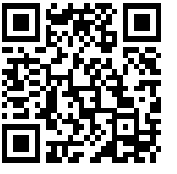
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JOURNAL

OF THE

SENATE OF MINNESOTA,

SITTING AS A

HIGH COURT OF IMPEACHMENT,

FOR THE TRIAL OF

HON. E. ST. JULIEN COX,

JUDGE OF THE NINTH JUDICIAL DISTRICT.

VOL. II.

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TWENTY-FOURTH DAY.

ST. PAUL, MINN., Feb. 7, 1882.

The Senate met at 2:30 o'clock P. M., and was called to order by Senator Wilson acting as President *pro tem.*

The roll being called, the following Senators answered to their names: Messrs. Aaker, Adams, Bonniwell, Buck C. F., Case, Crooks, Gilfillan J. B., Hinds, Howard, Johnson A. M., Johnson R. B., Langdon, McCre, Morrison, Perkins, Pillsbury, Powers, Rice, Shaller, Tiffany, Wheat, White, Wilkins and Wilson.

The Senate, sitting for the trial of E. St. Julien Cox, Judge of the ninth 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 Represenatives to conduct the trial, to-wit: Hon. Henry G. Hicks, Hon. O. B. Gould, Hon. L. W. Collins, Hon. A. C. Dunn, Hon. G. W. Putnam, and Hon. W. J. Ives, entered the Senate Chamber and took seats assigned them.

E. St. Julien Cox accompanied by his counsel, appeared at the bar of the Senate, and took the seats assigned them.

The PRESIDENT *pro tem.* Has the Senate any motions or resolutions to offer before proceeding to the regular business?

Senator CROOKS. Is there a quorum present?

The PRESIDENT *pro tem.* There is.

Senator CROOKS. I rise to a question of privilege. The question has been raised as to the right, under article four of the constitution of this state, of certain gentlemen, Senators, also occupying positions under the State government other than that of Postmaster to be Senators. Now, it would be very awkward to have this question raised by and by. I am not prepared to express any opinion upon it, except from the reading of the constitution, nor am I aware of what the practice may have been heretofore, specifically; but I deem it very important that the senate, sitting as a high court of impeachment, should be composed of men who, under the constitution, are senators in every sense. It were improper it seems to me until this question is settled to the satisfaction of the senate, that these proceedings should go any farther. They should go no farther until that question has been absoluteley determined. I should like to have the expression of the opinion of the senator from Hennepin. I should also like to hear from the senators upon this floor who are lawyers, and who may enlighten the senate on the facts. I do not think it were proper for us to proceed here in any way in which the rights of the people or the rights of the respondent can be affected hereafter (no matter what the result may be) when a question is raised as to the standing or the authority of this senate, composed partly of men who are not senators, to try this case which under the constitution is entirely thrown into the hands of the senate.

The PRESIDENT *pro tem.* The Senate have heard the remarks of the gentleman from Ramsey. What is the pleasure of the Senate?

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Senator POWERS. I would call upon the Senator from Ramsey to state to whom he refers, and to what point of the constitution he has reference.

Senator CROOKS. I refer to Senator J. B. Gilfillan, of Hennepin, and to Senator Clement, of Rice. I ask this not that I want to raise any question, but because it has been raised by the public press, and I want the question settled, if it can be, to the satisfaction of the Senate.

Senator GILFILLAN J. B. Mr. President, I think I understand the Senator perfectly. I am not aware whether the question has been raised by either the honorable managers or the counsel for the respondent. I don't know whether the question has been raised—

Senator CROOKS. It has not.

Senator GILFILLAN, J. B. I, myself, have not examined the question, and I am not prepared to express an opinion. I do know this, however, that for the last twenty years it has been adjudged by the department of justice of this State, (I refer to the attorney general) that the office held by myself—if that is what the Senator refers to—

Senator CROOKS. Yes, I mean that.

Senator GILFILLAN J. B. Does not come within the constitutional inhibition; I think as long ago as 1860 or 1861, the honorable Gordon E. Cole, attorney general, passed upon the very question. I do not remember who the individual was who held the office of regent in that case, but it was in respect to that appointment. It was held by the attorney general not to be an office under the state. That opinion covered the case precisely so far as it relates to myself. I do not know of any more recent opinion directly in point, but that has been alluded to in analogous cases repeatedly from that time to the present, in three or four instances I think. I do not know that the matter has ever come before the courts. I say I have not examined the question. This is the extent of my knowledge in the matter.

Senator CROOKS. Mr. President, the only object I had in the world was simply this: That there should be no waiver on the part of the Senate in a fair trial here, and that after we get through here, that neither side could get up and say that they had been tried by persons disqualified under the constitution. That is all. I think it would be well to look into this matter now; and I would ask the Senator from Scott, if he will, to give us his opinion upon that point. I would like very much to hear from him.

The PRESIDENT *pro tem.* The provision of the constitution referred to, as near as I can repeat it, is this: That no Senater or Representative shall hold any office under the United States or State of Minnesota, except that of postmaster during the time for which he is elected.

Senator CROOKS. I think that is it.

The PRESIDENT *pro tem.* I suppose the question would depend altogether upon the construction that is put upon the phrase "state office," —whether a regent comes within the purview of that term in the constitution.

Senator CROOKS. I would state, Mr. President, that this has occurred to me, that it was not within the view of the constitutional convention, or either of them, when framing the constitution of the State, that anybody should represent upon the floor of either house an appropriation bill for an institution with which he was connected. I think it was put in as a safeguard against that. It strikes me as a very proper one. Not that any gentleman connected as a regent with the university would have any

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interest whatever with what was done, but as they have the control of the expenditures of the money of the people for these several institutions, it would seem to me that the framers of the constitution had guarded that, with the view that these men should not represent upon the floor of either house of this Legislature money of their own expenditure there; that they would be biased necessarily,—*might* be biased rather,—in favor of appropriations, the expenditure of which came under their own supervision, and I cannot see any reason for it in the world, except that. I could conceive very well why, under the United States government, they should not be allowed to come into a State Legislature here, representing the government, the whole country, as against the sovereignty of the State. That I can see very well; and, for my own part, I am very frank to confess that I do not think these gentlemen here are disqualified. I do not think so; but the question has been raised by the public press, and I repeat again, I do not wish, after we get through with this trial, to have ourselves barred on either side, because gentlemen, representing themselves to be Senators here, but disfranchised as such under the constitution, have cast their votes for or against this man.

Senator PILLSBURY Mr. President, I think this question has been decided by the Senate several times. I know it has been sometimes brought up in the matter of confirmation. It has also furthermore been decided by the attorney general of the State; and I do not see how the Senate can be called upon to decide the question again, unless it is brought before them by one of the parties in this case, either by the managers or by the counsel for the defense. I think when we get down to this question, though I do not pretend to be a lawyer, that it will be found that the Senate is the only body that can decide.

Senator CROOKS. There is do doubt about that; they are the judges of their own acts.

The PRESIDENT *pro tem.* That is a question purely for the court, and not for the Senate. As a matter of fact to my personal knowledge there has not been a session of the Legislature since I have known anything about the State, in which there were not auditors, or county attorneys, or county treasurers, members of the legislative body.

Mr. Manager DUNN. And notaries public, any number of them.

The PRESIDENT *pro tem.* And notaries public, any number of them; but that does not make the thing right. Do you wish to be heard, Senator Hinds?

Senator HINDS. Under the constitution each house of the Legislature is made the exclusive judge of the election and qualification of its own members. Now, I take it, that the Senate, as one branch of the Legislature, has passed upon this question as to each one of the members of the Senate that was sworn in. By administering the oath, and admitting a member to a seat, the Senate passes upon that question. If there is any motion pending by which this question can be now raised, I do not know what it is. There is no motion pending or proposed, as I understand it, to expel any member.

Senator CROOKS. There can be one.

Senator HINDS. It seems to me the question is not before the court. It seems to me also that the question cannot be before the court. It cannot reach the court. This court is not the Senate. It is not sitting as a legislative body. The legislative body has authority to determine as to the qualification of its own members. That legislative body became a court by virtue of its organization as such, under the administra-

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tion of a different oath. The legislative body is not in session, and at the first view, it strikes me that it is not competent for the court even to consider that question, the Senate having passed upon it while it was a legislative body, and that Senate is distinct from the court, sitting under a different organization, under a different oath. If it *can* be raised at this time, why there is nothing pending, as I understand, by which it *is* raised. This is simply an informal discussion.

Senator CROOKS. That is all right; that is all it was intended to be.

The PRESIDENT *pro tem.* I don't understand that there is anything before the Senate at all.

Senator HINDS. I should hope to find that there is nothing in the suggestion even. I recollect very distinctly that I have sat in this and the other body for several years, and during all the time, until very recently, have held the important office of treasurer of a school district, and that is an office—

The PRESIDENT *pro tem.* Under the State?

Senator HINDS. Certainly, under something, by virtue of some law; and, perhaps, there are very few members of either body of the legislature that were not holding some office during some portion of the time that they were occupying their seats. I am not aware, as has been said by others, that there has been any ruling that even throws a doubt upon that question. All the rulings that we have ever had, either in the supreme court or by the law officer of the State, have been adverse to the theory that is suggested, that a Regent of the University is disqualified from being a Senator.

Senator GILFILDAN J. B. Mr. President, it may be proper for me to add further that I knew nothing of this question being raised until last evening, when my attention was called to it.

The PRESIDENT *pro tem.* I suppose that if this discussion is continued it must be by common consent.

Senator CROOKS. There is no objection.

Senator GILFILLAN. (Continuing.) I say last evening my attention was called by a friend to an article in one of the papers in this city. That was the first intimation I had that any such question had been or would be raised, and since then I have not had an opportunity to examine the question; but my recollection of the uniform holding of the attorney-general and of the courts, so far as it has been before the courts, (I do not recollect any case where the question has come up directly before the courts) but the rulings have been so uniformly against the proposition or question raised, that it seemed to me that there was nothing in it all. If it were a matter of mere personal choice it would not require long to decide this question; I assure the court of that. I have not manifested thus far very much inclination to tie myself to this tedious inquisition, although as much as I have felt able to do; but I do not consider it a matter of personal privilege, but a matter of duty based upon an official oath which I have taken, and upon my understanding of the law I do not feel at liberty to withdraw from my seat in this court. I should be very glad if I could be relieved. I think the Senator (Mr. Crooks) feels as much assured of that as myself.

The PRESIDENT *pro tem.* If there is nothing further before the Senate we will proceed with the regular order of business.

Is the counsel for the respondent ready to proceed?

Mr. ARCTANDER. Yes, sir. May it please the President and gentlemen of the Senate: when by your generous action some time ago, it was

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decided that the defense should have a week's time at least, to prepare, I had hoped that that time would be sufficient to enable me to make such a preparation for the opening argument in this case, that I could be short and concise, and bring the vital points out with a force that a thorough examination and preparation would give. I was, however unfortunate in going home as soon as you had adjourned, instead of staying here where I could have prepared myself, and, as every practicing lawyer on this floor readily understands, when an attorney in active practice, after a month's absence gets home, there are many matters which claim his attention and which must be attended to; and I found too soon that the time you gave us,—although liberal as it seemed at the time,—was too short, under the circumstances, to do the subject matter justice. There is considerable material to wade through in this case,—about 1,000 pages of testimony,—and the way in which it has been brought forward by the managers,—not taking up each article by itself, but taking the evidence up by piecemeal, and spreading it all over these, 1,000 pages has not made the work any easier. I think, therefore, that Senators will kindly pardon me if in the exposition that it is necessary to make upon behalf of the respondent in this case, I should be more lengthy and more tedious than I should have been if I had had proper time in which to prepare.

I will state that the respondent started out in this case, with the proposition that the articles of impeachment that the House of Representatives found against him were insufficient in law. This proposition we have not abandoned; this proposition we still maintain and shall continue to maintain with the kind permission of the Senate, until the final close of the trial. We do so not so much in justice to the respondent, (as we think we shall be able to show that whether these impeachment articles be proper and legal or not, he is not guilty of any of the things of which he is charged in these articles,) but we do it more because we consider it necessary because we consider it proper, that this matter as to the insufficiency of the articles, should be brought before the Senate at every possible occasion,—that it should be presented by the different counsel who represent the respondent here in the different lights in which they view it, so that if possible the different expositions may throw light upon the subject, where one only would fail so to do. We think that this is right, in justice to the State; we think it is right in justice to the precedent that will be established by this trial; we think it is right toward those generations that shall come after us, and those persons holding office that may hereafter be called upon, upon the strength of the precedent laid down in this case to answer articles of impeachment which charge them with no crimes or misdemeanors whatsoever.

We claim that when the Senate decided upon the demurrer adversely to the respondent, that it did not directly or necessarily decide the question, that here were no impeachable crimes or misdemeanors charged: we hold that all that decision amounted to was simply that the Senate would not then discharge the respondent; that they desired to hear proof; that they desired that he should not be discharged upon a simple question of law. And, probably, for all we know, the Senators who voted upon that question and voted upon that demurrer may have been perfectly satisfied that the demurrer was well taken, that there were no crimes and misdemeanors charged, but at the same time felt that it was due to the honor and dignity of the State that no person should be dis-

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charged upon a simple question of law, with such an array of accusations standing against him virtually admitted by demurrer to be true; that it was not a proper thing for the dignity of the State; that it was not the proper thing for the respondent and for his future. And if that was the view Senators took of the matter, I certainly for my part coincide with it. I think it was a just view, I think it was a commendable view, I think it was a view that we all could be proud of. For certainly, as far as the respondent was concerned, it was not desirable that at that time the demurrer should be sustained, with these charges standing against him virtually admitted,—charges that looked rather heinous, as was stated at the time, it was his personal desire that the demurrer should be overruled. We claim, therefore, that the decision of the Senate upon the demurrer does not preclude the raising of this question again and raising it all through the trial.

We claim farther that we have a right to address you upon the subject for the reason that the decision of the Senate is not law; the decision of the Senate does not bind the individual Senators, it is not *res adjudicata* or in the nature of *res adjudicata* in the same way as are decisions of the courts.

Each one of the Senators, before entering upon the duties of this trial, took a solemn oath to decide this case impartially and justly upon the law and the evidence,—not the law as one Senator's judgment may lay it down and dictate it to his fellow Senators,—not the law as the Senate may lay it down,—but the established lay of the State as it is laid down in the books and by the courts,—*the known law of the land.*

Now, I say then, that every Senator has, and ought to have, his individual judgment in this matter, without regard to what the members of the Senate as a whole may do, or what a majority of them may have done. Every Senator has his own conscience to meet upon the question as to what is the law and what is the evidence. He has to respond to his Maker for his best and honest judgment upon a question of evidence as well as upon a question of law; and on that day of reckoning, when we shall respond to the omissions and commissions of which we have been guilty, then it will not do for any individual Senator to stand up and shield himself under a decision of a majority of this Senate, for he is not to be bound by it; he is to be bound only by his own individual judgment as to what is the law and as to what the evidence amounts to. I therefore address myself upon this question, not so much to the Senate as a whole, as I do to the individual conscience, the individual intellect and the individual judgment of every Senator upon this floor. When referring to this question I shall do so briefly. I shall not go into an extensive citation of the authorities, because I apprehend that that will be done hereafter, and more ably and perfectly, by my learned associate who will close this case. I shall simply allude to the matter as I go along; I shall simply bring the matter up so far and no farther than is necessary to elucidate the points that I shall hereafter make.

I take it, for the sake of this argument, to be established, that in order to make a crime impeachable or to enable a party to be impeached for it, it is necessary that he should be accused of crimes or misdemeanors,—crimes or misdemeanors *known to the law.* I speak not here of corrupt conduct in office, because the House of Representatives has not seen fit to charge us with corrupt conduct in office; and the managers have heretofore, upon the argument made at the first hearing in this case, disclaimed any intention of charging us with corrupt conduct in office, and

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have stated before the Senate that they do not claim that the charges brought forward amount to corrupt conduct in office.

I shall not discuss before you the question as to whether or not in order to make an offense impeachable it is necessary that it should be an indictable crime or misdemeanor, I shall leave that subject to abler hands hereafter; I shall leave that to the books and precedents that will be produced before you. I shall take it for granted that so is the fact. I shall not deem it necessary for the sake of this argument even to go to the length of claiming, that it should be *indictable* crimes or midemeanors, but it must be crimes, or misdemeanors, at least, whether indictable or not. I think there is no doubt that the books lay it down plainly, and that there is no deviation of authorities from the position, that any offenses for which a man is liable to impeachment must be indictable crimes and misdemeanors; but I say for the sake of my argument, I care not for that, and I shall not go into that question; I shall take it for granted for the sake of this argument, as established by law (as it certainly is) that it is necessary under our constitution before you can charge a man legally and constitutionally in this solemn proceeding of impeachment, that you charge him with a crime or misdemeanor known to the law, and I ask then when was it in this State or when was it under the common law a crime to be drunk or to be intoxicated? I admit that intoxication is a moral vice; I admit that it is a heinous moral vice; I admit that it is one that has been fraught with evils and with dangers, that it has been fraught with evils and with crime; but I claim that notwithstanding it is a moral vice it has never been and is not today in this State a crime,—and that is the criterion. You cannot impeach nor convict a man for a moral vice in this proceeding any more than you can in a court of justice. You must find a crime of which you can convict him. The managers claimed before you that under the common law anything that was open and notorious and tended to deprave the morals of society was a crime. I say that it is true that it is a vice; I say it is true that it may be a fact that all such things are moral crimes, crimes for which the perpetrator must answer and respond to his Maker; but I say that it has never been laid down in the books and never will be, that matters of that diminutive magnitude (if I may use the expression) matters that the law has never established and laid down rules for,—matters that the law does not in terms prohibit; that such matters, I say, whatever may be their consequence, whatever may be the feeling of abhorence with which we look upon them, are nevertheless not crimes, and I ask leave to cite you upon that question an authority that I think is conclusive,—one of the greatest authorities upon the philosophy of crime that is extant,—I cite you to Archbishop Paley's Principles of Moral and Political Philosophy, page 27; he says:

"Human laws omit many duties, as not objects of compulsion; such as piety to God, bounty to the poor, forgiveness of injuries, education of children, gratitude to benefactors. The law never speaks but to command, nor commands but where it can compel; consequently those duties, which by their nature must be *voluntary*, are left out of the statute-book as lying beyond the reach of its operation and authority.

"Human laws permit, or, which is the same thing, suffer to go unpunished, many crimes because they are incapable of being defined by any previous description; of which nature are luxury, prodigality, partiality in voting at those elections in which the qualifications of the candidate ought to determine the success, caprice in the disposition's of men's fortunes at their death, disrespect to parents,

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and a multitude of similar examples. For this is the alternative: either the law must define beforehand and with precision the offenses which it punishes, or it must be left to the discretion of the magistrate to determine, upon each particular accusation, whether it constitute that offense which the law designed to punish or not; which is, in effect, leaving to the magistrate to punish or not to punish, at his pleasure, the individual who is brought before him; which is just so much tyranny. Where, therefore, as in the instances above mentioned, the distinction between right and wrong is of too subtile or of too secret a nature to be ascertained by any preconcerted language, the law of most countries, especially of free states, rather than commit the liberty of the subject to the discretion of the magistrate, leaves men in such cases to themselves."

Now, then, the criterion and question is, under that authority as well as under common sense, has the common law ever established and defined the crime of drunkenness, or has the statutory law done so? Has the common law done so?

If it is true that drunkenness was a crime under the common law, I ask you in the name of common sense, Senators, what was the need or use of the enactment of the statute of James the First which made drunkenness not even a criminal offense, but which provided for the punishment of public drunkenness or drunkenness in public, which provided that parties who were drunk in public should be summoned—not arrested—before a magistrate and judgment given against them for, I think, from five shillings to one pound, and that judgment to be collected by distress upon their goods and chattels? Not the way in which criminal fines are collected,—not the way in which criminal prosecutions are conducted.

Criminal prosecutions are, and have, as long as the common law has existed, been instituted by warrant and arrest. Not so under the statute of James the First. The law in these prosecutions has provided for fines and for incarceration until the fines are paid, or for both fine and imprisonment. Not so under the statute of James the First.

Now, I say if it is true that under the common law drunkenness *was* a crime, what in the name of all that is good was the necessity, or the urgency, or the reasonableness in enacting the statute of James the First, providing for the punishment of persons that were drunk in public places?

Now, I take it for granted that the Senate understands,—because it was so read by the learned Managers, and our great standard criminal authority, Mr. Bishop, lays it down,—that the statute of James the First is not a part of the common law of this country. "That particular statute," he says, "has not been considered to be a part of the common law of this country." And drunkenness certainly was not a part of the common law of England before; the common law, that we accepted. The common law did not recognize drunkenness, because it was too small an offense to recognize; and the law does not take notice of small things. The statute that they enacted under James the First was not, according to Bishop and the other authorities on criminal law, part of the common law of this country. Consequently we had no law, no common law, no English statutory law in force in this country at the time when we severed our connection with the mother land, making drunkenness an offense. I am simply calling your attention to the fact of this statute of James the First, to prove the assertion that there was no such thing under the common law as a criminal offense of drunkenness. If it should be necessary (which I think it is not, because the enactment of that very statute proves conclusively, that there was no common law on the sub-

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ject;) they would certainly not have enacted that statute if it was an offense before. I might call your attention to the fact that you can find nowhere in the books in relation to justices of the peace, nor in any of the hand-books that were published in England to help along these petty prosecutions, and give information and intelligence to magistrates,—you can find in none of these books, I say, any reference to any such common law offense,—you can find in the law-books or reports no single case of a prosecution under such a common law provision.

Now in this State, it will certainly be admitted, there has never been any statute passed making drunkenness a public offense. We have no statutory law upon the subject. And as a further proof that there was no such offense as drunkenness known to the common law, I call the attention of the Senators to the fact that most of the States have enacted laws making drunkenness a criminal offense. I ask you, if when we severed our connection with the mother country, it was a part of the common law of the country that drunkennees was an offense; why is it that the State of Massachusets and the State of Maine should have adopted statutes making it an offense and providing punishment for it and declaring it to be an offense—not only providing the punishment, but declaring the offense? I ask you, in the name of common sense, if that was a part of the common law of this country, why, Pennsylvania, in the early part of its existence enacted a statute against drunkenness, and provided for a sixty-seven cent fine? If it was a part of the common law of this country, I ask you why the States of Ohio, Michigan and Wisconsin have enacted laws making drunkenness a criminal offense, and providing for its punishment—not only providing for its punishment, but declaring it a criminal offense. If drunkenness was a crime under the common law, I ask you why Connecticut has enacted such a statute; why has New Jersey, why has Virginia, why has Indiana, why has Tennessee, why has New Hampshire, and why had Iowa, and several other States probably, whose statutes I have not examined into enacted such a statutory provision? I ask if it is reasonable to suppose that these several States would go to work and enact statutes declaring the offense if it was an offense already under the common law. I ask how it is that you never heard in this State, as long as the State has existed, of a single man being arrested for the crime of drunkenness as being an offense against the State. I ask you if it is a fact that drunkenness is a crime in this State, and if it is so because it was so at common law, then what is the need of every village and every city in this commonwealth trying to obtain authority from the State to enact ordinances making drunkenness in the public streets, or in public places an offense against the municipality, or in other words, leave to make public regulations on the subject. I ask you what that means? Does that show that it has ever been acknowledged that drunkenness is a crime under the common law, and that we have it in our State from the common law? Does it show that lawyers have so regarded it? Does it show that drunkenness has been recognized by a known law of this State by virtue of the common law? I say it shows on the contrary that it has never been so recognized before it was necessary to call it into requisition in this case. If drunkenness is a crime I would like to know when it was so made; if it is anything more than a breach of a police regulation I would like to know when that idea was first promulgated. Certainly no such idea existed at the time of the wedding in Cana, when the best and greatest of all men not only allowed the par-

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ties to drink until they got drunk, but furnished them more wine to drink after they had got drunk. It certainly was no crime in the times of the cloisters and of chivalry during the medieval ages. It certainly was no crime even against a moral law in the fifteenth century, when the great Martin Luther, the reformer of the church, the father and the founder of the Protestant Church in all civilized countries lived and worked, the man who unchained the bible and gave it to the people that had been excluded from its benefits, and had had no knowledge of its magnificent truths theretofore—as that man sang as you are probably most of you well aware:

"Wer nicht liebt Wein, Weiber und Gesang,
Er bleibt ein Narr sein Leben lang."

It certainly was no crime, morally or legally thirty years ago, if I may believe what men older than me, have been telling me, even in this country,—in this the home of the puritans;—I understand that in the east thirty years ago, if you were to come to the house. of a minister of the gospel he would think it was his sworn duty to provide you, if he had a cent, with some of his apple juice. I understand that thirty years ago it would have been considered even by a presbyterian minister an insult to him if he should come into your house and you should neglect to offer him one or more glasses of apple brandy. It certainly was not a crime at that time. I call your attention to this fact because it shows that there is a cause for this claim to-day that drunkenness is a crime under the law of the land, and the cause of it is the movement that late years has witnessed,—a law that our legislature has never sanctioned but which has been enacted in the whirling brain of some fanatic temperance orator, speaking for the cause that appeals to the domineering and tyrannical tendencies of a sovereign people, awakening a spirit of intolerance that is unworthy of and unknown to the principles of every free government, appealing to the worst and most ignoble sentiment of a free man.

But the managers say: Admit for the sake of the argument, and admit as a matter of fact that drunkenness alone was no crime at common law yet drunkenness in an officer while in the discharge of official duties, was a crime at the common law. Now that is their claim. I ask, Senators, has any decision, any law been produced before you? Has any commentary on the English common law been produced here to show that such was the common law,—has any decision in any English court been produced before you to fortify this position,—has any decision of any of the supreme courts, the courts of last resort, of any of the states of this union been produced before you to show the fact? Not one; and for the very good reason that none can be found. Why, the learned managers were obliged to resort to two musty decisions of *nisi prius* courts,—one in the mountains of Pennsylvania, the other in the backwoods of Virginia,—decisions that were made by *nisi prius* courts, if not before the flood, at least before the period of civilization,—old and musty records they bring forward from those courts,—decisions that would not hold good in the districts in which they were delivered, even five or ten years after they had been rendered,—decisions that would not be cited as authority and could not be cited as authority even in the State of Pennsylvania, or in the State of Virginia themselves, much less in the State of Minnesota. We all know that decisions in the district court are considered to be of some value, that they are considered to be worth

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something as precedents by the judges of the district court in other judicial districts of the state, if the reasons given for the decisions were good; but it is the reasons for the decisions, not the decisions, that are of any value. One judge of a district court may decide one way and another in the adjoining district may decide directly the opposite way; and there are lawyers upon this floor who will bear me out in the statement that here in this state they have witnessed the fact that the decision of a judge of a district court has been cited in the district court of an adjoining district, and have been told that "That may be the law in the twelfth district, but it is not the law in the tenth, or, it may be the law in the first district, but it is not the law in the eighth." It is of no binding force. If it were even the decision of a judge of a district court of this state it would be of no binding force outside of his district, it would not be considered as authority unless the reasons given for the decision were good, and binding, and then it would be the reasons and not the decision that would be relied upon.

Now I say that the Senate would not be bound, and the courts of this State would not be bound by decisions made by courts in other States, they are not necessarily bound by them; they may overrule them if they see fit, follow them if they see fit, and what makes them do one or the other, and what determines the matter, is whether or not the reason given for the rule or the decision is good. It is only the court of last resort in our own State that lays down the law of the State which binds us and which is proper as a precedent.

Now I say that the managers have not been able to find an English decision under the common law, they have not been able to find a single decision of any court of last resort in any State upon this question, and all that they have produced before us are these two district, or circuit court decisions, down in Pennsylvania and Virginia. I say that if these cases had been cited in a court of justice in this State by the learned managers, the lawyers opposing them would have sneered them down because they have no force or authority, and because they do not give any reason for their decision, both of those decisions are devoid of reason. All they say is that at common law drunkenness is indictable, we hold that at common law it was indictable for a man to be drunk in the discharge of his duties, and yet both of these decisions add certain language which shows that drunkenness even in office is not even in opinion of those courts sufficient, "when it disqualifies him from performing the duties of that office," that is the *sine qua non* of both of these decisions. For the sake of the argument let us say that is good law; let us say that those decisions lay down good law; with the qualification that the drunkenness must be to such an extent that it disqualifies the party from performing his duties in office before it can be indictable, does that help the case of the State any in this instance? It is true that such a law would cast its protecting shield over the articles of impeachment because they charge drunkenness in office so as to disqualify the respondent from performing his duties in a proper manner. It might if it were the law throw its protecting shield over the articles, but how is it with the proofs? It is not the articles that we are here to meet; it is not the articles that we are here to defend against; it is the proof that has been introduced under these articles. These articles prove nothing; they are the accusation, and the accusation must be made good before you can pass judgment. Even if we had not appeared here, even if it had been a case of default, it was necessary, before you could proceed and pro-

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nounce judgment, that you should take the proof and ascertain what that amounted to before you could say whether or not the respondent was guilty. It is not then the articles that we are here to meet, but it is the proof that has been adduced under them. And I submit to the Senate, whether or not the proof has not signally failed to sustain a single one of these articles. It is alleged in every article that he was by voluntary and immoderate drinking disqualified from the exercise of his understanding in matters and things then and there before him as such Judge, and that it rendered him incompetent, and incapable of discharging the duties of his said office with decency and decorum, faithfully and impartially, and according to his best learning. This is a material allegation.

You can find no authority, even in a circuit court down in Pennsylvania or Virginia which holds that drunkenness in office is a crime unless it is such that it disqualifies him from discharging the duties of his office. It is a material allegation and it is one which I submit to the Senate the managers have entirely failed and neglected to prove. They have not neglected to try to prove it I apprehend, for they have certainly done all that was in human power to do, to bring out the facts of this case in as strong and bold relief as it was possible, but the evidence has totally failed to sustain the charges, the evidence falls short of the charges, and in a material particular. I submit, I state nought but what must be conceded upon all sides; I submit whether or not there is a single witness that has testified upon any single charge before you that the intoxication of the respondent in this case prevented him from performing the duties of his office, nay, even from performing them properly. Why, almost every witness that has been upon the stand tells you he can state no act of omission or commission on the part of the respondent; almost every witness, that has been upon the stand, tells you that there was nothing wrong to be noticed in the rulings or in the charges, or in the decisions of the respondent when he was acting as judge in these instances where they claim that he was intoxicated. No one claims that the business was retarded or that it was not attended to; on the contrary, it is stated I believe by a couple of witnesses that on these occasions when the respondent was as they claim under the influence of intoxicating liquors, business was rushed rather than otherwise. Now, I assert that under this statement of the facts (and I think the evidence will bear me out in this statement) it has not only not been proven that the intoxication of this respondent has at any time disqualified him from performing his duties as district judge, but it has been affirmatively proven before you by the witnesses upon the part of the State that as a matter of fact this alleged inebriety on the part of the Judge has not hindered the business in the least, that it has not disqualified him from performing his duties as he ought as a judge.

But I admitted, simply for the sake of the argument, that these decisions cited by the managers were good law. As a matter of fact I deny that there ever was such a law under the common law, or that there ever has been such a law in this State. I say, and I say it without fear of contradiction, that for the last two hundred years and more, for the last three hundred years and more, drunkenness was common among all classes in England to a far greater degree than it is to-day in this country. That there were instances there of judges one after another, and of other officers, who were drunk and disqualified from discharging their duties in a proper manner on account of the use of intoxicating liquors.

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Yet you never heard, nor has any one else ever heard, of a case under the common law of any judge or any other officer being arrested, indicted or tried for the offense of drunkenness in his office. You never heard of such an instance, and there is no such case upon record. There never was any such thing, I think I dare say, for if there had been it would certainly have been reported in the books. Since when is it then that this has become the law of the land? Since when is it that it has become the law of the land that a man who is intoxicated, an officer who is intoxicated, is thereby guilty of a crime? It certainly was not so a hundred years ago, when in the year 1760, Baron Hanley, afterwards Lord Northington, who was the Lord Chancellor of George the Third, who held the highest and most responsible judicial office in Great Britain—I say it is not more than a hundred years ago when this same Lord Northington upon the accession to the throne of George the Third, went before him and asked him for leave to abolish the evening sittings of the chancery court on Wednesdays and Fridays; and when the king asked him, "My dear Baron, what is the reason, why do you want them abolished?" He answered, as one historian tells us, "That I may get drunk, please your majesty;" And as another one has it, "because I am apt to be drunk about that time, your majesty," And it is a matter of fact, it is recorded, and the Lives of the Lord Chancellors in England will bear me out in the statement, that the king granted his request and allowed him to abolish the evening sittings of the chancery court of England on Wednesdays, so that he could go and get drunk. It certainly was not a crime for a judge to be drunk at that time, when the king, representing the majesty of the law in his holy person, allowed him not simply not to attend to his business, but permitted him to abolish and abrogate the customary sittings of court at certain times, for the purpose of allowing him to get drunk. And it is a matter of fact, gentlemen of the Senate, that that is the reason of the fact that since there never has been, and at the present time there are no evening sittings of the chancery court of England on Wednesdays and Fridays. Now, certainly at that time it was no crime to do that which is here claimed to be a crime. If it had been a crime it must be presumed that the king instead of granting the request; instead of allowing his highest justice of the realm to neglect his business and get drunk, would have rebuked him and taken from him his high office of trust. But he did no such thing.

Have we ever here in this State, had any precedent of any officer of any kind having been indicted, tried or convicted for drunkenness while in the discharge of the duties of his office? We have certainly had more instances of drunkenness than we would desire, but have you ever heard in any portion of the State that even a town or county officer, or a state or district officer, has ever been indicted, tried or convicted for the offense of drunkenness in his office? We certainly have never lacked for material for such cases. If the law had been as it is now claimed by the honorable managers, there certainly has been room for the vigorous enforcement it it.

But the managers say there are precedents for this proceeding. It is true, there are precedents, such as they are. There is case to which I do not believe the managers have even called your attention,—a case in England; I have reference to the case of the impeachment of Chief Justice Scroggs. It seems that in the year 1680, England had for chief justice, a man who was utterly unworthy in every respect. He was a debauchee and a drunkard, and not only that, but he was corrupt in

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every way that it was possible for a man to be so,—one of the most corrupt judges (and I believe they had four of them at the time that were about equally so,) I say one of the most corrupt judges that England has ever seen, or any other country for that matter. It appears that articles of impeachment were preferred against Justice Scroggs; that these articles charged him with offenses that were not crimes known to the law of the land at that time; and one of them, and the last one, put in rather in a careless manner, was the one of drunkenness in office, coupled with using language unbecoming a Christian. It seems that this was at a time when the church of England was threatened by what was called the "Popish Plot;" that William Scroggs, the cheif justice, and some of his associate justices were Papists themselves and tried to prevent the punishment of the offenders in that plot, and as the majority in parliament consisted of Protestants and members of the church of England, they were greatly enraged at the attempt upon the part of these justices, to prevent the due execution of the law, and nothing would do but to impeach Chief Justice Scroggs. I desire to call your attention to the different articles and the different charges in those articles, to show you what attention the house of commons of England paid to the offense of drunkenness.

The first article charges William Scroggs with subverting "the fundamental laws, and the established religion and government of this kingdom of England, and, instead thereof, to introduce popery, and arbitrary and tyrannical government against law." I do not read the whole article, but simply enough to show the nature of the charge.

The second article charged him with unlawfully discharging the grand jury, "which then served for the hundredth of Oswaldston in the county of Middlesex, before they had made their presentments, or had found several bills of indictment, which were then before them; whereof the said Sir William Scroggs was then fully informed."

The third article charged him that he "before any legal conviction of one Carr, of any crime, did in the same Trinity term, in a most illegal and arbitrary manner, make, and cause to be entered, a certain rule of that court against the printing" of "the Weekly Pacquet of Advice from Rome, or the History of Popery." Now, that order is in Latin, and it is not necessary to read it, but it was an arbitrary order prohibiting the publication of the book by Carr or any similar publication by anybody else.

The fourth article charges him with most notoriously having departed from all rules of justice and equality, "in the imposition of fines upon persons convicted of misdemeanors in the said court;" that he would fine one man five hundred pounds for a certain offense, and another man for the same offense only one hundred pounds.

The fifth article charges him with refusing to accept bail, though the same "were sufficient and legally tendered to him by many persons accused before him only of such crimes for which by law bail ought to have been taken."

The sixth article charges him with having "granted divers general warrants for attaching the persons and seizing the goods of his majesty's subjects, not named or described particularly in the said warrants."

The seventh article charges him with having defamed and scandalized "several of the witnesses who had proved the treasons against divers of the conspirators, and had given evidence against divers other persons, who were then untried, and did endeavor to disparage their evidence,

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and take off their credit; whereby, as much as in him lay, he did traitorously and wickedly suppress and stifle the discovery of the said 'Popish plot.'"

The eighth article I will read in full as that charges drunkenness.

"VIII. Whereas the said Sir. William Scroggs, being advanced to be chief Justice of the court of King's bench, ought, by a sober, grave and virtuous conversation, to have given a good example to the King's liege people, and to demean himself answerable to the dignity of so eminent a station; yet he the said Sir William Scroggs, on the contrary, by his frequent and notorious excesses and debaucheries, and his profane and atheistical discourses, doth daily affront Almighity God, dishonor his majesty, give countenance and encouragement to all manner of vice and wickedness. and bring the highest scandal on the public Justice of the kingdom, and the article conclude as follows:

"All which words, opinions and actions of the said Sir William Scroggs, were by him spoken and done, traitorously, wickedly, falsely, and maliciously," etc.

Now I have read this to call your attention to the fact of what has been charged all the way through here. When the matter was brought up from the house of commons a violent discussion ensued upon the question as to drunkenness, for it did not even touch upon that,—that evidently was a matter too small to be noticed; but generally, all through those articles of impeachment they did not charge any crime or treason that was known and established by the law at the time, and the doctrine was advanced, as it had been theretofore, that there was the power in parliament to declare that treason which was not treason before, and then to impeach for it, and I desire to call your attention upon that subject to a few remarks made in the house of commons at the time. Serjeant Maynard says."

"But enormous offenses may be impeached by the name of treason, notwithstanding the statutes, there was a treason at common law before the statute of 25 Edw. III, and the judges took upon them to determine treason, but, by that statute, the judgement of treason in doubtful cases was expressly reserved to parliament. What treason is, no man can define, nor describe. In that statute it is not; but treasons are enumerated; only those on those cases, if any other cases come before them, they shall not proceed upon them, but shall acquaint the parliament, if an offense be committed, the parliament shall Judge whether it serves the punishment of treason."

Again, Sir. John Otway remarks; "this article against Scroggs is very uncertain." He speaks of the articles generally, he says: "has he broken the fundamental laws, of the the nation? Wherein? It is a hard thing for a man to fall under the displeasure of the house of commons, no subject is too big for them."

Mr. Finch says, "suppose you had such a power,"—namely, to declare treason; as they do in this case *here*, the managers declare drunkenness with the other offenses, none of them known to the law before,—treason for the purpose of the articles of impeachment—Mr. Finch continues, "suppose you had such a power, yet no crime can be declared treason but by King, Lords, and Commons; you go on a little too fast, first to declare it before you impeach him."

The matter is laid down all through, and quite a lengthy discussion shows that the basis upon which the prosecutors in the case or rather the committee of the House that represented the articles of impeach-

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ment did not care whether it was a crime or an offense or not, that they could declare it so; that they had a right to make it constructive treason, and say that it was treason anyhow, and that then it was for the House of Lords to determine whether or not it was treason. Now it appears from the books that this Scroggs case was considered of so small importance,—that the charges embodied in the articles were considered by the House of Lords of England to be so frivolous and trival, and to be for no offenses under the common law,—that after they had called the respondent before them and summoned him, they let him to bail, refused to make an address to the King to have him suspended during the hearing, and the whole matter dropped and William Scroggs, Chief Justice, was never brought to trial, but I believe his salary was afterwards raised.

The articles of impeachment not even considered worthy to stand a trial upon! That was the end of the first impeachment trial that can be cited as precedent for impeachment for drunkenness in office.

To show what lawyers, authors and jurists, think of the proceedings in the case, I desire to call your attention to the article by the learned Professor Dwight in the American Law Register, page 265, in order that you may see what he says about that prosecution, and what sort of a precedent it is, in his opinion.

A strong instance of the exercise of the broad power of impeachment is found in the last charge of a series made by the Commons against one of the worthless judges of Charles the Second's reign, Chief Justice Scroggs.

He then cites the last charge of drunkenness, and then proceeds:

This was an article in an impeachment for high treason. The articles were never tried, so they only serve to show how far the doctrine of constructive treason may be pushed by ingenious committees.

He ridicules the idea of that being a valid article of impeachment, and does it, certainly, with a good deal of reason.

The next precedent that we have, of impeachment for drunkenness in office, is in the case Judge Pickering, in the year 1802. I advert to this particularly because it was cited by the managers as an authority. They found, I apprehend, that the case of Judge Scroggs was of such doubtful value that they did not even trouble themselves with citing it to this Senate when the motion was first made; and I do not blame them for feeling ashamed of it. It is certainly is not one to be proud of.

The case of Judge Pickering was the next case in which it was claimed that drunkenness was an impeachable offense, or in which it was attempted to impeach a man for drunkenness. In that case, too, the article of drunkenness is suffered to remain considerably in the background. It appears there were in that case four articles; the first of them charging that Judge Pickering had refused to obey, as Judge, a law of congress in regard to some matters in admiralty,—as to allowing a certain order which the statute made it incumbent upon him to allow under certain circumstances. The second article has reference to the same thing, but charges it in a different manner; and the third article is the same thing, virtually,—that he refused to hear the United States attorney and allow him to argue the case, etc., and that he refused to allow an appeal as he should have done. The fourth, and last article, is as follows:

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That whereas, for the due, faithful, and impartial administration of justice, temperance and sobriety are essential qualities in the character of a judge, yet the said John Pickering being a man of loose morals and intemperate habits, on the eleventh and twelfth days of November, in the year one thousand eight hundred and two, being the judge of the district court in and for the district of New Hampshire, did appear upon the bench of said court, for the purpose of administering justice, in a state of total intoxication, produced by the free and intemperate use of inebriating liquors, and did then and there frequently, in a most profane and indecent manner, invoke the name of the Supreme Being, to the evil example of all the people of the United States, and was then and there guilty of other high misdemeanors: disgraceful to his own character as a Judge and degrading to the honor and dignity of the United States.

