof:

"Provided, That the words following the name of each Senator in the question submitted, may be omitted in the discretion of the presiding officer, after proposing the formal question, at least once under each article.

Which was lost.

Mr. Senator Smith having appeared, arose in his place and requested that his name be called on the first article of impeachment, which was so ordered, and Mr. Smith voted "not guilty."

ARTICLE THREE.

The President directed the Secretary to call the names of the Senators.

Each Senator, as his name was called, rose in his place, and the President proposed to him the following question.

Mr. Senator—how say you, is the respondent, Sherman Page, Judge of the Tenth Judicial District, guilty or not guilty, as charged in the third article of impeachment?

Senator Clough voted guilty.

The Senators, who voted not guilty, were—

Messrs. Ahrens, Armstrong, Bailey, Bonniwell, Clement, Deuel, Donnelly, Doran, Drew, Edgerton, Edwards, Finseth, Gilfillan C. D., Gilfillan J. B., Goodrich, Hall, Henry, Hersey, Houlton, Langdon, Lienau, Macdonald, McClure, McHench, McNelly, Mealey, Morehouse, Morrison, Morton, Nelson, Page, Pillsbury, Remore, Rice, Shaleen, Smith, Swanstrom, Waite, Waldron and Wheat.

Whereupon the President announced that the respondent, Sherman Page, Judge of the Tenth Judicial District, has been declared guilty upon the third article by one Senator.

Forty Senators have declared him not guilty.

Having been pronounced guilty by less than two-thirds of the Senators present and voting, he stands acquitted upon this article.

ARTICLE FOUR.

The President directed the Secretary to call the names of the Senators.

Each Senator, as his name was called, rose in his place, and the President proposed to him the following question:

Mr. Senator—how say you, is the respondent, Sherman Page, Judge of the Tenth Judicial District, guilty or not guilty, as charged in the fourth article of impeachment?

Senator Clough voted guilty.

The Senators who voted not guilty, were—

Messrs. Ahrens, Armstrong, Bailey, Bonniwell, Clement, Deuel, Donnelly, Doran, Drew, Edgerton, Edwards, Finseth, Gilfillan C. D., Gilfillan John B., Goodrich, Hall, Henry, Hersey, Houlton, Langdon, Lineau, Macdonald, McClure, McHench, McNelly, Mealey, Morehouse, Morrison, Morton, Nelson, Page, Pillsbury, Remore, Rice, Shaleen, Smith, Swanstrom, Waite, Waldron and Wheat.

Whereupon the President announced that the respondent, Sherman Page, has been declared guilty upon the fourth article by one Senator.

Forty Senators have declared him not guilty.

Having been pronounced guilty by less than two-thirds of the Senators present and voting, he stands acquitted upon this article.

ARTICLE FIVE.

The President directed the Secretary to call the names of the Senators.

Each Senator, as his name was called, rose in his place, and the President proposed to him the following question:

Mr. Senator—how say you, is the respondent, Sherman Page, Judge of the Tenth Judicial District, guilty or not guilty, as charged in the fifth article of impeachment?

Senator Clough voted guilty.

The Senators who voted not guilty were—

Messrs. Ahrens, Armstrong, Bailey, Bonniwell, Clement, Deuel, Donnelly, Doran, Drew, Edgerton, Edwards, Finseth, Gilfillan C. D., Gilfillan John B., Goodrich, Hall, Henry, Hersey, Houlton, Langdon, Lienau, Macdonald, McClure, McHench, McNelly, Mealey, Morehouse. Morrison, Morton, Nelson, Page, Pillsbury, Remore, Rice, Shaleen, Smith, Swanstrom, Waite, Waldron and Wheat.

In explanation of his vote on this article, Senator Gilfillan J. B. said: In voting as I shall upon this article, I do not wish to be understood as giving any sanction or justification for the issuance of such orders as are embraced and set forth in article five. Believing, however, that a sufficient defense has been made, I shall vote "not guilty."

Whereupon the President announced that the respondent, Sherman Page, Judge of the Tenth Judicial District, has been declared guilty upon the fifth article by one Senator.

Forty Senators have declared him not guilty.

Having been pronounced guilty by less than two-thirds of the Senators present and voting, he stands acquitted upon this article.

ARTICLE SIX.

The President directed the Secretary to call the names of the Senators.

Each Senator, as his name was called, rose in his place, and the President proposed to him the following question:

Mr. Senator—how say you, is the respondent, Sherman Page, Judge of the Tenth Judicial District, guilty or not guilty, as charged in the sixth article of impeachment?

