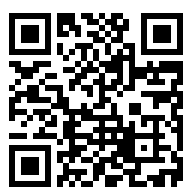

PAGE, SHERMAN, DEFENDANT.

In the matter of the impeachment of sherman page.

1879

IN THE MATTER

OF THE

IMPEACHMENT

OF

HON. SHERMAN PAGE,

Judge of the District Court for the Tenth Judicial District.

ANSWER OF RESPONDENT.

FILED MARCH 26TH, 1878.

MINNEAPOLIS:
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MANAGERS ON THE PART OF THE HOUSE.

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.

ATTORNEYS FOR RESPONDENT.

HON. C. K. DAVIS, St. Paul.
HON. J. W. LOSEY, La Crosse. Wis.
J. W. 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 Reporter—G. N. HILLMAN.

THE HOUSE.

NDENT.

'aul.
Crosse. Wis.
lbert Lea.

'OURT.

FIELD.

SON.
M. TOUSLEY.
HILLMAN.

ANSWER OF RESPONDENT.

THE ANSWER OF SHERMAN PAGE, JUDGE OF THE TENTH JUDICIAL DISTRICT OF THE STATE OF MINNESOTA, TO THE ALLEGED ARTICLES OF IMPEACHMENT, ALLEGED TO HAVE BEEN EXHIBITED BY THE HOUSE OF REPRESENTATIVES OF SAID STATE, IN SUPPORT OF THE ALLEGED IMPEACHMENT AGAINST HIM, FOR ALLEGED MISCONDUCT IN OFFICE, CRIMES AND MISDEMEANORS.

Now comes the said respondent, and protesting against the manifold defects and informalities in the said alleged articles of impeachment contained, and reserving to himself all right and benefit of exception thereto, and to the insufficiencies and defects thereof, on their face appearing, avers, alleges and says:

I.

That the House of Representatives of the State of Minnesota, have never in any form or manner impeached the respondent for corrupt conduct in office, or for any crimes or misdemeanors in office, or for any cause or offence whatever; that the said House of Representatives never adopted the said alleged or any other articles of impeachment of or against this respondent; that the said House of Representatives never adopted any resolution or order, or have in any way directed that this respondent be impeached for any cause, act or omission; that all and singular the proceedings of and

before the Senate of the State of Minnesota, sitting as a court of impeachment herein, have been and are wholly without jurisdiction for the reasons above stated, and for other good and sufficient reasons, all of which this respondent is ready to maintain and prove at such times and in such manner and form as the Honorable Senate shall direct.

II.

And the said respondent, still protesting and reserving his right of exception as aforesaid, and insisting upon the matters and facts hereinbefore pleaded, and not waiving the same, and reserving all his rights thereunder, respectfully submits the following answer to the said articles:

FIRST.

In answer to the matters alleged and set forth in the first article of impeachment, respondent admits that at the time therein specified, to-wit: on the third Tuesday in September, A. D. 1873, he was, and ever since has been, Judge of the Tenth Judicial District of the State of Minnesota, and that he, as such Judge, presided at a term of said Court at that time held, in and for the county of Mower, in said State and District, and also admits that the Grand Jury empanelled and sworn at said term duly returned and presented to said Court an indictment against one D. S. B. Mollison, a citizen of said county, for the crime of libel, as set forth in said articles.

Touching all other matters set forth in said first article, and all matters relative to his official acts, in connection with said indictment, respondent alleges the following facts:

That by the indictment aforesaid, the said D. S. B. Mollison was charged with composing, printing and publishing certain false defamatory, malicious and libelous statements of and concerning the official conduct of respondent, while in the discharge of his duties as

Judge of said District. That respondent had no knowledge or information of said indictment until the same was read in open Court, by the County Attorney of said county; nor did the respondent incite or procure said indictment, or instigate the same in any manner. That said Mollison appeared in Court at said term, to be arraigned on said indictment, and was asked by respondent if he had counsel, to which interrogatory he replied in the negative. That the respondent then inquired if he desired counsel, and he replied that he did not. That the indictment was then read to him by the County Attorney, and he pleaded thereto "Not Guilty." Respondent then being of opinion, as in fact and law he was, that he was forbidden under the laws of this State to preside at the trial of defendant, upon the charge contained in said indictment, immediately informed defendant of that fact, and also stated to him that it would be necessary to postpone the trial until the attendance of another Judge could be procured to preside at said trial; to which statement and disposition of the case, said Mollison made no objection. That afterwards, and during the same term of Court, said defendant again appeared with his counsel, G. M. Cameron, Esq., an attorney at law, practicing in said county, and moved the Court for leave to withdraw his former plea of "not guilty," and to enter and file a demurrer to the said indictment, which motion, for reasons then stated, and because of the facts hereinbefore stated, was not entertained, and could not be properly entertained, considered or adjudged by this respondent. That the case was then continued by the consent of counsel for the State and defendant, until the next general term of said Court, and defendant gave bond for his appearance at that time.

And this respondent further alleges on his information and belief, that said defendant was not in fact ready for his trial on said indictment at said term, and had made no preparation whatever therefor for trial, and was advised by his said counsel that he could not then safely proceed to trial for want of such preparation. That said Mollison has never, at any time, been desirous that his trial take place, but, on the contrary, has desired its postponement, in the hope that by delay he might avoid his trial; that he has been present in Court either by himself or his said attorney, at several

general and adjourned terms, since the time of his arraignment, but has never indicated his readiness for trial, nor moved in said case in any manner whatsoever, but has consented that the same be continued from term to term..