Now, in that case a summons was issued, and Judge Pickering was requested to answer to these four articles found by the House. The article charging drunkenness was considered of so little consequence that it was placed at the end of the articles of impeachment and was inserted there for some purpose or other, we do not know what. When the return day came, Judge Pickering was not present; he made default. His son sent a petition to the court, setting forth the fact that his father was, at that time, and for some previous time had been, insane, and asked that a commission issue to inquire into his sanity, and that time be allowed him to produce testimony showing his father's insanity. It appears that Judge Pickering was a judge that was not popular at that time with the governing party, the ruling party in the United States; he belonged to the opposition; and, I suppose, it was considered desirable to get rid of him under some pretext or another. The Senate allowed Mr. Harper to be heard in behalf of Judge Pickering's son, Mr. Harper disavowing any appearance upon his part in behalf of Judge Pickering himself, claiming that he wanted it perfectly well understood that he did not consent to appear for him, and in fact he never did appear for him, so that there never was any appearance in behalf of Judge Pickering in that case. They allowed him to introduce his deposition in evidence in regard to insanity, but after they had done that, the managers insisted that the matter should go on, that Mr. Harper should not be heard, and that no further time should be given; the Senate ruled that no further time should be given, although two of its own members from the State of New Hampshire, the State from which the Judge was, arose and stated that there was no question but that Judge Pickering was insane, as there certainly was not.

When the Judge failed to appear, the managers proceeded to introduce their case, and they brought forward extremely strong evidence on all the charges. They proved all three charges,—the facts that had been set up in the charges, conclusively. They proved, I believe, as to the drunkenness, that he was so drunk—(if I remember right; it is some time since I read it,—that a man had to sit by him and hold him up while he was sitting on the bench; had to lead him up on to the bench, and then hold him up while he was sitting there and discharging his duty as judge, and that he was swearing and cursing on the bench, telling people to come up and take part with him in his decisions, and threatening, if they did not do so, to fine them for contempt. Certainly the proof showed one of the most aggravated cases that could be brought before any Senate on an impeachment trial. Now, when the evidence had been introduced by the managers, and they had rested their case, a motion was made, or, rather, a resolution was introduced, I think by John Adams, of Massachusetts. I am not certain, however—no, Mr.

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White introduced a resolution providing that the matter should go over until an investigation should be had as to whether Judge Pickering was insane, and that no judgment of the court should be had at that time. This resolution was rejected by a vote of nineteen to nine, showing, simply, what regard *that* Senate had for the rights of men, for the rights, even, of a man accused of crime. With an abundance of evidence before them that that man was insane,—with no hearing given to him, proceeding on his default, in his absence,—they refused to wait and give him time, until the state of the weather would allow him to be brought there and be examined.

Mr. Manager HICKS. They admitted the drunkenness, too.

Mr. ARCTANDER. He did no such thing.

Mr. Manager HICKS. The affidavit so stated.

Mr. ARCTANDER. There could be no admission because the affidavit stated definitely that Mr. Harper did not appear except for the son. He did not appear for Judge Pickering, and nobody there could admit anything for the Judge.

Mr. Manager HICKS. Well, they admit it, all the same.

Mr. ARCTANDER. I have no doubt that Judge Pickering was drunk, however. The question came up—and here is the leading point in the case that I desire to call the attention of the Senate to—the question came up after the evidence was in, after it was proven conclusively that the man had been as drunk as man could be; that he could not walk; that he could not sit, that he could not stand, that he could not even speak, unless, simply, for the purpose of swearing and doing mischief, —the question came up as to what the form of the vote should be, and Mr. White proposed the following form for the verdict:

Is John Pickering, district judge of the district of New Hampshire, guilty of high crime and misdemeanor, upon the charges contained in the article of impeachment or not guilty.

The form, let me remind you, Senators, that was used in the trial of Warren Hastings, the form that was used in the case of Dr. Sachevarall, the form that has been used almost invariably, I think, as precedent will show, in England; but the consciences of the majority of that Senate, biased as it was by political and partisan feeling, would not allow them to vote, fairly, that he was guilty of crimes and misdemeanors. They objected to the form of it, and they made a motion that it should be changed, as follows:

Is John Pickering, district judge of the district of New Hampshire, guilty as charged in the article of impeachment exhibited against him by the House of Representatives.

In other words, they voted simple as to whether or not the articles of impeachment were sustained, not as to whether, under the evidence, he had been found *guilty* of crimes and misdemeanors. They did not dare to vote upon it, because they knew that there were no crimes or misdemeanors charged there.

The following discussion was had upon the subject,—no, they voted the resolution without discussion, and then further, it was adopted by the same vote, nineteen to nine—mind you, a strict party vote, all the way through, in these matters.

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Mr White stated that he believed Judge Pickering had practiced much of the indecent and improper conduct charged against him in the articles of impeachment; that he had been seen intoxicated, and heard to use very profane language upon the bench; that that he had acted illegally, and very unbecoming a judge, in the case of the ship Eliza, as charged against him in the articles; but that he was very far from believing that any part of his conduct amounted to high crimes and misdemeanors, or that he was in any degree capable of such an offense, because, after the testimony the court had heard scarcely a doubt could remain in the mind of any gentleman but that the Judge was actually insane at the time; and Mr. White wished to know whether it was to be understood, by the two last votes just taken, that the court intended only to find the facts, and to avoid pronouncing the law upon them; that they could have it in view to say merely that Judge Pickering had committed the particular acts charged against him in the articles of impeachment, and, upon such a conviction, to remove him, without saying, directly or indirectly, whether those acts amounted to high crimes and misdemeanors or not; for, in the several articles they are not so charged, though judgment is demanded upon them as such Upon such a principle, and by such a mode of proceeding, good behavior, he observed, would be no longer a tenure of office.

Mr. Dayton observed that the honorable gentleman from Virginia seemed to be offended at the language of his honorable friend from Delaware, who, in speaking of the proceedings on impeachment, had called them a mere mockery of trial. To such terms however, the ears of that honorable gentleman must be accustomed and accommodated, for, whilst either he or his friend had the honor of a seat in that body, they should designate this trial by no other character It deserved no better appellation, and would be thus characterized in all parts of the United States where these proceedings could be seen and understood.

That is the language of one of the Senators upon the floor of that Senate.

That the conclusion of this exhibition might perfectly correspond with his commencement and progress; that the catastrophe might comport with the other parts of the piece, the Senate were now to be compelled, by a determined majority, to take the question in a manner never before heard of on similar occasions. They were simply to be allowed to vote, whether Judge Pickering was guilty as charged —that is, guilty of the facts charged in each article,—aye or no. If voted guilty of the facts, the sentence was to follow, without any previous question, whether those facts amounted to a high crime and misdemeanor. There were members who were disposed to give sentence of removal, against this unhappy judge, upon the ground of the facts alleged and proved, who could not, however, conscientiously vote that they amounted to high crimes and misdemeanors, especially when committed by a man proved at the very time to be insane.

I would call the attention of the Senate to the fact that so incensed were the minority there with the ruling made by the Senate, with the view taken by the majority of the Senate, dodging the question as to whether this man had been tried according to the constitution, whether he had been guilty of crimes and misdemeanors, simply deciding whether he had been guilty of what he had been charged with; that six of the members of the Senate left their seats, and refused to take any part in the final vote, and that when Judge Pickering was found guilty, as charged in these articles,—not of crimes and misdemeanors, because the majority did not dare to find him guilty of that,—when he was found guilty as was charged, it was by a strict party vote of nineteen to seven, six of the opposition having left their seats, and refused to take any part in the vote. And it is a remarkable fact that the name that heads every one of these votes, the name that heads the opposition, the name that proclaims to the world that its owner will not stand and make a fool of himself in any such manner, and declare that drunkenness and the other acts of the Judge there amounted to crimes and misdemeanors,—the name that heads the opposition every time, is the time-honored name of John

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Adams, of Massachusetts, the most promiment lawyer of his day. He refused to be a party to such a scandal, to such a farce. He refused to be a party to the crime, as it was, and as it is fair to call it, of trying to convict a man upon articles which charge him with an unconstitutionally impeachable offense. I say that the managers are entitled, in this case, to all the benefit they can draw from the trial of Judge Pickering. If they can derive any benefit from it, they are entitled to it, so far as we are concerned. If they think that this Senate will consider as a precedent, what a partisan senate did, in a case where there were no attorneys representing the respondent, to argue a point in his favor, where the Senators themselves found that it was so flagrant an injustice, that they had to stand up and fight for the rights of the absent man,—a precedent established by a Senate who will find guilty, as they did, a man who was proven to be insane at the time, and who was entitled to the protection of the Senate, and should have been spared its condemnation, I say if they can draw any benefit from that authority, they are entitled to it.

I desire to call your attention to the way in which that prominent lawyer of New York, Mr. Wm. M. Evarts, characterizes that proceeding, and how he treats it as a precedent. He says, in his argument in the Andrew Johnson case:

> And the next trial wherein the accusation is against Judge Pickering, partook of no qualities except of personal delinquincies or misfortune, and whose result gives nothing to be proud of; and to constitutional law gives no precedent but that an innocent man may be convicted of crime by a partizan vote.

That is the way that Mr. Evarts characterizes the precedent that the managers have seen fit to bring before you, to show that a man can be impeached for drunkenness, "a precedent that gives nothing to constitutional law," but the fact that an "innocent man may be convicted by a partizan vote." I claim that no words could be spoken,—no contempt could be pronounced, that would be strong enough to damn, forever, as it deserves, the precedent of Judge Pickering's trial.

The next case in which the question of intoxication was brought in, was where it was again brought in as a collateral incident, as you might call it, in impeachment, namely, in the case of Mr. Edmonds, of Michigan. I do not desire to refer to that case particularly, because I think my associate, who will close this case, and who has studied that case thoroughly, will give you the benefit of all that is in it. It will be shown, undoubtedly, and I know it to be the case, that the matters of intoxication and adultery were inserted there, if for any purpose, to prejudice the minds of the Senators against Mr. Edmonds. There were some thirty or forty charges, I believe,—at least a great number of them; one was drunkenness, another was publishing an indecent paper. I think, it has been stated here before, by Mr. Sanborn, that when it came to a vote upon that article, there was not a Senator that voted guilty, although the testimony showed beyond any question of doubt, that he had been guilty of drunkenness.

I desire now to call your attention to a case that came up in late years, in the State of Missouri. It appears that there was a judge of the criminal court of Saint Louis, by the name of Prim, who had been guilty of exceedingly gross intoxication upon the bench, and also of lewdness. Charges were preferred against him in the legislature in Mis-

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souri, in the year 1874. The matter was referred to the judiciary committee, as it was here in the matter of the respondent, and depositions were taken, and witnesses examined by it. The judiciary committee reported to the house, that the charges were true, but that there was no law providing for their punishment. This is my understanding of what occurred. I simply have my information from the seceretary of State of Missouri; at least there it rested. The charges have never been resurrected from that committee. An impeachment was never found or voted by the House of Representatives of the State of Missouri, against a man who was culpably guilty of the acts with which he was charged. I say it may not amount to much as an authority, because we have no record of it. Of course, as there came no case out of it, there is no record of it; but I simply state the fact upon the information that has been given me. Having heard that there was a trial, letters were directed to the secretary of State, asking for the record, and he informed me that what I have related was the fact. Now, I say that it goes to this extent, that it shows that the House of Representatives, or, at least, the judiciary committee of the House of Representatives of the State of Missouri, did not consider that intoxication and lewdness were impeachable offenses.

But if all this be not true, the managers say, if drunkenness is not an offense at common law, if drunkenness in an officer, while discharging his official duties, so as to disqualify him from performing them in a proper manner, is not an offense of common law, then our last sheet anchor is the statutory provision, and this respondent can be convicted if not under the common law, if not for drunkenness in office, at least, he can be convicted for misbehavior in office, under the statute.

Now, I intend to call your attention to that statute.

> 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 provision is made for the punishment of such malfeasanee, is a misdemeanor punishable by fine and imprisonment.

So, the question comes then to be, what is a misbehavior in office? Is there meant by it any moral misbehavior or does it mean any legal misbehavior? Is a man to be indicted for a moral misbehavior in his office, because he is an officer, or is it not the clear intent of the statute that it must be a legal misbehavior, a misbehavior in law? I think there can be no question about it, and that common sense will dictate the judgment and the verdict upon that point.

Now, I claim that to make out the offense of legal misbehavior in office, you must show either an act of omission or commission upon the part of the officer. There is not a misbehavior in office unless there is either an omission to do a duty, or the commission of a wrong; either a neglect of performance of duty or a performance that is not in accordance with law,—not a performance that is not according to the Ten Commandments, or against the moral law of a certain church, or of a certain sect, or of a society, but of the *law*.

Now, I say that, as the article stands, charges that the respondent became voluntarily drunk to such a degree as to disqualify him from discharging his duties, so that he did not perform his duties, and could not perform them in a proper way. As the articles stand that statute probably gives them protection. That statute is good, and the ruling

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of the Senate upon that question undoubtedly was correct, if that statute is to be so construed; because they charge there an omission upon his part; they charge a failure to discharge his duty in a proper way; they charge drunkenness so as to disqualify him from performing the duties of his office; and, if that was true, then he was guilty of a misbehavior in office, whether he neglected or refused to perform the duties of his office on account of stubbornness and meanness, or on account of drunkenness, could make no difference. But I claim that they should have charged him directly then, with a misbehavior. I claim, to be technical upon that question, that he should be *charged* with misbehavior, and the particular facts showing wherein he did not perform his duties should have been set out, and then the reason would not make any difference. But granted that that is set out sufficiently, yet I claim that if that law is a protection to the managers and a protection to the House, and a protection to these articles, that it is not a protection to the proof, and it is the proof we are here to meet; it is not the articles. The proofs do not show that; the proof does not make the article good; the proof does not show that he was guilty of any misbehavior in office, the proof does not show that he neglected his business; the proof does not show that he was guilty of any act of omission or commission; and if it does not then they have failed to make out the case under the statute, and we cannot be convicted by the proof as it stands here uncontradicted, to-day. On the contrary, I claim that it appears here in testimony that the actions of Judge Cox in that district as judge, his decisions, rulings and remarks, testified to here before you, and cited by the witnesses as evidences o his intoxication, are so correct, are so strictly legally correct, present such fine legal distinctions, that it is desirable, gentlemen, if it was whisky that prompted those rulings, that some other of the judges of this State should have some of the same whisky.

Look and see whether the fact of his being intoxicated at certain times, under certain circumstances has interfered with the discharge of his duties. You do not find an instance of it. Look over the district! Look at the district as it was four years ago, when this respondent took the position as Judge. You could not go into a county in that district where there were not to be found from five to ten saloons running unlicensed. You could not enter a saloon in that district where a minor or habitual drunkard could not get as much whisky as he wanted if only he had the money to pay for it. Look at the condition of the district to-day. You cannot go into the district to-day and find a saloon that is running unlicensed. You cannot go into a saloon in that district without having your eye attracted, at the threshold, by a card, "No minors need apply; no minors allowed in here." You cannot find, in that district, a saloon, even in the lowest and darkest hole in the city of New Ulm—anywhere in that district, where an habitual drunkard, known to be such, can get a drop of liquor. And why? Because this respondent, so far from permitting his intoxication, if he had ever been guilty of it, from interfering with his business or duties or causing him to neglect them, has made his mark as the temperance Judge of the State, by looking out for and guarding against the law being broken by men who are apt to do it, unless a sharp lookout is kept for them; by administering the law to the fullest extent, by giving offenders the benefit of it fairly and squarely, but repressing crime and vice with the strong arm of the law. That is what has produced it; and I say, gentlemen, if that is the

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fact, and it is the fact, and can be proven, and it is a fact that his habit of drinking occasionally, of taking a drink, now and then, has made him a Judge like he is—a man who has tried there, during the last four years, about three hundred cases a year—you have already had evidence before you as to some of his terms, with sixty or seventy cases at a term, and ten or twelve terms a year—at least three hundred cases a year tried before him, making twelve hundred in the four years he has been Judge, and in these twelve hundred cases in only eighteen has there been even a doubt as to the correctness of his rulings or decisions; only eighteen of the twelve hundred cases he has tried have found their way to the supreme court of this State for correction of error, and of those eighteen only five have been reversed, as the records of the supreme court in this State show; I say, gentlemen, that to have a record like that is something that any Judge in the State, I don't care who he is, may be proud of. I dare say that there is none other of them that can present such a record; and if that is correct, if it is true, if the official conduct and the ability of the respondent has not been interfered with in any way by his drinking habits, or tendencies, but, on the contaary, he has shown himself to be one of the ablest, one of the foremost Judges of the land, a man who attends to his business, and discharges it faithfully, then, I say, gentlemen, that it is right that we should wish that some of the other Judges of this State had some of the ninth judicial district whisky. You have all heard, I apprehend, the old story that is told of our martyred president, Abranam Lincoln, when some fanatic temperance men came to request him to discharge Grant from his position as general of the army. He said to them "Well, gentlemen, what is the reason for your request? What is the trouble?" And they said to him "He drinks whisky." Mr. Lincoln replied; "Is that so; is that a fact? Does he drink whisky?" "Yes; very much." And the answer he gave to their request to depose Grant, if I am informed correctly, was that he should have to write to General Grant to find out where he bought that whisky, because he needed some of it—a barrel or two—to send to some of his other generals. I think that is about the shape the ninth judicial district is in to-day. I think the evidence here shows it, and I think the records of the supreme court shows it.

But then again, the managers say, leaving all this aside, we have charged him here with having broken his official oath, and they say the official oath is part of the statute, and then, of course, it is a part of the land, and so he has broken part of the law of the land. I do not know how to style that argument so as to give it an appropriate name, but it seems to me to be almost beneath the dignity of anybody to notice it. Here that statute is—I want to call your attention to the fact that, in the first place, the prosecution have not proven that Judge Cox ever did take an oath. I suppose that ought to have been done in the first place, in order to show that he broke it. They have not proved it, but leaving that aside, (for I suppose there is no question that he took it) all that statute says is, that any person elected to a judicial office "shall take the following oath." When a man has taken that oath he is done with that statute; he is through with that statute. He can not break it unless he does not take the oath. If he takes the oath, the duty enjoined upon him by that statute has been fulfilled. He has then been guilty of nothing. He has been guilty of no breach of the law, because the law says he shall take that oath. If he has taken that oath, and he is not charged here with not having taken it,—if he has taken

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that oath, he has fulfilled that statute and he can not break that statute or that law. It is impossible. They may say, probably, that by not keeping his oath,—and I have not seen that they have proven here, anywhere, that he has broken it, but suppose they do, all you could possibly say is that he would be guilty of perjury. He is not charged with perjury in the first instance, but I claim it is not *that;* because he does not swear that he has done a certain thing, but he swears that he will do a certain thing ; and a man certainly can not be guilty of perjury because he does not do what he swears he will do.

The President of the United States takes an oath, and the general of the army takes an oath, I apprehend, to support the constitution of the United States. Suppose the President of the United States, or the general of the army, should prove a traitor to his country, would you think of charging him, or indicting him, or impeaching him, for having broken his oath? Would you think of charging him with perjury, in not keeping his oath? No; you would charge him with treason; that is what you would charge him with. You would charge him with his acts, not with his disregard of his oath, because that is no offense. But, as I said, it has not appeared that Judge Cox, the respondent in this case, has, in any single instance, broken that oath, but that he has kept it holy and sacred, as he should do. When he took that oath, he took an oath to perform only the duties of that office, to the best of his learning and ability, and he has done so; and there is no evidence here before you, that he has not done so. There is no evidence before you that he has decided cases wrongfully ; that he has decided matters corruptly; that he has not acted according to the best of his learning and ability. He did not swear that he would not drink whisky; he did not swear that he would never get drunk, because he was elected judge. He has not gone that far yet, in the constitution of this State, although some people would like to have it so, that it is one of the qualifications of a judge, that he shall not drink whisky, that he shall be a temperance man, that he shall be a narrow-brained, shallow-minded man. It is not a necessary qualification, and so long as it is not, he has broken no pledge; he has broken no promise. I do not stand here to say that Judge Cox is an angel or a saint. I do not stand here to claim before you that Judge Cox has not his faults; I do not stand here to claim before you, nor will the evidence show, I apprehend, that Judge Cox does not drink any whisky, that he is a total abstinence man. I do not even claim that Judge Cox has not been drunk, during the time that he has been holding the office of district judge. I do not claim that; that is not a fact. I know it is probably an unfortunate tendency that the Judge has. It is one that he shares with many of us. It is one in which he not alone, either in the judiciary of the states of the Union, or amongst other mortal men. It is a tendency that I, as his friend, deplore; that he, probably, deplores himself, no doubt; that all of his friends deplore. But we should remember, gentlemen of the Senate, that men with the brains, with the ability, with the knowledge, with the learning, of the respondent in this case, cannot be got, and got without faults. You cannot get men that tower above those around them, that are a head higher than all the other people; you cannot expect to get them, and get them moulded in a strict temperance, or any other mould.

Senator ADAMS. Mr. President, I arise to a point of order; I do not think there is a quorum present.

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The PRESIDENT *pro tem.* Do you move a call of the senate, Senator Adams?

Senator ADAMS. I do sir.

The PRESIDENT *pro tem.* The Senator from Dakota moves a call of the Senate; as many as are in favor of the motion will say aye; the contrary, no.

In the absence of the secretary the President *pro tem* called the roll.

The following Senators answered to their names:

Messrs: Aaker, Adams, Buck, C. F. Case, Crooks, Hinds, Howard, Johnson, A. M. Johnson, F. I. Johnson, R. B. McCrea, Morrison, Perkins, Powers, Rice, Shaller, Tiffany, Wheat, White, Wilkins and Wilson.

Senator C. F. BUCK. I would enquire from the counsel about how long it will take to finish his opening address, and whether there is a probability of getting through this evening.

Mr. ARCTANDER. Oh, no, sir. I do not expect to finish before to-morrow at the noon recess.

Senator HINDS. We expected that he would occupy to-morrow forenoon.

Senator C. F. BUCK. I suggest that, as there is no quorum present, we adjourn.

The PRESIDENT, *pro tem.* We have now a quorum; Senator Morrison who has just come in completes the quorum.

Senator POWERS. I move, Mr. President, that further proceedings under the call be dispensed with.

The PRESIDENT *pro tem.* That will be the sense of the Senate unless objection is made. [To Mr. Arctander]. You will proceed.

Mr. ARCTANDER. I was stating, Senators, when interrupted, that you could not expect to get men of the ability, of the mental calibre of the Judge of the ninth judicial district, the respondent at the bar here, and get them free from faults. I need, to maintain that position, simply to call your attention to what the facts have been coming within the common observance of men. The smartest of lawyers, the ablest of judges, in England and in this country, are men addicted to this same vice of intoxication, men addicted to other and more shameful vices. It is a true phrase that Shakespeare puts into the mouth of Richard III.:

> The greater the man, the greater the fault.

And although it is not a truism that because there are great faults in a man, he is a great man, yet I say, that it is seldom that you find a man great in any way, great in any achievement, unless you find, also, that his faults are in proportion to his ability and to his noble qualities.

I have, I believe, only one more point of law that I desire to discuss here. It has been remarked by a Senator, and I think it has been stated by the mangers, that this is no criminal proceeding; that the sooner we cease from the absurdity of thinking that this is a criminal prosecution the better it will be. I believe it was stated by one of the judges in this trial that this was a proceeding simply to ascertain whether the respondent was fit to hold office, and that was all there was to it. Now, I say, gentlemen, that that claim and that argument is probably not a novel one. It is one that has been attempted to be introduced by managers, by partisans, in almost every impeachment trial that has taken place in the United States; but it is a theory that has been sat down upon by every Senate and by every court of impeachment that ever was. It has

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been sat down upon thoroughly, and I cannot see how it could be otherwise. Look around you and see this court, representing and embodying in itself, as you might say, the wisdom, the justice, and the majesty of the State of Minnesota, assembled here, forty-one of you, sitting here for days and weeks and months, perhaps, and for what? Not to determine whether this respondent has been guilty of a crime or misdemeanor, but simply to ascertain whether he is fit to hold office. I say, gentlemen, that the idea is so ridiculous, the idea that a court of this magnitude, a court of this dignity, a court that is such a source of expense to the State as this is, should be called forward to decide upon offenses that are too small, too insignificant, to find a place even upon the criminal code of the State.

I say that the idea is so ridiculous that it does not need argument to refute it. That this court should be called here; that all of you should be called from your business, dragged from your homes, to spend weeks and months for the purpose of laying down simply the proper rules of decorum for a court, or judge, or any other officer,—for the purpose of ascertaining whether it would be proper and right to have a judge that would swear, a judge that would drink, or a judge that would eat too much, or a judge that would not behave himself as he ought to, or to try a judge and to determine his fitness for office, if he was a man that was not civil enough in his deportment, and all that. It is ridiculous to suppose such a thing. And not only that, but where is this doctrine going to carry us, if we are not going to answer before this Senate simply for crimes and misdemeanors known to the law of the land; if that is not what you are here for to try us upon? If you are here not to try us upon that issue, but to determine whether we have acted with proper decorum, whether we have shown the proper fitness for our office? I say if that is so, then there is danger ahead, because the question of fitness or unfitness depends, in every instance, upon the fluctuating sense of the present Senate, the Senate to-day or the Senate to-morrow; one Senate may have one moral standing or one moral sense, and another Senate may have another; and it leaves the law where it does not tolerate it to be left. It leaves it in the darkness of uncertainty; it leaves it in the darkness of indetermination. Why, if that is true, the rules that apply to the commonest and simplest man, the poorest laborer in this land, that he shall not be tried except for a breach of the known law of the land; that he shall know what the law is, that he can find out what the law is, and be not accused, tried, or condemned for anything unless a crime against the known law of the land which he is bound to know, and is presumed to know,—that rule, I say, does not apply to your highest officers. They have no law to guide them. That does not apply to them,—the law does not apply to them. They have to rely on the caprices of the Senate, friendly or unfriendly. If that is the fact, indeed you let our judicial officers, as well as our other State officers, who are the subject of impeachment, walk upon a road of quicksand. They know not to-day where, to-morrow, fate will bring them. Why, it is a doctrine that is as cruel, as inhuman, as tyrannous, and more so, than the action of the Roman emperor whom we all have read about, who posted his edicts so high up that nobody, even with the best eye, could read them, and yet punished a breach of them with the utmost severity. It is more tyrannous than that, because in the case of the Roman emperor, his subjects could, by the exercise of some strength, climb up the post and find out, at the cost and sacrifice of some exertion, what the law was.

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But here you ask your judges to have the gift of prophecy, to be able to foretell what this Senate and what other Senates to come, for years hereafter, will judge about a certain act as to being proper, as far as decorum is concerned, as far as fitness is concerned. I say that it is tyranny that is not conformable to the principles of free government, and it is a tyranny that should not be practiced in any case in a proceeding of this kind, and that you should guard against, because every one of these proceedings and this one that you are now engaged in, is going to be a polar star in whose path other proceedings of a similar kind shall travel. It will show the direction in which popular sentiment allows this thing to go, and it will grow and grow, further and further, until you cannot know where the end will be, until when you stand at the brink, you find, too late, that there is no time to stop, that your want of caution, your carelessness about preserving the liberty of the citizen and of the officer, has led you to a precipice where you cannot stop any longer, and where freedom and liberty meets the fate of destruction.

I have already called your attention once before in this case, to the fact that the constitution treats articles of impeachment as matters of criminal prosecution, classes impeachment with criminal prosecutions, mentions it as one, and excepts it from certain rules. Since that time I have discovered, not noticing it the first time, another constitutional provision that clearly shows that that is the contemplation of the constitution. I have reference to section four of article five under the head of the executive department.

> It is the privilege and duty of the Governor and he shall have power to grant reprieves and pardons, after conviction, for offenses against the State, except in cases of impeachment.

I say that the very language of the constitution in this section, as well as in the former,—it was cited the other day,—shows what was in the minds of the framers of that constitution,—that there could be no impeachment except for offenses against the State. It shows that they have treated it as a criminal prosecution, because they classify it, put it under the same head, and except it, showing that if it was not excepted it would come under that head.

Other things have already been called to your attention, the manner in which these proceedings are conducted, the fact that when your final verdict is rendered, it is in the same form as in criminal prosecutions, guilty or not guilty, the punishment that is imposed, (for there is a punishment, and the constitution provides that it shall not exceed certain limits) all point towards the fact, that this is a criminal prosecution; and still more forcibly, the other fact that was called attention to, I think, by a Senator on this floor, in support of his theory that it was not a criminal prosecution. Why, he said, the idea is ridiculous; the idea is ridiculous that it is a criminal prosecution. How is it so if he can be indicted and convicted again? Would he not be then convicted twice? It is true, and the very constitutional provision, providing that a conviction upon impeachment shall not prevent an indictment and conviction afterwards in the law courts, is the clearest and strongest evidence that the framers of the constitution considered and classed impeachment as a criminal offense.

I call the attention of the Senate to article thirteen of the constitution upon the subject of impeachments, section 1.

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The party convicted thereof shall nevertheless be liable and subject to indictment, trial, judgment and punishment according to law.

If it was not a criminal prosecution was it neccesary to make a constitutional provision providing for his trial in another way? The very language that is used shows that the framers of the constitution had in mind the fact that unless that provision was made for his trial and conviction afterwards in the lower courts that he could not be tried under that other provision of the constitution which is that no man shall be put twice in jeopardy. But to take it out of that category, to relieve it from the onus of that provision, to except it from the constitutional provision that no man can be put twice in jeopardy, they specially find it necessary to enact that in spite of that constitutional provision that no man shall be put twice in jeopardy, we ordain and lay down, and it shall be a part of the constitution of this state, that a man may be put twice in jeopardy in cases of impeachment, that an officer is liable in that respect and liable civilly, because his offense is two fold, because he has committed a crime as an officer and also as a citizen.

I take it that is the strongest argument that possibly could be adduced for the position of the framers of our constitution all through, in every section where the subject of impeachment is brought up,—that they have treated it and agreed to treat it and consider it beyond peradventure of doubt, as a criminal prosecution.

Upon that question whether or not this is in the nature of a criminal prosecution, or whether you have any right, under the constitution, to determine whether a man is fit for office or not, I say scan that constitution from one end to the other, upon the subject of impeachment and see if you can find any authority for any action upon your part in determining whether a man is fit to hold office or not. See if you can draw from any of the language there any such authority. It says that you shall, from the law and the evidence, decide whether he is guilty of—what? Of not being fit to hold office? No, of corrupt conduct in office, or of crimes and misdemeaners. That is your only constitutioual authority; and when you take the further step, following the theories that have been advanced here and offered to you for acceptance, that you have a right to say whether a man is fit for office in this proceeding or not, that is what you can decide, then, I say, that you usurp a right that the constitution never gave you, never intended to give you, and never in eternity will give you.

I will ask leave of the Senate to read upon the point as to whether or not this is a criminal prosecution, or simply an inquest called to determine whether a man is fit for office or not, from the argument of the learned lawer, Harper, in Judge Chase's trial in 1804. I read from page 269 of Benton's Abridgement of Congressional Debatess.

Not content with endeavoring to blow up a flame of party spirit against the respondent, and to engage sympathy in the ungracious, and to her unnatural task of aiding a criminal prosecution, the honorable managers have resorted to a principle as novel in our laws and jurisprudence as it is subversive of the constitutional independence of the judicial department, and dangerous to the personal rights and safety of any man holding an office under this government. They have contended "that an impeachment is not a criminal prosecution, but an inquiry in the nature of an inquest of office, to ascertain whether a person holding an office be properly qualified for his situation; or, whether it may not be expedient to remove him."

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This is the position that has been taken upon this floor. Mr. Harper says further:

But if this principle be correct—if an impeachment be not indeed a criminal prosecution, but a mere inquest of office; if a conviction and removal on impeachment be indeed not a punishmemt, but the mere withdrawal of the favor of office granted, I ask why this formality of proceeding, this solemn apparatus of justice, this laborious investigation of facts? If the conviction of a judge on impeachment is not to depend on his guilt or innocence of some crime alleged against him, but on som reason of state policy or expediency, which may be thought by the House of Representatives and two-thirds of the Senate to require his removal, I ask why the solemn mockery of articles alleging high crimes and misdemeanors, of a court regularly formed, of a judicial oath administered to members, of the public examination of witnesses, and of a trial conducted in all the usual forms?

Why not settle this question of expediency as all other questions of expediency are settled, by reference to general political considerations, and in the usual mode of political discussion? No! Mr. President! This principle of the honorable managers, so novel and so alarming; this desperate expedient, resorted to as the last and only prop of a case which the honorable gentlemen feel to be unsupported by law or evidence; this forlorn hope of the prosecution, pressed into its service after it was found that no offense against any law of the land could be proved, will not, cannot avail. Everything by which we are surrounded informs us that we are in a court of law. Everything that we have been three weeks employed in doing reminds us that we are engaged, not in a mere inqury into the fitness of an officer for the place which he holds, but in the trial of a great criminal case on legal principles. And this great truth, so important to the liberties and happiness of this country, is fully established by the decisions of this honorable court in this case on questions of evidence—decisions by which this court has solemnly declared that it holds itself bound by those principles of law which govern our tribunals in ordinary cases. These decisions we accepted as a pledge, and now rely on as an assurance that this cause will be determined on no newly-discovered notions of political expediency or state policy, but on the well-settled and wellsknown principles of law and the constitution.

Now, then, I take it that when you examine the constitution for yourselves, when you digest the able arguments of Mr. Harper upon that point, when you take all the precedents that have ever been in the United States or in England, you can come to no other conclusion than that this is a criminal prosecution. If it is so, then the rules that prevail in criminal cases prevail here. Then the rule of law that is as old as the English common law, the merciful rule to a party accused of crime that he shall be presumed innocent until proven guilty, with its halo, surrounds this case. It is a presumption that we have claimed, and, I think, with good grounds and reason, from the start. Remarks have fallen from the lips of some of our judges that have rather led us to believe that that was not the true rule, but I apprehend that it has been done unwittingly. It has been remarked here that it was desirable that we should prove ourselves innocent, if we could. Gentlemen, we do not need to prove ourselves innocent. The mercy of the common law, the mercy of the law of England, as we have adopted it in this country, the principle that pervades all criminal law in every state of the union, says that no man accused of a crime need to prove himself innocent; he must be proven guilty. He is presumed innocent, and that presumption in his favor, should, it seems to me, have been called to your attention by the honorable board of managers in their opening statement of this case. It would have been proper for them to have informed you that such was the fact. It would have been proper for our prosecutors, not persecutors, as showing their desire to have justice done, to inform you of our rights, just as well as of our duties.

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Now, besides having that strong presumption in favor of the accused, which is so strong that it needs positive and definite proof to overcome it—nay, more than that, it needs proof of guilt beyond a reasonable doubt, it needs proof that will meet any reasonable doubt that you can countervail against it,—I say with that presumption with us, we have no fear before this Senate, because that presumption we can now invoke for the consideration of law, as well as for the consideration of evidence. When we interposed our demurrer before you we had everything against us. We took the position that this was not the law, and it was for us to prove it. We undertook to show that this was not a legal accusation, and it was for us to prove it. We took the affirmative in that case, and it was right, probably, that we should be overruled, if we did not make it out strong enough. But now the law and the facts and the evidence and all is to be taken with the presumption of innocence in our favor, and the presumption of innocence prevades and permeates the law and facts in this case. If there is a reasonable doubt in your mind as to the fact that these charges that have been brought against us are impeachable offences under the constitution, we are entitled to the benefit of that reasonable doubt, and entitled to have you discharge us upon that reasonable doubt, under the law, as well as upon any reasonable doubt as to the fact.

The importance of this case demands that all well established principles of law should be invoked, for it is an important case. It is important not only to this respondent, and it is certainly important to him, because here is to be decided whether his usefulness shall forever be destroyed. Here is to be decided whether or not he shall be ostracised forever. Here is to be decided whether or not he shall hereafter enjoy the confidence of his fellow-citizens. Here is to be decided whether the days he has left to live shall be days of happiness or days of sorrow and of woe. But it is of more importance to the State. This case is not one in which the respondent alone is interested. It is a case of the State against him, but it is a case in which the State has just as great an interest at stake as he has. It has an interest at stake that no step shall be taken which is not proper and according to law. It has an interest at stake that none of its citizens shall be condemned in an improper manner, nor for crimes not known to the laws of the land. It has an interest at stake that justice—high justice, pure justice, shall be done. It is a case that is of the greatest importance to this Senate, because the judgmeut that this Senate shall pronounce will, when we are away from the heat, the passions and prejudices that we live in to-day, when all this has disappeared, it will stand out in bold relief; it will go down to ages to come hereafter; it will go down and be scanned, in calmer times than now, by the historian, by the people that are to live in this State; nay, in the United States, for ages hereafter; and when that cooler judgment is to be pronounced upon it, it is desirable for the sake of the honor of this Senate, that the judgment that posterity will pass on your decision, the judgment that it shall give and deliver upon your decision in this case, shall be one that can bring honor on your names, honor over the names of the Senate, honor over the name of the State. Therefore, I say, it is a case that is important in more respects than one.

It is so much more necessary that the greatest caution should be observed by Senators, individual Senators, as well as the Senate as a whole, in this matter, as it cannot be denied that ever since this prosecution

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was started, nay, long before it was started, there has been a clamor of prejudice against this respondent, I do not know whether only by his enemies, or by the press, or by persons who are interested in seeing his defeat and downfall, but, wherever it comes from, there has been a pressure upon this Senate and upon this court, to depose the respondent; whether the grounds or reasons be po litical, or not, I do not know and I do not care. When a judge feels that there is danger that he may be prejudiced, when he feels that there is the least danger of it, then is the time for him to have most fear of himself. A judge has a great and a grand power entrusted to him, and when he feels prejudice commencing to work upon his judgment, he should fear and tremble for himself, lest that judgment may not be righteous, lest that judgment be not an injustice. It has afforded me pleasure to see in the judicial districts of this State, and more particularly in the judicial district in which I live (the twelfth) when, in a criminal case, a certain class of people have been clamoring for conviction,—when you could almost feel that the air was thick with the blood of the person sought to be convicted, sought to be judicially slaughtered, it has afforded me great pleasure, I say, and it has been a source of much pride, in such instances to look at the judge upon the bench, to see how with almost a will of adamant he preserved the jury from this prejudice, how he surrounds his own heart as with a wall of adamant, so that no prejudices, no passion shall get there to bias his mind, and I say that it is a matter we can be proud of, that our judges have such a judicial training that they can, whenever there is a case of great interest, or one that awakens the prejudice of the populace, stand and do right and see that right is done without fear or favor.

I can appreciate fully the greater difficulty that Senators will meet with in that respect, for the reason that their training has not been a judicial one: for the reason that they are called, probably, only once in a lifetime to such a task. It is a matter that is not born with a man; the desire is. The desire to do right and justice, we know, is in the heart and breast of every honest man, but it is not always that the desire is mighty, strong enough, on account of the want of training, to carry out the intent that possesses them. And I say, therefore, that these are facts that no Senator should feel offended at having mentioned. To say this, should not be a cause for offense with any Senator, because it is only a caution. It is nothing that could offend anybody, because Senators are not supposed to be trained as judges are, by judicial work and labor, year after year. It is right, I think, that it should be said upon the part of the State. It is right it should be said on the part of the respondent. It is right that every Senator should himself address his mind and his thought to that particular subject, and be anxious, careful, that no wrong is done; that, unwittingly and unconsciously, he does no act of injustice to the respondent. For it is a tremendous power that is laid in the hands of a Senator in this matter. It is a tremendous power that is held in the hollow of the hand of a Senator in any case of impeachment.

We have seen how that power can be abused. We have seen too many instances of it in English history, how innocent blood has flowed on account of prejudice, on account of partisan feeling, on account of wrong judgment,—the judgment of the heart or the head, I care not which, if it is wrong. We have seen innocent men convicted; we have seen guilty men escape. We have seen the families, the descendants,

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the progeny of innocent men suffer the consequences of judicial murder; we have seen how they suffered from it, year after year, during the blood-stained times of early English history. And the same power, if not to the extent to take life away, the same power is here yet; the same danger that an innocent man may be wrongfully convicted, is here yet; the same tremendous power is in this Senate yet. There is nobody to review its actions. There is nobody to correct the errors that it possibly may make; and I say in a prosecution so important as this, with such tremendous powers given to the court, as in this case, it is right to look into everything which may throw a spark of light upon the case.

I think, therefore, that it is proper for us also to enquire into the motives and the manners of the proceeding. Who are the persecutors in this proceeding? You will answer me the House of Representatives of this State. Nominally, yes. They are the mouthpiece of somebody, who are they the mouthpiece of? Who has set that machine in motion? Who is the power behind the throne? Is it the people that have elected the respondent to the great position which he now holds? Is it the people of the ninth judicial district that storm at the door of the popular house of this legislature and clamor to have him deposed? Not at all. Is it, as was the case in a former proceeding here, a petition presented to the House of Representatives, signed by numerous citizens, by a majority of the inhabitants of a certain vicinity? Nothing of the kind. The people of the ninth judicial district have stayed at home. They have not asked to have this respondent impeached. Two men as it appears in testimony already, have signed the petition that went to the house, two men, residing in that district, and who are they?

One of them an itinerant preacher, offended at a remark made by the respondent, that wounded his dignity. The other—it has come out here and I can comment on it now properly—the other one appears to be Mr. Tyler, the register or receiver, I do not know which, of the land office at Tracy. And who is Mr. Tyler? A man, probably, who may feel that he has great and weighty reasons to prosecute, convict and destroy, if it lies in his power, this respondent; a man whom this respondent, while practicing at the bar, found it his duty to prosecute in different courts, for attempting to steal land away from a poor settler; land that he was entitled to, land that he had a right to under the beneficent land laws of the United States. And I think it will be shown here before you what were the motives for his prosecution here to-day, for his prosecution in the House of Representatives,—that it was revenge, because this respondent, in the fullness of his heart, had taken up the case of an injured man and had tried to bring this man to justice, this man who, because he was high in authority, thought he could defy the law, could steal and rob without punishment.

Senator CROOKS. Mr. President, I move that the Senate do now adjourn. It is within four minutes of six o'clock and I move that we adjourn.

The PRESIDENT *pro tem.* According to our rule if it is six o'clock the Senate stands adjourned without motion.

Senator CROOKS. Unless the counsel desire to proceed, in which case I withdraw my motion.

Mr. ARCTANDER. I might just as well stop here as anywhere else.

The PRESIDENT *pro tem.* The Senate now stands adjourned.