The Senators who voted guilty, were—

Messrs. Ahrens, Bailey Bonniwell, Clough, Deuel, Drew, Edwards, Finseth, Gilfillan J. B., Hall, Henry, Hersey, Lienau, McHench, Morehouse, Morrison, Nelson, Remore, Rice, Shaleen and Swanstrom.

The Senators who voted not guilty were—

Messrs. Armstrong, Clemetn, Donnelly, Doran, Edgerton, Gilfillan C. D., Goodrich, Houlton, Langdon, Macdonald, McClure, McNelly, Mealey, Morton, Page, Pillsbury, Smith, Waite, Waldron and Wheat.

Whereupon the President announced that the respondent, Sherman Page, Judge of the Tenth Judicial District, has been declared guilty upon the sixth article by twenty-one Senators.

Twenty Senators have declared him not guilty.

Having been pronounced guilty by less than two-thirds of the Senators present and voting, he stands acquitted on this article.

ARTICLE SEVEN.

The President directed the Secretary to call the names of the Senators.

Each Senator, as his name was called, rose in his place, and the President proposed to him the following question:

Mr. Senator—how say you, is the respondent, Sherman Page, Judge of the Tenth Judicial District, guilty or not guilty, as charged in the seventh article of impeachment?

The Senators who voted guilty, were—

Messrs. Ahrens, Bonniwell, Clough, Drew, Edwards, Finseth, Gilfillan John B., Henry, Lienau, McHench, Morehouse, Morrison, Nelson, Remore, Rice, Shaleen and Swanstrom.

The Senators who voted not guilty, were—

Messrs. Armstrong, Bailey, Clement, Deuel, Donnelly, Doran, Edgerton, Gilfillan C. D. Goodrich, Hall, Hersey, Houlton, Langdon, Macdonald, McClure, McNelly, Mealey, Morton, Page, Pillsbury, Smith, Waite, Waldron and Wheat.

Article 7. In explanation of his vote

Senator Clough said: Mr. President: It was my intention to ask to be excused from voting upon this article, for the reason that I have previously expressed an opinion. But since the Senate have decided the matter involving that same principle in article two, wherein the respondent was accused of expressing his opinion in regard to the Riley bill, and afterwards taking cognizance of the same matter, and deciding precisely in accordance with his previously expressed opinion, I say, since the Senate have acquitted him of that, and decided that he was right, that I cannot see any impropriety in *my* voting—at least, I do not see how the Senators can; they have decided that that course is consistent, I will decide that it is inconsistent, I therefore vote "guilty."

Whereupon the President announced that the respondent, Sherman Page, judge of the tenth judicial district, has been declared guilty upon the seventh article, by seventeen Senators.

Twenty-four Senators have declared him not guilty.

Having been pronounced guilty by less than two-thirds of the Senators present and voting. he stands acquitted upon this article.

ARTICLE EIGHT.

The President directed the Secretary to call the names of the Senators.

Each Senator, as his name was called, rose in his place, and the President proposed to him the following question:

Mr. Senator—how say you, is the respondent, Sherman Page, judge of the tenth judicial district, guilty or not guilty, as charged in the eighth article of impeachment?

Those who voted guilty were—

Messrs. Ahrens, Bonniwell, Clough, Deuel, Doran, Drew, Edwards, Finseth, Gilfillan John B., Goodrich, Henry, Lienau, McHench, Morehouse, Morrison, Nelson, Page, Pillsbury, Remore, Rice, Shaleen, and Swanstrom.

The Senators who voted not guilty were—

Messrs. Armstrong, Bailey, Clement, Donnelly. Edgerton, Gilfillan C. D., Hall, Hersey, Houlton, Langdon, Macdonald, McClure, McNelly, Mealey, Morton, Smith, Waite, Waldron and Wheat.

Whereupon the President announced that the respondent, Sherman Page, Judge of the Tenth Judicial District, has been declared guilty upon the eighth article by twenty-two Senators.

Nineteen Senators have declared him not guilty.

Having been pronounced guilty by less than two-thirds of the Senators present and voting, he stands acquitted upon this article.

ARTICLE NINE.

The President directed the Secretary to call the names of the Senators.

Each Senator, as his name was called, rose in his place, and the President proposed to him the following question:

Mr. Senator—how say you, is the respondent, Sherman Page, Judge of the Tenth Judicial District, guilty or not guilty, as charged in the ninth article of impeachment?