And respondent further answering said article, and more particularly the matters touching his alleged misconduct and neglect of duty in failing to procure another Judge to preside at the trial of said defendant, says:

That when he entered upon the discharge of his duties as Judge of said District, to-wit: on the first day of January, A. D. 1873, there were pending in said Court, and more especially in the county of Mower, a large number of causes, both civil and criminal, in which he was interested as attorney, and which he was incompetent to hear. That to dispose of these cases it became necessary to procure the attendance of another Judge, and that immediately after he entered upon the discharge of his official duties, he opened correspondence with other Judges in adjoining districts, and upon whom only he was authorized by law to call, with a view to securing their services, and to an early disposition of all of said causes. That their official duties and engagements in their own districts frequently prevented those judges from giving prompt responses to the calls thus made upon them, and considerable delay in the disposition of said causes was thereby unavoidably occasioned, and many of them remained on the calendar in said Mower county when the indictment was found against Mollison at the next succeeding term thereafter, to-wit: the term held in said county in the month of March, A. D. 1874. Respondent was unable, although he had faithfully endeavored, to procure any other Judge to preside, but at that time correspondence was pending with the Honorable William Mitchell, Judge of the Third District, for that purpose, and which finally resulted in the adjournment of said March term to the 7th day of July, A. D. 1874, at which time Judge Mitchell had agreed to be present, and was present for the express purpose of hearing said causes, and none others, and was ready and willing to hear all of said cases, and that a jury was summoned, and was present at said adjourned term, and the case of The State vs. D. S. B. Mollison, the same being the indictment referred to in

said article, was on the trial calendar. That when the same was reached in its order, said Mollison and his said counsel, as respondent is informed and believes, both being present, and well knowing that the said indictment then be tried, if defendant was ready, voluntarily and without request, stipulated and consented in open court that the case might be continued, and on such stipulation, an order was entered by the Judge presiding, and also by the clerk to that effect.

After said adjourned term respondent was wholly unable to procure the attendance of any other Judge, at any of the general terms of said Court, held in said county, although he made repeated efforts so to do, and said cause remained on the calendar and was continued from term to term by consent of the said defendant, until another adjourned term was held in said county, in the month of February, A. D. 1877, for the trial of said cause among others. Hon. D. A. Dickerson, Judge of the Sixth District, was present and presided at said term, and was ready and willing to hear all cases wherein the parties were ready for trial, and for that purpose to order a jury if necessary.

That said Mollison was present at said term, by himself and his attorney, as respondent is informed and believes, and when his case was reached he again stipulated and consented that it be continued. Whereupon the said court so ordered.

And respondent further says that in all matters relating to or connected with said indictment, or the trial of said Mollison thereon, he has acted in good faith, without malice or ill-will toward any one, and has at all times put forth his utmost exertions to secure and has in fact secured to the accused abundant opportunity for a fair and speedy trial before a competent and unbiased court, but said defendant has never been ready to assert his rights under the law nor to meet his trial on said indictment.

As to each and every allegation, statement or conclusion in said article contained, respondent denies the same and each and every part thereof. save as hereinbefore stated.

Wherefore, respondent alleges that he is not guilty of any official misconduct, nor crime or misdemeanor, by reason of any of the matters set forth in said article.

SECOND.

In answer to the allegations of official misconduct, contained in the second article of impeachment, respondent says:

That for more than ten years last past he has been and now is a resident freeholder and tax-payer in the county of Mower, and as such has at all times had a legal interest in common with other citizens in the proper, legal and honest administration of the public affairs of said county, and he insists that the fact of being the incumbent of a public office does not deprive him of any rights, or make his duties any less as a citizen, and he earnestly protests against the dangerous and subversive doctrine that an officer can be impeached for the proper exercise of such personal, social and political rights as are secured to him by the fundamental laws of the country.

Respondent further answering admits that indictments were found and presented against two of the persons named in said article, to-wit: Beisicker and Walsh, at the time stated; that said indictments were pending in the District Court of Mower county until the month of August, A.D. 1875, and then judgment was rendered thereon on demurrer in favor of the defendants. He also admits that subpœna were issued in said cases as stated in said article, and that the same were served by one Thomas Riley; but whether said Riley was at that time a Deputy Sheriff of said county, and as such authorized to collect his fees as therein stated, respondent has no knowledge or information sufficient to form a belief.

He avers that when the defendants were arraigned on said indictments, to-wit: in September, A. D. 1874, each of them, by their counsel demurred to the indictments, and the hearing of the issues raised thereby was postponed, by consent of the State and the defendants, until the term of Court held in said county in March, A. D. 1875. That no issues of fact were ever joined in said cases by plea or otherwise, and no witnesses were ever required by the State or the defendant for the trial thereof. That the cases were

again continued over said March term by stipulation of the State and the defendant, with the understanding that the demurrer should be argued and determined in vacation. That previous to, and at said March term, well knowing that no witnesses would be required in the determination of an issue of law, and with the design to make unnecessary expense to the public, and to furnish employment for the said Riley, confederating with said Riley to that end, defendants unlawfully procured a large number of subpœnas to be issued for witnesses in said cases, all of whom resided at or near the city of Austin where the Court was then in session, and the attendance of whom could have been secured within a few hours in case said demurrers had been overruled and defendants required to plead and go to trial at said term. That the Clerk of said Court, without authority, issued said subpœnas, and when respondent learned that the same had been issued he immediately, in open Court reminded the clerk of his mistake, and duly ordered that no part of the expenses or costs of issuing and serving said subpœnas be paid by said county. That afterwards, and at the session of the Board of County Commissioners of said county, held in the month of January, A. D. 1876, the said Thomas Riley, well knowing all the aforesaid facts, presented a bill of fees to said Commissioners, for serving said subpœnas and at the request of said board respondent made a statement to said board of the aforesaid facts connected with the transaction, and during the conversation expressed and stated that the Court had ordered that the bill should not be paid by the county.