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TWENTY-FIFTH DAY.

ST. PAUL, MINN., Feb. 8, 1882.

The Senate met at 10 o'clock A. M., and was called to order by Senator Wilson, acting as President *pro tem.*

The roll being called, the following Senators answered to their names: Messrs. Aaker, Adams, Bonniwell, Buck C. F., Case, Clement, Crooks, Hinds, Howard, Johnson A. M., Johnson F. I., Langdon, Macdonald, McLaughlin, Morrison, Powers, Rice, Shaller, Tiffany, Wheat, White, Wilkins and Wilson.

The Senate, sitting for the trial of E. St. Julien Cox, Judge of the ninth 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 Represenatives to conduct the trial, to-wit: Hon. Henry G. Hicks, Hon. O. B. Gould, Hon. L. W. Collins, Hon. A. C. Dunn, Hon. G. W. Putnam, and Hon. W. J. Ives, entered the Senate Chamber and took seats assigned them.

E. St. Julien Cox accompanied by his counsel, appeared at the bar of the Senate, and took the seats assigned them.

The PRESIDENT *pro tem.* Are there any resolutions or motions to be offered before the Senate proceeds with the regular business before the court.

There being no response from the members of the Senate, Mr. Arctander arose and proceeded with his opening address to the Senate.

Mr. ARCTANDER. Mr. President and Senators, I was stating, I believe, when interrupted by the adjournment last night, that the importance of the proceedings was so great that it was proper to look into the motives of the prosecution; that it was proper to see who it is that is clamoring for the prosecution and conviction of this respondent. I stated, I believe, that the facts and records of the House of Representatives show that it was not the people of the ninth judicial district that had been clamoring in the legislative halls for the impeachment and conviction of this respondent; that they have not changed their minds since four short years ago when they saw fit to elect the respondent to that high official position—and elected him although the political complexion of the district you might think would entirely prevent the election of a lawyer of the political faith of the respondent.

It is a matter of fact that the records show and I suppose this court can take judicial cognizance of that fact that in the memorable year 1877, being a year of presidential election, the republican candidate for president in that district, received over twenty-five hundred majority of the votes, while this respondent at the same time being of the opposite political faith was elected to the position he now holds by about one thousand majority. I say that facts and figures of that kind speak louder than words. The people of that district knew at the time when they elected this respondent to that position his failings, they knew his

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frailties, and I am safe in asserting that they have not increased upon him during these last four years; if anything, they have decreased; if anything he is a better man to-day than he was four years ago and all his friends will say so. If anything he has been able to master those frailties and indiscretions of mankind that are common to all of us more or less. I say that the people of that district when they elected him by that rousing majority gave a verdict that should govern in this case. They have not changed their minds since that time; they have not come before you nor before the lower house clamoring and demanding his impeachment. There was no petition demanding his impeachment signed by the residents and voters of his district. As I said, I think last night, the petition for the impeachment of this respondent was signed by only two men,—one of them a preacher in name, a man who had been offended by some incidental remark made by the respondent and who himself, over his own signature, has admitted that some time ago this last year, he offered to head a gang of thirty men to throw this respondent into the Redwood river and keep him there until he should drown,—a man who so follows the teachings of the Master whom he professes to serve,—that is one of the virtuous, honest, Christian men who have signed the petition for the removal and impeachment of this respondent.

The other one,—a man whom the records of the United States court and the records of the district court of that district show to have perverted the powers given to him by his office under the United States Government to defraud the poor settlers of that country and those same records show that the man who considered it his duty to follow him up and prosecute him under those circumstances was this respondent,—obeying the oath he took when admitted as an attorney and counsellor at law that he should never refuse to take the cause of the oppressed and the down-trodden,—that he should see justice done; he did it and did it according to his best judgment; he did it according to his best ability. And this man that he prosecuted, thinking that it was right to do so, is to-day one of the two prosecutors of this respondent. That accounts for it; that accounts for the abscence of all those thousands and thousands of voters of the ninth judicial district, who have business before this respondent, who have their personal and property rights decided upon by him. Where are they upon the petition to remove this respondent?

Another thing that has already cropped out in evidence, which throws a remarkable light over this case, and shows where you can trace the origin of it, and what is the reason that these impeachment proceedings have been commenced, is this: The ninth judicial district was represented in the lower House of the legislature by at least two men, if not more. When the petition for the impeachment of this respondent was introduced in that House, it did not come through its natural channel as it should have come,—from the representatives of that district or one of them,—nay, the people did not ask his impeachment, and it was not therefore incumbent upon those representatives to present such a petition; they probably could not be induced to do so. But it was a stranger,—a man outside of the ninth judicial district,—the attorney of the Winona & St. Peter Railroad Company, a road that runs all through that district,—who presents the petition for the removal of this respondent. I say it is a remarkable coincidence that if the people of that district desire to have their verdict given at the polls, on the

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5th day of November, 1877, set aside, that you do not hear their voice, that you do not hear their two representatives in the halls of the legislature, demanding the removal or the impeachment of this respondent; that you do not see them presenting petitions from the down-trodden and long-suffering people of that district, who have suffered from the intoxication of the respondent, as the managers would fain have you believe. I say it is a remarkable coincidence that their voice has not been heard in this matter,—that the voice of the people and the voice of their representatives has not been heard, but that the instigation of this prosecution should come here from parties outside of the district,—parties who have no interest in the position of the respondent,—can have no interest to have him removed for other than selfish and sinister motives.

The honorable manager who opened this case to the court upon the behalf of the State told you that he had found upon his wanderings in the ninth judicial district that this respondent had a remarkable host of friends, that as a matter of fact everybody was his friend; that, as a matter of fact the people of that district would elect him to any office within the gift of the people except that of Judge. Yes, and I go further; I say that he represented only one-half of what he found; for if he had represented the fact truly, if he had met the right men, he would have found that this respondent is a tower of strength in that district; not only politically, not only for every other office, but as well for the office of Judge; that he has so demeaned himself during the four years of his administration that everybody feels that in him is embodied a shield that the law contemplates that there should be in a judge to the private, the personal as well as to the public right; that he is incorruptible; that he is a stern friend of justice, that he will see nothing but justice done; that he will protect and be a protector, to the poor and the lowly and see that they are not oppressed by the powers of the strong, by the power and influence of powerful corporations or strong men; that he will not allow it, nor suffer it to be done but that he goes upon the principle, which is the true one, that the law is for the protection of the poor, for the protection of the lowly, and that the rich, and the grand, and the great, can take care of themselves. I say, if we shall be allowed to do so, we shall introduce before this court a document which will answer the argument of the learned manager, that the people of that district, if they were to exercise their choice again, would, with the same glorious majority elect the respondent to the same responsible office which he now holds.

We shall ask leave to introduce before you a petition from the legal voters of that district,—a petition signed by over four thousand legal voters of that district,—more than the number of votes which this respondent received at the time when he was elected. We shall show, if allowed, that these four thousand electors in that district beg of you and of the Senators who represent them, that no regard shall be had in this prosecution to private or public indiscretions or irregularities merely; that this respondent shall be convicted for naught but for offenses against the known law of the land; that they ask and implore of you, and of the Senators who represent them on this floor, that you shall use all honorable means to the end that the district shall not be deprived of the services of a stern friend of justice, and an impartial and incorruptible Judge. We say that this, if we are allowed to introduce it, will be a complete answer to the statement of the learned manager; that the

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people of that district do not desire this prosecution, that they do not desire, and do not demand the conviction of this respondent; that they are willing to take him as he is with his indiscretions, private or public; that all they want is, if he has been guilty of a crime, of a known and established crime or criminal offense, that then he shall be found guilty and not otherwise; and begging at the hands of the Senators,—one of whom has kindly allowed me to take charge of the document referred to, —that you should see to it that you do not deprive that district of a man of the calibre and desirable qualities of this respondent,—a man that is a stern friend of justice and incorruptible. If those people could be heard in your halls and in your court, gentlemen of the Senate, they would characterize the bringing of this impeachment, they would characterize the action upon the part of the men who set this proceeding in motion, in the memorable words of queen Anne:

"Cursed be the man that had a heart to do it!"

I say that under our system of government the voice of the people should be heard in matters of this kind. Under the English institutions, where the king appointed his justices and other officers, where they held for life, or at his pleasure, the proceeding by impeachment was only in the interest of the people, and in the interest of freedom. It was the only remedy that the people had to punish those who oppressed the freedom and interfered with the liberties of the people, it was the only remedy the people had against the almost absolute prerogatives of the Crown. The proceeding of impeachment was then a proceeding by the people, in favor of the people, and for the people. It was a public proceeding and a public check upon executive over-riding, upon executive tyranny; and it had its great importance at that time. I claim that under our government, and under our elective system, that the proceeding of impeachment has virtually spent its force. It may yet be of use in the United States government where the judges are elected for life, or during good behavior; it may be proper to exercise it there; but I claim it is not in accordance with the theory of a free government to use the power of impeachment under a system like the one prevailing in our State, where the people have a chance, every seventh year, in the case of judges, and at shorter intervals in the case of other officers, to pronounce their verdict at the polls, unless the people find that they have made a mistake and *they* come in and ask you to correct it. I say that the theory of our government is this: The people are the sovereign, the legislature is not the master of the people nor the guardian of the people; the Senators are not, and the members of the House of Representatives are not; they are the servants of the people, and to do their acts and to do their bidding, to represent them truly and not otherwise.

Now the people of that district, by their verdict at the polls in the year 1877, declared the respondent a fit man to hold the office of Judge; they elected him to that position; they exercised their privilege as sovereigns. Now if they came here and complained before you that the respondent was not what they had supposed him to be, if they should come before you and say that "he has committed crimes that we cannot tolerate and we therefore do not desire him to continue to exercise the functions of his office," it had been perfectly proper for the House of Representatives to find and exhibit against him articles of impeach-

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ment, and entirely appropriate for the Senate to sustain them, if the charges contained therein should be proven to be the truth ; but I claim that unless that same people which is the final arbiter and judge upon the fitness aud the trueness, the virtue and the honesty of their judges, —when this people have pronounced their verdict, and when they have not seen fit to revoke it, nor to take any action requesting of you a revocation of that judgment and that verdict,—then I say that for the House of Representatives to attempt—driven to it either by the spite or malice of some individual person or corporation, or by a desire for power and a desire to show their power, I do not care for what reason—if they do it under such circumstances, they actually take away and rob the sovereign people of the power that is guaranteed to them under the constitution.

I will now, before going into a criticism of the evidenee, call the attention of the court to the action of the prosecution in this matter. I think that it is proper to look into and examine, in a case of this magnitude, the actions as well as the motives of the prosecution. It has already been adverted to I believe that when this ex parte petition signed by those two worthy (?) members of society was presented to the House of Representatives, the matter was referred to the judiciary committee, consisting mainly of those gentlemen who now constitute the board of managers; that the judiciary committee was delegated to take evidence and examine into the matter and report to the House. I desire to call the attention of the Senate to the fact that when that judiciary committee commenced its investigation it sat with closed doors, in a Star Chamber proceeding; that this respondent knocked at its door, that he clamored for admission, that he humbly presented to the House of Representatives a petition to be heard before that committee by himself and by his counsel, for the right to cross-examine the witnesses that had been brought against him by the State, and to adduce proof to show if he could that they testified falsely, and that the statements made by those witnesses were not true.

Now, it will be remembered by every Senator on this floor that that privilege was denied the respondent at that time; that the judiciary committee closed and locked their door in his face; that the House of Representatives which sat to see that nothing but justice was done, closed their door to his clamors and his prayers to be heard in his defense.

Now, you may say that they had a right to do so; I admit it; but, gentlemen, in exercising that right, a right which may be inherent in them, a right to do as they see fit, they disregarded all sense of justice; they disregarded all duties that decency would impose upon them; they disregarded precedent, and they did it at the peril of this respondent, and at the peril of the State; for I dare say that if the doors of that investigating committee had been opened to this respondent, if he could have cross-examined the witnesses adduced before that committee, if he could have been allowed to bring proof against them, the result would have been different from what it has been; the result would have been similar to that with reference to this first charge—the Martin county charge, when that matter was investigated in 1878 —immediately after the complaint was made about him in the newspapers,—it would have resulted in the same way. That committee would have seen that it was a web and a net of fabrication that was sought to be woven about this respondent. They would have seen the motives that actuated the

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prosecution and the witnesses in their testimony given before them, and, as honorable men, they would have reported to the House of Representatives, as did the committee that had once investigated the charges against this respondent,—they would have reported that the charges were unfounded and groundless, and they would have saved this respondent the humiliation that they now impose upon him; they would have saved this State the humiliation of such testimony, rank perjury, as it must be, upon the part of some of these witnesses, and they would have saved the State many thousand dollars. I say that in refusing this respondent admission, in refusing him the privilege of taking part in that investigation, the judiciary committee ignored the precedents; and this I intend to prove.

There is no need for me to refer to cases of impeachment in the United States, because gentlemen of the Senate are probably most of them familiar with nearly all of these cases, and well know what has been the invariable pratice. Gentlemen of this Senate will remember in our own State, in the last impeachment, that the respondent was allowed to come before the House committee to cross-examine witnesses and to produce witnesses in his own behalf, for days and weeks together. In the case of Edmond's trial in Michigan, the committee did not wait for the respondent to make a petition and to be heard before them, —did not wait for him to send in a petition asking to be admitted, and to cross-examine witnesses, but the moment they started into the investigation, sent him a note informing him of the fact, and inviting him to come before them, and take a part in that investigation. They acted openly and above board. In the impeachment of Judge Peck, in the United States Senate, Judge Peck asked leave to go before the investigating committee. Charges were brought forward against Judge Peck, on three different occasions, before three different Houses. He was allowed to go before the committee; and the result was that two of the Houses failed and refused to vote his impeachment. The third time he was allowed to go before the committee to cross-examine witnesses, and he himself so states in a communication to the House. The result probably was not different from what it would otherwise have been, yet we cannot tell. The result in that case, was that one article of impeachment was found against him; there probably was not room for anything more.

But I desire to call your attention to English precedents upon this point; because, if in England, with the small regard that the representatives of the people constituting the party majority that ruled at the time, had for the feeling of those of the opposite party which almost invariably were the victims of impeachment there, I say that the precedents that they furnish are remarkable; they are to be taken into account, and the actions of those partizan majorities, blind fanatical politicians as they were in those days in England, stand out in bold relief, as acts of justice compared with what has been shown to this respondent. Why, sir, the reports show that the Duke of Buckingham, when resolution was made for his impeachment, was allowed to come before the House of Lords, and to be heard before the bar by himself and by witnesses, and that although the committee had reported impeachment articles, after hearing before the bar of the House, it refused to vote the articles, and thus not only saved the government expense, but saved him the humiliation that would follow from being impeached, whether he was convicted or acquitted.

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The same was the case with Lord Arlington; he was also allowed to come before the bar of the House and the House forbore to do anything, and that was the last that was heard of the articles. Mr. Thompson, of Bristol, and Sir John Davis of Ireland, were both allowed to come before the committee that investigated the matter and we understand that the result of that was that there the matter rested. Lord Chief Justice Kiely was heard in the matter of his impeachment in the House of Lords at the bar of the House, and the matter went no farther. Lord Melville was so heard, Dr. Sacheverall was so heard; the Earl of Macclesfield was so heard, and the result was that two articles that had been presented were not voted. Warren Hastings in his memorable prosecution sent a petition to the House some days after Burke had introduced a resolution for his impeachment. As will be remembered by the Senators, in that case there was not a petition or a resolution introduced, but the articles of impeachment were introduced at once, presented by Mr. Burke without any investigation. A few days afterwards Warren Hastings made application to the House to be heard before the bar of the House. He was allowed to come there and cross-examine witnesses. He was allowed to produce witnesses in his own behalf, and to make his argument before that House; and the result was that the last charge, and the one that his prosecutors mainly relied upon, was stricken out by the House, and they refused to vote it.

Now, I say can anybody hesitate for a moment in believing that if this respondent had been allowed the privilege that was his by virtue of the rights of the English law,—by virtue of his rights under the constitution, by virtue of the rights which humanity should give and accord to him; if he had been heard before the judiciary committee, the articles which have been brought here would have been abandoned by the managers; that articles that have been brought here and discussed by the Senate, would not have been brought forward against him,—articles which never in their inception had any other intention than to prejudice the public mind, and to prejudice the minds of Senators against this respondent,—articles that the managers, the committee, and the House knew, or ought to know, had no foundation in fact, and no foundation in law, but which were brought forward—and I charge it to-day, and I charge it boldly, knowing that the whole proceeding will bear me out, in the statement that they were brought forward for the purpose of prejudice, for the purpose of awakening undue and unjust prejudice against this respondent, not to give him a fair trial upon what was charged against him. When one of the managers even had the manhood to stand up and object to the introduction of the nineteenth article, objecting for the reason that it was not an offense, and that the proof did not sustain it, when he had the manhood to stand up there on the floor of the House, although a manager, although a member of that committee, although a manager who had been assisting in drafting the articles,—yet had the manhood, as James Smith, Jr., the honorable manager, had, to stand up in the House and demand that that article should not be voted, because it was not fair, because it was not justice, then we hear from the instigators of this prosecution and of this impeachment; then the attorney of the Winona and St. Peter Railroad Company arises upon the floor of the House and tells the members of that body, that it may be that the charge contained in that article does not constitute a crime, that it may be the respondent cannot be convicted of it, but that it shall be sustained at all events, and asserts such rea-

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sons, as that the respondent offended the dignity of the House of Representatives by doing the things charged in that article right under their personal cognizance. Why was it insisted that those things, that lawyers as they were, good lawyers as they were, knew were not true in fact, nor true in law, should stand, why was it? Ask the question and answer it for yourselves.

Now I say all these things go to show the animus of this prosecution. The action which the House and its committee took refusing this respondent admission to participate in their proceedings, and introducing here in the 19th century, in a free country, the old Star Chamber proceedings only in a superlative degree, with superlative injustice, and doing it in the name of decency, the name of morality, and the name of virtue. But that is not the only deviation from precedents in this case.

The next we find of the prosecutors in this case is that the honorable board of managers sees fit to constitute itself into a committee to go around the district of this respondent, to go to every place where he has ever held court, to examine witnesses and to find if possible new charges to bring against him, upon which there was no evidence taken before the House committee, charges that there had been no witnesses produced upon before the House, trying to see if they could not cast a drag-net in which they might at least catch the respondent. I do not know but that it was perfectly proper to do so; I do not know but that the board of managers acted perfectly properly in the matter; I do not know, but at least they so considered it themselves; but I say, thank God, it is the first time in the history of impeachments that ever such a proceeding upon the part of the honorable Managers of the House of Representatives either of the State, of the United States, or of the House of Commons, has ever been witnessed.—Thank God, it is the first time in the history of England and of the United States, that a board of managers of the House of Representatives, representing the great power of the State, the honor of the State, considered it their duty in prosecuting and doing justice between the State and the respondent, to rake a district with a fine-tooth comb to see if they could not find some little offense,—to see if they could not scare up some more witnesses by whom they could perchance convict.

Now, gentlemen, my position, privately, is very low and humble compared with that of the honorable managers. I have only the honor to represent the state as a prosecuting attorney in a small district of this state; but I say that I most certainly would despise myself, I would most certainly feel that every man on this floor would despise me, that every honorable and honest citizen of this state would despise me, if I should, as prosecuting attorney, after complaint had been made to me by some one against a man, and I had found that it was not quite sufficient, that the evidence was not quite sufficient, take my horse and buggy and start around the country to see if I could not pick up something else against him, and sneak around and see if I could not find something by which I could send the party to the state prison! It would be a spirit that I would deprecate as a public prosecutor. It would be a spirit that I believe every honest man would deprecate. It may be different of course, when you represent the whole State of Minnesota with its vast treasury behind you, with its great power behind you, with the dignity of the House of Representatives behind you; but I think the greater the power, the greater the dignity, the vaster the amount of the treasury, the more caution there should be shown.

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I had always understood that the prosecuting attorney, and I claim that the board of managers, in this case, act in the capacity of prosecuting attorneys—they are not the complainants, they are the prosecuting witnesses, they are not the parties interested in this case; they are selected as the prosecuting attorneys in the case, and I had always considered it, probably in my simplicity, with my old-fashioned and old country views, that a public prosecutor had no other duty, except to see that justice, and full justice was done towards the State, as well as towards the defendant; and that it was not expected of him that he should use all means to convict, honorable or dishonorable, that he should use every trick within his power to convict, whether a man was guilty or not guilty; but that he should stand there, impartial as the Judge himself, and see that justice be done between the State and the defendant. It may be that that view is old-fashioned and old-fogyish, and that the action taken by the managers was perfectly proper. I do not make this remark to throw any slur upon the managers; I do not say this to hurt their feelings in the least, such is not my intention. I call attention to it only to show you, and because I have a right to argue to you, that in this case there has been done what has never been done before; that in this case injustice upon injustice, persecution upon persecution, has been heaped upon the head and shoulders of this respondent and that every official act of his, from the day he took his oath of office, until the present time has been investigated, scrutinized and examined into. So that you may know when you have examined the charges here presented against him, in connection with the proof the State has submitted, that you have all there is against him, that you have got every incident which shrewd, learned and able managers could lay their hands upon, after two weeks sojourning around through the ninth judicial district, besides the information they already had from the witnesses subpœnaed before the judiciary committee; that there is no act of this respondent, moral or immoral, wrong in law, or right in law, corrupt, or straight and impartial, that these managers have not examined, and the result of which is before you.

I say, therefore, that when this respondent goes out of this prosecution, when he can disprove (as I know he can) the charges that have been brought against him here, he will go out with a knowledge upon his part, with a knowledge upon your part, with a knowledge upon the part of the people, that there can be no possible doubt but that he is a fit person to hold that office; for, that all that could possibly be brought against him has been brought against him; all that cunning, money, and effort could bring has been brought against him; and if he is not guilty of these acts he is pure, he is good, notwithstanding his little failings.

I call your attention particularly to the action of the managers, as I have said, to show the way in which this respondent has been treated, not to throw any slur upon them. I have called your attention to it more particularly because I, for my part, must confess that I became sickened, when this trial first started in, by hearing from the lips of the managers such professions of pure and true friendship on their part towards this respondent; that they were actuated in this matter by no ill feelings; that they loved this respondent; that they had slept with him, and that they had traveled with him, and that they had hugged and embraced him, and that they loved him, in short, as their life, and that it was a very hard thing for them to do in this matter; it was a very hard thing, indeed, to prosecute him as they ought to do. In fact, gentlemen, every stab that

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this respondent has received during this trial from the board of managers he has received under the cover and cloak of false friendship. We do not not ask for the sympathy of the managers; we do not ask for yonr compassion, sir, [turning to one of the learned managers.] We say to you, stab away, and do the best you can, but come out against us like an open enemy. Don't do it under the cloak and cover of friendship, of love and kind feelings; don't wreck this respondent under the cloak of friendship. The cloven foot has once in a while shown itself. Harsh language has geen used against this respondent by the managers; insinuations, fearful and tremendous, have been thrown out; promises have been made that have not been fulfilled; statements have been made as to horrid states of circumstances which the proof has not sustained; all, I apprehend, to prejudice your mind against this respondent. But we are not here to complain; we are here to receive from their hands, from your hands, whatever you see fit to bestow upon us, and what they see fit to bestow upon us, without complaint.

We do not complain, all we ask is, that when they do treat us so harshly, when they do treat us in the way they do, that they shall do it in an open and manly manner, and assert that they desire to win this case at all cost; say that they desire to see this respondent convicted, that they would give their left hand to do it if they could, from vanity or pride or other motives; that they desire to win at all hazards;—and not come here under the cloak of friendship to hurt and stab us in the way in which they have done. Why, we have seen this cloak of friendship brought into requisition more than once in this case. The witnesses that come before you here, some of them, say that they too are friends of the respondent, and the managers are very anxious to tell you of it, and the witnesses are very anxious to tell you of it. Gentlemen, would my *friend* be apt to come here and injure me to the full extent of his power? Just imagine that monumental liar, Mr. Pierce, that came here before you and testified in the way he did, with the animus,—with the meanness in every feature of his face, with the hatred expressed in every glance that he cast towards the respondent in this case,—and yet he comes and tells you "*that he feels very friendly towards the respondent.*" Mr. Lind tells you the same thing. Mr. Lamberton tells you the same thing. Why, gentlemen, *my* friends dont come and do their utmost to injure me and ruin me! That is not friendship. And I say we dont care for their friendship; we are willing they should do their worst; but we dont want those men to come down here, claiming to be our friends; we want them to be *honest.* Verily the old proverb is true: "*Save me from my friends*!" We need to beware of such friends as these.

I desire to caution you, Senators, in the consideration of this case, in making up your judgment as to whether or not this respondent has been guilty of the charges brought against him. I assert that it is necessary that you should be over-cautious in this matter because, it has appeared in proof already, and I think it will appear farther, that it is an easy matter to be mistaken as to the condition of this respondent, whether he was drunk, or whether he was sober.

There is so much the greater danger of a mistake in this case, as we find that almost every one of the witnesses that has been produced by the State, utterly and entirely fails to give you any reasons at all for his judgment. As a matter of fact, they ask you to rely upon their opinion; they do not come and testify to facts before you, but they ask you, who are sworn to do justice, according to law and evidence, that the basis

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of your judgment should be their judgment,—rather, that you should look with their eyes. Now, I have heard it said, that nobody can describe a drunken man, and describe the general appearance of a drunken man, or the actions of a drunken man. It strikes me, gentlemen, that I should be able to describe the actions and appearance of a drunken man. When I see a man intoxicated, it strikes me that I should be able to describe his appearance; it strikes me that I should certainly be able to describe his actions, if there were anything out of the way. Of course it may be a difficult matter with unlettered persons that are not by nature keen observers, but you have seen that the witnesses that have been brought before you by the State. Why they are not farmers, or men in the ordinary callings of life, they are men who belong to what is considered the shrewdest and the smartest profession in the world, to that of a lawyer, who must of necessity, if he shall make a success in his profession, be familiar with human nature and be a keen observer. Now, these keen observers have seen this man drunk and they have seen him sober; they have seen this judge upon the bench, where certainly every expression in the face, every lineament of the features would be noticed, sitting as he does in a prominent position, and, in such condition, where most certainly his actions, if there were any impropriety in them, would be noticed, and could be, and ought to be remembered. Now, if there was nothing in the appearance, if there was nothing in the actions which they could observe and remember, then there certainly arises a strong suspicion that the judgment of these men is mistaken and incorrect; and that they are giving no good and valid reasons for that judgment; and I think you will take their testimony for just what it is worth.

It is true, and it is laid down as a rule of evidence, and the authority was cited by the managers here the other day, that it is competent evidence for a man to testify that, in his opinion, another man was intoxicated; and that the fact that he could not describe his appearance particularly, did not make the testimony incompetent. Now, that is admitted. The testimony would be competent as to whether he was intoxicated or not, but is it worth anything? That is another question. Testimony may be competent and yet be of no value; testimony may be allowed to come in as competent, and yet after you have got it in, it may not amount to anything, and may not be sufficient to base a judgment upon. And that, I claim, is the case with the kind of testimony we have presented before us in this case, on the part of the State. More particularly a great degree of caution should be exercised in a case like that of this respondent. It has been already shown, and it will come out more fully, I apprehend, that he is a man of many peculiarities; a man who is to a certain extent quite eccentric, and does those things that other Judges and other men perhaps would not do; that he acts freer in every way, and has not that dignity about him that we are used to associate with courts as a general rule.

Another thing, is the fact of his reputation being that of a drinking man. Have you ever considered, Senators, what results a reputation may produce? You have all of you read, I apprehend, about the glaciers on the Alps of Switzerland; you have doubtless read how one little stone thrown by the hand of a feeble child may start the waves of sound so as to produce one of those dangerous and most terrible avalanches,—may start a little ledge somewhere, and causing it to roll down in the snow, it grows larger and larger from precipice to precipice, until at last it

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becomes a mountain of snow and ice coming down and crushing everything before. So it is with reputation. One weak tongue, one little remark, may set the waves of the ocean of slander in motion, and before you are aware of the fact the waters overwhelm and ruin everything coming in contact with them.

Now the effect of the reputation of being a drinking man cannot be fully appreciated by you. When you come to one of those valleys of Switzerland after an avalanche has swept down, after it has buried the proud castles and elegant churches as well as the peasant huts, under its masses of snow and ice, you see not the town that lies beneath it, you may divine it perhaps through the masses of snow covering it, by the eye of your imagination, but you cannot tell whether the castle is demolished, or whether it stands with not a stone displaced, or the facade disfigured. So it is here with the respondent wherever he goes, the mist of the avalanche of the reputation of being a drinking man follows him. It surrounds and enshrouds him ; everyone looking at him sees him through that mist, with that mist around him, and cannot see clearly by reason of the mist. The mist around him of being a drinking man reflects back upon your eye, and you see him through that mist and imagine you see things, acts and appearances which are not real, and to your imagination he becomes a full-fledged drunkard perhaps when he is as sober as you and I to-day.

Again with a man that has such a reputation, a man that has the reputation of a drinking man, one little remark by a lawyer, or dissatisfied suitor who has been kicked out of court, having lost his case, or some little boy on the street saying "Judge Cox is drunk to-day," becomes the stone that starts the avalanche, and it goes around that Judge Cox is drunk to-day; and you go into the court room, you see with perfectly honest eyes, but you have got the mist of the avalanche before you, and all around you as you look at him; he commits one of his little eccentricities that you would probably not have noticed under other circumstances, but now, blinded and prejudiced you say, "Why, certainly, he is drunk: nobody but a drunken man would do such a thing."

Now, gentlemen come before you who have been honest enough to acknowledge the power of the avalanche, who have been honest enough to acknowledge that their judgment has been warped and influenced by this reputation of the respondent as a drinking man—I refer you to the testimony of Mr. Collester—honest man, as Mr. Collister is—there is no evil eye about him—he comes before you and he tells you that the Judge was sleepy on the bench in the morning, seemed tired and worried, and "I thought that he was drunk." What made up that thought? Would you have thought so if you had known he had been a drinking man? "No, I would not." If it had been Judge Lord, or a man I had known not to be a drinking man, I would not have thought he was drunk." He was honest about it ; he acknowledges it before you. If the other witnesses had been as honest as he, they would have done the same thing; because it is only human nature. That is the way we make up our judgment, and that is the way we look at things. Our eyes are operated on by the talk we hear, by the motives we have, by the unseen influences surrounding us, like as we are told of the eyes of the witches of Harzen and Blocksberg, being operated upon so the lens of the eye is cut, so that every thing that is straight looks crooked to them, and everything that is crooked to them looks straight.

The witness Forbes is another honest witness of that kind. When he

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was asked in regard to the general term at Lyon county, he says that Judge Cox was not as he ordinarily had been before; there was something different with him, "and I, *of course*, thought he had been drinking," taking it as a matter of course that there never could be something the matter with him, never a little sick, or something of the kind probably, but only "that he had been drinking." It is a matter of course, and it is a matter that cannot be helped. It is an impression that comes over us; it is a feeling that we cannot help, that we can conscientiously and honestly possess; and yet it was wrong.

But there are some of those witnesses, around whom there is more, gentlemen of the Senate, than simply the mist of the reputation of intoxication that surrounds this respondent.

In Italy they have an old saying that there is such a thing as an evil eye; that there are wicked men who possess an evil eye; everything they look upon is viewed under the horizon of that eye. Everything they look upon is evil and degraded and everything upon which they cast their glance withers; the beautiful becomes ugly, a sweet odor like that of the rose becomes a bad scent. Now I think there are some of these witnesses who have been before you have got considerable of the Italian evil eye. I think it has shown itself in their testimony; I think their animus has been so clear, I think you can see that whenever their eyes would fall upon this respondent, he would suddenly be in such a condition as they would wish him to be in; the wish has been the father of the thought, and the wish is the father of their oath as they testify before you, there are such men; there are more of them than we imagine. And I cannot explain it, or explain as I desire to do, the difference there will be in the testimony of those men and the witnesses that we shall bring here for the respondent,—I cannot explain it I say, and be as charitable to those witnesses as I desire to be, in any other way, than that they have got the evil eye of the Italians; that the wish has been the father to the thought, and that they honestly believe that the Judge was intoxicated at times when no one else but those gifted with the evil eye could see it. Because it is a fact that some of those men who have come here and testified will be most flatly contradicted by witnesses who are honorable and honest men above any suspicion, who would not swear their souls away for this respondent, nor for any other man, whose truthfulness you cannot for a moment doubt. I say when we bring them forward an avalanche of them and show respondent perfectly sober,—having heretofore shown as we have done, that on the days when it is claimed the respondent was intoxicated, it was to such a degree that there could not be any honest mistake about it,—for that has been one of the objects of the cross-examination of the state's witnesses upon the part of the respondent, then it will, and must be clear, that there is some tall swearing done on one side or another in this case, on which, is for you to say.

I apprehend that some who are not lawyers and perhaps some lawyers who have witnessed my cross-examination of these witnesses have wondered and probably thought we did not know what we were doing, when we would bring out matters, as the papers style it, which were to say the least, very damaging to the defense. Gentlemen, those things were done for a purpose. By that we succeeded in the first place, in laying bare before you the animus of these witnesses; we succeeded in showing how far those men would let themselves loose. Again, we established another fact, the fact that there could be no room for an

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honest mistake as to the condition of the Judge at these particular times; we established the fact that either those men speak the truth, or they lie; and that when witnesses come before you, who tell you a directly opposite story, that there is no room for an honest mistake there, but that somebody lies, that somebody swears to what is not true. The formidable castle, that the State calls its own in this case, that it hold ready to crush us with, stands there now. I submit to you, Senators, who has built that castle? Who has sat here day after day, and placed stone upon stone in the walls of that castle? This respondent has done it with his feeble hands; he has built that castle higher by far than the managers would ever have attempted to do it. If there is a case against him at all, to-day, it is his own handiwork; he has drawn it out of their witnesses by his counsel. We have built the castle that is going to *crush* us; the castle in which we shall be incarcerated, never to be set at liberty; we have seen it growing; we have helped it to grow every day; we have done it for a purpose. Now comes our turn, now we will let the rays of light and of truth into that building; we will let the sound of the trumpet of truth be heard outside those walls, and they will crumble into ashes, into the fruits of the Dead Sea. We will let the rays of the sunshine of truth fall upon this heap of falsehood, of malice, of spite; and it will disappear as the mist of the morning disappears before the effulgence of the glorious sun god.

I would ask, Mr. President, if it be convenient that the Senate take a recess for five minutes?

The PRESIDENT *pro tem.* The Senate will take a recess for five minutes.

Senator WILSON in the chair.

The PRESIDENT *pro tem.* The Senate will come to order. Mr. Arctander will now proceed with his argument.

Mr. ARCTANDER. Mr. President, I now come to that part of my argument which more particularly is devoted to the testimony as already adduced under each article, and in commenting upon that, in as concise a manner and as briefly as possible, I desire to call the attention of the Senate to the inconsistency in the testimony on behalf of the State under each article, and to the manner in which the different witnesses contradict each other, to show plainly before we start in, what it is we have to meet. Therefore I will, as shortly as I can, state upon each article what we expect to prove and what we expect to rely upon to defeat the article.

I beg leave now to call the attention of the Senate to the article which charges the respondent with being intoxicated, while in the discharge of his official duties at the county of Martin, in the month of of January 1878. I desire to call your attention under this article, as well as under all the others, to the fact that it charges that the respondent was in a state of intoxication "caused by the voluntary and immoderate use of intoxicating liquors, which disqualified him for the exercise of his understanding, in matters and things then and there before him as such Judge, and which then and there rendered him incompetent and unable to discharge the duties of his said office with decency and decorum, faithfully and impartially, and according to his best knowledge."

Now, I need not call your attention to the fact, that that part of the article has not been proven by the evidence adduced by the managers before you, because every witness that has sworn upon that article—Mr. Gra-

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ham, Mr. Higgins, Mr. Wallenstein, Mr. Everett and Mr. Livermore, all testify that business went on in a regular manner. No, I desire to take that back. Mr. Higgins said that there was some demoralization, but he only gave that generally upon cross-examination, he testified that business went right along, was well despatched, and all of these witnesses testified that there were no acts of omission, or commission, upon the part of the respondent during that time. This thing, then, the State has failed to prove, they have failed to prove if he was intoxicated, that it interfered with his business, that it disqualified him from performing his duty as he otherwise would, and I say, that being a material part of that article, that article must fail; but we will not be satisfied with that. We take it for granted that even as far as the intoxication goes in Martin county, it does not amount to anything; that we could move to-day, to be dismissed upon it, but we do not so desire to do so, because here is this article; men have been called in, who have testified to the intoxication and their ideas of the intoxication of the Judge, gentlemen who reside outside of the district, apparently honest and truthful men, and against them we will bring men, that are equally honest and truthful, and they will tell you that these witnesses were mistaken.

Now I say, if men of whose honesty there can no doubt, men who have no interest in these proceedings, as these men have not, because they are outside of Judge Cox's district, because they are not candidates for Judge; they are not men, with the exception of one of them, that ever have sent out of court kiting, (I refer to Mr. Higgins,) but with the exception of him, they were men who had no business there before respondent. They must be presumed to be honest witnesses, men who testified before you to facts, as they really believed them to be, and I think if we can bring up men to testify, honest men to testify before you—(the clerk of the court, the sheriff, attorneys and other parties, who on account of their relation to the court, are presumed to know what they speak of state witnesses,)—that they were mistaken, that the occasions they testified to when Judge Cox was in their judgment intoxicated, were not occasions upon which he he was intoxicated, that if he has ever been sober in his life, he was sober at those times; you will see how easy it is even for honest men to make a mistake in judgment, and a mistake in statement before you, how easy even for men who have no interest to swear falsely, to state what is not so; and that is the reason we did not desire to ask to be dismissed upon this article, for though the proof does not show anything, we desired to show you that even honest men could differ and differ honestly upon that question.

ARTICLE ONE.

Now, what is the testimony upon article 1? Mr. Graham, the first witness, said, that he thought one evening Judge Cox was somewhat under the influence of liquor, but says he was not drunk, if drunk is what you mean, he was not drunk, when he was asked whether he was intoxicated. This evening, he places when the Macdonald jury was out, when the case of the State vs. Macdonald had been tried in the afternoon, and the jury went out and the judge went up after supper to wait for the jury. Now, Mr. Graham made some remarkable statements, rather contradictory, but I don't care much about that. He says on that evening Senator Wilkinson made a motion; that is what he said at one time; then he said again there was no business before the court;

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no court opened, that there was just an informal gathering; that they came there together and sat in the court room waiting for the jury, but however that may be, I think that, even if you think Judge Cox was intoxicated, or was at least under the influence of liquor at that time, under the testimony of Mr. Graham, we will be able to show you by the records, and by the witnesses, that on that evening there was no business before the court, and that Mr. Wilkinson did not make any motion, and that as a matter of fact they were just sitting around and talking. Now, it is a remarkable fact, and I desire to call your attention to it, that of the five witnesses for the State, two of them contradicted each other flatly upon the condition of the Judge on this particular evening.

Mr. Wallenstein, who certainly is an honest man, who was sworn here, and who thinks Judge Cox was drunk on some other occasion, says, that on this occasion, when Mr. Graham testifies Judge Cox was, in his opinion, not under the influence of liquor, he was there in court that evening, but that that was not the time he refers to as having seen Judge Cox, as he thought, under the influence of liquor. Now, as to that evening one stands against the other almost in juxtaposition, Mr. Graham and Wallenstein. One says he is drunk, the other says he is not drunk. That is the case of the State. Now we will bring in on behalf of the defense, men like the clerk of the court there, the sheriff there, who were present, an attorney who was present, two of them, I believe, another party that had no particular interest who was present, and all will testify that at this particular time Judge Cox was not intoxicated; that they remember the occasion, remember being there, and that Judge Cox was absolutely sober, and that there was no indication that he was drunk at all, or under the influence of liquor at all. Certainly we shall not need to invoke the rule of reasonable doubt in that instance.

Of course, it is desirable to call your attention at the same time to the fact, that most of these witnesses, on both sides, had never seen Judge Cox before; did not know and were not aware of his peculiarities, and that some of the men coming into the court room, and seeing his actions, and hearing what he said, might easily believe him intoxicated, when he was not. I will refer to that more particularly with reference to Mr. Wallenstein's testimony. He came into court one night when an order was given to the clerk that seemed to him to be unintelligible. Mr. Wallenstein is an honest upright man. I have not the slightest idea that he did not believe that what he testified to was true and correct—he did not put it very strong anyhow,—he *believed*, it was his *impression*, that Judge Cox was under the influence of liquor.

But who is Mr. Wallenstein? A will-to-do, well bred Englishman, who, at that time, 1878, or at least a short time before, had arrived from England, had been accustomed to the dignity and style of English judges, to their wigs and gowns, and the woolsack, and to seeing them sit there and make long faces at each other, and try to look wise and keep up an enormous amount of decorum. He comes out here to a frontier court and sees a young man sitting upon the bench who turns around probably, in the midst of a trial, to one of the attorneys present and says, "Dunn, give me a chew of tobacco,"—of course, the most charitable construction that a person such as Mr. Wallenstein could place upon such conduct was that the Judge was drunk. [Laughter.] There is no question about that, I think; that is just what we will show; that that

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was the fact that night. That, honestly, he comes before you and says that he really had an impression,very grave doubts about his sobriety and I do not blame him at all with his ideas of decorum with the mock dignity he had been used to see in judges, to be shocked at the way Judge Cox carried on there in court, not that there was anything improper or wrong about it, but the easy way it was done, no restraint, none of the sham dignity and mockery of importance sometimes seen in judicial officers. Now, as I stated very likely in the evening when Mr. Graham testified that he was under influence of liquor, the Judge did not make many remarks; he probably did not ask any of the attorneys for a chew of tobacco and consequently Mr. Wallenstein saw nothing out of the way, as we shall show there was nothing out of the way,—and he therefore can not find signs of intoxication what made Mr. Graham think so I do not know; probably some impression he had on his mind—probably somebody else was drunk at the time there, not to say that Mr.Graham was, but somebody else might have been drunk in that court-room and it has left an impression on his mind that *somebody* was drunk there and probably, with the reputation Judge Cox has, for the last year or two it has taken form and concentrated itself on Judge Cox.