The Senators who voted guilty, were—

Messrs. Ahrens, Bailey, Bonniwell, Clough, Deuel, Doran, Drew, Edwards, Finseth, Gilfillan John B., Goodrich, Henry, Hersey, Lienau, McHench, Morehouse, Morrison, Nelson, Page, Pillsbury, Remore, Shaleen and Swanstrom.

The Senators who voted not guilty, were—

Messrs. Armstrong, Clement, Donnelly, Edgerton, Gilfillan C. D. Hall, Houlton, Langdon, Macdonald, McClure, McNelly, Mealey, Morton, Rice, Smith, Waite, Waldron and Wheat.

Whereupon the President announced that the respondent, Sherman Page, Judge of the Tenth Judicial District, has been declared guilty upon the ninth article, by twenty-three Senators.

Eighteen Senators have declared him not guilty.

Having been pronounced guilty by less than two-thirds of the Senators present and voting, he stands acquitted upon this article.

ARTICLE TEN.

The President directed the Secretary to call the names of the Senators.

Each Senator, as his name was called, rose in his place, and the President proposed to him the following question.

Mr. Senator—how say you, is the respondent Sherman Page, Judge of the Tenth Judicial District, guilty or not guilty, as charged in the tenth article of impeachment?

The Senators who voted guilty were—

Messrs. Ahrens, Bonniwell, Clough, Deuel, Drew, Edwards, Finseth, Henry, McHench, Morehouse, Morrison, Morton, Nelson, Page, Remore, Shaleen and Swanstrom.

The Senators who voted not guilty were—

Messrs. Armstrong, Bailey, Clement, Donnelly, Doran, Edgerton, Gilfillan C. D., Gilfillan John B., Goodrich, Hall, Hersey, Houlton, Langdon, Lienau, Macdonald, McClure, McNelly, Mealey, Pillsbury, Rice, Smith, Waite, Waldron and Wheat.

Whereupon the President announced that the respondent, Sherman Page, Judge of the Tenth Judicial District, has been declared guilty upon the tenth article by seventeen Senators.

Twenty-four Senators have declared him not guilty.

Having been pronounced guilty by less than two-thirds of the Senators present and voting, he stands acquitted upon this article.

Mr. Davis, of counsel for respondent, offered the following:

And now, on motion of the counsel for the respondent,

It is now here considered, ordered and adjudged by the Senate of the State of Minnesota, sitting as a High Court of Impeachment, that the respondent, Sherman Page, Judge of the Tenth Judicial District, be and is hereby acquitted of each and every article and specification of impeachment.

The same being adopted as the order of the Senate by an unanimous vote, the President directed the Clerk to enter the same as the judgment of the Court.

SECRET SESSION.

On motion, the Senate resolved itself into secret session.

Mr. Edgerton moved that the matter of further compensation of the stenographer be referred to the committee on accounts, with power to act.

Which motion prevailed.

Mr. Armstrong moved to refer the matter of mileage of officers to the committee on accounts.

Which motion prevailed.

Mr. Nelson offered the following:

Ordered, That the Sergeant-at-arms be, and is hereby ordered to gather up all stationery, ink stands, pens and other articles on desks of members, and to deliver the same to the Secretary of State.

Which was adopted.

Mr. Henry called up the resolution of Mr. Edgerton, relative to adjournment.

Mr. Bailey moved to strike out Monday, July 1st, and insert Saturday, June 29th.

Which was lost.

The question recurring on the resolution, it was adopted.

Mr. Pillsbury offered the following:

Ordered, that the Secretary be instructed to furnish to each of the members and officers of the Senate whatever number of copies of the proceedings of this court they are entitled to, and that the committee on accounts be instructed to approve a voucher for this purpose.

Which was adopted.

Mr. Edgerton offered the following:

Ordered, That the clerk have bound and forwarded to each of the judges of Supreme Court, one copy of the proceedings of the court.

Which was adopted.

Mr. Henry moved that the secret session now rise.

Which motion prevailed, and the Senate resumed business in open session.

On motion, the Senate adjourned to 9 A. M. to-morrow.

Adjourned.

Attest:

CHAS. W. JOHNSON,
Secretary of the Senate and Clerk of the Court of Impeachment.

---

## THIRTY-SEVENTH DAY.

ST. PAUL, SATURDAY, JUNE 29th, 1878.

The Senate was called to order by the President at 9 o'clock, A. M., pursuant to adjournment.