And the respondent avers that under the statutes of the State of Minnesota he had, both as a private citizen and as the Judge of said Court, the right and authority to do all singular the acts which were done by him in the premises.

Respondent further says: That while he was in the presence of said Commissioners he conducted himself in a courteous and becoming manner, and used no harsh, angry or threatening language, but simply stated the facts in the case, and he avers that in doing so he was not actuated by malice or ill-will towards said Riley, nor any desire to deprive him of compensation for his services; but that he acted in the faithful discharge of his duty, as

well as in the exercise of a legal right to prevent the allowance of an illegal claim. Furthermore, he is confident in the opinion that his conduct in the premises, was not justly censurable nor improper. In expressing an opinion to said board that the bill before them ought not to be paid by the county he simply reported a decision previously made in open Court relative to the same matter. This decision was made and rendered in good faith, this respondent then and still believing that it was strictly in accordance with the laws of the State.

And respondent expressly denies that while he was before said Board of County Commissioners, or at any other time, he was informed or knew that it was the purpose of the said Thomas Riley to bring an action against the county to recover the amount of said bill in case the same should be disallowed by said Commissioners; but he admits that an action was commenced before a Justice of the Peace, for that purpose, as stated in said article, and which finally came into the District Court by appeal on questions of both law and fact. He avers that while said action was there pending the attorneys for the parties, with full knowledge of all that had been said and done by Respondent, relative to said claim as hereinbefore stated, made a written stipulation that the case should be tried by respondent, without a jury, and he avers that in pursuance of said stipulation said action was brought to trial before the respondent in vacation, and that after a careful examination of the law and all the facts in the case, judgment was duly rendered reversing the decision of said Justice and in favor of the county. That at that time respondent was of the opinion and fully believed that said judgment was correct; but if to this honorable Court it shall appear that there was error in said judgment, respondent respectfully urges that he ought not to suffer for an error of judgment in the decision of a legal question.

Respondent further says: That in all matters set forth in said article he has acted in good faith and with a just and proper regard for the rights and interests of the parties under the law, and no act has been prompted, inspired, influenced or modified by malicious or unkind feelings towards any person, and denies that in manner

or form as stated in said article, or otherwise, he is guilty of any misconduct in office or crime or misdemeanor, and, save and except as hereinbefore stated, he denies severally and specifically each and every averment in the said article contained.

THIRD.

The third article charges the respondent with improperly refusing to grant an order for the pay of one W. T. Mandeville, who, it is alleged, served as a special deputy at an adjourned term of court held in the county of Mower in the month of January, A. D. 1876, and with intemperate and abusive conduct toward said Mandeville on the occasion of his making application for said order.

Regarding said charges, respondent alleges the facts to be as follows:

At the adjourned term of Court aforesaid, which was appointed and held for the trial of only one jury case, to-wit: The State of Minnesota vs. W. D. Jaynes, no other jury case was expected to be tried and no other was tried. On or about the commencement of said term, respondent, as was his duty, prescribed by law, determined that the services of only one special deputy would be required, besides the services of the Sheriff, for the proper transaction of the business of the term, and so notified said Sheriff, and that thereupon said Sheriff appointed and employed as such deputy one F. W. Allen, of said county, who was a competent, experienced and reliable man for such service, and who was thereupon constantly in attendance upon Court during said term, and performed all the services necessary or required, and paid therefor by the county upon the order of the Court. Respondent further alleges: That he did not authorize the appointment or employment of said Mandeville as special deputy or otherwise, at said term of Court, and his services were not necessary for the proper discharge of the business of the term. That the Sheriff af the county was in attendance at said term, and was paid therefor by the county the fees allowed by law, and that if said Mandeville performed any labor in or about the court room during said term, it was at the special instance and

request of said Sheriff, and without authority from the Court, and if he was recognized during said term as an officer, of which respondent has no recollection, it was during the absence of the Sheriff, and with the understanding and belief of the respondent that he was a general deputy left in the court room to attend to the duties of the Sheriff in his absence.

Respondent avers that he did not recognize said Mandeville as a special deputy at said term, nor in any manner approve his employment as such, and did not know that he claimed to be acting in that capacity until after the adjournment of said term of Court; and that immediately upon being informed by said Mandeville that he had rendered services for which he claimed payment from the county, respondent declined to grant an order therefor, on the ground that said services were unnecessary and that his appointment had not been authorized.

That by the laws of this State the sole power to determine the number of deputies required to be in attendance at any term of Court is vested in the Judge, and that Sheriffs cannot employ or appoint such deputies without his authority, first granted, and that this authority must be exercised "on or before the holding of any term of the District Courts." That, in this instance, respondent discharged his duty fully and in accordance with the law; that he determined and fixed by his order that only one deputy was required at said term, and gave timely notice to the Sheriff of that fact, who thereupon appointed such deputy, to-wit: said Allen.

That said Sheriff had no warrant or authority whatever for the employment of said Mandeville, and it was not the duty of respondent, nor had he any jurisdiction or power to make an order that said Mandeville be paid out of the funds in the county treasury.

Respondent denies that on any of the occasions specified in said article, or at any other time, he used towards said Mandeville the language therein set forth, or language of like import or effect; and denies that his conduct connected with this matter, or any of his acts in refusing to make the aforesaid order, or otherwise, were for the purpose of depriving said Mandeville of his pay for services rendered, or on account of any hostility or malice towards him; but, on the contrary, he avers that he was actuated wholly by an

honest purpose to observe the law and to discharge his official duties in a faithful and impartial manner. That at all times when requested to make an order for the pay of said Mandeville, respondent has treated him in a courteous and becoming manner, and has used no harsh or improper language towards him; but has always, on such occasions, informed him of the aforesaid reasons why he had no authority to make such order.