Now, Mr. Wallenstein, the honest old Englishman, is the only witness that evening, when he says the Judge gave a direction to the clerk which was unintelligible. He don't remember what proceeding was up, he does not remember if there were any motions or arguments, or any case tried; it was in the evening he thinks, there were motions or arguments and the Judge gave some instructions or directions to the clerk or sheriff, —he thinks it was to the clerk,—which were unintelligible or incongruous. He says, he thought the clerk did not understand them and had to ask over again for them, and this was the only time he thought Judge Cox was intoxicated. Now, we cannot fix that occasion, because Mr. Wallenstein does not fix it, and we will therefore be restrained to show you by the clerk and by the sheriff that Judge Cox never gave during that term of court any instructions or orders to the clerk or to the sheriff that were not perfectly intelligible, or in which there was anything out of the way. That there was no such occasion, that as a matter of fact the Judge helped the clerk wonderfully and gave him full instructions and helped him with everything that he asked him about, and that there might have been such a thing as the clerk not hearing what the Judge said and asking him to repeat what he said, but that he has no recollection of any such order, and if there had been any evening on which the Judge had given any instructions which would have been unintelligible and which would have shown that his mind was beclouded by drink, he would have remembered it, but he says there never was any such thing.

Now, the reasonable theory and supposition is that Mr. Wallenstein has heard the clerk ask the question as to what that order was, not hearing it himself, asking what it was the Judge said and from that he has formed the opinion probably that the Judge was a little off, more especially as Mr. Wallenstein himself does not understand court proceedings as he has testified before you, he does not know what technical terms in law mean; it may have been entirely Greek to him, the law language used by the Judge in telling the clerk to do a certain thing, probably to enter a non-suit, or a judgment *non obstante virdicto*, or anything of that kind. It is very likely that Mr. Wallenstein would consider that very incoherent and without any sense at all. It would have been Greek to

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him undoubtedly, not being used to the terms used in law courts, but as I say I think there will be no doubt in your mind as to the truth of the fact that on that evening, the Judge was not intoxicated, when you have the testimony of the clerk and of the Sheriff and also of the attorney who was present every night in court, when any business was going on, who will all testify that the Judge was never, during that term of court, in a state of intoxication or under the influence of liquor while on the bench. This same Mr. Wallenstein gives the Judge a recommendation by saying that he was very expeditious in his business all the way through, and I think we will be able to show you before we get through with this article, that as a matter of fact there was no truth in the statement made by Mr. Higgins, the man whom I now come, to who testified that there was general demoralization amongst the lawyers for the first three or four days, and therefore there was not much done at that term of court, that so far from that being the fact, on the contrary, more business was transacted at that term in the period of time in which it was held than ever has been done before or since in Martin county.

We will show that by the testimony of the clerk, by testimony of the lawyers who were present, and who have lived there and practiced law there for fourteen years; we will show you that Higgins, when he made that remark, when he made that statement, made it falsely and maliciously; he volunteered it; it was not called for, and it showed his animus; and I apprehend, from the looks of him, that he is just that kind of a lawyer that Judge Cox would be very likely to tell (from the way he acts and speaks in court,) when he came before him with a case, and showed that he didn't know anything more about it than a mule, and showed he was no more fit for a lawyer than a mule driver would be, that Judge Cox would very likely tell him he had better go and hire a lawyer to tend to the case for him; very likely he did; and the man comes down here, permeated by that animus, to testify against him, and volunteer what he can. We will show you beyond peradventure, beyond any reasonoble doubt, that this statement of his is false and malicious; that there was no demolization; that the court went right along; It was true there were only four jury cases tried, not as he has testified to, four cases only, but that an immense amount of court business was transacted; that one of these jury cases was one that took five days to try, an important and complicated criminal case for obtaining goods on false pretences; and as a matter of fact, I have talked with one of the witnesses to-day, and he informed me that this term lasted ten days; that Judge Severance had just finished a term there lasting twelve days; and just the same number of jury cases were tried at that term as were tried by Judge Cox and not half of the court business transacted as in the term held by Judge Cox, and not half so many important cases tried neither; so you will see that statement is false and malicious.

It is a fact that the business went right along and the remark was instigated by a spirit which ought not to animate any witness. Mr. Higgins makes Judge Cox under the influence of liquor one or two times during that term. He cannot describe his manners or his speech; he only has an impression he tells us one of the times—and he locates the time—and I am glad of it. It was the time when there was a question about issuing a special venire for a grand jury. It appears that the grand jury had found certain indictments and had been discharged and that a demurrer was interposed to the indictments, (I suppose not a

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demurrer, but a motion to quash, but the young man Higgins did not, probably, understand the difference) and that the demurrer or the motion to quash, whatever it may have been, was sustained, and that the reason was that the grand jury had not been properly selected. That was the reason it was sustained, upon a defect in the grand jury. Now, immediately after that had happened, Mr. Higgins says Judge Cox went to work and issued a special venire for a grand jury; for the purpose of having it consider those cases over again as any Judge would who had the criminal business of the county at heart. If justice had failed from some fault or negligence of the county officers, it was in order to shove the matter ahead, to bring the matters forward just as fast as possible. It was proper for him to do so; and not to permit criminals to escape. At this time the young man says the Judge was very much confused. We will show you, that he was not confused at all. He tells us, also, upon cross-examination that his eyes were red and his face was flushed, etc., and that he was considerably incoherent in his speech. I think he says that.

Now we will show you by men who were present there—by Mr. Blaisdell, the leading attorney there, and at that time senior partner of that young man, Higgins; by Mr. Bird, the sheriff, a respected and honorable man, Captain Bird, a man who is well known, I think, in the State all over—so is Mr. Blaisdell, for all that, an attorney who has resided there for a number of years, with as good a reputation as any attorney in the southern part of the State; by Mr. Fancher, who was present too; the clerk of the court, another honorable gentleman; all of these three men will testify, and so I think will Senator Wilkinson, although he has not arrived here yet, that at this time Judge Cox was perfectly sober; that his eyes were not red, that there was nothing in his general appearance or conduct to show that he was not as sober as ever he was. The second time that this witness claims to have seen him intoxicated in court is during the hearing of what he calls a laughable motion made by Senator Wilkinson, in a criminal case. This is not very definite. We tried to get the witness to fix upon which case it was, and handed him the calendar for that purpose, and he finally said it was the first case, the case of the State vs. Hyde. I think it will be shown by the circumstances detailed by the witness, that the case referred to by him is not the State against Hyde, but the case of the State against Sharp, and that at that time, on this evening this motion was brought up by Senator Wilkinson. It is true that he made a laughable motion and set the court house a laughing, not only by his motion, but also by his actions; it is remembered by the sheriff, by the clerk, by the attorney who was present that such was the case, and it is remembered also by all of them, that Judge Cox was perfectly sober at that time, and they will so testify.

Now, the next witness is Mr. Everett, although he appears to have been around court for the two weeks that it was in session, yet we do not find that he has seen Judge Cox otherwise than perfectly sober all the time, with one exception as he says himself, and at that time he *thought* that he was the worse for liquor, that is as far as he goes, that was the time when the special venire was issued for a special petit jury, or that there was talk about issuing it. It seems that there was considerable confusion up there in that county. The term of court commences early in the year, so that the commissioners could not at their first annual meeting select the names for jurors in time for the drawing and for the sheriff to get around and summon them in time for court. The

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consequence was the officers there went to work and made a jury list in month of December, the year before, which, of course, is contrary to statute. They seem to have been doing that for a number of years, and going right along that way. When the question was raised by Senator Wilkinson, Judge Cox held that a grand jury drawn in that way was not a legal grand jury, which necessitated the calling of a new grand jury. When the grand jury got through with its work, the first petit jury had been through for some time, and so as not to entail expense upon the county, they had been discharged.

Now when new indictments were brought in by the new grand jury, not anticipated at the time the petit jury were discharged, the question came up whether a new petit jury should be called to try those indictments at the time, and the Judge, who is always anxious had already decided in his own mind to call a new petit jury; and the people up there were wrangling about it, people who thought the economy of the county ought to go before the prosecution of persons accused of crime. There was considerable wrangling about it in the court house by the lawyers at this particular time, but I think we can show you by these same witnesses that at the time there was no trouble with Judge Cox. He was clear and he gave clear decisions; he gave clear reasons, and we shall call the attention of the court to the facts that establish that most certainly. When the question came up in regard to whether that venire should be issued or not, the witnesses we have got here, one of them, who was an attorney, spoke up and argued against it, and Judge Cox told him: "You are an attorney for parties accused of crime, you are interested in this matter, and therefore I will not pay so much attention to what you have to say; I will hear from such attorneys, who may have only the interest of the county at heart and not the interest of private clients," showing, as I claim, his judgment, his ability to distinguish just where the line should go; showing that a man who had such a power of distinction and such judgement as he exhibited at the time could not be intoxicated or under the influence of liquor. But this, is only an incident, a collatteral incident in our proof, for those witnesses are most positive that he was not intoxicated.

Now, the last witness upon that charge is Mr. Livermore. He can give us nothing definite. He has an impression; he thought that the Judge was under the influence of liquor part of the time. His reason is one peculiar remark of the Judge which he cannot remember. He does not remember who were present, does not remember where it was, does not remember what the remark was, but it was a peculiar remark of the Judge. Well, if he knew the Judge as well as I do he would probably find out that peculiar remarks from him are no signs of drunkenness. Without this, the man saw nothing out of the way in the business—no act of omission or commission during that term—and the only thing that struck him was that that there was a difference in the demeanor and behavior, he thought, of the respondent in the later part of the term from the first part; that he got more free and easy. Now, I submit, if that *is* the fact, whether that is any proof that the respondent was intoxicated. Why, here he came to a strange town, where he knew nobody, where he was acting for another Judge. It was not in his district; it was soon after he was elected, only about thirty days after he had taken his seat, probably.

Judge Cox (the respondent.) It was ten days after.

Mr. ARCTANDER. Ten days? I am corrected. About ten days after

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he had taken his official oath as judge he goes there among strangers, all of them. Every person, very naturally, even a man as full of fun and jokes as Judge Cox is, a man as free and easy as he is, when he comes among strangers, in a new position, would be a little dignified and reserved, and not so free and easy the first two or three days, or the first part of the term, until he gets acquainted; and, when he gets acquainted with a man, then his own nature comes right back to him. He is jocose, he is jovial, he feels good, and talks to them free and easy.

There would be nothing in that to show that he was intoxicated in the least, but I think we can show you even if you should think that would be any evidence at all of intoxication, that we can show you, I say, by our witnesses that it is not a fact. That Judge Cox was just as jocose, that he was just as jovial, and just as free and easy when he came there, as he was afterwards, and as a matter of fact, these gentlemen have noticed no particular difference in his conduct during the whole of that term. But if that was not so; if it was a fact that these men have noticed a difference in conduct, and it really was a matter of fact, it would not show that he was intoxicated by any means, or that he was under the influence of liquor. It would only show that he had had a chance to have become sufficiently acquainted, and that he felt he need not have the restraint that he would naturally have among strangers, especially in his first appearance in such a position; so I think that article 1 will be disposed of by the respondent very easily and in a very short time.

The next article I consider is

ARTICLE 2.

The Waseca County matter:

That article charges us, just the same as the other one, with not being able to transact business. That I claim has not been made out even in that case. It is true that it is claimed that one day court was adjourned, and that that was caused by the Judge's condition; but I take it for granted from the way it appears even from Mr. Lewis's testimony, that Judge Cox was perfectly able to go on, knew all about what was proper and right. The remarks he made at the time showed conclusively to me that when the lawyers desired an adjournment, it was not his fault, or caused by his condition, but the fault of their own innate wickedness, or at least not because he could not transact the business there; because the remarks he made showed he could; but by an ungrounded fear on their part for a condition that did not exist. But enough that this article two naturally divides itself into three heads. The first head, the 5th of April, the time when Mr. Taylor from somewhere in Dodge county, Kasson, I believe, was down to argue a motion with Judge Edgerton. That one day we will take as one head. The other sub-head would be the 3rd of April, the day when this adjournment was had; and the third sub-head would be the whole of the last part of the term, (with exception of the two first named days,) as testified to by Mr. Lewis, the only witness who testifies to it, where he thinks the Judge was more or less intoxicated. We will see first what the evidence is on April 5th. We will see what it is on the part of the prosecution, this day when Mr. Taylor's motion was made, and I will then present what we expect to bring up against it.

The only evidence, or the main evidence at least, is that of Mr. Taylor. I don't think that there is anything that amounts to a corrobora-

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tion by any of the other witnesses upon that head. That was the last day but one of the term, you will notice. Now, Mr. Taylor does not come to testify before you that Judge Cox was intoxicated at that time; his language is—he is a cautious man, I apprehend, one who probably would not wittingly do injustice to anybody, he says that he "thought Judge Cox was intoxicated." Now upon that kind of evidence, upon Mr. Taylor's thoughts, are you going to form a thought, and is that thought going to mature into a judgment beyond any reasonable doubt? It would be a slight foundation for any such judgment. We will now see what Mr. Taylor adduces as evidence upon which to found his thought. In other words, upon what evidence he bases the impression that he has formed. The first thing he says, was that the Judge seemed to be mistaken as to what side he was on. Now, I desire to call your attention upon that point to the evidence; we find it in the proceedings of the tenth day, page 13, also 16 and 17. Upon the direct examination. Mr. Taylor testifies:

I think that he mistook the position that I occupied. He asked me some questions that convinced me that he thought I was on the same side of the question that General Edgerton was, and at the time being he seemed to think that General Edgerton and myself were opposed to Mr. Bentley.

That is what he swore to on direct examination, Now, when you come to the cross-examination, we find out upon what Mr. Taylor bases this evidence of the Judge's mistaken ideas, that again shall be evidence of his intoxication. We will see what it is based upon.

Q. Now, what was the remark Judge Cox made to you?
A. I cannot give his language but I was arguing upon the question of the insufficiency of the answer and he spoke to me saying, that he thought it was an insufficient answer and that he would have to grant Mr. Bentley's motion and spoke of it in a way to lead me to think he supposed that I was arguing wifh General Edgerton.
Q. In what way did he speak? That language certainly did not lead you to think so?
A. Well I can't state his language now, but the idea that he conveyed to me, was that he thought that Mr. Bentley had the best side and I the poorer side of the question.
Q. Well the fact of is that Judge Cox told you that you need not argue any longer, is it not? And that you need not go any further on this. That he thought Mr. Bently was right in the position he had taken?
A. Yes, and that I was wrong.
Q. Did he use that language?
A. I don't know that he did, I cannot give his language, but that was the purport of it.
Q Now, wouldn't it be very natural for a judge, though ever so sober, if he had made up his mind upon the point, to tell the counsel who persisted in arguing upon the point, that he had already made up his mind, and in his favor, and that he need not go and argue it any longer?
A. That would be natural and proper, I think.
Q. That was the remark that you referred to?
A. That was the remark that he made that I speak of.
Q. No other remarks that you now think of?
A. I don't now think of any other.

Now, I call your attention to the fact that the witness has admitted on the cross-examination, that instead of the language showing that he mistook on what side he was, that he simply informed him that he need not go on any longer because he had made

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up his mind that he should have to grant the motion. Would anything be more natural in a judge, would anything be more reasonable in a judge, than when he had made up his mind and the parties came up and again attempted to argue, and he had made up his mind in their favor, to stop them. Now, Mr. Taylor seemed to be under the mistaken idea that if he had been on Mr. Edgerton's side, and the Judge had made up his mind against Mr. Edgerton, or rather made up his mind against Mr. Taylor, that then he would have told him to stop. Well, that would not be the way any good Judge would do, the Judge would not stop the argument of a man against whom he had already determined to decide. But he would stop the argument of a man in whose favor he had already made up his mind. It was a very natural thing for the Judge to say that. Mr. Taylor at the time or later has mistaken the language of the Judge, and understood it to mean something that it does not mean, or that does not necessarily lie in the language. But upon that question as to whether the Judge did really mistake what side Mr. Taylor was on, and as to whether if so, it was legitimate evidence of intoxication, we will show you by a witness that we shall call, an old practitioner and a good lawyer, that if the Judge did mistake on what side Mr. Taylor was it was not the Judge's fault, but Mr. Taylor's; that as a matter of fact it was no evidence that Judge Cox was drunk because Mr. Taylor made his argument in such a befogged manner that this attorney whom we shall call, who sat and listened attentively, never having heard these gentlemen before, and being anxious to listen to them and hear what they had to say, that he, the old practitioner, could not, for about ten minutes, tell on what side Mr. Taylor was, himself; and he was perfectly sober, and a man that never drinks.

Now, then, if that was a fact, if that is the case that Mr. Taylor acted in such a manner and argued that case in such a blind way as I have sometimes heard attorneys do, and as I undoubtedly have done myself, so that an outsider, a man who sits and listens to it and pays attention to it, cannot tell what side he is on from his argument, why it necessarily would not be any indication whatever that Judge Cox was drunk if he could not tell in the case then before him. Now, again, the further evidence that Mr. Taylor brings forward of Judge Cox being intoxicated is his idea of the nature of the order that was given on the motion after argument. He says that Judge Cox gave an order allowing their motion, which was one for judgment on the pleadings, for the reason that the answer was not good for anything. He allowed their motion, but also allowed Judge Edgerton to amend his answer, and told them to draw up their respective orders. Now I do not know whether that was a necessary evidence of intoxication. It rather struck me at the time that there might be something wrong in this order, even if the Judge could not on that account be changed with intoxication. But I have learned since, that it is the practice in the district of the respondent, upon motions of that kind being made, to make a decision upon the motion, granting it conditionally, to grant the motion and then if it is found that the other party has a right to amend, and he makes his application to make such an order at the same time, so that virtually two orders are given, one that the judgment on the pleadings shall be had unless an amendment is made within a certain time, and that this would be perfectly proper, I apprehend there can be no manner of doubt about.

Now, Mr. Taylor does not claim that he remembers the exact language of that order at all. He does not claim that he remembers the order;

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he says he can give the import of the decision. Now, it is just as likely that the language of the decision was as I have stated it, as that it was anything else. I apprehend that where a motion for judgment on pleadings is made in that way, that it cannot be dropped right there. It could not be denied because if you deny it, an appeal would lie from it, I don't know whether it would or not, but I apprehend it would, I have not thought of that matter particularly and I do not know whether an appeal would lie, but I rather think that it has been decided by our supreme court, that such an order is not an appealable order, no coming to think of it. Yet, I am not certain on the point. But, if an appeal would lie from such an order, denying the motion for judgment upon the pleadings where it ought to have been granted and where the court instead allows an amendment, I apprehend that the court would be reversed if the answer is so, clearly insufficient; because the motion for amendment is an independent application and would not necessarily be brought up on appeal from the order refusing judgment; that there must be some decision on that motion, for judgment on the pleadings, I am certain in my own mind. That would necessarily make two orders in the case, one allowing the motion, if a certain contingency should not take place, and another providing for that contingency. But be that as it may, there was no action or language on the part of the Judge that showed an intoxicated or bewildered mind, *that*, we will show by attorneys that were present. We will show that not only was Judge Cox sober at the time,—we will show that in the first place,—but we will show also that in this orders which he gave at the time,—whatever they may have been,—there was nothing unusual or nothing improper, nothing contradictory, that if it had been, it would have been noticed by the attorneys present, but of course, they cannot give the language of the order.

There was a statement made by Mr. Taylor from and by which either he or the managers,—I don't know which,—tried to draw out an inference that Judge Cox admitted himself that he had been intoxicated during that term, the language of the witness did not necessarily show it, but the way it came out,—the way in which the question was asked, and the way in which it was answered, rather left an impression on my mind, that if the witness did not desire to throw out a slur or insinuation to that effect, the managers at least desired so to do. The remark was that Judge Cox had come down, and sat by the witness and talked with him, and told him he should not say anything to Judge Lord about what he had seen concerning the managment of the business in court. Now, that was brought out in such a way as to lead you to believe that Judge Cox was desirous that the witness should not tell Judge Lord that Judge Cox had been intoxicated. The witness did not say so, but it would naturally be inferred from what he said, and the connection in which it was brought out, that such was the fact. Now, I will say upon that point that the facts of the case are these,—Judge Cox really did have such a conversation with Mr. Taylor, or some similar conversation, but under the following circumstances, and no other. We will show that Judge Cox had handled the business at that term in such a manner that everybody was praising him for it, that everybody around town was singing his praises from morning until night, for the excellent manner in which he had conducted the business; that business had never been conducted in that way in the county of Waseca as long as it had existed; and that everybody, as I said, was singing Judge Cox's praises for it.

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Judge Cox knew that Judge Lord was sick, that he was crabbed, that he was a man who was somewhat sensitive, that he was a *very* sensitive man, and he was afraid that Mr. Taylor had found out and picked up on the streets and around court from some of the citizens or attorneys, some of these praises; had heard people comparing him probably with Judge Lord, making odious comparisons, probably about the way Judge Lord had transacted business in court, and the respondent's ways. He did not desire Mr. Taylor to tell Judge Lord anything about that, so as not to wound his feelings, knowing that he was sick, and had just lost his wife. He did not desire on any account that any such thing should be brought to him, thereby to wound his feelings; that was the reason that Judge Cox stepped up to Mr. Taylor and said to him what he did: "Now, Mr. Taylor when you go down there, don't say anything about the way business has been managed in court here this term."

That was the sole view with which these words were said, it was a humane view, it was considerations of humanity that actuated the respondent in that case as they always have actuated him all through his life, in his dealings with his fellow man, and this kind remark has been turned against us to be brought up now as an admission that he was drunk, that he was intoxicated The words themselves contain nothing of the kind, the circumstances warranted nothing of the kind.

Senator GILFILLAN J. B. Any time when it will be agreeable to counsel to have us take a recess I will make a motion to that effect. I do not desire to move it now but whenever it is agreeable to counsel I will do so.

Mr. ARCTANDER. Has the hour arrived for the noon recess?

Senator CAMPBELL. It is within three minutes of it.

Mr. ARCTANDER. I would just as soon rest here as at any other time.

On motion the court took a recess until 2:30.

AFTERNOON SESSION.

Senator WILSON took the chair to act as president *pro tem.*

The President *pro tem.* Unless there are some motions to be heard before proceeding with the regular business, Counselor Arctander will resume his argument.

Mr. ARCTANDER. Mr. President, I think I had shown before adjournment that Mr. Taylor was to an extent mistaken when he testified that he thought Judge Cox was intoxicated at the time that he specified on the 5th of April, and the reasons why I thought that he was what they would show upon the subject matter. I now maintain there appears in the testimony of Mr. Taylor, further weighty reasons why doubtful weight should be given to his evidence at all. In the first place it appears that Mr. Taylor was, you may say practically unacquainted with the respondent, he was a may who was not familiar with his ways or peculiarities; had not known him more than for a few years, and then only met him on a very few occasions, only saw him once before on the bench.

Another reason that I now desire to call the attention of the Senate to this that it appears that Mr. Taylor's memory is rather defective, comparing his evidence with that of the other witnesses. Mr. Taylor seems to have got into his head that he came there in the forenoon; that they went up together to the hotel, and that Mr. Bentley and Judge Cox went into a place that he thought was a saloon; and it was shown on cross-

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examination that it was probable if Judge Cox had been in a saloon that it was a cigar that he bought, and no liquids. That in the afternoon the witness went back to the court room; that some business was taken up, and that then the motion that he was there on was reached. Now, the question was put to Mr. Taylor whether or not the Judge did not charge the jury there that afternoon. He said he did not remember. At first his impression was that the jury had been charged, and that there was nothing wrong in the charge, nothing to enable a man to judge from that that the Judge's condition was so as to make him unfit in any way, or less fit than he ought to be for the discharge of his duties. It became evident afterwards that the charge that Mr. Taylor had reference to was one that was made at a prior occasion when he was there, on the 29th day of March, and that his impression was that there was no charge given while he was there on April 5th. It appears from the testimony of the other witness, Mr. Lewis, the testimony of Mr. Hayden, with the records, and from the testimony of Mr. Collester, that the jury was charged in the Powers case on the afternoon of the 5th, immediately before this motion was taken up, and the question was put to Mr. Taylor as to whether or not, not remembering of any charge being given thereon there, if a charge had been delivered, and the Judge's condition had been so that it had shown itself in giving the charge to that jury, and in giving it in a manner that would have indicated that he had not the full possession of his mental faculties, whether or not he would not then have remembered it, and he said he would; that if there was any charge delivered there at all that day it was delivered in good shape and proper manner.

Now, all these facts show what? It shows at least that Mr. Taylor is a man of somewhat poor memory, and that if he is mistaken on one point he could be mistaken on the other points and not remember things as perfectly as some men will. Some precious evidence will be advanced before the Senate under the charge that I spoke upon before this one, the first charge, to illustrate the danger of relying on men of poor memries. Now, this witness, Mr. Graham, I take it, is an honest witness, as I take it Mr. Taylor is as far as his memory goes; Mr. Graham would certainly not bring any thing forth that he did not think was right and true. But this Mr. Graham testified before you that he had seen Judge Cox drink at the house of Captain Jones, with several parties, he rather left the inference although it was in the evening after court adjourned, that Judge Cox probably had drank too much. We are in the happy condition that we can show you not only by witnesses, but by record evidence, that if Judge Cox, and Mr. Graham, drank at Captain Jones' house in January 1870 it must have been either in Heaven or in Hell, for Captain Jones died about a year before, and we can show you by the records of the probate court of that county, by the letters of administration issued to Mr. Blaisdell that he was dead a year before, and he has never been known to have been resurrected. Now as I think Mr. Graham did not intend to tell a falsehood before the Senate, it convinces me only how easily witnesses can be mistaken about such matters, and yet this was a matter of just as much importance to him as any of the other occasions he gave testimony upon here.

Now the same is, I think, applicable to Mr. Taylor, with regard to that order. It is so easy for him to be mistaken as to the exact language of the order and it is the same in regard to the fact that the Judge did not know on what side he was. I should not wonder but Mr. Taylor, having

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practiced under Judge Lord for several years, I should not wonder, I say, that the very fact that Judge Cox interrupted him and told him he needn't argue any longer was the best possible evidence to him that the Judge was intoxicated, for it was certainly something that never would have happened in the practice of any attorney before Judge Lord. He was never known to interrupt an attorney, he was never known to stop short any one, no matter how much he would talk, or how much he had his mind made up; but Judge Lord's mind, as we all know who knew him, moved slow, sure but slow; he was another kind of man from the respondent, and acted differently, and I should not wonder that Mr. Taylor honestly could come in before you on that alone, and tell you that Judge Cox was intoxicated at that time, that he *thought* that Judge Cox was intoxicated at that time. It is a peculiar coincidence though, that Mr. Collester, another witness for the State, swears to this same occasion, this same fifth of April, and swears positively that there was no signs of intoxication in the Judge at the time. It is shown by the record and by the clerk, and by these two other witnesses, that in the afternoon immediately before the taking up of these motions of General Edgerton and Mr. Taylor, the charge was given in the Powers case, in which Mr. Collester was interested, and he testifies that the charge was clear and correct, it was very strongly against him, but it was correct and clear and given in a good manner, and that Judge Cox then, in his judgment, was perfectly sober. Now, it does not appear that there was any recess even or any time in which Judge Cox could have become intoxicated, after the delivery of that charge and until he took up these motions, because the records have been brought in here, or the clerk, rather, read from the records and showed that the matter went right on, and I rather think that he testified to the fact too, that there was no recess.

Now then, it has been shown conclusively, that the charge in the Powers case was given in the afternoon upon the coming in of court, that immediately thereafter this motion that Mr. Taylor testified to was argued and decided. It has been shown by Mr. Collester, and it has been shown by Mr. Hayden, that the charge was clear, and that everything went on nice, and that they noticed nothing out of the way with the Judge at all. It has been shown by these witnesses, I say, that Judge Cox was sober on that occasion when he gave the charge, and the other matters commenced right after without any intermission; of course, there is no reason why he should get drunk when he had no chance to drink. Even Mr. Lewis, the witness who swore most strongly against Judge Cox in that Waseca charge, admits that when Judge Cox gave his charge before the jury on that Powers vs. Hermann case, that it was clear and that there was nothing to say against it; that the charge was all right in every way. Now, it is not to be presumed, I apprehend, that if Judge Cox was so under the influence of liquor that he would not know what kind of a decision to make, and make a decision that was palpably wrong and inconsistent, and was so intoxicated that he did not know upon what side an attorney was, that he should have been ten minutes beforehand able to deliver a complicated charge in an important case, that was perfectly satisfactory to both attorneys; it is not to be presumed that such was the fact.

The only evidence I stated before, that in any manner corroborates Mr. Taylor in this affair is that of Mr. Lewis, who says that he thought the Judge was considerably under the influence of liquor that day, and upon cross-examination of Mr. Lewis it appears that the reason he

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could give for his idea that the Judge was intoxicated, and the only, reason was that he made considerably many side remarks. He was asked then upon cross-examination if that was not a habit with the Judge, and he went further and said he thought during the first week when he himself testified that Judge Cox was perfectly sober, that these side remarks were more frequent than they were during the latter part of the term and during this day, contradicting himself in his reasons, and consequently leading us to a conclusion that would be false or at least doubtful.

Now we will show you, as I said before by the tesimony of Mr. Brownell, one of the oldest practitioners at the bar of Waseca—a man who has known Judge Cox, and had a great amount of business before him at that term, we will show by him that he was present, and he will corroborate the testimony of Mr. Collester, which the State has already kindly furnished us, that Judge Cox was perfectly sober, on that afternoon, and acted in a proper way in every form, shape and manner imaginable. We will show you also by a very intelligent gentleman, that was present during the argument of that motion, and sat right there in court, that Judge Cox was perfectly sober, a gentleman that walked up with him after he was through with court, and had a long talk with him, a man who was a litigant in that court and had been during the day, I believe. The testimony of Mr. Taylor, corroborated faintly as it is by Mr. Lewis, is contradicted by Mr. Hayden, Mr. Collister, and will be further contradicted by the witnesses I have referred to. When that is done I think there will be nothing left of that charge.

I will take up as the next sub-head under that charge, the testimony of Mr. Lewis as to the condition of the Judge during the whole of the last week of that term, with the exception of the 3rd day of April, which I desire to treat of separately hereafter—the day when the adjournment was had. Now, Mr. Lewis' testimony was first, that the first week the Judge was perfectly sober, the second week he was not quite sober and the third week he was far from sober. The only instance that we have been able to get from Mr. Lewis upon cross-examination of any showing upon the part of the Judge of intoxication was this 5th day of April, which has been spoken of before, and disposed of, I apprehend, and the 2nd day of April, which was the day when the Powers case was first taken up in, being taken up the afternoon or immediately before dinner. On that day Mr. Lewis says, the Judge was considerably under the influence of liquor the whole day. On cross-examination he is asked if he noticed anything in the rulings of the court which was wrong, anything in the behavior of the Judge that was wrong, and he says no. All he thought was that he was considerably under the influence of liquor that day, or rather he said it straight and direct, without any if's or and's about it.

Now, upon that point there is against him the direct and positive testimony of Mr. Collester and not only on that point but Mr. Collester, testifies before you that he was in court *every day* during that term and that the only day that he noticed what he thought was signs of intoxication on the part of Judge Cox was that memorable 3rd day of April when the adjournment was had: that every morning he was bright, and during the day in the same way, that he noticed nothing out of the way, and he gives it as his opinion that Judge Cox was not under the influence of liquor any day except the 3rd of April. We have further the testimony of Mr. Hayden which also contradicts Mr. Lewis; in fact Mr. Lewis stands out in this charge in bold relief contradicted by every

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witness that has been brought by the State. The charge we meet here is disposed of before we get to it with the exception of the 3rd day of April portion. Mr. Hayden says that he could not notice any signs of liquor, perhaps, not until April 3rd, (page 35, of the proceedings of the tenth day) could not notice any signs of liquor, perhaps not until April 3rd. Now, upon the 2nd day of April, which was the only day, as I said, that we could pin Mr. Lewis down to, and find out that he could state that Judge Cox was intoxicated; he says, Judge Cox was intoxicated during the whole day. We will see about it. It is already in evidence by the records which Mr. Hayden read from, that in the morning of that day a motion was taken up in the case of Krassen against Bishop, in which Senator McGovern was an attorney. It has also been testified to by him that the next case taken up that morning was the case of Rassmussen against Buxton, in which Mr. Brownell was the attorney for one of the parties, and that that case was tried in full, and that then a motion was made in another case in which Senator McGovern was one of the attorneys, and that then the jury in the Powers case was empanneled and an adjournment was had for dinner; that in the afternoon of the same day the *ex-parte* divorce case of Fuller vs. Fuller was taken up before the jury, being a case of adultery, and tried and disposed of; and that then the Powers case was resumed and the trial proceeded with during the whole day and during the evening session.

Now, we will call witnees before you and show that Mr. Collester and Mr. Hayden spoke the truth when they said that Judge Cox was sober on that day and that time. We will corroborate the testimony of the State by those witnesses, contradicting their witness, Mr. Lewis, by calling before you Senator McGovern, who appeared in those two cases, and Mr. Brownell, who both will swear that Judge Cox was perfectly sober; that nothing was noticed out of the way; and we will call before you one of the jurors in the case of Fuller against Fuller, who sat as one of the jurors in that case, and who was present during the whole of the Powers case that was tried afterwards, being a witness in the latter case, and a juror in the prior case; a man who has known Judge Cox for twenty years; a man who has been his next door neighbor, almost; who sat right there and noticed him; and he will say, in his testimony before you, that he noticed no signs of intoxication, in the conduct, manner, language or appearance of Judge Cox. He saw nothing which indicated, in any way, that Judge Cox was intoxicated; nothing that indicated even that he was under the influence of liquor, during the whole of that day. We will bring before you the parties in the case that was tried, and show by them that the Judge was not intoxicated; and I think that Mr. Lewis, by that time, will be so thoroughly disposed of, that there will be no longer a necessity to spend time or wind upon him.

Now, as to the 3d day of April, the case is probably more questionable, so far as it has gone. As to the 3d day of April it appears that Mr. Collester and Mr. Hayden are of the same impression as Mr. Lewis, viz,—that the Judge was intoxicated. Mind you, this was the day upon which the Powers and Hermann case was taken up, and after a short time had been spent in examining witnesses, an adjournment was had on a sham motion as has been testified to here before you. I say that on this day it appears that Mr. Hayden and Mr. Collester had an idea the Judge was intoxicated, but I desire to call your attention to the fact that although Mr. Lewis testifies point blank that Judge Cox on that

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day was intoxicated and unfit to proceed with the business, that Mr. Hayden, the clerk, more careful, more cautious tells you that he thought he was under the influence of liquor at that time; that Mr. Collester was not ready to swear that the Judge was intoxicated, but he thought he was at least sleepy; that the fourth witness that was called upon that charge, Mr. Newell, testifies, not that the Judge was intoxicated, but that he was impressed that the Judge was under the influence of liquor, he thought he was. Now, there is none of this, except that of Mr. Lewis, that is definite testimony. Mr. Lewis has described to you the appearance of the Judge in the morning. He comes here with an unblushing face and tells you that the Judge's hair was uncombed, and his eyes blood-shot, etc. Mr. Hayden was asked the question, as to whether there was any such appearance and he said no. Mr. Newell was asked whether there was any such appearance, and he said no; his hair was combed and his eyes were not blood-shot. The only thing that troubled the Judge, as Mr. Newell explained it, seemed to be that he was rather dull; nothing out of the way with him except sleepiness; he seemed to be sleepy; and upon that he bases his idea that the Judge was intoxicated.

There is a peculiarity of this testimony that ought to be noticed, and that is the fact that although some of these witnesses seem to agree upon the fact that they were more or less impressed with the idea that the Judge was intoxicated, yet when they come to describe appearances, actions, and conduct, they flatly contradict each other. We have already seen the contradiction by Newell and Hayden of what Mr. Lewis has testified to. Mr. Collester says the same thing, that there was nothing the matter with him except that he seemed sleepy, either sick or used up. When you investigate further you will find that Mr. Lewis claims that he was sleepy, drowsy, so that you could not waken him up or get him to pay attention; and Mr. Hayden tells you that he was quick in his actions, that he snapped the attorneys up. Now, is it not a remarkable fact that each of these witnesses should be correct in their supposition, their theory or opinion, as to the Judge's condition, and yet disagree so materially upon what his actions, his line of conduct, and his appearance was? There are other discrepancies in the testimony between the witnesses. Mr. Lewis claims that Mr. Collester asked for an adjournment there, on account of the condition of the Judge. Mr. Collester swears, too, that he thinks he made that same motion. Mr. Hayden swears that it was Mr. Lewis that made the motion for the adjournment; and it rather seems to be the impression of the witnesses on the part of the defense that such was the case. Mr. Lewis denies it. Mr. Lewis denies that he had any talk with his client about adjournment; and the impression that Mr. Lewis leaves here is, that this adjournment was had by consent, on account of the Judge's condition. I desire to call your attention upon that question, as to whether it is reasonable to suppose that that was the true state of facts. Why, when that motion was made for a continuance, during the trial of the case, when the adjournment was sought to be obtained during the trial of the case, for the reason that a witness who should be there was not present, the Judge spoke up and said: "Gentlemen, this is an unheard of proceeding. We cannot allow this jury to sit here and wait for a witness to come," and he was correct. Mr. Lewis said that was correct in law; and Mr. Collester also said it was.

Now, is that the languge, is that the judgment of a judge who is so far

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under the influence of liquor that it is necessary for the attorneys engaged before him to ask for an adjournment because they cannot safely proceed before him? Is he shown, under the testimony, to have done anything at all there before them that was wrong? Has it been shown that in his rulings he was wrong? Not at all. He had not spoken, hardly a word, as Mr. Lewis said, and Mr. Collester chimes in that he had not spoken a word. He was sitting there, probably, with his eyes closed, probably drowsy, perhaps sleepy; but would that show that they could not safely try that case before him? Had they tried it? Had they made an effort? Had they found that he did not have his wits or his knowledge about him? Had they found out that it was intoxication that was the matter with him? Now, it is already in evidence here that the Judge, during that term of court, for about fifteen or twenty days before the third day of April, had been running court incessantly, early and late; starting at 8 o'clock in the morning and holding until 12; starting in again at half past 1 and continuing until 6 o'clock in the evening; beginning again for a third time at half past 7, and continuing until 10 or 11 o'clock at night. A man who is under the mental strain that a judge under such circumstances would be, would be more than a man if he could stand the pressure without showing it; if he could avoid looking weary and fagged out, "tired out," as Mr. Collester says his impression was at the time. Further, upon the basis of his knowledge that Judge Cox was a drinking man, attributing it to a spree, but having no evidence of it, this man, who has sat here and admitted that he stood before Judge Cox, the respondent, on the occasion testified to, and violated the oaths that as an attorney he took never to deceive the court by any artifice whatsoever; a man who has stood here and admitted, as Mr. Lewis has, that he arose there and stated that he *knew* that it was true that Collester wanted a witness from Waseca, and yet acknowledging before you that that statement was false, admitting that he had broken the oath that he took when he was admitted to practice before all the courts of this State, he now comes before you to ask you to receive his oath as to the truth of what he testifies to, when he swears with a bitterness that is almost unsupassed, a bitterness that is so strong that one would almost think he lived in the respondent's district, and was one of the candidates for his official shoes.

It will probably be somewhat of a surprise to you, Senators, if we shall be able to show, upon this article, that when the adjournment was had in the Powers case, on the 3d day of April, it was not because Judge Cox was intoxicated, nor because he was unfit to do the business, but because one of the attorneys in that case desired to steal a paper of importance in the case from the possession of the other attorney; when it is shown to you that his client informed him that he had to have that paper or lose the case, and that of an adjournment or something ought to be had in order to get hold of it, and if it can then be shown to you that he proposed the matter an adjournment as an excuse, that he tried to make the other attorney in the case believe that the Judge was intoxicated, and that that paper disappeared after the adjournment and was never entered in the case or offered in the case. Then it probably will be seen why this accusation is made against the respondent. Then it probably will be seen that it was not because this respondent was drunk or intoxicated or unfit to proceed with the business, that this adjournment was had, as you are led to believe by the testimony of Mr. Lewis, but that it was that he might commit a rascality, that he might commit

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another breach of his oath and steal a paper and a record from the attorney on the opposite side. If that comes out, I ask you to take Mr. Lewis at your mercy and decide what his testimony before you here is worth.

It will be admitted on the part of the defense that Judge Cox on that morning did not feel well. It will be admitted, and it has already been brought out to a certain extent by the prosecution that he was then and for some time had been suffering from a boil. Now, gentlemen who have suffered from the same malady know what there is in that They know what a strain is thrown upon a man to sit with such a plague upon his body, day after day, night after night, straining every nerve to do right, and to keep his mind clear on the business before him. It will not be wondered at that Judge Cox, under those circumstances, suffering that bodily pain, with the mental wear and tear that he endured there during that time, with the strain upon his nerves and body, consequent upon having to sit there all that time, despatching business in a more expeditious manner than had ever been done before in that county, working day and night, the attorneys protesting against it, because unable to stand it, although he sat there performing the hardest, the most laborious, the most wearing part of the labor; I say it would not be wondered at if, after he had gotten through with fourteen day's exercise of that nature, going there under the circumstances which have been related to you, that he should have appeared, in the eyes of an ordinary spectator, not merely tired and weary, but utterly "fagged out," and this will be more manifest when it will be shown to you that during that week, and particularly during the trial of that case, the plague from which he suffered, the boil, was so bad that it was impossible for him to get sleep, that if he went to bed it was impossible for him to get sleep, and that the only way in which he could wile away the time was to sit up and partake of some innocent amusement, and I think it will appear in evidence that probably that night, not being able to sleep, he left his bed and stayed up till one or two o'clock. He came then to the court room in the morning weary and worn-looking, probably looking tired and sleepy. I believe our witnesses will admit that he was, but, at the same time, every one of them will say, I believe, that there was nothing in either his appearance, his actions, or his conduct, all the way through that showed that he was intoxicated.