The roll being called, the following Senators answered to their names:

Messrs. Ahrens, Armstrong, Bailey, Bonniwell, Clement, Clough, Deuel, Donnelly, Doran, Drew, Finseth, Gilfillan C. D., Goodrich, Hall, Henry, Lienau, McNelly, Mealey, Morton, Remore, Rice, Shaleen, Swanstrom, Waite and Wheat.

On motion the Senate adjourned.

Attest: CHAS. W. JOHNSON,
Secretary of the Senate, and
Clerk of Court of Impeachment.

---

## THIRTY-EIGHTH DAY.

ST. PAUL, MONDAY, July 1st, 1878.

A quorum not appearing, at 12 o'clock, M., this day, pursuant to resolution of the Senate, the Lieut. Governor, Hon. James B. Wakefield, President of the Senate, sitting as a High Court of Impeachment, declared the Senate adjourned *sine die*.

Attest: CHAS. W. JOHNSON,
Secretary of the Senate and
Clerk of the Court of Impeachment.

---

The foregoing journal of proceedings of the Senate sitting as a Court of Impeachment for the trial of Hon. Sherman Page, judge of the tenth judicial district, is approved.

Attest: JAMES B. WAKEFIELD,
*President of the Senate.*

# OPINIONS

## FILED WITH THE CLERK OF THE COURT SUBSEQUENT TO THE ADJOURNMENT OF THE COURT, AS PROVIDED BY RESOLUTION.

### OPINION OF SENATOR WAITE.

Our constitution provides that certain officers may be impeached for "corrupt conduct in office and for crimes and misdemeanors." It is claimed by the prosecution that the words "crimes and misdemeanors" do not mean what we would understand at first blush, to-wit, legal crimes; but extended to all acts of mal-administration, misbehavior or misconduct in or out of office, whether criminal or not, thereby leaving the question to the "arbitrary discretion of the Senate," so that "it could make that a crime at one time or in one person which would be deemed innocent at another time or in another person;" which in a word would invest this court with powers undefined by law. Such authority is the essence of despotism and is not entrusted to any other court or department in this country. It is to regulate the powers of the courts, the departments and public officers that we frame constitutions, enact statutes and adopt the common law, which latter contains the accumulated experience of centuries, is so well adapted to circumstances, and is so multifarious in its provisions, that it is impossible to codity it. It is to be found in legal elementary works; the arguments of counsel and chiefly in the decisions of the courts. It is against the policy of this law, and of all enlightened, modern governments, to endow courts with undefined powers.

Impeachment was used in England in early times and was sometimes perverted to condemn those whom the government desired to put out of the way. Not being sufficiently available for this purpose, attainder was instituted. By this the government could by mere legislative enactment, without granting a hearing to the accused, confiscate his property and attaint the blood of himself and his descendants. Impeachment gave the right of defense to the accused. It became obsolete after the introduction of attainder. But in progress of time the barbarous remedy of attainder became odious, fell into disuse and impeachment was revived. It was again used to some extent for unjust political purposes, wherefore "crimes and misdemeanors" were held to cover every kind of misconduct. It was the exercise of this undefined power that

formerly constituted the main feature of the law parliamentary, technically so called, and it is claimed to be the law in this country for the same latitudinarian purpose. The Supreme Court of the United States has decided that the common law forms no part of the criminal law of the national government, and hence the question has frequently arisen whether the offenses charged by impeachment under that government, are in fact impeachable. It seems to me that the inefficiency of this remedy has powerfully stimulated, if it has not given rise to the claim, that the law parliamentary exists in this country. In impeachment under the State governments, no such inefficiency is felt, because in all of them the common law applies to criminal offenses.

It has never been clearly explained how the law parliamentaria has been introduced into this country. The English common law was adopted by enactments of the colonial legislatures, and by constitutions created during the Revolution, providing that it, together with the British statutes, as they existed at periods therein prescribed, though not entirely uniform, should be the law, so far as they were applicable to the *situation and circumstances*, but in none of them is the *law parliamentaria* mentioned, nor was it adapted to the situation and circumstances of the colony, because it is believed that impeachment was not used in them. In all the new states the common law, as it existed in this country at the time they were organized, has been adopted by statutes or by the courts. Our Supreme Court has recognized it as the law of this State.

Some have claimed that the adoption of the court of impeachment in the constitutions of this country, has brought with it the law parliamentary. But it seems clear as Professor Dwight says in his article in 6th Amer. Law Reg., p. 257, "Impeachment is simply a mode of procedure. It presupposes the existence of the crime, for the redress of which the trial is instituted." In a word, it relates to the remedy only.