Wherefore, respondent alleges that he is not guilty of any misconduct or crime or misdemeanor by reason of any matters set forth in said article, and, save and except as hereinbefore admitted, he denies severally and specifically each and every averment in said article contained.

FOURTH.

By the fourth article of impeachment respondent is charged with unlawfully and maliciously, and in a loud tone of voice, requiring a deputy sheriff to pay money into the county treasury which he had collected on an execution in a criminal case, and which he had withheld as fees.

In answer to the allegations in this article, respondent admits that an execution issued as therein stated, but he avers that the same was issued in a criminal action, to collect a fine of a definite and specified amount, imposed upon one Dwight Weller, the defendant in said action, and that at the time the said execution was issued, D. H. Stimpson was a deputy sheriff of said county of Mower, and authorized to serve legal process; but respondent alleges that said Stimpson did not perform any act whatsoever under and by virtue of said execution, for which he was entitled to compensation or fees under the laws of the State; that he did not levy on any property by virtue thereof, did not collect any money nor return said execution unsatisfied, but that the money which he had in his possession, and from which he deducted and retained the sum of five and 50-100 dollars, under the pretext that he was entitled to that amount as legal fees, was not in fact collected by him, nor any part thereof, but the same was paid by the said Weller to

one Lafayette French, the County Attorney of said county of Mower, to be by him applied in part payment of said fine, and was by said French unlawfully paid to said Stimpson, for the purpose of enabling him to retain said amount as fees. That by the laws of the State it was the duty of said French to have paid said money into the treasury of said county, instead of giving it to the person holding said execution.

That on receiving said money, to-wit: the sum of twenty dollars, said Stimpson, without authority, retained therefrom the sum of five and 50-100 dollars, and appropriated the same to his own use and paid the balance remaining, to-wit: fourteen and 50-100 dollars, to the Clerk of the Court to be credited on said fine.

That at the term of the Dietrict Court held at said county in the month of March, A. D. 1877, the Grand Jury investigated these matters and made report corresponding in substance with the foregoing statement of facts. When said report was made by the Grand Jury said Stimpson was present in Court, and on being interrogated by respondent, admitted that said statement was true, and that he was Deputy Sheriff of said county, and that he had as such Deputy Sheriff, retained a portion of the money paid to him by French, and that Weller had not been credited therewith. Whereupon it appearing from said admissions that said Stimpson was not entitled to the money so retained, and that Weller should have credit for the same as having been paid by him to apply on said fine, respondent directed said Stimpson, as an officer of said Court, to pay over said money, to-wit: the sum of five and 50-100 dollars, to the clerk of the court, for the use of the county; and in so doing he was, and still is, of the opinion that he adopted a legal method of correcting an error made by a ministerial officer of the Court, and that the action of this respondent was in accordance with the law and practice in such cases.

Respondent further alleges that said Stimpson interdosed no objection whatever to the method of procedure then adopted, nor to paying over the money as required, and respondent believes that it did not occur to him to pretend that by said proceeding he had been oppressed or misused, until he was incited thereto by meddlesome, malicious and designing persons.

Respondent further says that he was moved to this act by a sense of duty, and a desire to correct, in the simplest lawful manner possible, a wrong which had been done a defendant in a criminal proceeding, and to correct an improper act by which an officer of the Court had assumed the right to convert public money to his own use, and that he neither had nor exhibited any malice or other improper feeling towards said Stimpson. He denies that on said occasion, or at any time, he exhibited hostile or unkind feelings towards said Stimpson, or under any threats whatsoever against him, or treated him in an arbitrary or overbearing manner; but alleges that said Stimpson was furnished ample opportunity to be heard in his own defence, and freely submitted himself then and there to the direction and order of the said Court; and that when interrogated in open Court, freely admitted facts as aforesaid, sufficient to show that he had retained the money unlawfully.

And save and accept, as herein before admitted, the respondent denies severally and specifically each and every averment in the said article contained.

FIFTH.

Denying every allegation of official misconduct therein set forth and contained, if any there be, and protesting that such article is insufficient in law, respondent in answer to the fifth article of impeachment submits the following facts:

That on the evening of the 30th day of May, A. D. 1874, a riot occurred in the city of Austin, in said county of Mower; that George Baird, the person named and described in said article, was then sheriff of said county, and was present at said riot, with several of his deputies; that several hundred persons had assembled—great excitement prevailed—danger of personal violence was imminent, and actual breaches of the peace had occurred in the presence of said sheriff—and that he made no efforts to disperse the said rioters, nor to preserve the peace; that thereupon the mayor of said city, the aldermen and other officers in the lawful discharge of their duty, ordered said sheriff to exercise the powers conferred on

him by law, and disperse the persons engaged in said riot, and prevent public disturbance; but that the said Baird, through cowardice, intimidation and fear of personal violence, refused and neglected to obey said orders, and did not obey them, and refused and neglected to disperse said rioters, or to preserve the peace, but was completely overcome with fear, and utterly inefficient as a peace officer in their presence. That immediately thereafter, and on the evening of the day next following said riot, the same being Sunday, there being in said city a state of intense public excitement, and great apprehension as to the safety of citizens and property, on account of the desperate character of the rioters, and the well known inefficiency of said sheriff, a large number of said citizens assembled in a private house, to devise means of protection; that said Baird was present at said meeting, and after admitting his personal inability to enforce the law, proceeded to appoint a large number of said citizens as his deputies, to aid in protecting life and property in said city, and in executing the laws of the State.