Mr. Hayden would have you believe that when court was adjourned the Judge was in such a condition that he had to take him up to the hotel and put him to bed. It is in testimony that the Judge that morning, complained, both to Mr. Lewis and Mr. Hayden, to one of them of having a severe headache and to the other, of having a sick headache, which would naturally follow from the strain that he had been subjected to in sitting up part of the night. Mr. Hayden would have you infer that he carried the Judge up to the hotel and put him to bed, leaving you to infer farther from that, that the Judge was in such a condition that there could not be any question as to what was the matter with him. Upon cross-examination, it appears that that language, on the part of Mr. Hayden, was malicious, for it was not a fact. All that he did in taking the Judge to his hotel, was to say, "Come and walk up to the hotel, Judge;" and they walked together. That all there was about putting him to bed, was that he walked up in his room with him, and that the Judge took his coat off and laid his teeth on the table, and that Mr. Hayden left. I would not say that there was malice in

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that; I would rather think that it was carelessly made, if it were not followed up by the statement that when he met Judge Cox down in the hall, he said, "Come, let us walk up town," and Judge Cox said, "No, thank you, I have had enough; I have taken enough." Now, upon cross-examination he abandons that. He says that Judge Cox probably said, "No, thank you; I don't want anything." There is a difference in the two statements. "I have had enough," would imply that he was in an intoxicated condition at the time. If he stated as he says on cross-examination, that he did, that he could not tell which of the expressions it was, but that he probably said, "No, I thank you, I don't want anything now;" there is this difference in it, that that does not imply any admission on the part of the Judge, that he had been drinking at all.

But, gentlemen, I am prepared to state that Mr. Hayden's testimony is false in toto, in that particular, that he did not even go up with Judge Cox, much less take him up, that he did not go to his bed room, much less put him to bed. We will show you, I think, by a reputable witness that he, and another gentleman, who is here and who is ready to testify went up the street together, that Judge Cox was perfectly sober, that he complained of a headache, that they went in to a saloon and Judge Cox took a pony of beer, and then went up and lay down. Upon this branch of the article, we will bring before you not attorneys, (there was nobody there but those who have testified to it, so far as we have been able to find out) but we will bring before you the deputy sheriff that was in attendance upon that day; we will bring before you two gentlemen who sat as jurors in the case of Powers against Harmann; we will bring before you one of the parties to the suit, and one of the witnesses for the party on the other side, and we will bring before you another respectable business man of that town, who was present there in court during the forenoon, and we will show by all these witnesses that there is no doubt in their mind that, at the time, although the Judge was weary and tired, there was no such drowsiness as Mr. Lewis has testified to; that all there was to it was that he looked tired and weary, and that he, in their opinion, was perfectly sober at that time.

The opening upon the part of the State promised considerable. I did not know what to think of it when I heard it, uncertain whether it was done to prejudice the public mind, or to prejudice the Senate against this respondent; but promises were certainly made in that opening which have never been fulfilled, proof of which the State has not produced before you although they agreed so to do. Mr. Manager Hicks stated in his opening, in regard to this particular day, on page eleven, speaking of the clerk:

> At the beginning of the court in the afternoon, he goes over to the hotel, gets Judge Cox and escorts him back to the court-house and acts as a convoy to keep him from getting into those hell holes, surrounding him upon every side, and when he gets him to the court-room, the respondent, upon his own motion, was obliged to adjourn the court until 7 o'clock in the evening, and was driven out by his friends, away from town, in order to be kept sober.

I say that, certainly, is a specific assertion. I say it certainly will create prejudice in anybody's mind to have these things stated as facts; and I ask you why, if they are facts, they are not proven? Is there any evidence here that Mr. Hayden took him down there, that he was obliged to adjourn court, and that he acted as a convoy to him to keep him out

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of the "hell-holes?" Is there a scintilla of evidence before you that Judge Cox required anybody to take him out that afternoon, much less to keep him away from town, so as to keep him sober? There is not a scintilla of evidence before you on that point.

Besides, I think it has already appeared in evidence here by one of these men, who knew Judge Cox intimately,—I have particular reference to Mr. Lamberton, who is a witness for the State, who has known Judge Cox for years and years, for twenty or thirty years, living in the same town with him, and who has been on intimate terms of acquaintance with him,—that he has never seen Judge Cox intoxicated when he was drowsy; and I think it will be shown to you conclusively, that whenever Judge Cox is intoxicated, or in his life has been intoxicated, that the very last thing that ever happens is that he gets drowsy and sleepy; on the contrary, that there is a wildness about him that is almost unsurpassable; that no man ever saw Judge Cox drunk, and saw him sleepy. I vouch here for the correctness of that statement. Besides that, you will notice that we tried to draw out from this witness, Mr. Lewis, particularly, as well as the other witnesses on the other charge, certain peculiarities about the face of Judge Cox. I believe we can show you that it is invariably the fact whenever Judge Cox is intoxicated, that a little scar on his nose gets very perceptibly red, and the nose a livid white hue; a little scar on the left cheek, that he has received, I don't know when, or under what circumstances, gets black. Now, that certainly is a peculiarity that a party would notice in the first instance, and immediately under such circumstances. I think we can show by his old partner, by his friends in St. Peter, who have seen him when he was on sprees, before his election as Judge, that they never saw him intoxicated, unless these marks appeared very prominently on his ace; and certainly, if they were there, they could not help but be noticed.

I now beg leave to refer you to the third article, being the so-called trial of the Wells vs. Gezike case, in New Ulm. That is a charge, that, at the first glance seems to have been made out pretty fully, but before we get through with this matter, you will probably have considerable more doubt as to the truth of that charge than you now have. It is true, and it is unfortunate for this respondent, that upon this charge men have testified, one man, at least, who occupies a high position in the community which naturally throws a atmosphere of reasonableness, of truth, etc., over his testimony. I have reference to the Hon. M. J. Severance; but I think we can satisfy you, before we close this case, that when Judge Severance testifies in the harsh, strong language that he does and imagines that Judge Cox was intoxicated, as he claims he was at that time, that there is an explanation for it. I will not now dwell upon that, but I desire to call you attention upon this article, to the manifest difference which there is between the testimony that has been adduced to support it, one so great, indeed, that it seems to have taken, in its description of the condition of the respondent, all the ranges from sobriety to a condition of complete drunkenness, and to ask you whether or not taking the testimony already in, contradictory as it is, it is made out even to an extent sufficient to call upon us for our defense. Let us compare the testimony. Mr. Pierce swears that Judge Cox, during the trial of that case was "drunk as a fool, was crazy drunk;" that they treated him "like an irresponsible person;" that "he was entirely unconscious." That is Mr. Pierce's testimony. Mr. Severance is not able to swear up to that mark; he says, "He was intoxica-

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ted," and that he "thought the intoxication increased during the hearing that lasted four or five hours."

Mr. Goodenow states that "he was exceedingly drunk." That is the testimony of those three witnesses. We then come to the testimony of Mr. Webber, that the Judge appeared to be partially intoxicated, and that he formed that impression as to his partial intoxication, not from his appearance, for there was nothing particular in that, nor from his conduct, for he did and said but little, but that he formed that impression from a remark made by the Judge, before he went into the court house, that he did not trust any of those fellows very much. Now, I asked him, did the Judge say anything at that time, about intoxication? No, sir. That was all he said, was it; that he did not "trust any of you fellows, too much?" That was all. Now, I submit whether any reasonable or sensible man has a right to draw an inference of drunkenness or intoxication from such a remark. It seems, he says, the Judge hesitated somewhat about going on with the business. The court had adjourned, and the remark that he made in regard to his not trusting any of them too much, might have had reference to the fact—as a joking remark—that they would take advantage of any question of law; that they would try to fool him; that they would misstate the law, and misstate the evidence; that he could not trust them; there might have been a hundred reasons for it; we do not know in what connection it came up.

Now, let us see what Mr. Lind testifies as to this same drunk. "Judge Cox was not sober, nor would I say he was drunk; had been intoxicated the night before; felt dull; had the *katzenjammen*, as we call it at New Ulm; had the *re-action* of the drunk; I don't think he was drunk; he suffered from the dullness that followed after the spree is over; I think the liquor was dead in him; he was suffering from the relapse; the drunk was over; I did not notice any derangement of his intellectnal faculties." He was asked whether he was "terribly drunk?" No, sir. Was he "crazy drunk?" No, sir. And of course, he was not, when he says he was not drunk at all.

Now, I say, how will you connect this testimony? Here is a man on one side who testifies that he was "crazy drunk" and, as I shall show hereafter, testified also that he incessantly interrupted them, that he made foolish remarks, and rendered foolish decisions and complained because nobody would hold his decisions; and here is another man who swears that the Judge was partially drunk, and he did but little but sit quiet there, and the third one swears that he was not drunk at all, that he had been drinking the night before, was dull in his head, and had the *katzenjammen!*—and I desire fully to explain that term, as it is a technical term and a technical term in a foreign language. Senators, at least some of them, have, perhaps, sometimes had a little spree in the evening, upon champagne or more common beverage, and perhaps drank a little more than was absolutely necessary to walk straight. I don't say that it is necessary to be intoxicated to have the *katzenjammen* in the morning. It can be had where a man has drank just enough to put his system out of order. It is a matter of fact which we well knew, at least, most persons are so fixed, that in the morning following a drinking bout most persons feel a little dull, their head does not feel exactly right, there is an ache in it somewhere; they feel that the eyes are dull; they do not feel well generally. Now this feeling does not begin until the spree is over, until the effect of the liquor is over. So

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long as the spree lasts, so long is there no dullness; but when the spree is over, when a sleep has been had,—for it is necessary that a sleep should be had first,—so that the effect of the liquor is deadened, so that this liquor which was once a stimulant has become, as you might say, modified and is dead in you, and you feel bad, "feel mean,"—that is about the way you express it,—as a man generally does after having been on a spree in the evening, and having slept it out, that is what is meant by the term *katzenjammen*. If he had that he certainly was not drunk when he had it, because that would not set in until the drunk was over, and we are not charged here with having *katzenjammen*, or with suffering from dullness or heaviness the next day, and therefore, with being unable to discharge our duty.

We are charged here with being drunk in the discharge of our duty. Now, I say, it was probably wrong for the Judge to get drunk there that night, if he did get drunk; he had no business probably to drink at all, but he is not charged with that in this case. He is charged with being drunk the next day, during the trial of that case. I say that Mr. Lind's testimony shows—and I apprehend that he is an expert, from the way he testifies all the way through here, and from the fact that he lives at New Ulm, I suppose he has a right to expect to be—that when he testifies to that, as he certainly has not shown Judge Cox any mercy at other places, there is no reason to believe that he could make it any less in this case than it really was. An examination of his testimony, and comparison of it with other testimony in the case, will show the contradictions I have mentioned. Contrast it here with the testimony of Mr. Pierce, and of Judge Severance, and particularly of Mr. Goodenow, the man who comes here and swears that Judge Cox was exceedingly drunk, although he swears at the same time, that he sat with his back to him all the forenoon, probably turning around three or four times during the forenoon for four or five seconds at a time. I say the testimony cannot be reconciled. If John Lind's testimony is correct then the others are wrong, because there can be no mistake about it. There can be no honest mistake on the part of Mr. Pierce that the Judge was "raving drunk, crazy drunk," and acted as he describes he did, if Mr. Lind is telling the truth, because the two are incompatible. Mr. Lind is supported by Mr. Webber, and Mr. Pierce is supported by Judge Severance. But we will go further; Mr. Pierce testified too, that all the time during that trial the Judge was interrupting them, that he was hardly ever still, that he was all the time making orders and decisions that nobody heeded. Let us see what the other testimony is. Mr. Webber said he sat there and said but little; he sat there and did but little; he only spoke once when he wanted to know if we were going to admit such evidence." That is Mr. Webber's testimony. Mr. Lind's testimony is "I don't remember his making any rulings or orders, would have remembered it if he had" —flatly contradicts Mr. Pierce.

Judge Severance testifies also in answer to my question, "Did he interrupt you incessantly during that trial?" "No, sir, he did nothing of the kind." He testifies, too, that once or twice the Judge spoke about an undertaking on an attachment. Mr. Pierce stands alone there in that wholesale swearing with all the balance against him. Again Mr. Pierce swears, that "he complained that nobody would listen to him; all the time mumbling to himself, supposing he was trying the case, right then and there." Mr. Lind, when asked the same question, answered that he did not hear any complaint on the part of the Judge, that no-

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body was minding him; that he heard no talking and mumbling while he was upon the bench, and that he would have heard and remembered it if there had been anything of the kind. He also testified further that he did not remember anything extraordinary about his behavior on this occasion; if there had been he thinks he would have remembered it. He also says that the Judge only interfered once; that Cole objected to certain testimony and gave his reasons, and that the Judge said that if those reasons were true they might just as well settle the case then and there. Now does that testimony show that Mr. Pierce was correct, that he was making orders and decisions all the time, that he was evidently supposing that he was trying the case right then and there, when, instead of that, it had been agreed that it should be submitted without deciding anything. The very language that he used, "if that was correct it might just as well be decided then and there" showed that he knew what he was about, showed that he knew that he was not required to decide any question at that time; they hadn't been doing that before, but that point struck him so forcibly that he said we might just as well go on, there is no use waiting, we might just as well decide it right here.

The inference was left by Mr. Pierce that the reason this amanuensis was chosen to take down the testimony was because the judge was in the condition he was there that morning. He states in answer to our question as to whether the Judge's condition that morning had anything to do with that course of proceeding, "it had everything to do with it, sir;" and five minutes before that time he had sworn, as Mr. Severance afterwards swore, that that arrangement was made the afternoon before! The condition of the Judge the following day had everything to do with the arrangement what was made the afternoon before; that is sensible, that is a lawyer-like statement! And Mr. Lind told us it was not on account of his inability that the arrangement was made at all; that the arrangement was made because the Judge would not take the testimony himself; and Mr. Severance tells us that when as he now claims, he went over in an alley and found the Judge standing there; talking with somebody; that the Judge first refused to take the case up the next day; that he said he would not take it up, court having adjourned and it was only to accommodate them that he finally agreed to do it; but then only on the condition, which he *himself proposed*, not giving it out at all, as Pierce would have you believe, that they were obliged to do this in order to go on,—but the Judge prosposing to them, that if they would get an amanuensis to take the testimony and submit the points, that then he would go on and try it then and there, and not otherwise.

I do not desire to call your attention to smaller and less important differences between the witnesses upon this charge, there are several; there is the statement upon the part of the witness Pierce that he had never know during his experience of such a practice as submitting a case in that way without any rulings being made. Now it is a matter of fact, as every practicing lawyer knows to be so, that it is done every day in the year in our courts; that court cases are frequently tried in that way; that not a single ruling is made upon the objections and that the whole investigation proceeds, and the objections and exceptions are noted, and the court reserves the decision and then allows an exception to the party he rules against, upon the final decison of the question. Now, Mr. Lind tells you that he knows it to be done very frequently in equity cases, for instance such as this was, and that it would have been

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done here whether the Judge had been drunk or sober. Mr. Severance tells you it is a very common practice and an every day occurrence. I do not claim that this is material to the case, except as it shows, what a wonderful liar is that man Pierce. That same man Pierce says "that the Judge was requested to keep quiet; that is just the way we talked to him." And when Mr. Severance was asked whether they treated the Judge in that way, as an irresponsible person, as Mr. Pierce claims, he says "nothing of the kind." And you know, gentlemen of the Senate, that Pierce *might* have said this, but that men like Gordon E. Cole and Judge Severance would not so treat the court. Pierce might have done it, but those men are gentlemen and would never have done it, even if he were drunk, as Mr. Pierce would have you believe they treated this respondent. Mr. Pierce tells you that "everybody in the room could see that the Judge was drunk." Mr. Severance tells you that his eyes were red; his eyelids were swollen, and his face was swollen and inflamed. Mr. Webber, on the other hand, who has known him for a long time, who has lived in New Ulm for several years, and who knows him better, and has seen him oftener than Mr. Severance or Mr. Pierce, says, there was nothing to indicate that he was drunk in his actions; that he simply sat there; that there was nothing to indicate that he was drunk in his appearance, except that his face might probably have shown a lark from the night before; that he was kind of stolid in the face, as it would be natural for a man to be probably, that had the "*katzenjammen*."

Now, I ask you gentlemen, how it is, that what was promised in the opening of this case, would be brought forward under this article, has not been done. Why is it that only Pierce and Lind and Webber who swear through all this district, through its length and breadth, as to cases of intoxication of this respondent, why is it that they and Mr. Severance are the only attorneys who are brought in here? Why is it that the Hon. Gordon E. Cole, one of the most upright and honorable men that this State has ever produced, has not been heard to testify as to whether the Judge was drunk in that case. It was promised that he should be here and testify, but instead of that they have had to resort to this little man Goodenow,—a man who as it has already come out in evidence, was claimed to have done a mean trick by falsifying election returns, and the man who as the evidence shows, appeared as a prosecutor against this respondent before the House of Representatives in 1878, and did what he could to injure him at that time,—a man who is already shown to be a sworn enemy of this respondent,—why is it that the Hon. Gordon E. Cole is omitted from the list of the witnesses examined here by the state? Why is it that although he was subpœnaed, brought here and examined before the judiciary committee, although he was subpœnaed and brought here as a witness on this trial, and danced attendance on this court for days, that he was not called upon the stand, but that resort was had to little Goodenow to replace him! Why? Because the testimony of Gordon E. Cole, to say the most, would not exceed that of John Lind, that the Judge had evidently been on a spree the night before, and that probably his nerves were somewhat shattered, but that in his opinion he was not intoxicated at the time. That is the reason why Gordon E. Cole, although subpœnaed and in attendance upon this court was not called as a witness upon this article.

Now, what is it that the managers in this case desire? Is it the truth? Is it honest and fair treatment of this respondent? Is it a

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true statement of the facts that they are after? Do they desire to have them brought before you by respectable and responsible men, or is it the fact, that they do not care, except to get men who can swear strong enough? It looks almost that way. We had expected to see General Cole upon the witness stand, called there by the State, and throwing the weight of his testimony in our favor, as he was not called we shall call him and we shall let you have the benefit of his judgment, and I think it will at least offset that of Judge Severence.

But we have other men here than the attorneys who were present in that case. There was the clerk of the court, who it appears was present, and sat and talked with the respondent during a portion of this trial. We will call that clerk. He is no friend of this respondent, he has already been upon the stand, and sworn that on a certain occasion he thought the Judge was intoxicated in court. We will call upon that same man who has been a willing witness for the State, and as I said, is no friend, politically or personally of this respondent, but quite the contrary, nevertheless we shall call him, and you will hear from his lips that there was nothing in the condition, actions or appearance of the respondent at that time to indicate that he was intoxicated. We will call upon the parties in that case; and we have made it a rule gentlemen, to call upon the parties in all of these matters whenever we have been able to find them. Attorneys who are candidates for the Judge's shoes are not such witnesses as we desire to rely upon; attorneys who may have been beaten in a petty case, and who have got a grudge against the respondent because they through their ignorance were beaten, we do not want as witnesses, if we can get other good and reliable men. We think that the parties in a case have more real interest in the result than the attorneys have, that they have larger interests at stake, than the lawyers, for the lawyers always look out for their own fees. Now, then, parties that have their property, and their property rights, and their interests at stake in such a case, some of them to a larger, some to a smaller extent, are apt to notice, and notice more particularly and correctly the condition of a judge who is to sit in the trial of their case than anybody else. In this case the parties on one side were non-residents and were not present. The parties on the other side were Mr. Gezike and Mr. Behnke; they were both defendants in the case. Mr. Behnke, if I understand correctly, is one of the oldest and best citizens of New Ulm, a man who has lived there for years, an early settler in that county, a man of some means, a man of business, and a man of intelligence, who has known this respondent for years. I understand that that man had at stake in this case about $25,000, all that he had in the world. Mr. Gezike, who was the other party defendant, is an intelligent man who has been the sheriff of that county for years, who has served under this respondent in the army, who has been with him and seen more or less of him for 26 years.

JUDGE COX. Not in the army, Mr. Arctander.

Mr. ARCTANDER. I desire to correct that statement; it was a misunderstanding on my part, the gentleman has not been in the army with the respondent, but he has known him, as I understand for 26 years; has been the sheriff, as I said, of that county; the respondent has had his office while a practicing attorney in New Ulm to a certain extent for some number of years. This man Gezike will swear that he has known the respondent drunk, and he has known him sober; that from his intimate acquaintance with him and his observation of him he is able to

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tell when the respondent is under the influence of liquor, and his testi mony will be that the respondent that morning had not a drop of liquo in him; and he will come before you and testify, that all he had in thi world was involved in that lawsuit; that if he had believed the Judge t have been intoxicated in the least degree he would not have dared to risl his case before him; and he will come before you and swear that th Judge was just as sober on that occasion as he is now—just as sober a any man can be who has not tasted a drop of liquor—that is what Mr Gezike will testify before you, and that is what Mr. Behnke will corrobo rate. We will show by two other parties that were present, by the deput sheriff, who was around there; and by a party who was present, who had a case there the day before, who was there and sat around in the forenoon and witnessed the proceedings, and had known the respondent for a number of years, that the Judge was perfectly sober. And when we have convinced you, as I think we already have, that the testimony upon the part of the State is so contradictory, that there is hardly a shred o it left, that has not the ear-marks of suspicion, of malice and falsehood impressed upon it; one witness destroying the web of the other, when we bring before you the testimony of witnesses such as I have described to you, I believe that the Gezike case in Brown county will be disposed of by this Senate without much trouble.

ARTICLE FIVE.

I desire not now to speak upon the fourth article, but to take it up hereafter, and will call the attention of the Senate to article five, being the mandamus case, as I call it. You will remember what it was about that a certain case which had been tried at Waseca had been agreed upon between the parties, and had been submitted to the Judge upon a motion for a new trial; that he should have certified the case, but refused to certify it for the reason that, in his opinion, there was a part of the charge that was not correct, and did not agree with his minutes. But still, to accommodate the parties, he decided the motion for a new trial. Now, the most of the Senators upon this floor are not lawyers, I apprehend, and it is perhaps necessary to make a short explanation of this matter. When a case is tried by a jury and a verdict is rendered against a party, and he desires to have it reviewed in the supreme court, or by the judge, it can only be done in a proper manner upon a settled case, as we call it; that is to say, a party goes to work and draws up what he claims to be a statement of the facts and the evidence, and a statement of the charge of the court, etc. This statement he serves upon the other party, but the other party has then the right to propose amendments to that statement. Then the matter is noticed for settlement, as we call it; that is to say, the matter is brought before the judge, and he has then to decide whether or not the case is right, whether or not the amendments should be allowed, whether or not the party who proposes the amendments is right upon any or all of them, or whether the other party is right; and then he decides how the case shall be, and thereupon signs and certifies it when engrossed as a proper case.

When the case is settled, it is proper to make a motion for a new trial before the judge; and if the judge denies the motion, the party has a right to appeal. Then that settled case is taken to the supreme court, and it is there decided on that "case" whether the decision denying the motion for a new trial was right or wrong. Now, in this instance, it ap-

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pears that they did not proceed in that way. Lawyers have a way sometimes of getting along without all this trouble, especially when the judge is at a distance, and it is this: they come together and agree what the case shall be, without any amendments; they agree between themselves what shall be the "case;" still then it is not good, even after it is stipulated to, until the judge has signed and certified the case, because parties might go to work and stipulate away a case. For instance, in the charge of the court there might be a mis-statement as presented by the stipulated case; the parties might not know what the charge was, and the judge might not be willing to certify to the case with their version of his charge contained in it, for such a "case" should be TRUE, and it is necessary in order to give the case binding effect in the supreme court that the judge should certify it.

It appears in this case that Mr. Brownell and Mr. Lewis went up to St. Peter and submitted this case to Judge Cox, that they had stipulated and argued the motion for a new trial then and there before he had looked over the case. Upon coming to look over the case, the Judge found that Mr. Lewis had falsified the charge, and put in language that was not proper. Mr. Brownell will be called upon in this matter to show you that he when stipulating, did not know exactly what the charge had been, or rather did not know the exact language of it, and that when he and Mr. Brownell, entered into the stipulation, that that should be the case, it was with the understanding that Judge Cox should himself review his charge, and see whether or not it was correct. When Judge Cox came to look the matter up, he found that the case was not correct, and therefore refused to certify it, unless the parties consented to have the charge modified in accordance with the true facts; but, in order to accommodate the lawyers, he did not wait, but decided the motion for a new trial and sent the decision down, in order that the parties should not have their labor for nothing. Now instead of making such changes, in conformity with the views of the Judge, and then presenting it for his signature, Mr. Lewis, who thinks he is going to be benefited by his forgery, and his falsification of the record, goes to the supreme court and gets a writ of mandamus against Judge Cox, an alternative writ, to show cause why he should not certify that case. Judge Cox comes in and shows cause, but the supreme court holds that although he had a perfect right not to certify to a case which was false upon its face, yet that he had waived that right by deciding the motion for a new trial which was based on that case, and that he must certify the case whether right or wrong. Now then, after getting that decision, Mr. Lewis gets from the supreme court a peremptory writ of mandamus, as we call it, viz. an order to Judge Cox, commanding him to certify and sign that case immediately. Now this writ of mandamus of course had to be served upon him, and Mr. Long comes up to St. Peter to serve it upon the respondent, and get him to certify the case. That is what this charge amounts to; that is the purpose for which it is here; that is what Judge Cox did. He received that writ of the supreme court, and he obeyed its commands. That is all.

Now, the point I make is, that the proof under this charge is altogether insufficient; and I may say right here that we shall not introduce any proof against it. I claim that upon the showing of the State they have entirely failed to establish that Judge Cox has been guilty of anything like what they have charged. What is this charge? this is a peculiar one and differs from all the others: "On the 13th day of October, 1879, acting

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as and exercising the powers of such Judge, did then and there examine and disapprove of matters and things then and there pending before him as such Judge, and did consider and act upon matters and things then and therein pending before him as such Judge to-wit: Certifying and approving a certain case in a certain action which had there before been tried before him as such Judge * * * while he * * * was in a state of intoxication," etc.

Now if this matter had been brought up before Judge Cox in the way I was speaking of, viz. upon a notice to settle that case, and he had been drunk during that time, then there would probably be an excuse for saying that he was exercising his duties as Judge, and his discretion to a certain extent, if that had been the matter, if he should decide upon what was correct and what was wrong, if he should allow amendments and disallow amendments then he would be exercising his judgment and then he could be approving and disapproving as they have charged in the article. But this is what the proof shows he did not do. There was nothing to examine; there was nothing to allow; there was nothing to approve, nothing to disapprove. All that the proof shows he had to do was to obey the command of the supreme court, the same as any one else would have to do who should be served with a writ of mandamus, not to stop and consider, and act according to his best discretion, but, obey it blindly, and to do so immediately.

I call your attention in this connection to the writ of mandamus itself which was put in as a part of the cross-examination of Mr. Long; it will be found in the Journal of the 23r l day at page 5. And I call your attention to the last part of it; the other part is immaterial. It recites the whole proceedings in the trial of the case, of testimony being offered, etc., that a verdict was rendered, and that a stay of proceedings was granted so that they might prepare and serve a case for a new trial; that the time was afterwards extended bp stipulation, and that thereafter in pursuance of a notice of motion, the parties appeared before the Judge at the court room and presented the case which was stipulated by the attorneys for both parties to the cause, and a transcript of the reporter's minutes, and notice of the motion for a new trial, requesting him to certify and approve the case, to allow and sign it, and settle it, if in his opinion it was correct. That the Judge took the case for examination; that the attorneys, with the Judge's consent, and for their accomodation, before the case was allowed and signed, argued the motion for a new trial. That on the 11th day of June, the Judge filed in court an order denying the motion for a new trial, and returned the case without having allowed and sighed the certified and approved the same. That it was afterwards presented to him for allowance and signature, and that the Judge filed an order refusing to allow and sign it, or certify and approve it, for the reason that it was not proper (which last does not appear here.).

"And it further appearing to us that said stipulated case is the case upon which said motion was made, heard and denied, and that you do, without cause, and to the prejudice of the right of the defendants in said action, refuse to allow and sign said case, as we are informed by the complaint of the said defendants,

"Now, therefore, we, being willing that full and speedy justice be done in the premises to them, the said Seth W. Long, Ira C. Trowbridge and Dennis Sheehan, relators and defendants, as it is just, hereby command and firmly enjoin you that *immediately* after the receipt of this writ you, as judge of the ninth judicial district of the State of Minnesota, acting as judge of the fifth judicial district of said State, do certify to the case as stipulated, and as of the date of May 27, A. D. 1879.

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"And in what manner this our command shall be executed, make appear to our Supreme court forthwith.

"Witness the Hon. James Gilfillan, Chief Justice of the Supreme Court aforesaid, and the seal of said court, at St. Paul, this 18th day of October, 1879."

And signed by the clerk of the Supreme Court and the seal of the Supreme Court attached to it.

Now, gentlemen, I claim that when that writ was served upon the respondent he had to carry into effect what he was told to do there. He had to obey the command of the Supreme Court; if he did not he would be in contempt of the Supreme Court. When a peremptory writ of mandamus is issued against any one, a private person, a school director or a corporation, the party must obey. There is no discretion about it; there is there is no judgment about it; he must obey and do just what he is told to do. If he fails to do it he is liable and subject to contempt. Consequently the Judge had no occasion, had no room for exercising any discretion or to act as Judge here at all; he was just simply to obey, like any other individual, the mandate of the Supreme Court, and he did so. He was not even allowed, supposing he was drunk at the time he did it, to sober up in order to do it. The Supreme Court tell him to do it *immediately*, after receiving this writ. And, if you remember, the Judge at the time felt some hesitancy about doing any business, about even writing his name,—probably knowing at the time that he was somewhat under the influence of liquor, although not drunk, that he did not consider that it was proper, as will hereafter appear in testimony, I apprehend, and it is a matter of fact, and a notorious fact in that district, from one end of it to the other, that Judge Cox, whenever he is the least bit under the influence of liquor, will refuse to do any act in any form, shape, or manner whatsoever; he will sign no *ex parte* order; he will not put his name to a paper for an attorney who is his best friend, even though he knows he can trust him. He will not do it, because he does not consider it proper for him to act under such circumstances at all.

Now, I say the same thing crops out in this testimony; the same thing appears from the testimony of Mr. Long. When he came there, Judge Cox, as they say here, was in such a state of intoxication as "disqualified him from the exercise of his understanding in matters and things then and there before him as such judge, and then and there rendered him incompetent and unable to discharge the duties of his office with decency and decorum." Why, it appears in the evidence that the man came there with a paper and the Judge looked at it and immediately had sense enough to understand that it was a writ of mandamus; and he says to Mr. Long: "Ah !ha ! you are up with a writ of 'God-damn-us,' are you ?"

Now, afterwards, he holds the matter in the same reluctant manner,—and that is the best proof that the Judge was under the influence of liquor; that matter has been introduced in this case,—the fact of his reluctance to signing the paper at all, and it was simply his refusal to sign it then. It does not appear that he did refuse to sign the paper; he did not refuse to obey the order of the supreme court, but all he objected to was to signing it *that day*; and he told Mr. Long so, and that appears in his testimony, "that he would not sign it that day; that is what he said."

Now, undoubtedly he had to sign it that day if Mr. Long would not let him off; and that is what he finally did. But even if he was under the influence of liquor, was he in such a state that he did not understand his business; that he did not do right? Why, the supreme court

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commanded him to certify to this case that had been stipulated before. It is stipulated between the managers and counsel for the respondent, that the case upon which his signature is here, and which the managers desired to introduce, was his signature, and they did not therefore introduce it in testimony any further than that; it is stipulated, I say, between the attorneys in this case, that the case that the Judge did sign that day, was the case that he was commanded to sign,—the case that had been theretofore stipulated between the attorneys. Now, then, it shows that his judgment was not misled in that. He did not do anything wrong; he did just what he was commanded to do; he signed that case.

Now, further than that the testimony of Mr. Lamberton, tells you that the Judge knew what he was about· he says, "he appeared to know what it was in the first instance. And then when it comes to affixing his signature, although the Judge did not write the whole thing. did not write the title,—only wrote his name,—yet Mr. Lamberton tells you that he knew well enough where to write, and knew all about it; that he did not point out to him where he should write his name; that the Judge found it himself.

Again, when it comes to his title, Mr. Lamberton tells you that he wrote it for the Judge, but that the Judge dictated it to him,—"Judge of the Ninth Judicial District, acting in and for the Fifth Judicial District."

Now, then, it appears from the testimony of both of these parties that the Judge was not in such a condition, even if he had indulged in intoxicating liquors on that day, that the proof meets the allegations, and the material allegations in the article that he did not know what he was about, that he did not know what he had to do; he performed his duty as he was commanded to do, even if it was official business as a Judge; but, as I say, we claim that the proof has not made out the charge upon that point. It appears that the Judge had no discretion; he had nothing to examine or disapprove; he had not the right to disapprove a line in it; he did not have a right to examine a single line in it. All he had to do was to examine and see whether that was the case that was stipulated, and then sign it, under the mandate of the supreme court of the State of Minnesota, and it was at his peril if he did not do it. He simply obeyed that mandate, and obeyed it in terms, and did just what he should do, consequently there was no wrong done.

And upon this statement of the matter I desire to leave this article with you, gentlemen, claiming as I have already said, that is not necessary for us to introduce any testimony under it at all. It is admitted on our part—the managers claim that they have conclusively proved at this time, that he was drunk at this time, that he was intoxicated, that he was under the influence of liquor at least, and that the signature of the Judge was a drunken signature. We desire to have that signature before you, I believe myself that there is no doubt about it; we are willing to admit that that is the signature of Judge Cox when he was under the influence of liquor; we are willing to admit it; and we want that signature before you, and we want to compare it with the other judicial business for the last four years, as we shall bring it forward and before you hereafter.

If the Senate will allow, I will be thankful if they would grant me a recess for a few minutes.

The PRESIDENT *pro tem.* The counsel for the respondent desires a recess for a few moments; unless objection is made, that will be taken as the sense of the Senate.

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After recess Mr. Arctander continued his address, as follows:

ARTICLE SEVEN.

Mr. President, I now call the attention of the Senate to article seven which I shall designate as the Dingler case, the road appeal that was tried at St. Peter, I think sometime in 1879. The witnesses upon this article are only four, this same long-legged Webber, who is a candidate for judge, this same John Lind, and this same Sumner Ladd, another candidate for judge, and Thomas Downs. Now, I will admit that upon this article the witnesses seem to have conferred to a certain extent, so that they have managed to agree upon the main facts, or upon the main question, that the Judge was at least intoxicated. They all seem to have agreed upon that. There are inconsistencies in their statements, in the details, and when they wish to show and explain why and how the Judge's intoxication exhibited itself, there is a difference of opinion as to the facts; but I think that they all succeeded in getting him more or less intoxicated at that time. Mr. Webber testifies "in my opinion"—he is not so strong at that time,—"he was intoxicated." You will remember the facts in the case, that the case had commenced in the forenoon, and a recess was taken in the afternoon to enable the county attorney to look up the records with reference to the laying out of the road by the county commissioners; that at his request it was adjourned until after supper; and that they came there after supper to argue that motion; to vacate, or reverse, or set aside the order of the county commissioners laying out the road. Mr. Webber claims that he was there in the evening, and he tells you, as I said before, that in his opinion, the Judge was intoxicated; and when asked to give any reasons for it, when asked if there was anything in his appearance, he says that he judged from his general appearance, but that he could not describe it; that he could give no particulars; no scintilla of evidence showing or designating what his appearance was different from what it was when he was sober; and that as to his behavior, he was just as much at a loss upon that, as upon the question of his appearance.

Now it may be, gentlemen, it is impossible to give descriptions of that kind; but it has struck me that this witness, all the way through,—for it comes out on every article that he testifies on—he cannot describe anything, and he is followed by almost every other witness in this case in the same line and in the same direction; and they cannot say why they testify he was drunk; they cannot tell us the whys or wherefores; and it seem to me that it is unreasonable that they should not be able to do so.

I assert that wherever a witness has attempted to show particularly the actions or appearance of the Judge, that in every one of those instances we shall be able to meet that testimony, and to show that the premises are false, and, therefore, that the conclusion must be false. That is what we have labored for in this case—to find out the appearance and actions of the Judge in order that we may call the attention of our witnesses to those instances, and ask them whether or not any such things existed, or whether the Judge was so and so; and thus be able to disprove the charges at this time. And I assert that in every instance where we have succeeded in getting a witness to commit himself, that in that case we will *have* them.

But it has worried me all through the cross-examination of these witnesses to see men who claim to be *men*, and not women, but who claim

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to be men, claim to be lawyers, come here and advance an opinion and not be able to give a reason for that opinion. It reminded me of a verse in the "Two Gentlemen of Verona," I believe it is—

> "I have no other than a woman's reason,
> I think him so, because I think him so."

That is about the testimony; it is the burden of the song of the testimony of Webber; it is the burden of the song of the testimony of Lind; it is the burden of the song of the testimony of every one of these men; and I say that when it comes to that, that a lawyer can give nothing else than a woman's reason, he had better quit his practice and go out as a day laborer. These men certainly have not shown themselves to lack intelligence, knowledge, or judgment in the least. It is not because they don't know it, it is not because they cannot do it, but it is because it is false, and they are afraid to bring forward the description, because they know that it will be disproved. But in this case they have given an instance and a reason for asserting that the Judge was drunk; Mr. Lind has done it; and Mr. Webber has done it; and just as I have said here, everytime they have given reasons, every time they have attempted to state facts, to show that this respondent was intoxicated, we will show that those facts are false, that the premises are false, and therefore that the conclusion is false; so we do in this case. Mr. Webber says that the Judge attempted to decide the road as to the portion through Red Stone, and leave two ends of the road bad standing in that way; that is what he testifies before you; Mr. Lind testifies to the same thing, and Mr. Webber was asked if from that ruling he believed him drunk; if that was the reason he believed him drunk; and he said it was. Gentlemen, we will show you by the records, that the Judge never made any such ruling; we will show you by the records, that the Judge did not attempt to make any ruling there that night, as Mr. Ladd testifies to afterwards; he contradicts the two other witnesses. He says that the Judge did not make any ruling or decision, or attempt to make any, that he took it under advisement until morning. Mr. Lind as he goes on in his testimony says that he got awfully anxious about the ruling of the Judge and tried to argue with him, and begged and begged of him for an adjournment, and finally got a recess until morning; and that in the morning the Judge came in, and after argument, reversed his order of the evening before, and made a new order, reversing the whole action of the county commissioners laying out the road. That is Mr. Lind's testimony before you. We will show to you that it is false from beginning to end; and we will show it by witnesses that cannot lie, for we will show it by the record. We will show to you that when Mr. Lind and Mr. Webber testify that the Judge made, or intimated a decision that would take out the middle half of that road and leave the two ends standing, that they *lied*. We will show you by the records of that county that if the decision of the Judge had been to that effect, he would have held the order good as to the part outside of the Village of Redstone, and void as to the part in Redstone; that it would *not* have taken out a part or the road, and left two ends standing. That the commencement of the road itself was in the village of Redstone, on section thirty-five, as they have been testifying to; that that is where one of the termini of the road was.

Now, why is it that this man, Lind, who had the case himself, and

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who should, and does know better,—why does he come in here and falsify the record? Why does he come in here and swear that the Judge's decision was so ridiculous, that it was going to take the middle out of the road, and leave two ends standing and running nowhere, in order to make you believe the Judge was intoxicated, and that he did while in that condition, what he otherwise would not have done? When the record shows you that that was false, does it not also show that the statement was made for a purpose? Is it not to be presumed that Mr. Lind, the attorney in the case, knew better? But further than that, we will bring other testimony here which cannot lie. We will bring the records of the clerk of the court, and show to you that the Judge did not make any decision in that case that night. We will bring you the records of that court which will show that the court; after the matter was argued, took the matter under advisement until morning. That is what the record shows upon its face. We will show you, that so far from his entering an order in the morning, reversing the order that he made in the evening, that there was not a word said the next morning in the order he made about any order before that; but that an order is simply entered deciding the matter that he had taken under advisement. We will show you that these men have come and told you a false tale upon this subject, trying to make this respondent ridiculous upon a false statement of facts; and we will ask what confidence can you place in their testimony hereafter? And we shall show you this not only by the records; we call before you the attorney on the other side, the attorney that represented the county in that matter. We will show by him just what the true state of affairs was that evening; that it was as we claim it to be, that the Judge stated to Mr. Lind, not making any decision of the case, "Mr. Lind, I am fully convinced that that part of the road that goes through the village of Redstone is invalid, that the order is invalid so far." And why? Because it was perfectly correct. The judgment of the court was perfectly correct, because those county authorities of course had no right to lay out roads or streets in an incorporated village; but, says the Judge, "I am not so clear upon the point as to whether or not that would make the whole road invalid."

I think that more than one Judge would have been somewhat in a quandary, when a question of that kind should first be raised before him; I think more than one Judge would hesitate upon it. I have not given that matter a great deal of thought, nor have I looked it up; but I feel confident that if that matter was presented to me for my opinion I should feel rather doubtful, upon my general reading, as to what should be done in the case.

Now, Mr. Ladd swears that the Judge was confused about this thing, that he was in a quandary, did not seem to know what to do; and he says that was an evidence of drunkenness. I asked him if his confusion showed itself in any other way than that he didn't know what to do about the matter; whether he seemed to be in a quandary, as to what he should do about that portion of the road; and Mr. Ladd said, "No, that is all," and then I asked him, if he, Mr. Ladd, would not have been in a quandary about what to do, and if he himself would not have been confused if the question had been put to him, being perfectly sober; and he said he didn't know but what he would. But, I say we will call before you the attorney that represented the county in this matter; we will show by him, in addition to the records, that Mr. Lind and Mr. Webber testify falsely upon this matter; we will show you that all that

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the Judge did, was to express a doubt as to what he should do about the balance of the road—whether or not he could reverse the order for the reason that a part of the road was invalid; and that he said it was a matter that needed serious thought, and that he would not decide the question that evening, but would adjourn the case until the next day, and decide it in the morning. And he did so, and then and there decided it.

Now, then, that is what they base their ideas and opinions upon, that the Judge was drunk. Now, if that be false,—if that fall to the ground,—then the idea and judgment they have expressed upon it must fall with it. And, as I said, besides showing this fact,—that there was no order there in the evening, that the question was submitted and taken under advisement, and that the next day the order was entered in the record, and besides showing by the records that it is not true, as they testify, that the two ends of the road would be left there,—making the decision ridiculous,—besides that, I say, we will call the county attorney, and show by him, that the Judge did not act as they claim he did, and we will show by him that he is an old partner of respondent, a man who has known him for years, and known him perhaps more intimately than any other man in the district; and we will show by him that the Judge was perfectly sober at the time.

We will show by the short-hand reporter, that at that term of court the Judge was sober.

We will call before you the deputy clerk of court, or the man who was acting as clerk of the court that day, who had been elected clerk of court, and had not yet taken his oath of office, and who was there that evening and took the minutes. We will show by him, also an old friend, neighbor and acquaintance of the respondent for years and years, that the respondent was perfectly sober.