Congress may apply the rules of common law to crimes, and the nation can exercise a more enlightened and undisputed power in trying impeachments. It will not then need the aid of this extraordinary law.

But it appears that in England it is now held that no offense is impeachable unless it is indictable. It is claimed by Professor Dwight and others, that this was the settled law of England before the adoption of our national constitution.

See Lord Melville's case, 29th Howell's State Trials, p. 1470, decided in 1806, said to be the last impeachment case in England. In that case the House of Lords required the opinion of the judges who decided that none of the charges constituted an indictable offense, for which reason the lords refused to convict. It should be particularly noted that while the theory that courts of impeachment have unlimited powers over the offenses to be tried in England, which they quote for authority, has decided this dangerous doctrine repeatedly so that the law parliamentary would not establish what is claimed for it. Not a decision of any court has been made in this country that the law parliamentary has been introduced here. President Johnson's and other impeachment trials, were cited by the prosecution to establish the doctrine. They only show the individual opinions of the members of the court, wholly divided. No decision has been made by the court on this question, wherefore the cases are of no authority.

It seems to be the settled law of this country, that criminal and penal statutes should be strictly construed. Therefore we should give a plain

meaning to the language of our constitution. I have been moved to write out this opinion, mainly to do what little I could to put down what I deem to be a latitudinarian and dangerous doctrine. I think the members of this court should be bound by the rules of law.

In our State, crimes and misdemeanors, committed out of office, are impeachable, because the language makes them so, and because it shows a mind equally depraved whether committed in or out of office. Our constitution provides also that "corrupt conduct in office," is impeachable. This I suppose to be always indictable. It is a very comprehensive clause, and will cover all or nearly all the cases cited in the notes to pages 665 and 666 of volume VI, Amer. Law Reg. of Judge Lawrence's article on impeachment. These cases are cited by managers in impeachment trials, to illustrate the necessity of the law parliamentaria or at any rate of a latitudinarian construction. If a judge does an act to injure another, with a criminal intent, it is corrupt conduct in office. though he profits nothing by it. In order to impeach the respondent, it should clearly appear in proof, that he did the act with a criminal intent. A mistake in a judge goes for nothing.

I will refer to a part of the most important charges, as they appeared in the proofs, articles six and seven have been usually considered together.

Ingmundson county treasurer bought of the town treasurer of Clayton, a town order drawn for some $114, which the latter had paid to the holder. The town treasurer became a defaulter and absconded. A subsequent town treasurer, obtained from the county auditor an order on the county treasurer for five or six hundred dollars, which Ingmundson refused to pay, unless the town order should be received in part payment, and it was so received. The respondent called the attention of the grand jury to these facts. They had Ingmundson come before them, and examined him, which was improper. They reported the facts to the court when they asked to be discharged, and the judge remarked that all other matters had been attended to promptly by them, but in this matter they had shown an unwillingness to act. That the facts they reported warranted an indictment, and if they had failed to find one through fear, favor or affection, they had violated their oaths; but their consciences were their own, etc. The witnesses disagreed as to his language, but I adopt this qualified statement as more rational than the unqualified one that they had violated their oaths. He discharged them, and in their presence directed the county attorney to draw a complaint on these facts. Subsequently he caused Ingmundson to be arrested on his warrant, and held him to bail. No indictment was ever found. I see no cause for impeachment, either on account of the conduct towards Ingmundson, nor of the language to the jury. It is true the language in one sense was pretty strong, but it was put in an hypothetical form, by which it was shorn of its main force.

I ought to say in justice to Ingmundson, that on full evidence I concluded that he did not intend to do a wrong, which I suppose is the reason the grand juries have found no bill; although his conduct about the order was irregular.

Article 8. The respondent issued a warrant against deputy sheriff Stimson, an officer of his court, by which he was arrested, charged with contempt for circulating a petition containing this language. "Sir, knowing you and believing your prejudices are stronger than your sense of honor, that your determination to rule is more ardent than

your desire to do right, that you will sacrifice private character, individual interest, and the public good to gratify your malice; that you are influenced by your ungovernable passions to abuse the power with which your position invests you, to make it a means of oppression rather than of administering justice; that you have disgraced the judiciary of the State, etc. * * we request you to resign, etc." The warrant was issued without an affidavit. The statute requires "an affidavit or other evidence." It is plain that this was an oversight, and would not therefore be cause for impeachment, even if the judge would be liable for false imprisonment. After examination he discharged Stimson, there being no proof that he circulated the petition.