That night guards and patrols were organized by said Baird, and kept on duty in and about the streets of said city for considerable time thereafter; that notwithstanding these efforts and precautions, on the evening of the day next following, to-wit: June 1st, 1874, a large number of noisy and tumultuous persons assembled on the public square in said city, and after listening to inflammatory speeches, and imbibing freely of liquors, formed in procession and marched to the residence of respondent, situated on one of the public streets in said city, and there engaged in noisy and riotous proceedings. That these persons were the same rioters, and their aforesaid actions were a continuation of their riotous and unlawful acts hereinbefore stated.

That respondent had left his home on that day to attend a term of court in Fillmore county, and was then holding court; that his family were alone, and became greatly alarmed; that said Baird, whose residence was only a few rods distant, knew all of these facts at the time, but wilfully neglected his duties, made no efforts whatever to prevent disturbances, nor to proetct the lives and property of citizens. That a dispatch was immediately sent to respondent, then holding court in Preston, Fillmore county, informing him of

what had occurred in his absence, of apprehended danger, and requesting protection; and that thereupon, as was his duty in the premises, and in violation of no law, but for the sole purpose of preserving the public peace, and preventing further disturbance and breaches of the peace, respondent wrote the order and letter to said sheriff which are set forth in said article, and sent the same to him by mail. That these communications were made in the explicit form adopted, because the said sheriff had previously neglected to discharge duties of a similar character to those therein enjoined, and such neglect, becoming well known, had greatly encouraged said rioters.

Except as hereinbefore admitted, respondent denies each and every allegation of fact contained in said article, and avers that he is not guilty of any of the alleged misconduct, crimes or misdemeanors therein set forth.

SIXTH.

Touching the matters set forth in the sixth article of impeachment, the respondent admits that since the first day of January, A. D. 1874, one I. Ingmundson has been treasurer of the county of Mower, but denies that during all of that period, or at any time, said treasurer has borne throughout said county, and among all the the citizens thereof, the reputation of well and faithfully performing the duties of said office; but alleges that with and among a great number of the good people of said county he has been, and is, both personally and as a public officer, a person of bad repute, and that during the period of more than two years last past, and prior to said proceedings, he has been by a large number of worthy and reliable citizens of said county, openly accused of gross violations of law, and gross offences in the conduct of the business of said office, and that he has during said period furnished abundant proof of the same by his own admissions.

Respondent further answering said article, denies that at or during the session of the District Court held in said county of Mower, in the month of September, A. D. 1876, he instructed the Grand

Jury then empaneled, that he had been informed, or understood, that irregularities existed in the office of the county treasurer, or made use of language to that effect, and denies that said jury did investigate the manner in which the business of said office was conducted to any extent, except as hereinafter stated, and avers that he did instruct said jury as required by law, to investigate the official misconduct of all public officers within the county, and called their attention especiallp to certain alleged defalcations by the treasurer of the town of Clayton, in said county, which the jury investigated, and found an indictment against said treasurer of the town of Clayton, for the crime of embezzlement, but the said jury did not examine the books, records, papers and vouchers belonging to the county treasurer's office sufficiently to derive any reliable informatiou therefrom, but said examination was so superficial and incomplete, was limited to so short a time, and conducted in a manner so illy adapted to the purpose, that said jnrors in fact knew nothing more of the real state of affairs in said office, when they finished their investigations, than when they commenced their examination; and that when they made the report set forth in said article, they well knew that it was not warranted by any facts disclosed on said investigation.

And further answering said article, respondent denies each and every statement, averment or conclusion therein contained, except as hereinbefore or hereinafter admitted, qualified or answered, and submits the following statement of facts relative thereto:

Subsequent to said September term of Court, and prior to the term held in said county in the month of March, A. D. 1877, great public dissatisfaction then existing among the citizens of said county with the aforesaid action of the said grand jury, respondent duly received information from residents and officers of the said town of Clayton that the county treasurer had refused to pay to the treasurer of said town the money in his hands belonging to said town, on the legal and proper warrant being presented therefor, and after proper and legal demand made, on the pretext that he, the said county treasurer, held an order against said town, not taken for taxes, but received from a former town treasurer after the same had been paid, and after said treasurer had defaulted. Infor-

mation had also been received of a great number of irregularities, violations of law and embezzlements by officers and others in said town.

At the opening of said term of Court held in the month of March, A. D. 1877, after the grand jury had been empaneled and sworn according to law, respondent, as by law required to do, read to said jury that portion of the General Statutes relating to the investigation of willful misconduct in office, and in that connection called their attention specially to the town of Clayton, and to the alleged refusal of said county treasurer to disburse the funds as aforesaid, and instructed them to investigate said matters fully and impartially, and make report in such manner as the facts in the case might warrant. In obedience to said instruction the jury investigated thoroughly and faithfully all matters touching the defalcations and other misconduct of said town officers, and found indictments against some of them and returned presentments against others, but, in disregard of their duties and of said instruction, delayed and put off from time to time the investigation of the matters touching the misconduct of said county treasurer, whenever the same was called up by the foreman, and manifested great reluctance in the discharge of this duty. Respondent is informed and verily believes that said Ingmundson was constantly, during said term of Court, in communication with certain members of said jury, and was by them informed of what transpired in the jury-room relative to his case. That he, said Ingmundson, had become greatly offended and enraged on account of the attention of said grand jury having been called to his official misconduct, and in the presence and hearing of said jurors and other persons in attendance upon Court, used very abusive, profane and indecent language.