It is in evidence here already, that from the jury box there is just as good an opportunity to notice the condition of the Judge, as there was for the attorneys; and we shall call three or four jurors, that sat upon that panel that evening, and sat and listened to the argument, and observed the behavior of the respondent, and we will show by them that the testimony adduced here is false, and we will show by them that the respondent was sober.

We will show it by the deputy sheriff, and we will in that way offset the testimony of the sheriff, Thomas Downs, who comes up here and swears and helps his three candidates and next of kin, that Judge Cox was intoxicated at the time,—a man who states, that in November last he had forgotten all about Judge Cox being drunk at that time, but that he has remembered it since; he did not *know* anything about it at that time, but he has *learned* it since, and now comes here and testifies to it.

ARTICLE EIGHT.

I now beg leave to call your attention to Article Eight, which I call the Kelly case, that being the case between McCormick Brothers and Kelly, tried at the May term of the district court in and for Brown county, in the year 1880. In that case the managers have not seen fit to call more than two witnesses, and those two are the same eternal Webber and Lind. Mr. Webber's testimony is not lengthy, he states that this trial of the Kelly case lasted for two days; that before that

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time, during the time, Judge Cox was perfectly sober, he thought, but, during the trial of the Kelly case he was intoxicated both days. At the same time he has to admit, and testifies on the cross-examination, that he does not recollect of anything out of the way, or in the Judge's actions, which showed to his mind intoxication, except that it might be in the charge of the jury, which was somewhat peculiar; as you probably remember that charge was the one in which Judge Cox told the jury, that when he bought a threshing machine he wanted one that was fit to thresh grain, and not to thresh boys; and he did not evince very much surprise at that charge. It was also at the same time that he claims there was a latent ambiguity, a latent conflict rather, between a certain charge that the Judge gave upon his own motion, and one that he gave for one of the parties; I will not argue that matter here, we will come to that, probably, hereafter.

Mr. Lind, the other witness, swears short and sweet, that in the latter part of the trial the Judge was intoxicated. Now, Mr. Webber makes him drunk, both days, during the whole of that trial. Mr. Lind says: "*In the latter part of the trial* he was intoxicated." He was not cross-examined on that, he was not asked anything, and that was all the testimony he gave. There are only two lines of his testimony on that point, and you can find it in your journals.

Now, against those two witnesses, that have given, as you see, very poor reasons,—they could not give anything about appearance, or anything about conduct, except this matter of the charge, which I think will be thoroughly explained away, before we get through with it,—this same witness Webber swearing on cross-examination, that in his opinion, the drunkenness of Judge Cox was noticeable to every one that knew him, that it was plainly apparent. Relying upon that, we will bring before you the justice who tried that case in the court below, who went up to sit there for the purpose of hearing that case tried,—an old lawyer, a respectable and honorable gentleman,—a man who, I believe, was our first Secretary of State, a man who has a record behind him, a man, I say, who was the justice who tried the case in the court below, and went up to the court-house on purpose to hear the case tried, and who sat there and listened carefully all the way through the trial of the case, because he was anxious to see, whether or not, his action in the trial was going to be sustained and followed by the court above him. And he will testify to you, that he has known the Judge, that he has known him for twenty-five years at least, has been intimate with him, seen him almost daily, met him often, met him in court, met him on the battle-field and met him in society, met him on *sprees* for all that; and that on this occasion the Judge was entirely sober; that there was nothing in his language, his conduct, his manner, or in any other way, that showed or indicated in the least, that he was under the influence of liquor, much less intoxicated. We will bring this same short-hand reporter before you, the man who sits right by the Judge, as the short-hand reporter does here, the man who travels with him day out and day in, to every one of his terms of court where they have a short-hand reporter in that district, which is in every county but one, where there is but one term a year,—this man who has known him well, who has followed the Judge around, and who knows his pecularities, a sharp young man, who would of course notice him as quick as any man in the court-room,—we will call him and he will tell you that the Judge was perfectly sober.

We will call before you the parties in the case, that Mr. Webber

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claims were injured by Judge Cox's action in the matter. We will call Mr. Kelly before you; and I think from what I have seen of him, having talked with him myself, that he will come and tell you that if Judge Cox was ever sober in his life, he was sober on that trial. We will call his brother, who was a witness in that case, and a juror in the case preceeding, and show by him the condition of the Judge at that time. We will call the bailiff, who was present there in the court. We will call the witnesses who were present in the case, and you can take their judgment, and see what value you will place upon the candidate's judgment, and the one that his henchman and right bower, and working for his election.

ARTICLE TEN.

The ninth article being dropped, I desire now to call your attention to the tenth article—the naturalization scene at Marshall. You remember what the evidence was in regard to that, and the general scope and line of it. It is to this effect: That certain Norwegians and a couple of Germans came into court and wanted to be naturalized. The Judge was in town, and they went down to get him at the bar-room at a hotel, and he didn't want to go at first, but finally went along up to the clerk's office—the cubby-hole—and that he stood by there while these men were naturalized; that he had a fisticuff with Mr. Marks, a little fight or something, as was testified to here by these witnesses; and that after that he went out, and that was the last of it. That was all he had to do there. There was no lawyer there, no session of the court, nothing done except simply naturalizing these foreigners, and of course you understand how that is done. It is necessary, under the laws, before a man can be allowed to get his second paper, that he must exhibit his first paper, or a soldier's discharge; that when he exhibits that he must take his oath before the clerk of the court that he has lived a sufficient time in the United States and behaved himself well, and he must bring two witnesses to prove that he has lived in the United States five years and in the State one year, and is a man of good moral character, etc. That is all that is necessary. The paper is to be exhibited, the oath is to be written out, the party is to be sworn and to sign the oath, and then a certificate is issued certifying to the fact that he has been made a full citizen. The United States statutes making the requirement that this shall be done in court, it has been considered in some of our districts that it is necessary that the judge shall be there, because the statute says in open court. I apprehend that that question is done away with by the opinion of the Supreme Court, in a case brought against one of the judges of the district court in this State, in which it is my impression that it was held that it did not make any difference; at least it has been the practice in Ramsey county when men were naturalized, and when the second paper was given, whether the judge was there or not. However, I understand that it is a provision that it must be done in open court. The judge has nothing to do about it. He does not have anything to say about whether the papers are sufficient or not. He has nothing to do with the examination of the papers, and so on. As I understand it, that is a clerical duty, a matter which is left to the clerk of the court. And that is what was done in this case by the clerk of the court, as it is always done.

Now, let us see what this article charges, admitting for the sake of the argument that the Judge was drunker than a "biled owl" at the time,

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admitting it for the sake of the argument, is this article proven? Does the proof that he went up there and stood there outside of that cubby-hole while the clerk was making out the paper, and giving those men their naturalization papers—with no business; no court, nothing transacted except the naturalization business there—does that fill the allegations in this charge?

Let us see: The tenth article alleges. "that on the 2d day of May, 1881, acting as and exercising the powers of such Judge, did enter upon the trial of *certain causes*, and the *examination* of other matters and the the examination and disposition of other matters and things, then and therein pending in the district court of said Lyon county, and did then and there *preside* as such Judge in the *trial*, *examination* and *disposition* thereof, while he, the said E. St. Julien Cox. was in a state of intoxication whereby he was disqualified * * * from the exercise of his understanding." Is there any evidence here that he went into the trial and examination of any case. or any matter at all? Is there any evidence here before you that he presided at the trial of any examination or case at all or that he was unable to do what he had to do in the trial of those cases? Is there any such proof? Is there any proof to sustain these allegations? The allegations and the charges in the article must fall to the ground, because there is nothing to support them. If the Judge had been as drunk as he could be, there is nothing to show that he was there exercising his judicial functions. The managers would probably say that it was a judicial duty to be present, and stand and look wise, while the clerk was fixing up the papers, but they have not charged that; they have charged us with going into the trial and examination of causes, the presiding at the trial, and there is no proof to sustain the charge. It has fallen to the ground. They have not charged us with issuing naturalization papers, or superintending their issuance, and being drunk at that time, nothing of that kind. I admit, for the sake of the argument, that the Judge was intoxicated at that time; but I don't want it to be understood that we admit it as a matter of fact at all. On the contrary, I think we will be able to convince you, that if the Judge had been drinking, he was not in the least affected by it, and if he had been, there was an excuse for his having done so, not expecting any business at that time. But let us see what the testimony is.

The first testimony is that of the witness, Ole Skogan; he is a Norwegian. He says that he thinks that the Judge was drunk. That is all he says. I want to call your attention to a discrepancy between this testimony of the witness William Marx, and his brother Charles Marx. Ole Skogan testifies that he goes down to the bar-room, and tries to get the Judge up; that he would not go when he went down for him; and that then he went and got the clerk to go with him; and the clerk goes down with Skogan and they get the Judge up, and they walk to the clerk's office together. Now, William Marx is not satisfied with their bringing him up there; he is bound that he shall have something to do with the bringing of him up; and so he testifies he was the one who brought him up; that he went down to the saloon, and that he walked with him into the saloon, where he spoke about this quarter of a dollar business, about the Judge asking him if he had a quarter about him. Now, as a matter of fact, I believe that the Judge did ask him that; I believe it will come out here before you; that Mr. Marx and the Judge, going up to the court room, or at least going through the streets; that Mr. Marx invited the Judge to go in and take a drink with him, and that after he

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had invited him, the Judge says, "Well, have you got a quarter about you then?" after he had asked the Judge to come in and take a drink; it was a very natural thing to say, after he had been invited. That is the testimony as he gives it, and in it he strives to make you understand that the Judge of the district court begs him to treat by asking him, first, if he has a quarter about him, with which he can treat. It shows the animus of the witness. Now, again, this witness claims,—and I want to call your attention to the fact that the managers were so anxious that they tried to put into the mouth of every witness on this charge, that this place where these men went to, was the court—the court room. Where was that court room? Up in a drug store there, with a little cubby-hole for the clerk to sit in! There was the court room at Marshall. We have shown on cross-examination that it was no such thing; that there had never been court held there at all; that when they held court they hired a hall, and that they did not hold it in drug stores and around among glycerine and powder kegs, and other dangerous materials. They had alleged that he presided at the trial of cases, and of course they had to make a court of it. But what do they show? The evidence shows that there was no sheriff there to open court; it shows that there was nobody there but the Judge and the clerk. It does not show that court was even opened or adjourned, or that there was any court at all. As a matter of fact, there was no court.

Now, we come to Mr. Mark's testimony in regard to the Judge striking him. Mr. Marks says that the Judge slapped him in the face, and Mr. Wilcox, that bitter and malignant type of man, that occupied the witness stand here, for about an hour, who saw it, says the blow was so hard when the Judge struck him, that it could be heard across the store. The brother of the witness, William Marks, testifies, on the contrary, that, although he stood right by his brother, with but a few feet between them, that he did not hear anything; that the first he saw was his brother stepping up to the Judge, and that he then went to him and told him to quit. He saw no blow; heard no blow. Ole Skogan was not asked a question about that, whether he saw it or not. We must presume he did not see it, or the managers certainly would have brought that fact out. But, is it not remarkable if that blow could have been heard across the store, that the brother of this man who stands right by his side, does not see or hear it? Mr. Hunter, the deputy sheriff, comes in there, but hears nothing. He sees Judge Cox's hand lifted up in this way; and he is afraid there is going to be trouble; he knows the character of this man Marks, and he turns his head the other way; he hears nothing. If there had been a blow there, would he not have heard it?

Now, what is the proper way to explain that matter? Judge Cox was standing there and talking with those men, and I asked the witness, if it was not possible that he had stood there talking, and gesticulating with his hand, and threw his hand out towards his face, and in that way brushed his face, and, as I understand the witness, he says, it might have been in that way. At least, I have no doubt that was the way. Well, you may say why did the man get so mad? and why did he grab the Judge by the coat collar and push him away, eight feet as Mr. Wilcox testifies? Why, gentlemen, the witness who should testify that a man twice as large as Marks who should lay his hands upon the Judge when intoxicated, and grab him by the shoulder and throat and push him eight feet back into the corner of the wall and then crawl out and not know really what had been done, and beg off and say "that

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they would quit that business." I say the witness that would tell that of Judge Cox, to any man who knows the Judge when he was intoxicated would be met with a scorner's laugh. Judge Cox drunk,—a man that would fight for less than nothing when intoxicated, would he have allowed a man like William Marks to push him into the corner and then crawl out and beg off? Not when *drunk*, gentlemen; and the testimony will show it to you. As a matter of fact, as the testimony on our side will elicit, I think I can state it will be shown that all there was of it, was that Judge Cox in talking stretched his hand out and brushed it against this man's face; that this man Marks is a quarrelsome and a drinking man; a man who has never been known to be in the city of Marshall more than half an hour before he would be drunk, and in a fighting condition. This man comes before you and almost acknowledges himself a liar, because he tells you that it was in the afternoon that he first went after Judge Cox, and that he had been only half an hour in town when he found the respondent, and then a little while after that tells you he started from home, seven miles from Marshall, at six o'clock in the morning, in good season and with a horse-team! Now, that man had been three hours in Marshall, longer than time enough to get him drunk and in a fighting condition. Now, I have no doubt that it was as his brother says, that he grabbed Judge Cox by the coat-collar when Judge Cox was gesticulating, as it was very natural for him to do when talking, and that he took the Judge by the collar and said "that if he was Judge Cox, he couldn't strike him." It would be a very likely thing for a man of his character to do after having come into town and getting under the influence of liquor, to be ready to fight with anybody and everybody; it would be natural for this man to say just what he is represented to have said. I think it will come out in testimony that that is just what he did say; that he said: "I want you to understand that you can't strike me if you are Judge Cox." That Judge Cox apologized to him and said, "My dear man, I did not intend to hurt you or to strike you at all;" and that ended the matter right there and then. That his brother interfered, being more sober than he, and dragged the drunken beast away; and this drunken beast, who was so drunk he couldn't see, the managers bring down here to prove that Judge Cox was drunk!

In this connection I do not desire to call your attention to the animus exhibited in the testimony of that man Wilcox. That will be done hereafter. The whole story about this fighting at least bears about it the ear-marks of unreasonableness; anybody that knows Judge Cox knows that he is not going to act in the way he is said to have acted on this occasion, and no man who knows him, can say whatever else he may be accused of, never under God's heaven has he been accused of being a coward, drunk or sober. But, even if you should take it for granted that under this testimony the Judge was intoxicated, even if you should take it for granted, that under this testimony the Judge was doing business as he is charged with doing in this article, which has not been shown, but, if you should take that position, I say, even the testimony as it is established, shows he knew what he was doing, and what he was about; it shows that he knew his business, that he did not neglect his business. that he was not so intoxicated, that he did not understand what were the rights of the parties, because this same Marks comes and tells you that at the time he was down at the saloon he came to him and the Judge asked him if he had his first papers; that he told the Judge that

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he wanted his second papers and that the Judge then asked him, whether he had his first papers; and that he told him no, but that he had a soldier's discharge; and that the Judge told him that was all right. It seems that he knew the law, and what was the man's right, and what was necessary to do there. That was all he had to do to look over and see if he had his first papers, or other sufficient grounds to entitle him to his second papers. So that that part of the article, at least, is untrue, that he did not understand his business, and did not do what he should.

We will show you what was the fact with regard to these matters, gentlemen. We will show you that the Judge had at that date fixed a special term of court at Marshall. The managers have failed to show this, but we will show it. We will show that that was the Judge's regular special term court day; we will show you that he has never held court, a special or a general term, in that drug store, nor in that cubby-hole that the clerk kept his office in; that he has never held court there in his life; that when he comes up there to a special term it is his habit to hold it at the office of some attorney, because it is only for the purpose of a few motions, and such business, that the court is called there to hear, and that the businese is soon disposed of; and that when it is disposed of, then the court is over. It is rather an informal gathering, as special terms of court necessarily are, in frontier towns. There would be no business, perhaps, and the parties would sit around in the office and talk and smoke a cigar, and, I suppose, occasionally take a drink.

The facts in this case are that Judge Cox, on that day, came up on the train, prepared to hold a special term of court there; that when he came up he was perfectly sober, as will be shown to you by four or five witnesses, that he went around and saw all the attorneys, as he usually did, when he came up there, and ascertained if they had any business. It was his custom, if they had any business, to say well we will go to such and such a lawyer's office and hold the term there, and then they would send for the clerk, and after they had done their business, that was the last of it. Court was not called or adjourned, and there was no necessity of going through any forms or ceremonies. We will show you that the Judge did go around on this occasion, to every one of the attorneys there, and inquire of them if they had any business, found out that there was no business,—was perfectly sober during all this time,—that when he found out that there was no business to be transacted, and did not expect any business, that meeting old friends there, they probably took a couple of glasses of whiskey or beer, I don't know which, and played some games of billiards down in the bar room; that while they were there playing billiards, or perhaps just finishing, this party came down and wanted the Judge to go up to the clerk's office, or go up to the court to naturalize some foreigners; that the Judge told him that the court had adjourned; that he had nothing more to do there; that they was no court in town, just as this man Skogan testified, I believe, "that there was no court in that town," that finally the clerk came down and begged him to do it for his accomodation; that these men had come into town, and although he knew it was not regular to do it in that way, he asked the Judge if he couldn't do it for his accommodation, (for of course he was making a couple of dollars a piece on those naturalization papers, and hew ould like to have the money.) That the Judge to accomodate this clerk and the persons who desired to be naturalized, went up to the

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clerk's office and that all he did was to stand there in front of that cubby-hole and look wise, while the clerk was doing the business with these parties; and that when he was through with it he went off, after having this little unpleasantness, by brushing Mr. Marks in the face and having a little talk with him. We will show these facts, I say, by the attorneys he called upon that day. But even if the Judge had been drinking, even if he was to a certain extent, under the influence of liquor, he had no reason to expect that any business would come up, or that there would be any court there at all, and concluded not to hold any court. But, I think the evidence will show, that even under the circumstances, and while he was there, when the naturalizations were being had, he was perfectly sober. I think one of the oldest and most respectable members of the bar of the State, was one of the witnesses as to these things. It is sometime since I have talked with him but it is my recollection that he claims to be one of the witnesses of the transactions which took place there, and that he said the Judge was not intoxicated at the time, but that he was sober. But I say it may be that he had taken a glass or two, and I do not know, or suppose anything about that.

ARTICLE ELEVEN.

The next article to which I desire to call the attention of the Senate is article eleven, the motion for a new trial in the case of Young against Davis, tried at the St. Peter term of court last May. The only witnesses adduced by the prosecution upon that article are Lind and Ladd, witnesses who will certainly obtain some renown in the records of this impeachment trial as fast and thick swearers. Mr. Lind says he thinks the Judge was pretty sober till the last part of the trial. That after the verdict came in a motion for a new trial was immediately made, and that he then "*thought*" the Judge was intoxicated. Why gentlemen of the Senate, mark the language of this John Lind he "*thought* the Judge was intoxicated!" why it is so mild that I am almost inclined to think it cannot be his testimony! and yet it is. Why, he would shut his mouth, close his teeth, and swear how drunk Judge Cox was; and now he comes in and tells you that he only "*thought*" he was intoxicated. Why, the Judge must have been more than ordinarily sober at that time under the circumstances. Mr. Ladd is not so *thoughtful* at this time; he says "The Judge *was* intoxicated on that occasion." It is a remarkable coincidence that it appears from the testimony of those two witnesses that they have not been able to agree even in this case. Mr. Lind says, first, that he was "pretty sober till the last part of the trial." Mr. Ladd testifies as to that "that he was perfectly sober during the trial." That he has no doubt but that the Judge was sober "during the whole trial." Mr. Lind tells you that the motion for a new trial was made immediately after the verdict came in, immediately after the trial. Now if Mr. Ladd is right Mr. Lind is certainly wrong. If Mr. Lind was right, that the Judge was perfectly sober during the trial, Mr. Ladd must certainly be mistaken when he says he was intoxicated, and Mr. Lind must certainly be mistaken, when he says that the Judge was intoxicated at the time of the motion for a new trial.

The testimony upon this charge is otherwise very meagre.

The PRESIDENT *pro tem.* Did not Mr. Lamberton testify upon that point?

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Mr. ARCTANDER. No, Mr. Lamberton was called upon that article by the managers, and asked if he was present during that term of court; he said that he was, but not when Judge Cox was presiding. The managers then dropped him; and did not desire anything more of him. He stated that Judge Cox was not presiding at the time, that Judge Dickinson was presiding. I then took Mr. Lamberton up to show how even the old friend of Judge Cox could be mistaken, and asked him what he thought of Judge Cox that morning when he first saw him in the court room, sitting down on a seat in the court room; and he said he thought he was drunk; and that, when he went up to him, he told the Judge that he "looked like hell," and to go home and go to bed, and that he found after talking with him that the Judge was sober. I elicited that on cross-examination, and was allowed to be so although it would not of course go in properly under this article, because the Judge was not on the bench at all at that time; Judge Dickenson was presiding. But that is not claimed to be at the time of the trial of the Young and Davis case; it is only claimed that it was at the same term of court.

Now, as I have said before, all there is to this testimony is that of Lind and Ladd. We might probably leave that article without touching upon it at all, because we, when we get through we shall show you conclusively that Mr. Lind has not testified to one single article where he has not testified to that which was not true,—we can show you from the record as it already stands before you, that Mr. Ladd has made one statement before the judiciary committee, and another statement here. Why, the very article thirteen which was left out, which was dropped by the managers when they found that Mr. Ladd had been lying, when they found that Mr. Ladd had been swearing to an untruth before the judiciary committee, they dropped it like a hot potato. Why, before that judiciary committee he went and told its members that the Judge was drunk and did not go to New Ulm to hold a special term; that he went up there himself, and he admitted it here that he had testified to it. He admitted that he went up and found that the train had gone and that the Judge had not gone, and that he could have gone up there, but did not go because he was drunk. Now he has found out that the train did not go, and I was sorry to see that he had found it out before hand, for I think we would have had a circus here if he had not. But I suppose Judge Cox could not keep it to himself that he knew just how the thing was, that he knew there was no train, and that that was the reason he did not go, that it was not because he was intoxicated, and he spoke about it how Ladd had made a fool of himself, swearing that he did not go up to New Ulm at the time, because he was drunk, when the record showed that there was no train running at the time. And Mr. Ladd discovers this, and he comes in and takes it all back, in other words, he crawfishes; and the managers take it all back, and they crawfish. Now that man Ladd who says that he gave his impressions before the judiciary committee gives impressions under oath against a judge, and he is writing letters around to the members of the bar of that district as he admits in his testimony to get them to assist and support him in obtaining the respondent's shoes, showing that there was quarreling about the inheritance before the body had gotten cold. I think it will be found by your action before this case has closed, that it will take some time before the judicial body of E. St. Julian Cox becomes cold, and Mr. Ladd will find that the shoes which were worthy to be worn by the one who now holds that position, are much too large for his small feet. But he is the man

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who testifies on these two charges. On this Dingler case we will overwhelm him with the testimony of the population of St. Peter, and on this case it is almost unnecessary to speak of him at all. We might as well drop him and Mr. Lind both, because they are already practically disposed of. I apprehend, they have been weighed in the balance and found too light, but, as we have the witnesses down here under these charges, we will bring them forth. We will show by Mr. Davis, who was one of the parties in the case, that Judge Cox was perfectly sober during that trial. We will show by an old time friend and comrade, Mr. Rogers, who has known the respondent, who was the clerk of the court, and was there present, that the Judge was sober at the time. We will show what might have been the reason to cause these men to think there might have been something out of the way with the Judge. We will show that the Judge has had some trouble with some of the grand jurors, and had fined them for contempt, because they had not come in to court at the proper time during the term. That there had been some impertinent newspaper articles, and that the Judge was worried, and did not know what he should do, whether he should punish them for contempt, or whether he should pay no attention to the matter at all ; and that Mr. Rogers, the clerk, understanding that there was something the matter with him, as soon as the motion for a new trial was over, went with him into an adjoining room; and he will tell you that he smelt his breath, and that he had not drank anything. He will tell you that all there was about the Judge was, that he felt worried, and that it showed itself in his face; that he had a private conversation with him, smelt his breath, and was confident that the Judge had not tasted a drop of liquor. I think those witnesses will dispose of Lind and Ladd.

ARTICLE TWELVE.

I now beg leave to call your attention to article 12, the Renville county term, held in May, 1881. Before going into the evidence as to that term, I desire to call your attention, Senators, to a peculiarity which exhibited itself during the examination. William McGowan, the clerk of that court, was called as a witness by the managers. They told us that he was not one of the five witnesses, but they called him simply for the purpose of the record. They exhibited a certain portion of that record, and they never asked him a question about whether the Judge was drunk, sober or indifferent. Now, that man testified, before he produced that record, that he had known Judge Cox for twenty years; in fact, had served with him, I believe, during the Indian war. He did not testify to that, but I believe that is a fact. Now, this man, who was present as clerk of the court during the whole of that term, would have been liable to have known whether the Judge was drunk or sober, would he not? They had him here as a witness, they brought him upon the stand, they showed that he knew the Judge better than any other man; that he had been there himself and taken down the minutes all through that term of court; and yet they never asked him a question as to whether the Judge was drunk or sober, and for a very good reason; for the reason that Billy McGowan would have answered them, "*He was as sober as I ever saw him, sir.*" For the reason that it is not the truth that these managers are after: for the reason that it is not those who are the most able to judge, who were present, and are sure to be honest, that they are after; but that they want to bring before this Senate; but they want men who can swear strong, and swear to the mark. Such things might be proper and right

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in a civil suit, possibly, but it strikes me as exceedingly out of taste, and exceedingly improper in a criminal case; and considerably beneath the dignity of this great State of Minnesota. It strikes me it tends to mar the fair and shining escutcheon of the state, to let such a proceeding be countenanced. No, an honest man like Billy McGowan,—and every body that saw him would know in a minute that he was honest,—why, no man could cast a glance at him without observing that he was an honest man, and certainly all of us who know him know what an honest, upright and honorable boy he is,—no, he would not do; no use for honest men here,—get the *enemies* of the judge who will swear him to damnation! That is what they want even if they have to bring men down who were not *there*, makes no difference if they will only swear strong enough.

Gentlemen, the man, Robert W. Coleman, who is the standing common swearer for three charges, and three counties, who can beat any of the liars and swearers I ever saw in seven counties, comes up and tells you about the Judge's intoxication during the latter days of that term, during Thursday, Friday and Saturday and up until Sunday, when he says he left,—he is the man the managers want, not honest, honorable, decent, good Billy McGowans. They do this in the face of the fact that everybody at Beaver Falls, every officer of that court, every officer of that county, knows that Bob W. Coleman was not near the court in Beaver Falls, after Thursday morning, and will come here and swear to it; that he was not in the village of Beaver Falls, but that he left that morning, after having had a big drink in the evening, and having had a quarrel with his wife; he suddenly left town and was not seen around there as long as court continued in session. That is the kind of evidence they introduce against us in Beaver Falls. No wonder that that man will swear strong! No wonder that a man of that stamp, of that rank perjury, will swear to almost anything, will make it look as bad as bad can be, even if he has to get right down to the flea business!

Senator ADAMS. Mr. President, I see that the attorney for the respondent is becoming more or less hoarse, and doubtless is suffering from physical exertion, and as we have a little matter to consider in secret session, I would suggest that his further time be occupied in the morning in order that we may dispose of some business which we are desirous of disposing of to-night. I think it would be a relief to him; I think his voice would be more distinct in the morning than at the present time. I move that we go now into secret session.

Senator CAMPBELL. I second the motion.

The PRESIDENT *pro tem.* It will be taken as the sense of the Senate that the Senate now go into secret session, unless objection is made;

The Senate then went into secret session.

SECRET SESSION.

Senator ADAMS offered the following resolution:

Resolved, That the *per diem* of the members of this court be, and the same is hereby fixed at *five dollars* per day from and including Jan. 10th, 1882, consecutively, until the close of the trial, and that the Secretary is hereby directed to make the pay rolls in accordance therewith.

The roll being called, there were yeas 22, and nays 2, as follows:

Those who voted in the affirmative were—

Messrs: Aaker, Adams, Bonniwell, Campbell, Castle, Clement, Hinds, Howard, Johnson, A. M., Macdonald, McCrea, McLaughlin, Mealy, Mor-

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rison, Perkins, Powers, Shaller, Shalleen, Simmons, Tiffany, White and Wilkins.

Those who voted in the negative were—

Messrs. Wheat and Wilson.

And so the resolution was adopted.

Senator Mealy offered the following resolution:

Resolved, that the members of this court shall be entitled to extra mileage for going to their homes and returning between December and January 10th, 1882, the time when the trial actually commenced.

The roll being called, there were yeas 15, and nays 9, as follows.

Those who voted in the affirmative were

Messrs. Bonniwell, Adams, Castle, Clement, Hinds, Howard, Johnson A. M., Macdonald, McCrea, McLaughlin, Mealey, Morrison, Perkins, Shaller and Simmons.

Those who voted in the negative were

Messrs. Aaker, Campbell, Powers, Shalleen, Tiffany, Wheat, White, Wilkins and Wilson.

So the resolution was lost.

Senator CAMPBELL moved to reconsider the vote last taken, which motion prevailed.

Senator CAMPBELL gave notice of debate, and the resolution went over under the rules.

Upon motion the doors were then opened, and the Senate adjourned.

TWENTY-SIXTH DAY.

ST. PAUL, MINN., Feb. 9, 1882.

The Senate met at 10 o'clock A. M., and was called to order by Senator Wilson, acting as President *pro tem.*

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

Messrs. Aaker, Bonniwell, Buck D., Campbell, Case, Clement, Hinds, Howard, Johnson A. M., Johnson F. I., Langdon, Macdonald, McCrea, McLaughlin, Mealey, Powers, Rice, Shaller, Shalleen Tiffany, White, Wilkin and Wilson.

The Senate, sitting for the trial of E. St. Julien Cox, Judge of the ninth 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 Represenatives to conduct the trial, to-wit: Hon. Henry G. Hicks, Hon. O. B. Gould, Hon. L. W. Collins, Hon. A. C. Dunn, Hon. G. W. Putnam, and Hon. W. J. Ives, entered the Senate Chamber and took seats assigned them.

E. St. Julien Cox accompanied by his counsel, appeared at the bar of the Senate, and took the seats assigned them.

The PRESIDENT *pro tem.* Has any Senator any resolution or motion to make before proceeding with the argument? If not Mr. Arctander will resume his argument.

Mr. ARCTANDER. Mr. President, when the court was adjourned last night, I had about entered into the consideration of the twelfth article,

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being that of the Renville county term, last spring. I stated that the witness that I considered the manager and the prosecution looked upon as the mainstay of that article, Robert W. Coleman, we should be able to show by credible witnesses, and by the officers of the court, and the officers of the county, who were present, was not within several miles of Beaver Falls during any of the days on which he claims to have witnessed the intoxication of this respondent; that he was not even in the village, much less in court. I will call attention now, to some of the testimony on that article. The first witness offered was the county attorney of that county, Mr. S. R. Miller. He stated that it was his impression that the Judge was on a spree Thursday night; that on Friday morning, he appeared nervous, that the witness considered him intoxicated all that day, and Saturday, and on Monday, that he was worse than he had been on any other day during the term; that the witness "considered him intoxicated;" that is the language he uses; "that he considered him under the influence of liquor," that is the language the witness at another time used. I call attention to this, to show that although facts may have been brought out, and these witnesses have been willing to testify to the condition of the Judge, yet it is done in every instance, or in most instances at least, with what you might call a mental reservation. The statement is not made as of a positive fact, but given merely as the opinion of the witness, and not with the juridical certainty that should always be around statement of facts.

Now, the witness recites incidents in that court showing to his mind that the respondent was intoxicated. This incident which took place on the last day of the court, Monday, consisted of the fact that the respondent remitted the fine of a certain party who had been convicted and sentenced to pay a fine for selling liquor without a license. The witness details the circumstances to a certain extent, showing that the party was convicted and sentenced, I think, on Friday or Saturday, as the records will show; that on Monday just before the court was about to adjourn, when the witness had packed up his books and was ready to go to the office, the matter was brought up by the defendant's attorney in the case, the case of the State against Anderson; that he notified the county attorney that he was going to make a motion to have the fine remitted and the judgment set aside; that the witness, who was county attorney, protested against taking the matter up at that time, and that he further protested against the court exercising any such power at all, and the witness, with rather a malicious sneer, that went through, as you might say, all of his testimony, threw out a hint that this was a usurpation by the court of a privilege that belonged only to the executive, namely, the pardoning privilege; that he objected and protested against this proceeding, and that he further protested specifically, upon the ground that the receipt which the party had and which was offered there, did not cover the time that he was charged with having sold liquors; and the same witness adds that there was nothing in the application that could be set up as a matter of defense. Now, that is true. The facts appeared to be that this party who was convicted of selling liquor without a license, held a receipt of some kind from the county treasurer, showing that he had paid a certain amount of money to the county.

I think it has already appeared sufficiently clear that that was paid in for license money. The party then had intended to comply with the law; he did not intend to evade the law, or break the law by selling

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liquor without a licence, but had paid his money to the county for a license, and, for some reason or other, probably the county commissioners not meeting, his application had not been acted upon, and his money was kept by the county. Now, it is true that would not be a defense to a prosecution for selling liquor without a license, because the question then would be, had he a license when he sold the liquor? As a matter of strict law, the party was guilty whether he paid in his money for a license or not, supposing for the time being, that the receipt covered the the time; I suppose that for the sake of argument. Now, although it is true as a matter of law, that the payment of this money into the county treasury would not help the defendant in his defense to a criminal prosecution; although it is true that it is not a matter of defense of which he could avail himself; yet it is also true, as a matter of justice, where the spirit of the law is to be preserved in the hands of those who administer justice, certainly in hands of Judges who have discretion in judicial matters; it is, I say, for them, in their discretion, to look to the justice as well as the strict letter of the law.

Now, it seems to me when a prosecuting attorney prosecutes a man for selling liquor without a license and convicts him, and discovers after conviction that this party has deposited money with the proper officers, leaving his fate, as you may say, in the hands of the county that it would be judicial robbery to take that man's money afterwards in the shape of a fine, because a crime is made out by the intent; the gist of the crime of selling liquor without a license is the intent to swindle the revenue; the gist of it is the intent to swindle the State or the municipality of the revenue to which it is entitled. Now, if a man did not intend to do that, if his actions show that he meant to do what was just, right and fair; if they showed not that he sold without a license, but that he simply had not been able to obtain a license, that in order to obtain one he had taken all the steps that were necessary to be taken on his part, then, I say, in the name of justice, it was not right that that man should suffer under the false accusation of a crime because the criminal intent was not made out. There is another thing that needs to be taken into consideration, gentlemen of the Senate, in this matter, namely, that we do not administer criminal justice in the frontier counties in the same manner that you do down here.

Up there the great question of economy enters into the consideration of every criminal prosecution. Here you do not concern yourself about economy. Here there is quite a number of wealthy men to bear the burdens of taxation, as in all the older counties of the State. In the wealthier counties, the people can afford to prosecute crimes without regard to the question of economy, but in the frontier counties it is otherwise. There are districts sparsly settled, where only a few poor settlers and back-woodsmen, all new comers, have to bear the burdens of the day, the expense of the courts are more, doubly more in some of them, than all the other expenses of the county, the poor, county officers, and all; and I believe, in most, if not all, of the frontier counties the officers who have to do with the administration of justice seek to make the expense of the same as light as possible, and the Judge, as one of its law officers always considers that, and tries to do everything in his power to lighten the burdeu of the tax-payers. It is right, it is only fair that he should do so, because in every county great expense follows, as we all know, from criminal prosecution, jurors and witnesses must be paid, and if a party is convicted who is without money to pay his fine, the doors

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of the jail are thrown open and he is invited to step in at an expense to the county of a considerable amount. Now, in this particular case that principle of economy entered into the consideration of the matter. It is a fact that up in the county of Renville they have a jail that is unfit to harbor a human being for a day. I have been there myself and I know how it is. Of course, I was not sent there, but I have been there to see clients of mine who were in it. It is a hell-hole that would compare favorably with Andersonville and Libby prison.

Now, this Anderson is a poor ignorant Norwegian living up in that country who it appears thought everything was all right when he paid in his money to the treasurer, and that he would have secured his license in due time. By some mistake, or, perhaps, with the intent to harass and oppress the man, and to exercise his little brief authority, the county attorney there caused him to be indicted. After he had been convicted and fined by the Judge twenty-five dollars, his attorney made application that his fine should be remitted for the reason that the defendant had paid money for a license into the treasury; and it was discovered by the Judge upon an examination made by him, that the man was poor, that he had nothing that his fine could be made out of, and that unless the fine was remitted it would become necessary to send the man to jail. The sentence, as I remember it, was that he should stand committed for three months unless the fine was paid. To send the man to jail would entail an expense upon the county in a case in which justice and necessity did not require it, in a case in which it appeared from the showing after judgment, on the application to have the fine remitted, that the man was really not guilty of a criminal intent; that the county had received his money—all that he had—and that he now could not pay his fine for want of funds; and of course the Judge, upon consultation with the county officers there, concluded that it was a proper case in which to exercise his judicial prerogative to remit the fine. The honorable manager who had the management of that branch of the case when the matter came up in evidence suprised me fairly by throwing out the insinuation that Judge Cox, in this instance, had stepped upon the toes of the executive; that there never existed a power in the Judge to remit the fine.

Why, gentlemen, I need only cite to you the practice in the police courts around you here, where you see the thing done every day in the week. A man is fined, and the fine afterwards remitted because he does not have the money, or because he promises to reform, or something of that kind. We see it done every day in the week by Judge Cooley in Minneapolis, and by Judge Burr in this city; those Judges have done it over and over again. It is a privilege that the court has in its discretion. It can carry its judgment into execution but it is also within the discretion of the court to say that its justice shall be tempered with mercy, in the proper case; and if our police courts have that privilege most certainly our district courts have.

I do not say that the Judge would be authorized in a grave criminal case to revoke the sentence imposed after conviction. I do not say, for instance, that if the Judge had sentenced a man to states prison for life that he could revoke the sentence. I do not claim that he could do so in that case, but this is simply the remission of a fine, and I say that can be done at any time. Why, I remember last summer when, in the county of Chippewa, in my district, I had indicted and prosecuted a woman for keeping a house of ill-fame, and she came into court and was

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properly convicted. The judge of the district, and certainly, there is no suspicion that since he took his official oath and has occupied the position that he does, he has ever drank a drop of liquor, or ever the worse for liquor. Nobody would ever think of bringing such an accusation against him, one of the most upright, one of the most learned judges that the judiciary of this state can show, and of whom it may well be proud. I say that this judge, after consultation with me as prosecuting attorney, concluded that he would not send the woman to the state prison, and that he would not fine her, because if he fined her she would only go along with her business, and he did not like to send her to state prison because he knew that my object was not so much to punish the party as to tear up the business, and to prevent it from being carried on there. The judge, I say, after consulting with me upon the matter, concluded, and so announced in open court when the defendant was brought before him, after conviction, that the sentence would be suspended during her good behavior and absence from the county and the judicial district, and he sent her away. Do you say that was using the pardoning power? Here was a woman that was convicted of a state prison offense, of an ignoble, a most infamous crime, but that prerogative of power was used and nobody questioned its justice. The defendant's attorney did not question it. The state's attorney did not think of questioning it. Nobody dreamed of questioning it. I say there is a power in the district judge justifying him in not following the strict letter of the law in cases that properly come before him. Our judges are allowed to use their discretion, and if they were not, there would be no use in having them.

Now, we will show you, upon this question that it is not a fact that the county attorney protested against this proceeding at all at the time; that he testifies falsely when he so testifies.

We will bring before you parties who were present in court; we will bring before you the defendant in that case, and will show by them that the County attorney of that county, as usual, never said a word, never said boo—he does not know enough to say boo—that so far from calling the attention of the court to the fact that the receipt did not cover the time for which the man was indicted, (an immaterial fact anyhow if it covered the time for which he was convicted, because in a crimnial case you can allege one time and prove another as has been done in this case) that so far as that is concerned he never opened his mouth about it, that he never saw it, if it was a fact, and never called the Judge's attention to it. The Judge of course, did not look at it; it was none of his business. When a paper was handed him by a reputable practitioner who stated that it was a receipt covering the period in question it was not for the Judge to examine it in order to discover inaccuracies. It is not to be presumed that an attorney would come in and make a false statement. Attorneys are sworn not to make false statements and they are presumed not to make them, and the court was warranted in having some confidence in that presumption; it is not be neceessary for him to put his nose in every little nook, and every little corner, of every matter that is brought before him.

This same witness Mr. Miller, tells you that there was no irregularity in that court in the prosecution against Mr. Peter Bernegen He said, when he came up, that the party had not plead, that he was not ready—. Why, of course, he was not; he was never known to be ready—and that the Judge insisted that the State should go to trial. "I pleaded with the

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Judge and he finally continued the case on my motion." But he claims that he did not require any recognizance, that he simply told Mr. Bernegen that he was discharged on his own recognizance, and there was never any formal recognizance made of record, and that is stated as an evidence that the Judge was intoxicated at that time. Now, I desire to call your attention to the spirit and the animus that has prompted the witness Miller to come down here and testify against Judge Cox, the respondent and to testify as he did.

The reason has cropped out already in his cross-examination to a great extent, and I think it will crop out more hereafter, that it will be blazoned forth so that you cannot doubt it, so that everybody who will see it can see it. It appears that this man Miller, the county attorney of that county, a young man who has not much experience in the law, and who is one of those peculiar men that seem to be governed by the same laws that control great bodies, they move slow, fearful slow,—it appears that at this term of court he had the grand jury hanging around there for four or five days, in order to find three or four indictments and the delay was so flagrant that the Judge found it necessary to reprimand him and to tell him that if the grand jury did not come in and report within a certain time, that he would adjourn court so as to adjourn the grand jury over, because they were wasting the public money, the public funds, unnecessarily, on account of his slowness, his dilatoriness. It appears that this man brings charges before the grand jury, has certain indictments found, and certain parties arrested and brought into court; that when they come in and demand an immediate trial, as is their right, he informs the Judge that he has sent the witnesses for the State home. Now, I ask Senators who have had connection with courts, who have noticed proceedings in court, whether you have ever seen anything of that kind. Have you ever seen any such practice in your life? Have you ever known a prosecuting attorney whose witnesses were present and an indictment found, to arrest a party accused of crime and immediately send home the witnesses, who are to testify against the party accused, before he learns whether the case is to be brought on for trial or not, knowing, as he must, as every lawyer does, that it is the constitutional privilege of the defendant to demand his trial immediately after his arraignment. The constitution gives him a right to a speedy trial, if he demands it. If he insists upon a trial, and the State is not ready, and it can be shown that without good and valid excuse the case is continued by the court, it would be ground to set aside the judgment, of conviction, if there was one.