Article 9 alleges that the judge made a fishing expedition out of Stimson's examination, to find out who originated and circulated the petition. The respondent testified that the witnesses were unwilling to tell any facts, and that he could get nothing out of them, except by the most rigid cross-examination, etc., I could see no conduct under these charges deserving of impeachment.

Under article 10 some conversations are proven, between the respondent and some of the county officers, showing an excited feeling on both sides, and amounting to "a breach of decorum, only."

---

## EXPLANATION OF VOTES GIVEN BY GEO. W. CLOUGH, (SENATOR) UPON THE SEVERAL ARTICLES OF IMPEACHMENT PREFERRED BY THE HOUSE OF REPRESENTATIVES, AGAINST SHERMAN PAGE, JUDGE OF THE TENTH JUDICIAL DISTRICT, OF THE STATE OF MINNESOTA.

In reference to Article 1st.—In the first place, I think there was improper conduct on the part of the judge in procuring the indictment. According to the evidence of A. W. Kimball, a large part of his charge consisted in talk about libel. If a judge in his charge to a grand jury figures up and magnifies small things, and makes them think that a crime has been committed when there is none, (to gratify his personal spite) I consider it improper and corrupt. That there was no libel in this case has been demonstrated by a fair trial. The jury who tried it not hesitating a moment. I heard the trial and thought it was a small matter upon which to base a charge of libel. I know the mode by which indictments have been procured and this is no exception.

Second. I think the bail bond excessive and oppressive. $1.500 bail for a poor man who had simply written a harmless criticism of the judge in a time of political excitement, seems to me most unjust and oppressive, and is in my mind an exhibition of malice, incompatible with the principles of good will to men that ought to actuate a judge.

That the bail was excessive appears by the bail he required in other cases, (one in evidence, Mr. French). There was a noted forger through our country by the name of Pugh, professing to be the owner of certain lands, and forged deeds and sold large amounts,—committed crimes enough to imprison him ten times the life of one man, and Judge Page admitted him to bail in the sum of $500. What a contrast! Are they both right? I cannot account for the difference upon the theory of an innocent error of judgment. There must have been some malice in the one case, or some deep corruption in the other. I cannot avoid the conclusion.

Third. It is claimed that Judge Page did not give Mollison his constitutional right of a speedy trial. Judge Page knows that every man is entitled to a speedy trial by the constitution. When he enters upon the duties of his office, he takes an oath to support the constitution of the State of Minnesota, and that constitution guarantees a speedy trial. During all the four and one-half years during which this indictment was pending, it appears that there was barely one opportunity given for trial, and according to evidence of Mr. Cameron, (which I believe) there is great doubt whether he ever had any chance for trial at all.

It seems to me that this is a long time to hold a man under a heavy bail bond, and the suspense and obloquy that naturally attaches to such an indictment, in fact, the whole transaction in regard to Mollison savors so strongly of judicial bullyism, that I could not give it my sanction by voting *not guilty*.

Article 2 accuses Judge. Page of going among the county commissioners and advising them in regard to the legality of the bill of Thomas Riley, and causing them to disallow the claim, and then afterwards sitting judicially on the same thing and deciding the matter in accordance with opinions previously expressed, and thus prejudging the case. Every portion of the charge is fully sustained by the evidence on both sides. The judge seeks to justify on the ground of being a citizen and tax payer. If he was so much interested as a tax payer, then surely he should not have acted judicially, for the law expressly prohibits a judge from acting in cases in which he is interested, but, I think that the evidence shows that he wanted to spite Thos. Riley, therefore it was malicious. A good and upright judge will carefully avoid controversy in which conflicting claims are discussed, knowing that they are liable to come before him for judicial action. If he does not do it, he is corrupt.

I regard the judge as very much out of his place before the county commissioners. I believe that the evidence forces me to the opinion that he was there for a corrupt or malicious purpose. By his action a poor man lost about $40 of money honestly earned by obeying the process of his own court. What would we think of a man who would hire other men to do his work, through a clerk, and then take such action as to *cheat* the laborer out of his pay; yet this is what Judge Page has done in this case. The man was obliged to do his work (serve the subpœnas) would have been liable to punishment had he not; yet this is the result. If this is *judicial honesty*, God save us from dishonesty.

# INDEX TO VOL. 3.

# INDEX TO VOL. 3.