That through his influence and the influence of his personal friends, some of whom were members of the said jury, an effort was made to postpone and finally to prevent a thorough or any investigation of said officer by said grand jury, and to shield and protect said Ingmundson from investigations. That for this purpose said jurors postponed investigation, in disregard of said instructions and their duty, until a late period in the session, and

until all of the business necessary to be transacted ought to have been and might have been completed. That they refused to be guided by the law as given them by the Court, disregarded and denounced the instructions given them, and some of them publicly denounced the Court in an angry and abusive manner for having directed their attention to said county treasurer. That, disregarding their high duties and sacred obligations, a number of said jurors unlawfully and maliciously combined together to resist the enforcement of law, and to prevent the administration of justice and the punishment of crime, and that in furtherance of said purpose and in disregard of the law and instructions of the Court, the jury called said treasurer before them while they were in session at two different times, when the subject of his misconduct was under consideration, and permitted and required him to make lengthy statements as to the affairs in his office. Said jurors having been previously informed by the Court and well knowing that this proceeding would be fatal to any indictment that might be found against said officer.

And respondent further alleges that prior to said term of Court the said treasurer had been and was guilty of gross misconduct in his said office, in the disobedience of well-known requirements of the law, and to such an extent had his misconduct been carried and persisted in that the public interests were greatly endangered. That well knowing these facts the said grand jury, disregarding their obligations and duties, assumed the right to expound and determine the law as well as the facts, and in contempt of the authority of the Court determined and decided that they were not bound by the instructions given them, and that after respondent, as was his duty, had fully and carefully read and explained to them the provisions of the statutes relating to the duties of county officers, some of said jurors, while returning to their room, and after arriving there, but not while investigating any matters legally pending before them, openly asserted that they would find some way to evade the law, or language to that effect, and violently denounced the Courtf or discharging his duties in the premises.

That at the commencement of and during said term of Court the attention of the grand jury was called to a large number of

criminal matters and irregularities in the conduct of public officers, all of which, with the exception of said treasurer, were promptly and thoroughly investigated and acted upon as required by law.

That after remaining in session eight or nine days, a much longer time than would have been necessary to transact the entire business of the session, had said jury been diligent and faithful in their labors, and had they not disregarded the instructions given them by the Court, they came into Court and presented a brief paper writing containing statements to the effect that there were irregularities in the county treasurer's office, but not of sufficient imporance to demand their attention, and that the treasurer in committing them had not intended to do wrong; that this statement was not signed by any one, and did not purport, on its face, to have been made by the jury. That respondent then briefly, by way of instruction to said grand jury as to the law, pointed out the informalities of said paper, and requested the jury to make and return a proper and formal statement or presentment of the facts as they found them from the evidence, as they had done in other cases. Thut the jury then retired and soon after returned and presented a formal statement, duly signed by the foreman, setting forth in substance that the county treasurer had refused to pay over money belonging to the towu of Clayton, when demanded by the town treasurer, unless he would first pay to him, or receive as money, a certain order against said town which had once been paid in full by a former town treasurer, and that he had received town orders and disbursed funds on them in violation of law, which said paper was duly filed in said Court.

Respondent then instructed the jury that misconduct of the character represented in the said statement was an indictable offence, and, if the evidence was sufficient to support the facts, their duty was clear, and at the same time instructed them that they were the sole judges of the evidence and the facts, and the Court had no control over their action. That they again retired and in a short time reported that they had completed the business before them.

Being informed of the aforesaid misconduct of said jury, of their unnecessary and unreasonable delay in the investigation of so important a public accusation, of their violations of law in refusing to be guided by the instructions of the Court, respondent felt convinced that it was his duty to admonish and impress them with the dangers and disastrous results that must follow such conduct, and he thereupon administered to them a temperate rebuke; that in doing so he used no violent or abusive language and entertained no feelings of anger whatever, but acted under a pure conviction of his duty as a magistrate. He called their attention to the promptness with which they had investigated all other matters brought before them, and their delay and hesitancy in this, and stated to them in substance that if their action had been influenced or controled by friendship, fear or favor, or any desire to shield or protect persons accused of public offences, or had knowingly disregarded the law as given to them by the Court, such conduct was a violation of the oath which they had taken, and as the matter was left in doubt, and was one of great public importance, it was proper that it be further investigated. The Grand Jury were then discharged, and the County Attorney was instructed to institute proceedings for the purpose of securing a full investigation of the case. Said attorney soon after drew up a complaint embodying therein a statement of such facts as he considered necessary and proper, filed the same in said Court, and a warrant was duly issued thereon, for the arrest of the accused.

Respondent further avers that said complaint and warrant set forth sufficient facts to constitute a public offence; and that at the examination, or at any time, the accused did not object to the sufficiency of said complaint or warrant, nor was the attention of respondent directed or called to any defects therein, and if any did exist he was not aware of them. That said Ingmundson, by his counsel, G. M. Cameron, Esq., an attorney at law, waived an examination, when he appeared and offered to give bond for his appearance at the next term of the District Court, but respondent deemed it his duty to proceed in the form and manner prescribed by the statutes in such case made and provided, and that thereupon the county attorney caused witnesses to be subpœnad and examined.

From the testimony given it appears that an offence had been committed, and the accused was held to bail for his appearance at the next term of the District Court. During said examination, and at all times, said defendant and his counsel were treated by respondent in a courteous and considerate manner. And respondent further alleges that at no time during said March term of Court, while the official acts of said Ingmundson were being investigated, nor while said examination was taking place, nor at any other time, were his official acts in any way influenced, modified or controlled by malice or ill-will, or other improper or unkind feelings towards said Ingmundson, or by any desire to injure or degrade, or bring him into disrepute among the people of said county or State, but that in all things done concerning said case, he was prompted and influenced solely by a desire to discharge his official duties in a faithful manner, and to promote the public welfare by an impartial and proper exercise of his duty as a Judge. Respondent was and still is of the opinion that all of his acts were lawful and proper, and understands that the laws of the State make it the duty of all District Judges to require grand juries to investigate the misconduct of all public officers, and requires said juries to be governed by the law as given in charge by the Court, and if in any material or important matter said juries refuse to act or are negligent in this regard, it becomes a further duty of the Court to interpose in the interest of justice, and to that end may require the proper officers to institute such legal proceedings as are necessary.