Now, in that case what good and valid excuse was there? The negligence of the State through its prosecuting officer,—that is all; but that is not a good ground of excuse in this case. It appears in every case where indictments have been found by a grand jury, that the county attorney had sent the witnesses home, so that he was not ready, to proceed in a single case; that the Judge got out of patience with the man, and I don't wonder at it, and said that he was tired of his monkeying, monkeying; I don't wonder at it; I don't blame him for it. He rebuked him publicly in court and I do not blame him for it. But there you have the key to the situation, the key to the whole transaction, the man was rebuked publicly by the court. He was a public officer under the court, and it was the duty of the Judge to rebuke him, when he failed to prosecute as a prosecuting officer ought to. He did rebuke him, and there I say is the key to the situation; that is the reason that this man

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comes down here and swears as he does. In regard to the Bernegen matter, that he testifies to, as to the recognizance, we will show you by witnesses, that it was nothing of the kind; that it was no proceeding, as this county attorney will have you believe. We will show you that at that time the Judge said, "Well, if you are ready, Mr. Miller, and I continue this case, I shall not insist upon Mr. Bernegen giving any recognizance except his own," or words to that effect; that is what he said, told the defendant that he could go upon his own recognizance. Now, Mr. Miller would have you believe that the Judge by that expression meant to have this man enter into a recognizance then and there. Well, the remark simply was a mere statement of the order of the court, that the party was only to give his own recognizance, and then it was afterwards, for the party to give it and be discharged.

Now, that was the language used by the court, and it was the proper thing to do, and it could not have been done otherwise; it could have been, of course; the Judge might have called him up in court, and had him make a recognizance right then and there; but as been shown already, that is not the practice of Judge Cox, and I do not think it is the practice of any other Judge in the State, except, perhaps, Judge Dickinson, when he was practicing. It is not, so far as my practice goes. I have not seen any other judge than Judge Dickinson, do that. Now, when a party is required by a court to give a recognizance to appear at a certain time, whether personally or with sureties the duty of the party or his attorney is to draw up that recognizance and to submit it to the county attorney; the county attorney is then to pass upon it, and to tell the Judge whether or not he is satisfied with the sureties, and with the form of the order. The Judge uses the judgment of the county attorney in these matters, and if he is satisfied with it, the Judge approves it, that is all. Is he to draw up recognizances for these parties, and for that ignorant county attorney who neither knew how one ought to be drawn nor how to draw one himself, and who did not know enough to ask how it should be drawn, as he stated himself? Is it not enough for him to say this party can give his own personal recognizance? Is it for the Judge to see that it is done? Is he the prosecuting officer of that county, too, at the same time that he is Judge? Is he to sit there and take sides when he is sworn to be impartial, and do justice according to law and evidence, between the State and the defendant? Is he going to help the prosecution, and see that things are made right? Not at all; that is not what he is there for; and it would be a sorry sight, indeed, if we should see our judges sitting as judges and acting as prosecutiag attorneys in criminal cases. It is a sight that no respectable lawyer would wish to see, and one that no man who had any regard for the constitution and for the rights of the citizens, would care to see.

We will show you that this man Miller was so dilatory, so negligent of his business or so timid, whatever it was, bringing charges against men that he knew, probably, he could not convict them of, just so as to have them hanging as a sword to use on occasions when he saw fit to use them, that even after the Judge had sent fifteen miles after witnesses when it was found that the county attorney had sent the witnesses home, and that the parties insisted upon an immediate trial or a dismissal, and the Judge found it necessary, on his own motion, to prevent a complete failure of justice, to send the sheriff with subpœnas for these witnesses, because he could not get the county attorney to do it; after the county

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attorney, I repeat, through neglect had sent his witnesses home, when the parties accused were insisting on being dismissed and when they had a right to be dismissed unless the State prosecuted, or showed cause why it could not prosecute which it had failed to do; when, I say, there would have been a failure of justice and guilty parties would have been suffered to escape through the negligence and carelessness of the prosecuting attorney, and because the Judge could not sit by there and see that done he rebuked him; we will show you that after the Judge sent the officer fifteen miles to bring in the witnesses, so that the county attorney could not have any excuse, and in order that justice should not fail; that even then he could not get the prosecuting attorney to come into court and prosecute as he was paid to do.

The next witness is the brother of the former, George Miller. He tells you that the Judge was all right until Friday. Tuesday, Wednesday and Thursday, and up till Friday, the Judge was all right. His testimony, substantially, is that the Judge was all right up to Friday, and when we cross-examine him what do we find? That the man does not know anything about what occurred after Friday forenoon; that he was not there; that he went out to subpœna witnesses, and was not there at all. That is about what his testimony shows. I think we will be able to show you—I have no definite information, for I have not examined myself,—that the man left there Thursday, and that he was never near the court afterwards until it had adjourned. But, be that as it may, taking his own testimony he was there only until Friday noon. Now, it is only as to Friday afternoon that he can give us any information. He was asked to state the difference in his appearance between the first two days, when everybody admits that Judge Cox was sober, and the remainder of the time, and tries to do it. He tells us the first day that Judge Cox was haggard-looking. Now, this was when he was perfectly sober, when everybody says he was perfectly sober, that he was haggard-looking, evidently suffering from something. The next day it was less haggard, and the third day, which was Thursday, he got a little more color in his face, it was a little flushed; before that it was haggard, and then it became flushed. Evidently the man was recovering from his sickness; evidently he was recovering from his haggardness; that was all there was to that. Then was there anything about his conduct? He says there was one thing—he was making side-whispers to an attorney. Well, on cross-examination he was asked: "Was there any more of that day than on any other day?" "No, I can't say that there was." "Days when he was perfectly sober?" "No, I cannot say that there was." "Can you place any of the side-whispers on any other days, either Friday or any other?" "No, I cannot do it; I may be mistaken." But there is one thing that this witness remarked that must show, undoubtedly, that Judge Cox was intoxicated. Why, what was it? Why, he was catching fleas at times, or probably it was mosquitoes, and killing them.

Well, gentlemen when I heard that testimony introduced I did not know at first what to think of it, I did not know but that the managers wanted to bring in a zoological garden here, or to claim that the Judge had seen a zoological garden around here somewhere and was perfectly delerious; I thought that was the object of it, but I had to abandon that idea, because there was not enough of the animals, and they were too small, I did not think that could be the idea; but it appears to me to be rather small business to introduce it to show that he was intoxicated at

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the time he made these movements with his hands, and I thought at the time that the language of the poet would apply to the witness as well as to the managers

> Trifles light as air
> Are to the jealous, confirmation strong
> As proofs of holy writ.

Now, I guess that is what's the matter. Those witnesses and the managers are very anxious to get some confirmation of the Judge's intoxication, and they are zealous for it, so anxious for it that they see the smallest trifles and gather them in, thinking them important. But you look upon it with an impartial eye, and the diminitive little animals, so huge in their sight, disappear from your vision in the dim mist of their prejudice, and you see nothing more there. I was uncertain at first whether I might not attribute the actions of the respondent, if he acted as it has been here testified he did, to the fact that he has some French blood in him, being born in the French part of Switzerland; and you might explain it upon that theory, and I know of no other. You will remember probably that Lord Lytton Bulwer says that a Frenchman would rather go to the devil than be bitten by a flea; and I do not know but what that is what ailed the Judge at the time. But I think gentlemen, that we will be able to show you, all joking aside, that it was not fleas that bothered the Judge at the time, although Beaver Falls is the home of fleas and other disagreeable insects, but that on the evening before this occurred there had been a concert given in that room, and it had become entirely filled with mosquitos.

Now you may say, as was remarked here, that it was pretty early for mosquitoes in the month of May; but I will say this, gentlemen, that Beaver Falls must be the home of musquitoes, because I believe that if you were to go up there now, you would find some left from last year. I know I have never been in Beaver Falls at any time when I have not seen mosquitoes, and more of them than at any other place, and larger than at any other place except on the Dakota praries. However, that may be, it is a fact that will be established, that, at that concert the evening before, the mosquitoes so tronbled the people that they had to sit with their hats and handkerchiefs around their heads, and that in the morning following the room was full of the little pests, and that once or twice during the day the court had to take a recess for the purpose of getting rid of them. Now, whether or not the Judge did kill one of these little creatures, I do not know, but the officers of the court who were present say they did not notice anything of the kind, and certainly if they did not it was a matter of so little importance, of so little consequence that nobody but those that were lying in wait for some action of the respondent upon which they could hang a charge of intoxication would ever have dreamed of seeing.

Now, as said before, the testimony of Mr. Coleman has been introduced on this article. Mr. Morrell who was called on the article at first did not testify. That is why you will find in the index which I made that his name is not given, because they did not ask him any questions. Mr. Coleman will be shown to have been away from that place at least Friday, Saturday and Sunday. He claims,—and he is the only one who claims that the judge was intoxicated even on Thursday, and I think you will find that even Mr. George Miller does not

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claim that any thing was the matter with the Judge on Thursday. He said nobody could take exceptions to this conduct, but that was before he rebuked because he did not do his duty as a public officer.

As to the fourth witness, Mr. Holtz, he did not testify as to anything in court, or as to any conduct of the Judge in court. In fact, he stated that he had not been in court during that term.

Now, against these witnesses, against Mr. Miller as to Friday, Saturnay and Monday, against his brother as to Friday afternoon, and against Coleman, if it is necessary to bring a witness against a man who was not there at all, we will produce here before you the clerk of the court, the sheriff, and the treasurer of the county, the auditor, I believe, of the county, one of the attorneys who was present there in this particular case; this man Peter Bernegen, a business man up there, in whose case it was claimed that this order was made. We will call other respectable men who were present there, parties connected with the judiciary, the court commissioner, and a former Senator from that place, who was present in court as a juror; we will call these witnesses here and show by them that there was nothing the matter there with Judge Cox at that term; that there was no difference in his behavior and his appearance from the first two days, when the parties say he was sober, and the three last days, or any of the days; that he was the same all the way through; that the only difference that could be noticed in Judge Cox was one that was noticeable all through the term, and that was that he was more strict in court than he had ever been before; that he had become tired of the negligence of public officers there, and that he rebuked them more severely, was more severe and more strict; that is the only difference, and we will show you that that strictness followed him all the way through the term. Now, if it did, it is not any evidence that he was intoxicated, if they show, and they have proven without us that on the first two days he certainly was as sober as he could be.

The thirteenth article having been dropped, I will now proceed to consider the evidence introduced upon the

FOURTEENTH ARTICLE,

Which is the general term of court in Lincoln county, last spring. The testimony under that article naturally divides itself into two subheads, the first one what took place at Marshfield, the county seat of Lincoln county on the first day, until they adjourned to Tyler, and the second, that which took place at Tyler, during the session that was held there. As to the first one, what took place at Marshfield, they have four witnesses, some of whom come before you and swears that the Judge was drunk as a lord; they do not all swear to that; they put it more or less strong; but that is what one of the witnesses says, that the Judge was so drunk that he had to be helped out of the wagon. I do not desire to criticise the testimony of that witness now, because that will be done hereafter, and I think full justice will be done to him, at least he can expect that he will be, if we shall live that long. But I desire to call your attention to the fact that the witness expressly stated that the Judge was in such a condition that he could not get out of the wagon alone, that he had to be assisted, helped out; and I want to call your attention at the same time to the remarks that he and another witness admits that the Judge made, showing immediately thereafter what his judgment was and can compare that testimony with that which says that

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he was staggering drunk, "staggered badly," one of the witnesses says; when it has been testified here already that the Judge probably is never so intoxicated that he staggers, that he never gets drunk in his legs. What was it that this witness says the Judge did at the time, when he came into the court room at Marshfield, and staggered into his chair? Why, the first thing he did was to ask about the business. One witness says that he said, "What is the business, Mr. Clerk?" Another one says that it is probable that he asked what amount of business there was there. After having been answered as to that, he next inquires what accommodations there are. This was a little town with only five houses as we have heard. He asked what accommodation there was for the court. He was informed that the grand jury can be kept in a room down stairs. He asks what accommodations there are for the petit jury. He is told that they could be kept in a bar-room in the hotel,—a pretty place indeed to keep a petit jury, over night especially. What was the remark that the Judge made? "That is not a proper place to keep a jury, Mr. Clerk." What does he do next? Does he act like a drunken man,—a man who does not know anything, who does not know what he is about? The next thing is that he inquires the distances to the two nearest points where there are towns with sufficient accommodations for the court. He is informed that it is four miles to Tyler, and seven miles to Lake Benton, and he immediately turns around to the clerk, and says, "Mr. Clerk, enter an order adjourning this court to Tyler, and a further order that you bring all books and papers belonging to the office of the clerk of the district court to Tyler, to be produced there in the morning at the opening of court at ten o'clock."

Does that show a drunken man,—his consideration for the accommodation of the court, his remarks upon being informed what they were; his inquiries as to the distances, so as to be sure to do right, and what was best and most convenient for the court in the matter? And then his order, clear as sunlight! No muddle about that. I say, I will let all that stand to counterbalance such witnesses as Chapman and Coleman and Mathews and it is alone sufficient to do so. But we shall not rest with that; we do not want to do things by halves, gentlemen. We are accused here and we want to show you beyond a reasonable doubt that we are accused falsely and maliciously; and that those who accuse us know that they accuse us falsely and maliciously. We will call the parties who brought the Judge over there to Marshfield; we will show that when he came on the train to Tyler he was perfectly sober; we will show that he did not stop in town at all, that he stepped at the depot right into the wagon that brought him over to Marshfield; and we will show by the hotel-keeper, the county attorney and other parties who were with him in the wagon when he drove over that the Judge was perfectly sober, when he went there when the train stopped at Marshfield, and he went over to Tyler, and it is probable that he did not drink a drop of liquor that day. Then you can take the testimony of this witness and apply it as you please; you can then compare the testimony and judge of its truthfulness, with the testimony that has been given under the other articles.

Coming now to the

SECOND SUBDIVISION OF ARTICLE 14,

as to the term of court, which was held at Tyler, to which place it was

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adjourned, this same witness Chapman says that the Judge was under the influence of liquor the whole term—the whole term, mind you—and, he adds, that when the Judge left the cars at Tyler he was under the influence of liquor then; and on cross-examination we show, gentlemen, that when the Judge took the cars and left the town that the witness was not there, and was not within fifteen miles of it; that he left the evening before. We show further, upon cross-examination, that when he swears that the Judge was under the influence of liquor during that whole term that he swears to something that he cannot know, because we show that he came into court the first day, Wednesday, in the morning; that he was away Thursday; that he was away part of Friday; that he does not remember anything about Saturday or remember about being in court there and cannot testify anything about it; that he does not remember that the Judge was drunk on Monday; that he left at 10 o'clock on Monday, and that at that time Judge Cox was the soberest he ever saw him. He says that on cross-examination, and I ask you now what his evidence amounts to? When you find a witness who will swear like that, swear as fast and as swift as that I say that everything he testifies to must be taken with considerable allowance. I think when a witness comes before you in such a manner and under such circumstances, that the old doctrine can truly apply "False in one, false in all." Why this witness swears so swiftly that he does not remember what he swore to five minutes before; he takes it all back and swears that he never swore to it at all. This man Chapman, who, up there is in the habit of granting divorces out of court, comes here and tells you that a spree ended one night with a poker game, that the Judge got too full, that he couldn't hold a hand, and that then they rolled him upon the bed and continued the game without him; and ten minutes afterwards, when I brought him back to the same subject he tells you that he did not say that the Judge played until he could no longer hold a hand; that he did not see him play cards, that he did not play at all; that he did not say the Judge played cards at all; that he only said that he sat at the table with the boys for a few minutes. Now a man who denies under oath what he swore to himself five minutes before, is not a man that I would place any confidence in, nor do I think you will; but that is the character of several of the witnesses, the honorable, the honest witnesses, that the prosecution brings forward! This is the same witness who witnessed the funeral, as you might call it, of Judge Cox when they put him on the bed. He sees it all through a transom. Another transom scene transferred from the hotel at Albany to the hotel at Tyler. He sees through a transom, sneaks over and looks on at what is going on with the Judge, who, he says, was put to bed with his boots on. Gentlemen, I think we will be able to show you conclusively, that the testimony of that witness, and that of Mr. Matthews, is absolutely false; that the Judge was never put to bed by that party there; that he was not intoxicated or drunk at the time in the evening, or so that he did not know what he was doing. But we will show you that it is a fact that the Judge did go to bed with his boots on. Why? because here was a company, several of them, occupying the same room or two rooms thrown together; he could not thrust out the company of any of the gentlemen who occupied the room with him and who sat in the room until late at night and played cards; the Judge no doubt laid on the bed; he did not want to undress, because he has some respect for himself and he did not want to walk in his drawers or in his shirt tail

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around a room where there was a dozen of men sitting or playing cards; he throws himself down upon the bed to take his rest, and when they are gone he undresses and puts in for the night. But this is ground for the imputation that he was drunk; and the managers must have it. Why, the man went to bed with his boots on! It sounds so nice; it creates a prejudice, and, it is, of course, fully in accord with the dignity of the State of Minnesota to create a prejudice, a false prejudice, a prejudice there is no basis for, against this respondent, if only they convict a man that they are bound to see convicted. But they say there is a proof, and it was so stated in the argument, there is a proof of undoubted validity in regard to Judge Cox's condition at that term of court. Mr. Matthews tells you he was bright as a dollar every morning; Mr. Chapman tells you he was drunk the first day, he came there; Mr. Coleman says he was drunk when the clerk came with the papers; and Mr. Matthews tells you he was sober; but Mr. Matthews makes him get worse and worse during the day, and towards night he was pretty full every day. Now, this incident that the managers here called for to show that the Judge was intoxicated, was what? A man was arrested for an assault with intent to commit rape there, and he was arraigned; he asked time to plead. As appears in the testimony he was arraigned on Saturday, and he asked time to plead, and time was granted to him until Monday morning, under the statute. On Monday morning he was brought in, and the trial had without his pleading. That is as the evidence stands before you. That shows the Judge was drunk, does it not? well it would probably seem so to those who do not understand such things; but that is not what the Judge is there for, to see that the record is made up all right, to see that the criminal prosecutor, the county attorney attends to his business as he ought to; to see too, that the defendant is in court, and all that little minutiæ the Judge has nothing to do with that. If the prosecuting attorney does not know enough to look out for those things, it is his fault, and the State loses by it, but the Judge has no right to do such a thing. Why I remember how angry I became with the respondent when I was trying a criminal case of great importance, before him in St. Peter,—a man charged with rape, committed on his own daughter,—where the county attorney from Renville county was down there to prosecute,—it was one of his cases—assisted by Judge Hanscombe, the predecessor in office of the Judge, when one morning the defendant was not brought into court, and the State went on with the trial and the Judge said to the county attorney: "Mr. Miller, do you intend to go on with this case, without the defendant being in court?" I know that I was the maddest man you ever saw, because the Judge interfered, putting in his nose, and depriving me of a point I was entitled to, on account of the ignorance of the county attorney, and it is not proper that the court should take sides and see that things are done right, by the prosecuting attorney, I think it is depriving defendants of rights that they have when the court looks out for those things, and helps out a fool of a prosecuting attorney.

Now, at this time the county attorney undoubtedly forgot the fact that the party had not plead or he did not know enough to bring him in to plead, I don't know which. You say that proved that Judge Cox was intoxicated, do you? Well, it might probably, as I said before; it probably might do that, but what is the evidence in the case? Why the evidence of Mr. Mathews is that he was sober as a dollar that Monday morning when the party should have plead and when he was brought on

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for trial. Now if he was sober at that time and a mistake was made, how is it that the mistake shows that he was drunk when the positive evidence shows that he was sober; the indications, then, must disappear, must they not? If there were any indications, if it amounted to an indication, it must disapper because the facts show that it was not so. Now this same Chapman who comes in here and swears wholesale against him tells you that on this same Monday morning the Judge was the soberest he ever saw him. How is it?

Mr. Coleman says that on all the mornings but one, the Judge was perfectly sober, but there was one, he does not remember which one it was, when he was not sober. It evidently was not this one, because he testified as to this case, and did not bring it out. Why, gentlemen, a question as to whether or not the fact that a man was tried without having been arraigned or allowed to plead, would, under any circumstances, standing uncontradicted, prove drunkenness, is simply ridiculous! Why, I remember of such an incident happening at Minneapolis, in the court of Judge Vanderburg, one of the present judges of the supreme court, where some years ago a criminal case was tried where the prosecution was conducted by as able an attorney as the Hon. E. M. Wilson, with the respondent in this case, as attorney for the defendant, without the defendant having plead ed to the indictment. The defendant was convicted; and the respondent moved in an arrest of judgment before Judge Vanderburg, and Judge Vanderburg never decided that case, and it is over six years ago since it happened. It stands there, hanging fire every since. Would you say that Judge Vanderburgh was drunk because the man was allowed to be tried without having a plea and without an arraignment? Well, I imagine that Judge Vanderburgh is above the suspicion of being drunk on that occasion or any other. But they say here is another thing; he went to this man Chapman in the afternoon, after the noon recess, when it was discovered that there had been a trial without a plea, and told him that if he did not come in and plead guilty to simple assault, he would have to fine him fifty dollars, and put the costs on him anyway. Well, I don't know but that was perfectly proper; I don't know but what it was; I don't know but what it would be perfectly proper for the Judge to say, "Here, young man, you have been tried and found guilty by a jury of your country, and now you seek to escape on technicalities. You can take your chances; if you go on and demand another trial and put this county to expense I will take that into consideration in fixing the punishment; if you plead guilty I will take that in consideration in determining the question of the amount of punishment in case of conviction." It would have been perfectly proper. There is not a judge in this State, not a judge in any judicial district, that does not make a distinction between a case in which a man comes in and admits his guilt, and a case in which a man compels the State to prove his guilt; and such considerations as those would weigh a good deal more in the frontier counties than they would anywhere else. It would not be a bit improper. I have myself, as prosecuting attorney, in times now past told parties, when I knew they could not escape, that if they plead guilty and saved the county the expense of a trial that I would recommend them to the mercy of the court, and that the court would undoubtedly take into consideration their action in saving the county that expense in imposing punishment upon them, and making it light on that account; and there

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isn't a judge in this State that does not take that into consideration. But we will show you, gentlemen, that this respondent never had any such conversation with this man, although it may have been perfectly proper, although it would not show anything wrong, or show that he was intoxicated, had he done so. We will show by the respondent himself that he never talked with that man out of court about his case. We will show you that the witness is mistaken entirely, whether honestly or otherwise; that it was the county attorney of that county that had that conversation with him. I think we will be able to show you by that official himself that it was him that told the defendant that if he would come in and plead guilty he would see the Judge, and told him that he would fine him only ten dollars. We shall show you that when the Judge did fine the man finally it was done after consultation with the county attorney, as is always the practice in criminal cases, so far as punishment is concerned. The Judge consults with the county attorney and ascertains what his views are as to what the amount of punishment should be. Of course he does not always follow it, but he asks for information in order to have another's judgment as well as his own. Besides that, it cannot be claimed that the fine was excessive, nor that it was too small. The charge was a serious one, it is true; but it has been shown before you that all there was of it was that a man had kissed a girl. Now, ten dollars and costs is, it seems to me, a reasonably severe punishment for kissing a girl, if indeed there should be any punishment at all; and I should certainly object, if it were my case, to being made to pay as much as that, unless it was a pretty good looking girl. Upon this charge we will bring before you to refute all that has been said, and all that may be inferred, the county attorney of that county, the clerk of that county, the foreman of the grand jury of that county, the deputy-sheriff, the attorneys that were present both from Marshall, Lake Benton, and from Tyler; men from all those localities. We will show you that these men that came down here from Lake Benton, and swear that the Judge was drunk, do so because there is a feeling against him in Lake Benton on account of the county seat fight, as was referred to by the honorable manager in opening the case; that at Tyler you could not find anybody at all to swear that Judge Cox was drunk, but that at Lake Benton you could find a difference of opinion; that there was a feeling between Lake Benton and Tyler, and that would account for it. We will call men from the county, from Lake Benton, from Marshfield, Tyler, from places around there, and we will show you that it was impossible that Judge Cox could have been intoxicated, and have been guilty of the things charged against him. Why? For the reason that on the last day of that term the grand jury of that county came in and brought in a resolution in which they praised the conduct of Judge Cox during that term of court in that county in the highest manner, and thanked him for the able, impartial, and manly way in which he had presided at that term of court, and presented it to the court; and we have got the resolution here, with the signature of the foreman of the grand jury upon it. We had the signature identified by the witness Chapman when he was upon the stand, to show that it was genuine. I say that that alone will show that it was impossible. Twenty-three men of that county, from all over the county are not going to come in and put themselves upon record to a lie and pass any such resolution, and commend and praise the respondent for his action and conduct during that term when he was so beastly drunk, as these witnesses would have you believe he was.

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So far as those evening excesses go after court had adjourned, I don't know what the proof will show. I have not conversed with any of those witnesses. I apprehend that by this time you will understand frontier life and that some of you probably have had experience yourselves, and know what it is when court comes around in a little town where everybody is together, at one hotel, and everybody is bound to have a little fun. It is like a festival whenever court comes around, and of course there may be excesses, there may be card playing, and a little drinking, and a little singing, and a little dancing, etc., but certainly nothing to blame anybody particularly for. As to whether the Judge, at the time sat down and played penny ante, I can only say that I do not doubt that he did. Why, we all do on the frontier. I always have had the reputation of being a good church member, but I don't remember a term of court which I ever attended in which I did not sit down and have a game of penny ante with the boys; and I do not remember a term that I attended in that district, long before the respondent came on the bench, in which I did not sit, night after night, with the Judge of that district and play caseno with him, until three or four o'clock in the morning, when he was out of court. Why, that is not a crime in the western part of the State for judges, or lawyers, or anybody else. It is an innocent game to engage in, after your hard work during the day, especially when you can not go to bed and sleep, on account of bed-bugs or other insects, where you get into hotels, where the bed-bugs are so thick that they walk away with the beds right before your eyes. It is not pleasant to anticipate lying down in those beds, and the only way to drive away time is to sit up and have a pleasant social game. That is the way we always do it on the frontier, and nobody is blamed for it. You do not want to look at the conduct of men on the frontier with the ideas of metropolitan Senators. That will not do, we are not so refined up there as you are down here, and we ought not to be blamed for it. We will become civilized bye and bye.

FIFTEENTH ARTICLE.

The last June term in Lyon county.

Mr. President, at this Lyon county term there are many instances in the testimony of witnesses contradicting each other to a great extent one saying that the charge of the Judge to the grand jury was all right, another finding fault with it, and that it showed he was intoxicated; one claiming that he was intoxicated when he first came to the place, another witness declaring that he became intoxicated, after he came there, by drinking to a considerable extent. Some witnesses swear that the Judge was intoxicated a couple days during the term; others three days, and one other at least that he was intoxicated during the whole term. Other witnesses are very weak in their testimony as to the Judge being intoxicated. They say that they believe he was, that it was their impression that he was. Now I do not desire to dwell lengthily upon this article. I have made out and dotted down points upon which I desire to speak, but I desire to show upon this article, as upon the others as I have passed along, all the incongruities that there are in the testimonys to weaken the cause for the State and to show it up in its true light, and to show how weak it is. But I am taking up so much time and am so fearful of wearying the Senate with this long argument, that I prefer upon these matters that are left rather to skim over them

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than to go thfough them as thoroughly as I have gone through the others, so as to get through, if possible, this forenoon or within a reasonable time after the convening of court this afternoon, knowing that the senators must feel tired and that witnesses are here at an expense which ought not to be continued. I will not, therefore, treat as fully of this as I have of others, or go into all the details at the present time.

I desire to call your attention simply, though, to some evidence that has come out already. Mr. Drew, one of the witnesses there, Mr. Coleman, this same Mr. Coleman, who swears to the Renville county term, when he was not within fifty miles of it, testified both of them that Judge Cox, on the first day he came there, about noon, or the first day in the afternoon, was so intoxicated that he staggered; he couldn't walk; that it looked as though he would fall down; that he could not charge the grand jury, and couldn't perform his duties at all. Mr. Forbes comes before you, but first, Mr. Patterson, the clerk of court, tells you that he thought the Judge was considerably under the influence of liquor that day. When asked to give his reasons he mentioned several remarks made by the Judge, as it appears, during a recess, when some men were being naturalized, none of which remarks, as I shall show hereafter, have any bearing on this case, none of them showing, necessarily, or otherwise, that the Judge was intoxicated in anyway. But this same clerk of court, Mr. Patterson, testifies also that the Judge took up a certain case in the afternoon of the first day, that when the plaintiff had rested his case he asked the plaintiff's attorney whether or not that was all the evidence he had, and the attorney told him it was; he again asked him, "are you sure it is all the evidence?" and the attorney replied that it was, and the Judge then turned around and said "well, if that is the case, I will nonsuit you."

Now, it appears from Mr. Patterson's testimony, as well as Mr. Forbes, both of whom swear here that they thought the Judge was considerably under the influence of liquor at that time, that two months afterward, or more, the Judge was again at Marshall at the special term; that at that time a case was to be settled in this same action that was up on the first day of the term, in which the Judge had made these remarks; that the plaintiff's attorney, who was non-suited by him, had made up a case and submitted it to the counsel on the other side and they had settled it, or rather agreed that it was correct, proposed no amendments, and the matter was brought up in August before the Judge, while Mr. Patterson was there and while Mr. Forbes, the witness was there; that the Judge looked over the case and said to them, "gentlemen, this is not correct," and they asked in what. Mr. Forbes remembered the remark made by the court, but he said he had left it out because that would beat his case. The Judge then, after two months—just imagine a drunken man who sits, as some of the witnesses have testified, as though he would fall down, fall apart any minute; that was so drunk that when he walked up toward the platform where tho Judge's bench was, he staggered and almost fell backward—this same Judge two months afterward remembers and calls the attention of the attorneys to the fact that he made a certain remark, using the language that he did in the case that was tried that afternoon, asking them if that was all the evidence that they had and they were sure of it, and the answer he received, and tells them that their case is not correct, because that is not incorporated with it. The other attorney, and it is in testimony here that he is a technical man, had

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forgotten all about it until the Judge spoke of it himself, and he is a sober man who never drinks. The Judge remembered it and said, "I will leave it to the clerk if I did not use that language," and the clerk said, "you did, your honor." And as it happened afterward, and as Mr. Patterson, the clerk, said—it is not denied—when he found that afternoon that the Judge remembered what had passed on the previous day, and when he found that two months afterward the Judge remembered what was said on the trial of that case, he was ready to go up and swear that he was not drunk at all. I should think that the best man in Christendom would go up and swear that the Judge was not drunk under such circumstances. Yet Mr. Patterson comes before you now and says that he thinks the Judge was drunk. Mr. Forbes comes before you and tells you that his impression was that he was drunk. I asked him why, and he said, "well, I thought the Judge acted differently from what he did at other times; I have seen him and I thought he had been drinking." Of course! There is no reason for it except that the Judge acted differently. Now, the testimony that will be brought in here on this charge on behalf of the respondent will show you that the Judge had been holding this term of court in Lincoln county immediately preceding that, that he was up late the night before holding court, I think until about two o'clock in the morning, to get through in Lincoln in time to go up to Lyon which was the next term; that he had not, of course, had much sleep, the train leaving there early in the morning from Tyler. We are going to follow the Judge that day from the time he leaves his bed in the morning until he goes to his bed at night. We will show you when he left Tyler, what he drank; we will show you that he was perfectly sober. We will follow him on the train to Tracy; we will show you what he drank at Tracy, two small pony glasses of beer; we will follow him and show that he was sober when he left Tracy, perfectly sober. We will follow him on the train and show that he was perfectly sober there. We will follow him until he gets to Marshall, and when he steps off the cars and carries his valise over we will bring witnesses before you who saw him when he came in, witnesses who have known him for years, who will testify that the Judge looked weary and fatigued ss he naturally would be after long travel and the labor of a long tedious term; in fact a long series of tedious terms and of work since the early part of May.

Now, we will follow him from the hotel. We will show you that all the Judge drank at the hotel was one little glass of beer, that he went up to the court room after waiting only five or ten minutes—just washed and took a glass of beer—and went up to the court house. It was, mind you, a very warm day in June; it was a day in which a man might be excused for drinking one glass of beer or three or four, if he saw fit; it was a day when it would be natural with any of us whether inclined to drink or not to take a glass of beer to quench our thirst. We will show you that the Judge had only time, as we say, to wash and drink a glass of beer and walk up to the court room; that when he came up he found the grand jury was there and had been waiting for him a little while; he had them sworn and informed them that he had not had time to have dinner, and that he would adjourn for dinner as the witnesses have already testified, that he did adjourn for thirty minutes, that he went not to a hotel but to a restaurant to have dinner; that after his dinner he came back; that he was perfectly sober then, that

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there was nothing in his appearance, his conduct, his language or his language or his behavior during that afternoon to show that he was not perfectly sober. On the contrary his actions were those of a sober man all the way through. We shall show that when testimony was given here that he did not charge the grand jury in a proper manner, that that testimony is false, that the charge to the grand jury was an impressive one and a good one and just such a charge as he always gives; that his behavior all through that evening was that of a sober and able judge; that he was right in what he did, tried cases and dispatched business, running things ahead; that he did the same thing the next day and the next day, and that he was perfectly sober during all this time. We will be able to show this to you by attorneys who were present there in court. We will be able to show this to you by men who had cases there in court, by men who were jurors, by men who were in attendance upon that court, by men who were parties to actions tried in that court. We will be able to show it before you by so many that there can be no reasonable doubt in your mind that this is another of the offsprings of the fanatic imagination of some enemy's brain. I come now to the

SEVENTH ARTICLE.

and will take up the first, fifth and seventh specifications and will reserve the others until a later time. First, then, we have the first specification which is the time of the supplementary proceedings in the case of The Cleveland Co-operative Stove Company against Robinson and Maas, held at the office of William Todd, in Marshall, in Lyon county, in November, 1879. There are only three witnesses upon the part of the prosecution to this transaction. The first one is Mr. Forbes, an honest man, a lawyer up there who had not seen the Judge at all before that time, who says he could not swear that he was intoxicated at the time, but that he thought the Judge had been drinking some at the time, but expressly declares that he could not swear that he was intoxicated, for it was the first time that he had appeared before the Judge and he was not acquainted with him, and he had not seen him drinking and therefore could not testify definitely. The other two witnesses do not know any more than Mr. Forbes does, but they are more willing; they belong to the regular Marshall crowd. They are John A. Hunter and William G. Hunter, the sheriff and deputy sheriff. In the first instance J. A. Hunter tells you that he had not seen the Judge more than once before that time, but he says from the little acquaintance he had with him he should say the Judge was very much under the influence of liquor, but he went on with the business all the same. What he testified to was what took place on the evening of that day. He cannot tell whether any witnesses were examined; he can tell nothing about it except that he thinks from the little acquaintance he had with the Judge that he was intoxicated at the time, or under the influence of liquor. Now the third witness is W. G. Hunter, and I want to spend a little time on that witness because he is a precious one. He says that after the noon recess the Judge was slightly under the influence of liquor. Now it will be shown before you and it has already cropped out in the testimony that there was no such thing as a noon recess at that time, that the Judge came up on the train at noon and after noon went to work on this case, and after a little work that they discovered that the return was not proper and they then adjourned until six o'clock in the evening to give the sheriff a chance to

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come in and amend his return. Now, this same man on cross-examination after having first testified in direct examination that the Judge was slightly under the influence of liquor at the afternoon recess testified as follows. I read from his testimony on cross-examination in the journal of the twentieth day, on page 40.

Q. Did he say anything? Now, was there anything in what he said, or in the way in which he conducted himself, that was out of the way in any way?
A. I think his general appearance was different from what it would have been if he had been sober.
Q. How do you know how it would have been if he had been sober. You had only seen him once or twice before?
A. I think I do. He acted differently from what he did when he first went on the bench, when he first went on at noon.
Q. Did you see him when he first went on at noon?
A. Yes.
Q. And you say that at 3 o'clock he acted differently?
A. I think he did.
Q. Now, from noon until 3 o'clock he was sitting there and listening to the argument and proceedings there?
A. He was
Q. He didn't go out at all?
A. Not that I saw.
Q. Did he go to dinner?
A. Not after noon.
Q. Not after you saw him take a seat on the bench?
A. No, sir.
Q. But toward 3 o'clock he acted differently from what he did at 12 o'clock or 1 o clock, or whenever it was when you came into the room and saw him take his seat, he acted differently, did he?
A. It is my impression that he did.

Now, I desire to ask you what the testimony of such a witness is worth. He said he thought the Judge was slightly under the influence of liquor at that time, at three o'clock; and he tells you that he thinks so, from the fact that he was different in his conduct at three o'clock than he was when he first took his seat on the bench, between twelve and two o'clock, and in that time, between twelve and two o'clock and until 3 o'clock, he did not go out; he sat on the bench attending to the business of the court, and the change in his conduct the witness ascribed to his being intoxicated, when he tells you, at the same time, that he had no chance to drink a drop. I say that a witness that will testify as he has done, deserves to have his testimony thrown into the waste basket and never looked at again. But he is not satisfied with what he brings forth in the afternoon. He sees the Judge in the evening again. It is true he was not present in court, but he saw the Judge before court. The court or proceeding rather, for it was not a court, was commenced at 10 minutes before 6 o'clock, and he is very accurate about the time, this witness, he is a very accurate witness. At ten minutes before six he walks down towards the office of Wm. Todd and he meets the Judge, and says the Judge told him to open that door. "Why don't you open that door, God damn you?" It was locked and he was the sheriff, and it was a very reasonable presumption upon the part of the court that he would have the key to the court-room. He says, the Judge said to him "God damn you, why don't you open the door." You must remember that this happened on an November evening, the Judge walking or standing outside, perhaps thinly clad, cold, and feeling mean, and it would not be unreasonable if he did say, "God damn you, open this

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door;" for had it been opened he could at least have got in and warmed himself and not stood outside. The witness says, he told him he didn't have the key, and then he says the Judge swore again and said, if he didn't open the door he would break it in. Now we do not know whether the Judge used any such language or not, we have got only the witness' word for it.

Let us see now if that witness is worthy of belief. Is he a witness that you can rely upon? Is he a witness that you can stand by, and whose testimony you can take into account in forming your judgment in this matter? What does he say further, when asked upon cross-examination, how do you know that the Judge was drunk, except from that remark? He replied that he saw his face, that it looked flushed, that his eyes were colored. I asked him if it was moonlight, and he said it was not. He is positive that it was not moonlight. It was daylight, he said. Gentlemen, he testifies also that he was positive it was about ten minutes to six, and you can turn to your calendar and you will find that the sun sets on the 7th day of November in the latitude of Chicago at 4:45; in New York at 4:48; and in the latitude of Marshall, which would be thre e degrees further north, the sun would set at least not later than 4:35. And it was an hour and a half later in the winter that this man claims to have seen Judge Cox out on the street. There were no lights, he says, no lamps, as there are not of course up there; and yet he tells you he saw that the Judge's face was flushed, and his eyes were colored. Why he is the most infernal liar that I ever heard! and every one of you knows that he is; because you know that an hour and a half or an hour and twenty minutes after sunset in the winter, there is no dusk or twilight, so that you can tell a flush on a man's face, or the color of his eyes. That is the kind of a witness the State brings forward; that is the kind of consciences their witnesses have; that is the kind of witnesses the State of Minnesota desires to convict this respondent with. I should say that against such witnesses it is not necessary to bring proof. They condemn themselves; they impeach themselves; they show that there is nothing but falsehood in their mouths. But to make assurance doubly sure, we shall introduce before you respectable men; we shall introduce before you one of the attorneys in those proceedings, and show by him that he was there before the court all the time, and that the Judge was perfectly sober.

We shall introduce before you a man, if we can find him, and I think we can, although he is a man who travels a good deal and is hard to get at, but I think we shall find him—a man who has no interest in this matter, a man who is a resident of the state of Wisconsin, living in Milwaukee, a traveling man, for the plaintiff, who was up there, and, bye the bye, the plaintiff was beaten in that case, and it is not from feelings of gratitude towards the respondent that this gentleman will come in here to testify as to the truth, but we shall show by him that he went to St. Peter to get the respondent to come up and try that case; that he went up with him on the cars and followed him right into the court room and stayed by him, and we will show by him that Judge Cox was perfectly sober, and we will show by an attorney up there, who had business there before him that evening, who went before him with an *ex parte* matter that evening, just as soon as the other was completed, who was present and listened to the supplemental proceedings first as far as they went, and then went before the Judge with his *ex parte* business afterwards, and he will swear that if the Judge was ever sober in his life

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he was sober that evening. Well, I think that this witness and that the perjurer, Hunter, and his brother, and the suspicious Forbes, a man who has only a faint suspicion, will be disposed of, and that they will be buried in the waters of Lethe by the time we come to consider his case. The next specification I desire to take up is

SPECIFICATION FIVE.

Specification two and four I will reserve until another time later in this argument. Specification five is what I call the motion of Mr. Drew at the special term held in Marshall on the 30th day of September 1880. As to that specification there are only two witnesses; one of them is Mr. Patterson, the clerk of the court, who says that he can not swear that the Judge was under the influence of liquor when transacting business in court that day, and he has no recollection particularly as to the time in court. Now that is not much evidence, is it; that he cannot swear that the Judge was under the influence of liquor? I suppose the managers are perfectly willing to convict us on that proof. But Mr. Drew helps the thing out by coming in and saying "the Judge was intoxicated; I considered him drunk." Why, of course, that is gospel! He has testified before in this case and we know what Mr. Drew amounts to. It came out in the examination of witnesses that on this particular occasion two motions were taken up, one of them in which Mr. Drew was interested with Mr. Mathews, Mr. Andrews, and Mr. Forbes, Mr. Seward, an attorney up there, was interested in the other case, and on the other side of the motion in which Mr. Drew was interested, we will call these gentlemen, we will call these lawyers, and we will identify the occasion without any doubt because it is already in testimony that it was on this occasion that the Judge adjourned court earlier then he had intended to for the purpose of allowing one of the attorneys to go to the Republican convention. Very charitable upon the part of a Democartic Judge, I think! But, as I say we will call these four attorneys that were there, and will show by them that the only witness who swore to intoxication at that time, Mr. Drew, speaks falsely, and that Judge Cox was sober at that time as he is to-day. I think that specification can be disposed of in a short time.