And further answering said article, respondent says that for a long time previous to the said term of Court in the month of March, A. D. 1877, the public business of said county had been so unlawfully and irregularly managed that in consequence thereof the county had been put to great trouble and expense in the employment of competent experts to examine the accounts of officers and had been involved in expensive and protracted litigation to recover funds which had been embezzled, and all of which might have been avoided if the Grand Juries empanneled and sworn at the various terms of court holden in said county had discharged their duties faithfully, that certain towns of said county had then recently sus-

tained heavy losses on account of defalcations and embezzlements of their officers, some of whom were then under indictment and had absconded and forfeited their bail in order to escape prosecution.

In view of these facts all of which were well known to respondent previous to said term of court, there seemed to be, and was a pressing necessity for more than ordinary vigilance on the part of the Court and jury to prevent the recurrence of this class of crimes, that the improper conduct of said Treasurer himself and of his immediate personal friends at the term of Court held in September, A. D. 1876, and subsequent thereto, furnished at least a reasonable ground of suspicion that the affairs in his office should be made the subject of thorough investigation at the earliest opportunity. And more recently the admissions of said Treasurer made public through one of the newspapers printed in said county furnish abundant evidence of his gross and reckless violations of well known laws.

Among the many disreputable acts of said treasurer which should be received as evidence of his desire to evade the law, as well as of the necessity then existing for a full investigation of his official conduct respondent, on his information and belief, alleges the following: That while the Grand Jury were engaged in the investigation of the affairs of his office, he secured communication with certain members of said jury, through the intervention of friends, and otherwise, and was thus kept informed from day to day as to what transpired in the jury-room—what position members took regarding it, and how they voted. That during the same time while he was engaged in the discharge of the duties of his office in the same building where said Court was in session, in the presence and hearing of jurors and other citizens, he cursed and swore in the most disgraceful manner on account of the investigation that was being had, and indulged himself in the most abusive language of and concerning the Judge then presiding at said term, and used every means in his power, by misrepresentation of the facts and otherwise, to create prejudice against the officers and jurors who were in favor of such investigation. That he pursued this conduct for several months after said term of Court, to such an extent that hardly a citizen of said county could enter his office without being insulted by some offensive remarks, or compelled to listen to a

lengthy and abusive harangue concerning said officers. That he falsely, and without any cause whatever, except that they had discharged their duty in the investigation of his office, assumed that the court, the jurors and all others who did not espouse and advocate his cause, were his personal enemies, and he immediately assumed towards all such persons an attitude of hostility.

That he seemed to be informed as to the individual acts of all of the Grand Jurors, and towards those whom he charged with voting or expressing themselves as Grand Jurors against him, he has ever since manifested bitter feelings of hostility, and refused to recognize them, while towards others his conduct has been of the opposite character.

That immediately after the close of said March term of court, said Ingmundson entered into a combination and alliance with other evil disposed persons, to invent, publish and circulate, and they did invent, publish and circulate certain false and defamatory statements of and concerning respondent as a public officer, designed and calculated to bring him into disrepute among the people of the State, and all of which was done, as respondent is informed and verily believes, for the sole purpose of diverting attention and protecting himself and other of said friends from punishment for crimes, by making it appear that a Judge in seeking to enforce obedience to the laws in so doing was himself a criminal.

And respondent further alleges that said Ingmundson and his said confederates, for no other purpose than to protect themselves and to gratify their personal animosity, have been largely and chiefly instrumental in procuring the present proceedings against this respondent, have contributed funds and have devoted a large amount of time and labor to that end.

Respondent further answering said article avers that all things whatsoever done by him in relation to the case of said Treasurer were in strict conformity with the law and in no instance did he assume powers or authority not conferred by law.

Wherefore he says that he is not guilty of any official misconduct nor any crime or misdemeanor by reason of any matter set forth in said sixth article. And save and except as hereinbefore admitted he denies each and every averment in said article contained.

SEVENTH.

In answer to the seventh article respondent denies each and every averment of fact, conclusion or intimation therein contained except as admitted in his answer to the sixth article which is now referred to, adopted and made a part of this answer to the said seventh article.

Further answering he denies that when the Grand Jury were discharged at the term of Court held in March, A. D. 1877, or at any other time he became or was greatly or at all angered or excited because said jury had omitted or failed to comply with his wishes, and avers that he had no wishes regarding the acts of said jury except that they should observe the law and discharge their duties faithfully under it. He denies that he addressed said jury in an angry or loud tone of voice or used any language to them of an insulting character, but avers that he used only such language as was proper. He denies that he told said jurors that they had violated their oaths, but described and named to them certain acts which *if done* by them would be in violation of their oaths, but did not state that they had committed these acts.

Respondent then believed and still believes that, knowing the misconduct of said jury as hereinbefore set forth, it would have been a gross neglect of his duty to have discharged them without first reminding them that such misconduct was not sanctioned by law nor by the rules and practice of courts of justice. Many of said jurors as he is informed and believes, when they came into court to be discharged, were greatly angered and excited on account of the bitter partisan discussions and wrangle which they had among themselves concerning the Ingmundson case, and were in no suitable frame of mind to observe, recollect or correctly judge of the tenor or substance of the remarks made to them by the Court. Moreover the feelings of some of them at that time towards respondent were exceedingly bitter and hostile, and the colorings and interpretation given to his remarks were mainly drawn from the disposition of

their own minds. And save and except as hereinbefore admitted this respondent denies severally and specifically each and every averment in said article contained.

EIGHTH.

In answer to the matters set forth in the Eighth and Ninth Articles of Impeachment, respondent denies each and every statement of fact or conclusion therein contained, except as hereinafter admitted or answered, and alleges the following facts:

At the general term of the District Court held in Mower County in the month of March, A. D. 1877, and for some time thereafter, one David H. Stimpson, the person referred to in said Eighth Article, was a Deputy Sheriff of said county, and as such Deputy Sheriff was in attendance upon said term of court, and engaged in the discharge of his official duties. That soon after the adjournment of said term of court, and during the months of April and May of said year, respondent received information from reliable citizens of said county that said Deputy Sheriff at and during said term of court, and immediately thereafter while engaged in the discharge of his official duties as such officer, wrote, printed and published of and concerning respondent as Judge of the Tenth Judicial District of this State, and concerning his official acts as such Judge, certain false, scandalous and defamatory statements, necessarily tending to impair public confidence in the integrity of said Judge and to interfere with the proper and successful discharge of his official duties, which publication was in words as follows, to-wit:

"*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."

That the purpose of said publication was not that it might be presented to said Judge, but that it might be stated and published that the citizens of Mower County were petitioning Judge Page to resign.

That after a careful examination of the law, respondent arrived at the conclusion that if the charge against said Stimpson was true it was a contempt of court and ought to be punished as such.

That a warrant was then duly issued reciting the substance of the offense with which Stimpson was charged, in accordance with the statutes of this State in such case made and provided, and an examination was held thereon. That the practice adopted was in conformity with precedents and the law in such cases.

That at such examination the accused was represented by counsel and was furnished every opportunity to make a thorough defense; that adjournments were had from time to time but not at any time without the consent of the accused. That early in the examination it appeared that the publication with which Stimpson was charged was the joint production of several individuals including said Stimpson, who to gratify their malice, had organized a conspiracy at or immediately after said March term of Court, to bring respondent as said Judge and said Court into disrepute and thus divert public attention from their own offenses, and that as a groundwork for their unlawful confederation they had availed themselves of the hatred and malice entertained by the county treasurer by members of the Grand Jury and by said Stimpson, all of whom were induced to believe by said evil disposed persons that they had suffered great wrongs during said term of Court. That from the witnesses exam-

ined respondent learned for the first time that two petitions of an essentially different character had been put in circulation by said persons and both of which it appeared had been in the possession of Stimpson, but one of which he claimed was not published nor circulated. That in order to ascertain the facts as to the guilt or innocence of the accused it became and was necessary to examine several witnesses most of whom were personal friends of the accused and had been more or less connected with him in composing and circulating said libel, and from their sympathy and interest in his behalf were extremely unwilling to disclose the facts. That all the questions put to said witness were proper and legal questions, and that no witness was compelled under his valid objection to answer any question, and only one witness, viz.: A. A. Harwood, declined to answer on the ground that he might criminate himself, and he was not required to answer. No objection was made by any witness to any question on the ground of its irrelevancy or incompetency. Respondent submits that Courts in such examinations are vested with discretionary powers to be exercised prudently in the interests of justice and are not liable as for misconduct except for a criminal abuse of such discretion. And Respondent avers that all questions propounded on said examination were pertinent and necessary as bearing either on the facts established or the credibility of the witnesses, and were not propounded for the purpose of annoying or injuring said witnessess, but solely for the purpose of arriving at the truth relative to the matter then under consideration.

That after hearing fully and carefully considering all of the evidence respondent was of opinion that the accused was not intentionally guilty of the contempt alleged against him and he was accordingly discharged.

Respondent further alleges that while said examination was pending all of the witnesses, parties, counsel and other persons in attendance thereon were treated with the fairness and impartiality, and all of their rights were faithfully preserved and protected, and every averment in said Articles showing or tending to show to the contrary is wholly untrue.

He denies that during said examination, or pending the same, he held conversation with said Stimpson, or with any other person, except as to the subject matter under consideration and the testimony given, and denies that he used any of the language set forth and alleged in said Ninth Article to have been used by him on said occasion, but avers that he did, after said examination had been adjourned, and again after the same was concluded and defendant discharged, have a conversation with said Stimpson during which he, said Stimpson, expressed regret at the associations which he had formed since he had been in Austin, and alleged that he had been led into difficulty by the influence of bad men. Believing him to be sincere in his assertions respondent addressed him in a kind and friendly manner and advised him to shun the society of such men, but did not use the names of any individuals. This conversation was introduced and sought by Stimpson himself, and at its conclusion he expressed himself as well satisfied with what had been done, and so said.

Respondent further answering said Ninth Article denies that A. A. Harwood and I. Ingmundson were at the time of said examination, or have been at any time since, well reputed among the inhabitants of said county as law abiding citizens, and denies that he then, or at any time, said that said persons were worse than the "Younger Brothers."

NINTH.

For answer to the Tenth Article, the Respondent specifically excepting to the same, in addition to his exceptions heretofore made, that the same is indefinite; that it states no facts; that it does not inform him of the nature and cause of any accusation against him, denies the same and each and every part thereof.

Wherefore the respondent prays the judgment of this Honorable Court acquitting him of all corrupt conduct in office or crimes or misdemeanors alleged in the said articles.

SHERMAN PAGE.

C. K. DAVIS,
J. A. LOVELY,
J. W. LOSEY,
Counsel for Respondent.