Now I come to

SPECIFICATION SEVEN OF ARTICLE SEVENTEEN.

And this specificatiou naturally divides itself into three sub-heads. There are three classes of proof, on which it is claimed the respondent was intoxicated at that term. The first is the first day; the second is the second day, and the third is the third day. There were only three days in the term. As to the first day most of the witnesses (there are, I think, five witnesses altogether) agree that the Judge, when he came in that morning, by train from Sleepy Eye, just a minute or a minute and a half before the court was opened, looked intoxicated, and from the witnesses that we have upon the subject, I can just gather from the testimony as to the first day what it amounts to. They have first Mr. Webber, who says that the Judge was drunk during the trial of the case of Howard vs Manderfeldt. The trial was very regular; that trial was had on the first day. The jury came in the evening and that then the Judge was very drunk. Mr. Lind, the other witness, an-

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other of the standing pillars of the prosecution, says the Judge was drunk the entire term; another that the cases were adjourned on account of the Judge's drunkenness. "I continued all my cases, and a number of cases by other attorneys were continued; only one case was tried; and that during the trial of the case of Howard vs. Manderfeldt. The first day, the Judge was wild that afternoou." Mr. Thomson—Jim Thomson, testifies that during the whole term, the Judge was under the influence of liquor, that he was so when he first came there.

Mr. Somerville says that when he arrived he thought he was intoxicated. Now that is the main testimony upon the direct examination of all the witnesses. Mr. Blanchard also testifies that he was more or less under the influence of liquor during the whole of the term. Now, when you come to the cross-examination of Mr. Webber, when you come to examine into all the testimony and see what it amounts to, you will find that he noticed nothing out of the way with him on that morning, when he thought he was drunk; that his eyes were all right, that his hair was all right, that his face was not flushed more than would be naturally in a man who had been driving as he had, a number of miles in the wind and sun; but that he appeared as a man that was intoxicated. But when he was asked in what that appearance consisted, why, it was the same old story; he could not describe it. Was there anything in his actions? No, I cannot describe it. Of course there was, but he could not describe it. Why, that witness on cross-examination said that he couldn't give any evidence in regard to the appearance or actions of the respondent; that he might possibly be mistaken in his idea about the intoxication of the Judge, except on the evening the jury came in. Well, then, he could describe it, and is it not remarkable that if the Judge was drunk at that time and he could describe his appearance at that time, that he could not describe it at any other time. How was it? Why, "he talked very indistinctly; he had lost control of the under jaw; the mouth was partially open; his face was stolid; no expression in the eye;" that is his description of it. And we will call before you gentlemen that were present that night, and it is all we ask, as I said before, that these witnesses, instead of giving us their opinions, should give us facts, or what they claim to be facts, and we will show that the facts that they relate are false as hell. And so we will in this case. We will show it is a lie; this description of Judge Cox there that evening is a falsehood from beginning to end. We will show this to you, and show it by reasonable testimony like that of Mr. Jones, whose deposition has been sent for.

We will show it by Mr. Brownell, the attorney that was engaged with Mr. Jones, and a man who lives outside of the district of this respondent; we will show it by the testimony of Mr. Baason; we will show it by the testimony of the reporter; we will show it by the testimony of jurors; we will show it by the testimony of the bailiff of the court; we will show it by the testimony of parties who were there as witnesses; we will show that it was false by the attorney of that court, by the man who had the case there in court, and the man who was beaten by the Judge; we will show you that it is false, and that, on the contrary, the Judge was perfectly sober at the time. Why, gentlemen, we will show you that in the afternoon of that day the Judge went down to get shaved, and we will bring here before you the barber that shaved him, who will tell you that he did not notice the smell of whisky on his breath at the time; and then you can judge as to where Mr. Webber, the candidate for the judge-

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ship, is; then you can judge where Mr. Lind, his friend and henchman, is; then you can judge where Mr. Stewart and Mr. Somerville, his faithful *aid-de-camps*, are. Mr. Lind testified to another fact here. He said that all the cases there were adjourned were adjourned on account of the intoxication of the Judge. Mr. Thompson claims to tell you the same thing. Mr. Webber attempts to tell you the same thing. Gentlemen, I claim that they dare not bring that forward here as proof of the Judge's intoxication, and claim that as any evidence of the intoxication of the Judge. That they do so in the manner they do shows the impudence of these men, shows what they dare to do, what they dare to swear to. Why, here Mr. Lind comes and tells you that almost all the cases were continued; that only one case was tried, and it was continued for that reason. Why, we brought forward a calendar of that term; we showed you there were only twelve cases on that calendar; we showed you that the only cases that were continued at that term were the three cases that Mr. Lind was interested in, and that none of the other attorneys continued any of their cases. We showed you that the only other case that was continued, and one that Mr. Lind was not interested in, was because an amendment had been allowed to a complaint, and the defendant declared he was surprised and could not go to trial, and the case was continued on that account.

We have shown you by the cross-examination of a witness like Mr. Thompson, that he continued his case with Mr. Lind because the Judge was intoxicated, but he went right on the same day and tried another case; and we asked why he tried that case when he claimed he would not try another case because the Judge was intoxicated? He said, "because there was another attorney against me in that case;" not because the Judge was intoxicated, but because Mr. Lind was determined to have his case continued. And why? Because we shall show you that when he made his motion for a new trial in the case of Youngman vs. Davis, tried before the Judge in St. Peter, he became so enraged that he said that if he could ever see the Judge drinking liquor when he came to New Ulm, he would get up a conspiracy with the other attorneys to continue the cases, so as to get a public scandal on the Judge, and get revenge. This little one-horse lawyer living up there, would get revenged because the Judge would not decide in his favor and would not decide wrongfully. We will show in the same connection, the spirit and animus of this man Lind. We will show you whether he is an honest witness or not, the man who came here; who, when we asked him whether or not he had not stated in the presence of Sumner Ladd, that he would like to cut the damned drunken guts or damned drunken heart of the respondent out, or words to that effect,—I don't remember the precise language,—turned around to the chair and said, with a great show of indignation, "I believe it is malicious." I say that I believe we will be able to prove from the lips of this Sumner Ladd himself, that that was the expression he used. He denies it here with indignation, to-day, but I believe that Sumner Ladd will come here before you, and testify to that effect, and if he will not, we will show you where he has, on two or three different occasions, said that that was the fact. If he will shield his friend Lind, and shield him for the purpose of preventing this respondent from holding his office any more, we will show where he has said it, and show whether it is reasonable or not.

The testimony of this man Thompson who testifies that the Judge was under the influence of liquor the first day cannot amount to any-

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thing. Why? Because he admitted that he would say a man was under the influence of liquor if he had not drank any liquor at all. Why, a puritan like that, or a bigot like that, does not amount to anything, nor does his testimony; because he only testifies that the Judge might have drank only one glass of liquor, and he would have been under the influence of liquor. He says he does not remember anything unusual in the court; everything went on as usual, nothing wrong in that way, either the first or second day; but what struck him as peculiar was tbat when the Judge came in there that morning, he didn't stop and shake hands with the attorneys all round, as he was accustomed to do, but rushed up and went to work calling the calendar; and that was something remarkable for the Judge, because he is always polite. But then we will show why the Judge was not polite at that time; why he did not go there and shake hands with Mr. Thompson. He was not late; he was there just at the minute that court was to be opened; and we will show by some of the witnesses that that seemed to be almost a morbid idea with the Judge, the desire to open court on the very day, the very hour, almost the very minute for which it was set—not a minute later, but it is certainly a practice that is right and proper. Now, the first day I think, of that term of court will be disposed of without doubt, and in such a manner that there can be no doubt in your mind that the testimony which has been brought forward against this respondent is malicious and slanderously false.

Now as to the second day. We find that Mr. Webber testifies that the Judge was drunk all the term, but when we come to examine him, we find that Mr. Webber was not in court on the second day, more than just a few minutes in the morning, and that then he didn't pay any attention, and that he couldn't swear that the Judge was drunk on the second day. He takes it back as to the second day; he takes back what he swore to before; he could not swear that he was drunk on the second day. Mr. Lind swears that the Judge was drunk through the whole term, but he comes here and tells you that he was there in court only on the morning of the second day, and does not know anything about the remainder of the time. But then it does not cost anything to swear that the Judge was drunk the whole term, whether he knows anything about it or not.

Mr. Thompson tells you that the Judge was not intoxicated when he was charging the jury in the Young against Lind case that was tried the second day. Mr. Somerville tells you that he was not so bad the second day, that there was nothing in his rulings or charges in the Lind case that would show that he was not competent to transact business. Now, I say upon that day we will call before you, besides the others I have mentioned under this article, or at least part of them, jurors, witnesses, who were present. We will call before you the foreman of the jury in the case that was tried that day, and the only case that was tried, who is now a practising attorney, admitted at that term; and we will show by him, as well as by the other witnesses, that Judge Cox was not intoxicated at that time, or on that day.

But we come to the third sub-head and that is the one upon which the great stress was laid by the managers in the opening of the case. Why, the developements, occurrences of the day would certainly show to any sensible man that the Judge was intoxicated; there could be no doubt about it. What were they? Why the managers told you that they would show that he brought a poor ignorant German in there and

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that in a proceeding for contempt for not paying alimony as he was ordered to do the Judge in a wild manner fined him first $100, then $250, then $500, then $1,000, then $1,250 and that finally he revoked and remitted the whole. Well, if he did that, it would have been pretty good evidence I apprehend that the respondent was drunk, but then that is oniy what the managers say; that is only what Webber says again upon his direct examination, but he dwindles down and takes it all back on his cross-examination; and that is not what the record shows; that is not what the clerk of the court says; that is not what any of the witnesses swear to.

Now, what were the proceedings that day? What does Mr. Webber say himself on cross-examination? This man, he says, was called up there because he had failed to come when he was ordered to appear before the court and show cause why he should not be punished for contempt. He was brought in there and fined one hundred dollars; that the Judge told the interpreter to tell him that he fined him one hundred dollars; that Mr. Webber then turned around to the Judge and said he thought if the defendant would pay the money it would be enough, and that the Judge then spoke to the interpreter and told him that it was a shame the way the man was acting, and that he would fine him—talking to the interpreter all the time, not telling the clerk of the court to make any order, but telling the interpreter that he would fine him $250, then $500; would fine him $1,000; would fine him $1,250, if necessary. Now, the same man says that he may be mistaken about that. It may be that the Judge told him only that he could fine him so much, and that appears to be a reasonable theory. But here comes the clerk of the court with the record, and that record only shows two fines, a fine of $250, and then a fine of $1,250, and then a final order fining the defendant five hundred dollars, if he did not pay within a certain time a certain sum of money. The clerk was asked whether it was not possible that he might have fined him more than appeared in the record. Certainly not. Was it not possible that he might have fined him, as Mr. Webber testified? He said it might be possible, but it was not probable. Now, I don't think it is probable. Mr. Webber is too anxious for that seat; Mr. Webber is too anxious for those shoes, but he won't get them; he is altogether too anxious to get them.

Now the clerk tells you that even as the fines are in the book, which they claim are excessive, etc., and show that he was drunk that evening, even as to the fines that he put in his book,—that they are put there probbly by mistake. Why? Why, he tells you that the Judge did not address him at all when he imposed these fines, that he spoke to the prisoner and that it was only when he came to the final fine, the final order by which the defendant was to pay so much within a certain time or else to be judged guilty of contempt and to pay a fine of $500 or stand committed to jail, that that was the only time that the Judge addressed the clerk, and that then he told him, "Enter the following order, Mr. Clerk," and as to the other things that were said about the $100 and the $1250, it was only the Judge talking to the interpreter, and that it might be that the Judge said that he *could* fine him $100, or that he *might* or *could* fine him $1250, and that the clerk had misunderstood it and taken it as an order; that there was a great confusion on account of the wild dutchman that was there raving backward and forward, and threatening the court and everybody present. Now, then, if that was a fact if there is room for all that uncertainty, and that is a fact gentlemen, that

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was all that was said and done by the respondent, that he spoke to the man and tried to scare him into doing what the law required him to do without putting the county to the expense of sending him to jail in order to compel him to answer the requirements of the law, and that he spoke to the interpreter to tell him to tell the defendant, "I can fine you one hundred dollars and I can fine you twelve hundred and fifty dollars." but he did not do anything of the kind. When he came to fix his fine, as judges always do, he addressed himself to the clerk and said Mr. Clerk, enter such and such an order, and we have in the testimony of Mr. Blanchard, evidence that shows conclusively that that was a fact; in that he did address the defendant when he did not intend to make an order, that when he did not intend to make an order, he did not address himself to the clerk but to the party. So that this whole business about fixing a big fine, and then taking it back has all evaporated, it has all vapored out. and there is nothing remaining but mist and water in the whole thing.

Not satisfied with letting the testimony stand as it does, one witness contradicting the other as to the intoxication of the Judge, and as to the acts that he committed, upon which they based the idea of his intoxication—not satisfied with letting the matter rest there, we will call before you men that were present there, men who were present during this proceeding, one of the finest men that lives in Brown county, a gentleman there by the name of Subelia, who was present right immediately after this fine was imposed mentioned in the testimony of Mr. Webber, who was present there immediately after the alimony matter was taken up, on some mortgage foreclosure case, and we will show by him that the Judge was perfectly sober then, and that will corroborate the testimony of Mr. Lind. who swears first that he was drunk during the whole of that term, and then tells you that on the third day he was not in court until the Subelia matter came up, and that he would swear that the Judge was drunk then; that there was nothing to call his attention to him, nothing out of the way, and he certainly was not as drunk as in the Howard vs. Manderfeldt case, We will call the same barber upon that same afternoon and show this same performance by him again, we will call a party who was present, and an officer of the court who was present, in the court during the fineing—two officers of the court that were present there during the fineing process, and show that the Judge was perfectly sober at that time. We will show by the old Secretary of State, Mr. Baasen, that he met the Judge when he went down from the court house, immediately afterwards, on the road, and walked down town with him, and that he was perfectly sober then,—a man who has known him in distress, known him in success, known him drunk, and known him sober.

Now, I say, that when we succeed in showing that, there can be no doubt but that this charge on the third day of the last term at New Ulm is a fabrication just as well as the others. and it is a fabrication brought forward to benefit these candidates for the Judgeship, and their helpers and henchmen, and brought forward by them and by nobody else. Why is it, if Judge Cox was drunk, that they do not bring forward some of the jurymen who were present at that term of court; some men who are candidates for the judgeship? Why do they not bring forward some of the parties, Mr. Howard or Mr. Manderfeldt, who were parties in the case? Why do they not bring Youngman and Lind, who were present there, and had cases before the court? Why do they not bring the in-

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terpreter, Mr. Schneider? Why is there nobody, but these attorneys who are working for the Judge's shoes or working for their friends who desire to get into his official shoes? Why is it that these are the only men who are found worthy,—and every one of them political emimies of this respondent? Why is it? How is it? Is it that these other, men, jurymen and parties, are honest men who will not come in and perjure their souls, even to help a friend or to help themselves forward to a good office? I cannot see any other explanation of it. We will bring some of them in, we will show by men who were there, and are impartial and honest, and have no object or motive in coming here and swearing to a falsehood, that this article is a tissue of falsehood as the balance of them are, that this specification is a tissue of falsehoods, as is every article that has been touched upon yet.

The court took a recess until 2:30 P. M.

AFTERNOON SESSION.

Senator HINDS in the chair.

The PRESIDENT *pro tem.* The Senate will now come to order, and the counsel will proceed.

Mr. ARCTANDER. Mr. President, I now come to the consideration of

ARTICLE EIGHTEEN.

the article that charges habitual drunkenness. I was very desirous of laying before the Senate the law upon that subject. I have prepared a brief, but I feel that I will hardly be warranted, after occupying so much of the valuable time of the Senate as I have, in laying this matter before you now, especially as I think it can be done with as much advantage at the closing of this case. I will call your attention to the times that the prosecution claims that they have proven the respondent to have been in a drunken condition. I will call attention to the times that they have fixed with any reasonable certainty. Of course there are witnesses for the prosecution who testified that they have seen this respondent drunk at numerous times, frequent times, etc., but upon cross-examination some of them have failed to identify any of those times, or specify at what times, or under what circumstances, or in what company, or in what place. Now, we cannot undertake to meet and contradict any general statement like that. It is not to be presumed that we can so do; nor is it to be presumed that the Senate will take cognizance of any such testimony; that it will take cognizance of testimony given in such a loose and unsatisfactory manner that the witnesses themselves cannot satisfy themselves as to what times, what places, and under what circumstances they have seen the respondent in this drunken condition.

I will go through the testimony from the different witnesses *seriatim* as it was elicited upon this article. The first was Mr. Lamberton—he was not the first witness called but I take him as the first—the first witness is Mr. Lamberton. He says that the only time that he can remember, the only times that he was requested to testify upon, are times during the last year. He can remember of seeing the respondent five times; at two of them he was intoxicated; at two he was sober; at one he was so, so. Now these two times that he was so intoxicated are evidently one drunk. He testifies that it was on two consecutive days, and it was evidently one drunk. He gives no date, no circumstances and consequent-

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ly that must stand for what it is worth, and we cannot undertake to rebut it. The next witness, Mr. Lind, gives only one specific time in January, 1881. I will call the attention of the Senate to the fact that Mr. Lind has so little knowledge about what he testifies to that in his direct examination he told you that this time that he saw the respondent, in January, 1881, was during the holding of a special term in New Ulm, and he stayed over after the term was over for a couple of days and was drunk. On cross-examination I called his attention to the fact that there was no special term in New Ulm in January and asked him if it was not a fact that the time when he claimed to have seen the respondent drunk was the time when he was snowed in at New Ulm, on his way to Marshall to hold court, and he says, refreshing his recollection, that he believes that was a fact but he can give no time whether in the first or the latter part of January, but simply tells us that it was in the month of January, 1881; and in this same month the witness Morrill testified to having seen the respondent drunk in the same place at New Ulm.

The witness Casey testified to have seen him drunk at New Ulm, but they have not stated what time, what month, or whether one or two years ago. We presume, and have a right to presume, that it was the same occasion, as they have not shown that it was on a different occasion. The witness George also testifies that on or about the same time he saw Judge Cox in New Ulm and saw him drunk. We will take it for granted that the time the four witnesses testified to was the same drunk; at least, it does not appear, that they are different drunks. They are at the same place and about the same time, and I think the presumption is that the witnesses that lived in New Ulm, if there had been more than one occasion or time during the month of January, when he was there, would have so specified. We can take it for granted then that as far as we are concerned, there are only two times at which the defendant has been drunk during the last four years.

We will now come to the testimony of Mr. Webber. Mr. Webber, a candidate for the Judge's shoes, who testifies first that he saw Judge Cox very frequently drunk at New Ulm, when he is pinned down upon cross-examination, tells you that he would not swear that he saw him over six times intoxicated at New Ulm for the last four years, and that in the last year he has not seen him intoxicated at any time, except the general term in May; that he testifies to. Now, of the six times that we have been trying to get him to specify dates and circumstances, and the place in which he has seen Judge Cox intoxicated, the only place that he can specify, and the only circumstance is the time when Judge Cox talked to him about the divorce case that he had in Redwood county, where the question came up as to whether adultery was a ground of divorce under the peculiar circumstances of that case. He tells you that at that time he used, I think, some Latin, Greek or Hebrew expressions, and that he desired to know the exact meaning of them; that Father Bergholz, a Catholic priest of great learning, and of high standing in New Ulm and in Brown county, as well as over the state. happened to pass right by at the time the talk was had, and that the Judge immediately accosted him upon the same subject, and wanted to get his opinion as to the proper meaning or translation of the words. That is the only time of the six that Mr. Webber will swear to. He says that he saw him six times, but that is the only time of the six that he will specify, the only time when he has located the circumstances and the time; and

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upon that one time we will bring down the gentleman that he says spoke with Judge Cox at the time, we will bring the Rev. Father Bergholz; we will show you that he remembers the circumstances; that he remembers the fact, the subject of the conversation between himself and the Judge, and that, at that time, the Judge was perfectly sober.

I take it for granted that a man with the education and thorough training of a Catholic priest, men who are more learned—not only versed in religion but in philosophy, and in the knowledge of human nature—than any other people the world has ever produced, that this man, with his learning, with his knowledge of human nature would be able to tell with greater certainty than Mr. Webber could, whether the Judge was intoxicated or not, and when this man comes upon the stand and gives you in clear and distinct language his observation of the Judge at the time his recollection of that took place, I think that you will become thoroughly satisfied that the only time Mr. Webber can specify as to having seen Judge Cox intoxicated outside of the time that he has testified to under the specific articles—you will become satisfied that his testimony upon that occasion was false, and I ask you to argue from that, that of it was false as to the only time that he can specify, the only time that we can possibly meet him by evidence, that the probability is his testimony is just as false as to the other times as to what he can not specify. Mr. Webber remembers an other occasion on which Judge Cox was intoxicated, that is outside of the county of Brown. He remembers the time of the trial of the Hawk case in the county of Redwood. He remembers the occasion, he claims, at which Judge Cox sat and played cards in the old Exchange Hotel at Redwood Falls, and that he drank out of a bottle of whisky there he should say more than eight times; that the jury was out in the Hawk case, and that the sheriff came down after him, and said the jury wanted further instructions, and that he went up to the court house, and that he was drunk at the time; that it was plainly apparent from his actions and appearance, none of which he can describe; but he says that he was drunk at the time.

I will call your attention to the fact that Mr. Webber is corroborated in this testimony by the witness, S. R. Miller, the incompetent county attorney of Renville county, that has been upon the stand here;—that he is corroborated by Mr. Wallin, the candidate for the Judge's shoes in a certain contingency, in case the Judge can be disqualified from holding office,—that he is corroborated further by George Miller, the brother of the county attorney of Renville county; all of whom say that at that time Judge Cox was not intoxicated the time when the Hawk jury come in. We will show you that these men have made up their testimony one with the other, that all of these men that are anxious, for one reason or an other, to get rid of the Judge, have made up their testimony to suit, one to dove-tail into the other. We will show you that the testimony is false from the beginning to the end. We will call before you the men with whom the Judge sat in the room and played cards, as has been testified to.

We will call those good men, honest farmers, honest horny-handed grangers, who will come here before you and say that Mr. Webber lies when he tells you that Judge Cox was drunk there in the way he states he was. They will tell you it is a fact that there was a bottle there, but that Judge Cox didn't even taste what was contained in the bottle, if it was whisky; that Mr. Webber was not in the room long enough to know, whether Judge Cox was drunk or sober; that he was not in long enough

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to know whether Judge Cox drank anything or not. We will show this by three of these men, I say, two of them walking down with the Judge to the court house, when the jury was brought in. We will call before you the sheriff that called him up to the court house and was present in the court when that took place. We will call before you an honorable member of the House of Representatives at the last session, the Hon. George W. Braley, the banker at Redwood, who was present there, and show by him that he went with the Judge into a restaurant to take a dish of oysters or something, nothing to drink, and that when the sheriff came up to bring him up to the court house, he was perfectly sober. We will show by the bailiff, who had charge of that jury, and who saw him when he gave the charge, that Judge Cox was perfectly sober, and gave them full and clear instructions. We will show by Mr. Hawk, the respondent in that case, that Judge Cox was perfectly sober at the time; and when we shall have done that, I claim we shall have wiped away the imputation which these candidates for the judgeship have tried to throw upon his sobriety at the time, and that it will work back on these other occasions when witnesses like Webber testify to the intoxication of the Judge, when he cannot specify times, circumstances, men present, or places.

The next witness that is brought forward to prove the habitual intoxication of the Judge, is Mr. Morrell, formerly of Redwood Falls, now of Minneapolis.

There will probably be no necessity to bring forward testimony to show that Mr. Morrill has stated falsely in saying what he has in regard to the intoxication of the Judge, because I apprehend that when you hear the records of that man, when you hear honorable and prominent men of Redwood Falls and of St. Paul, come before you and testify to the reputation of that man for truth and veracity, to the reputation of the man for honesty, when they come before you and tell you he is a thief, an embezzeler and a black-mailer, that that is all that will be neccessary to characterize his testimony. But to make assurance doubly sure we will show you how Mr. Morrill has, upon the stand, falsified as to every occasion upon which he has been called. We will show you the occasion that he first gives, the occasion under article eighteen of the trial, in the evening, of the case of Lusher vs. Brayley in Redwood county, at the last June term of court, or during that term of court, that his testimony is false there when he says that the Judge was intoxicated there that evening. We will show you that it is false when he testified that during that session of court during a recess in the afternoon he saw Judge Cox drunk in a saloon; we will show that the saloon he mentions as having seen Judge Cox drink in Judge Cox never entered during that term.

We will show by witnesses who were with Judge Cox night and day during that term of court, that Judge Cox never tasted a drop of liquor during the whole term of court; that he was a perfect temperance man during the whole of the term; that neither at night nor in the evening, nor in the day time, did he taste a drop of liquor. We will show you that during the trial of that case of Lusher against Brayley in the evening, that he was perfectly sober. We will show it by the testimony of Mr. Brayley, one of the parties in the case, by the testimony of Mr. Gale, the attorney that was in attendance that evening; we will show it by the testimony of the bailiff who was in attendance that evening, and

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we will show by the testimony of Mr. Christian, one of the jurors in the case.

The next occasion that Mr. Morrill testified that he saw Judge Cox drunk during that same term of court was the evening that the bell ringers were there; he said that the Judge adjourned court, did no business; that he came there to the court room when there was a good deal of noise right opposite, the band playing, and said that it wouldn't do to go to work to do any business that night with that noise around, and therefore adjourned court; that is all he did. He cannot describe his appearance; he did describe his appearance in that Luscher vs. Brayley case, and when the bell ringers were there, except that he sweated very profusely. Why, I have been sweating very profusely since I have commenced the argument of this case, and I object most strenuously to that being taken as evidence that I have been drunk during its argument; and I think when you take into consideration the fact that the Judge proceeded there with the trial at that term of court during extremely hot weather as it was last year, in June, as you probably remember, that you will not wonder that he perspired. It is no evidence of intoxication, and this perspiration showed itself during the evening the bell ringers were there, and that was the only evidence of intoxication. We will show you by the clerk of court from Beaver Falls, who has known the respondent for twenty odd years, that he was with him in the court room that evening; that he walked with him over to the bell ringers.

We will show, also, by Senator Wilkinson, if he returns from Montana in time for this case; we will show it by the gentlemen who got up the entertainment, two of them, that Judge Cox that evening was perfectly sober. The next time that the witness Morrill saw Judge Cox intoxicated during that term of court was during the trial of Thorp against Brewster. We will call upon that question both of the parties to the case, Mr. Thorp, the plaintiff, and Mr. Brewster, the defendant, and we will show by both of them,—and I believe Mr. Brewster is a strong temperance man himself, a high churchman, who certainly would not tolerate intemperance in a judge upon the bench, or shield him if he believed him guilty,—I believe that both of those gentlemen will tell you that Judge Cox was perfectly sober, and that he conducted himself with perfect propriety. We will show you the same fact by the attorneys in the case, Mr. Gould and Senator Wilkinson. We will show it by the sheriff and by the deputy sheriff; and I think that we shall have disposed of Mr. Morrill when we have shown these facts to countervail the statements he has made.

When you take into consideration the fact that the managers had so little confidence in his testimony that they dropped the specification under which the testimony was originally introduced and would only let the testimony stand as coming in under article eighteen;—when they had so little confidence in it themselves that they would not risk the specification under which he testified upon the uncorroborated testimony of such a rank perjurer. I think he will go down to posterity with a reputation that he deserves. The next witness is one of a similar calibre, that is, Mr. Wallin. He has particular reasons for coming here and testifying against the respondent and testifying as strongly as he does. He is not only a candidate for his position if he can get him disqualified but he is also the gentleman who, four years ago, was defeated by the respondent to such a degree that the day after election he didn't know where he was, he didn't know that he had been running at all,—nomi-

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nated by a Republican convention in a Republican district, a district where his party had twenty-five hundred majority, he was left thirty-five hundred votes beh n l l.i- ti- ket. This man tells you and his testimony was discarded by the managers, was not considered sufficient to rest specificatio s upon, this witness testifies to you not that Judge Cox was drunk during any of the times when Mr. Morrell testifies he was; but it is a remarkable coincidence gentlemen, that I desire to call your attention to the fact that Mr. Morrell and Mr. Wallin, were both attorneys in the case of Luscher against Braley. Mr. Wallin is claimed to have been present the evening of the Bell Ringers, by Mr. Morrell. He is claimed to have been present during the trial of the Thorp vs. Brewster case, and when the managers were required by the order of the Senate to select one of the evenings that Mr. Morrell had testified to upon which to bring in corroborating testimony, they did not dare to do it, because Mr. Wallin, even could not muster up cheek enough to come in and corroborate Mr. Lind; and they selected another case, the evening after trial of the Tower case, when it was submitted to the jury; and they were going to prove by Mr. Wallin that the Judge was intoxicated. I call your attention to the fact that it appeared in the testimony of Mr. Wallin at the time, that Judge Baldwin was the attorney on the opposite side, Judge Baldwin and Mr. Morrill. Mr. Morrill was not called upon that occasion. Why was he not? Was it because he could not testify that the Judge was intoxicated? Was it because he could not bear to stretch his conscience far enough, that he had committed perjuries enough, when he swore to the other three or four occasions? How was it that Judge Baldwin, who is subpœnaed, a responsible gentleman and a responsible lawyer, a man with a past behind him; a man with a standing in a community—not any of your itinerant lawyers, running from one place to another trying to make what living they can, and then skinning out after having stolen what they could—but a man of reputation and standing, who was subpœnaed, I understand from the records here, by the managers. He was brought down here, he was an attorney in the case that Mr. Wallin testified to, was present that evening, but he was sent home again; he was not even called upon the stand. Why was it? Well, you can draw your own conclusion, if it was not because Mr. Baldwin would not testify to any such lie; that he would not sacrifice his reputation and his conscience, even if he is a candidate for Judge of the Ninth Judicial District.

I now desire to call your attention to the testimony of Mr. Wallin upon the trial of this case. He says he paid particular attention to the Judge, and was sure that he was under the influence of liquor at the time. Why? Because he had a particular interest in controlling his mind at the time; he wanted to get control of his mind so as to get him to give a certain charge to the jury. I asked him, did you get it; did you get control of his mind? No, sir. Did you get him to charge the jury as you wanted him to, were you sober? Yes. He had not drank any for eight years. He gave that as an advertisement before he left the stand and I was perfectly willing that he should advertise the fact to the people of the ninth judicial district, for I do not think they will have any use for the advertisement. Does that show that the Judge was intoxicated? Here a drunken man is claimed to have sat upon the bench, and a lawyer of the undoubted ability and the undoubted pertinacity of Mr. Wallin, tries to obtain control of his mind, to get him to give a charge to the jury, and signally fails; and he sober and the Judge drunk; why, it is a remarkable incident.

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I desire to call your attention at this time to this man Wollin, and to his appearance upon the stand. He is not interested of course, and everybody can see it; but everybody could see it yet more from the way in which he testified. Did you notice that whenever he was asked a question by the prosecution, how ready he was, either in rebuttal or direct examination? Why, immediately he knew all about it. Well, the minute I tackled this attorney, Wallen, and asked him questions on cross-examination, did you notice how he would shut his eyes and squint, and look wise, and look up at the roof, and wait about ten minutes before answering a question, and then finally tell you that he didn't know anything about it, that he couldn't say, that he couldn't say what case had been tried; that he couldn't say what day it was, couldn't say what time it was; that this was when the Judge had been drunk; couldn't say what time he charged the jury; couldn't say whether he made the argument in the night; couldn't say whether there was any other case tried that day? When I asked him questions that he knew, —because he knew that Tower's case had taken up the whole day,—and when I wanted to fix it, and show that this Tower case was not the occasion testified to by Mr. Morrill, he was telling me all the time that he couldn't tell, that he couldn't remember, with the knowing squint he has, after he had waited about five minutes and considered. Now it showed with what kind of spirit and animus he appeared here before you, and that alone should be enough to condemn him. If not that, at least his testimony, should at least the way in which it was given; the way he contradicted himself upon cross-examination, showing his in ability to get possession of the mind of the respondent, of the mind of the respondent should do so.

But we are not going to rest with that; we are going to call one of the leading attorneys of that county, before you, who was present that evening, and we will show by him that the Judge was perfectly sober. We will call before you one of the parties, the chairman of the board of county commissioners, who was present during the trial of the case, and we will show by him that Judge Cox was perfectly sober. We will call before you the clerk of the court at Beaver Falls, who was there again at that time, who talked with the Judge after the jury went out, walked up and down with him for about an hour, waiting for the jury to come in; and as I said, an old intimate friend of Judge Cox, who knows him well, drunk and sober; and that man will testify that he was perfectly sober. I think that this charge of habitual drunkenness, these charges that have been attempted to be made out, attempted to be proved, charging him with habitual drunkenness, have signally failed.

I come now to the testimony of Mr. Sullivan, of Marshall. I will state right here that it is given in such a loose way that it is almost impossible to contradict it. If we were given times and places correctly, so that we could fix the occasions, I have no doubt but that we could rebut the testimony. It gives three times when he claims that he has seen Judge Cox intoxicated, one was some time in the autum of 1880; and he explains upon the cross-examination how it happened that he thought Judge Cox was intoxicated at that time. And how was it? Why, he shows his animus all the way through his testimony; he tells you that he saw Judge Cox walking on the street with Judge Weymouth; that he heard him jabbering away, and he tells you that he was as far from the respondent as from the witness-stand here to the opposite side of the hall, at least. Of course it was farther that that, be-

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cause he was on the other side of the street; that he could not hear a word of what Judge Cox said, but, anyhow, the Judge was jabbering. Such testimony shows with what animus he comes upon the stand and testifies before you. He tells you that Judge Weymouth had to lead him along, and hold him up; and when cross-examined upon this point to see upon what he bases his idea, we find that it is upon the fact that Judge Cox and Judge Weymouth walked arm-in-arm down the street; that because they did that of course Judge Weymouth had to hold him up!

The next occasion that he gives you is at the time he saw Judge Cox standing at the hotel up there; he came around the corner and Judge Cox stood there leaning up against the wall talking with a man. He passes rapidly by, does not see him more than half a second; Judge Cox did not move, he did not hear him say anything, but he passed right by him as he came around the corner, and forms the opinion that Judge Cox is drunk. He can not give you his appearance or an idea of his appearance. He did not see him walk, he did not hear him talk, he did not do anything by which he could judge, but he is ready to give it to you that "Judge Cox was drunk."

The third occasion is the most ridiculous of all. On this occasion he does not give us day or date or the place, except that he says it was in Mr. Chittenden's store. And he saw Judge Cox there, doing what? Sitting down on a chair and having some socks on his knees. The Judge did not try to get the socks on over his boots, or anything of the kind. He heard him make a remark. What was the remark? "Don't remember; I thought it was silly." Did you hear what was said before? Did you hear what it was in answer to? "No, I did not." When did you go in there? "A second before, and went right out again. I did not notice him particularly." What made you think that Judge Cox was drunk? "Oh, his appearance." His eyes? "Yes, his eyes." In what position did he sit towards you? "He sat in profile to me." How many of his eyes did you see? "I saw one of his eyes." Was that eye drunk? "Yes, sir." He says that Judge Cox was drunk because one of his eyes was drunk! That was all he saw of him. I say, gentlemen, that that kind of testimony we don't care to rebut. It rebuts itself. It is ridiculous, preposterous, false upon its face, and no rebuttal can amount to as much to condemn it as the testimony itself as it stands with the reasons given for it.

We come now to the testimony of Mr. Lidgerwood; he is the gentleman from Mankato; he is the gentleman that now lives here in town, as he claims; the gentleman that lived in Mankato in June, 1880. He is the gentleman that found Judge Cox, after the term of court was over, some night in June, 1880, soon after the cyclone, when he was walking home one night on the sidewalk with his lantern, found him crawling in the street and trying to get on the sidewalk,—leaving the impression that he was dead drunk; and he testifies to you that he helped the Judge on to his feet, that he helped him on to the sidewalk, that he walked out of his way, and took Judge Cox to the Clifton house. That the next morning he went around to the Clifton House, to find if he had registered and to find out who he was; that he did not find his name on the register, but that he found him in the saloon close by, and he tells you that he was drunk at that time.

He tells you that he was at St. Peter at the Judge's office one day, but that the Judge was not at that time intoxicated, but he probably had

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been drinking only,—so I suppose that time is not to be counted against us.

We shall show you, gentlemen, that Judge Cox never in his life has seen this man Lidgerwood before he came upon the stand here and swore as he did,—from what consideration we do not know. We shall show you that Mr Lidgerwood's testimony is false as hell; that at that time and during the whole summer of 1880 the Clifton house of Mankato was closed, and was not kept open at all. We shall show you that from March 1880, until October 1880, according to the books of the first national bank there, and by the clerk of the Clifton house who left it in March, and knows when it was opened again, that the Clifton house was closed at the time when this man who comes upon the stand swears Judge Cox was in the gutter, and that he carried him around to the Clifton house. And I claim that this will be sufficient to corroborate the statement of the respondent, that he has never seen him before he came upon the witness stand, and shows that his testimony is false from beginning to end.

We come next to the testimony of Judge Severance upon this article. The first instance that he gives that Judge Cox was apparently under the influence of liquor was at the time when Judge Severance was at St. Peter and tried the case of the state against Loomis, before Judge Dickenson. We do not care to contradict that evidence at all, because we claim that to make out the charge of habitual drunkenness, you must not only show habitual drinking, but you must show instances of habitual drunkenness; you must show that a man is intoxicated, not that he has been drinking a glass or two, that is not sufficient; you must show so many instances. Now, Judge Severance does not claim that Judge Cox was intoxicated at that time, and I say we do not care to rebut that testimony. It does not amount to anything; it may stand for what it is worth.

The next time, he tells you too that Judge Cox was not intoxicated. That testimony was offered under article nine, and afterwards withdrawn and put in under article eighteen, article nine being abandoned.

Judge Severance tells you that at the last June term of court at Mankato, at the last day of the term, Judge Cox had before him a mandamus case against the city of Mankato; that he was before the respondent, as attorney for the city; that it was the last business that was done at that term of court, and at that time the Judge was not drunk, but that he was "excited on liquor." Now, of course, it was not necessary for us to disprove that, but we desired to disprove it to show how, even a man like Judge Severance can be prejudiced, and wrongfully so, against the respondent, how he can give testimony either intentionally or unintentionally which is not true, and which is not correct, which is not a matter of fact; but for this purpose, and for no other, we shall introduce testimony on that charge, we shall do it to react upon other testimony Judge Severance has given in this case, that amounts to more than this does. We shall show you by the records of that court that on the last day of the term the court met at 8:30 in the morning, that at 11:45 the court adjourned sine die, or at least Judge Cox's connection with it then ceased; we shall show you that the first case that was brought up in the morning there, was a case of General Baker's; that at that time that case was adjourned on account of the sickness of the General's wife; that Judge Cox at that time was perfectly sober; that thereafter the case of the State of Minnesota against Webber was taken up, and that the coun-

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ty attorney was one of the attorneys in the case, that one Maxwell was a witness in the case, that Mr. Meade was the deputy clerk who was there and kept the minutes of the court and sat there during the whole forenoon.

We shall show you by Mr. Freeman, the county attorney of that county, that Judge Cox was perfectly sober when he tried that case, and that there were no adjournments or recesses before the city case was taken up, so that Judge Cox could not have had a chance to have gone out and become intoxicated; that at 11.45 the court was adjourned, and that the Judge went away from the court room, and they did not see him there any more after that. We shall show to you by Mr. Meade, that there were no signs of his intoxication at that time. We shall show you by the witness Maxwell, that there were at that time no signs of his intoxication. We shall show you by Mr. Switzer, the sheriff of the county at that time, that there were no signs of his intoxication at the time. We shall show you by the Hon. Mr. Griswold, the ex-mayor of Mankato, who was then there as the mayor of the city during the hearing of that mandamus case, that there were no signs of intoxication, or of the influence of liquor upon the Judge that morning. And when we have done this I claim we have disposed of Judge Severance, and that we have shown that even he, for some reason or other, can be so biased and prejudiced as to give before you testimony that is either produced by that mist of the reputation of the respondent, of being a drinking man, or for some other purpose which is unknown to us.

The next witness that was called by the managers was Mr. Casey, the sheriff of Brown county. They pretended to show by him that Judge Cox had been intoxicated on a certain evening at New Ulm. Mr. Casey does not quite want to swear that the Judge was intoxicated; he says he was under the influence of liquor, and got more under its influence afterwards during the evening. It was that evening when he claimed the Judge wanted him to go and "pull" a house of ill-fame. And that he told him to go there, and insisted that he should go there, and that when he demanded a warrant, that the Judge sat down to write it out, and afterwards said, no, I guess I won't give you a warrant.

We will show you by a witness who was present there during that evening, that Judge Cox was perfectly sober, that the whole thing was a joke from beginning to end; that all the parties that were there except the sheriff, knew it was a joke. It seems that Mr. Casey had just lately been elected to the office of sheriff, and was quite important, and at the same time quite ignorant as to what was the proper way of discharging his duties; that the Judge sent the deputy sheriff after him and told him to come down, that he wanted to see him; that when he came down he put on a sober face and said to him, I want you to go down and arrest the inmates of that house, that the sheriff got rather confused, and wanted the deputy sheriff to go down with him, and wanted to borrow revolvers, etc., to take along with him, and seemed to take the whole thing in earnest; of course that only increased the joke, the Judge wanted to see how he would act under the circumstances. The sheriff went away to see the county attorney, and after he came back told the Judge that he wanted a written warrant, and that the Judge said, carrying out the joke, "all right, give me pen and paper and I will give you a warrant." He sat down and wrote one word, and then threw down the pen, when they all burst out laughing, and the Judge finally unable to restrain

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himself any longer told Mr. Casey "well Mr. Sheriff, I guess we had better not give you a warrant." He thought he had carried the joke far enough.

We shall show to you that instead of the respondent then being under a spell of intoxication, he was perfectly sober at the time, and we will show this, not by the respondent, but by witnesses who were present there; witnesses who heard and saw the whole thing, witnesses who were in the joke, witnesses who went after the sheriff, in the first place.

The next witness is the Rev. Mr. Liscomb. He tells you that upon a certain occasion in December, 1879, at the office of Mr. Forbes, after the December term of court for Lyon county, had been disposed of, Judge Cox was intoxicated, was under the influence of liquor, was drunk. I asked him what he meant, by the term drunk, and he says, that he calls a man drunk who has drank a drop. Now, that is his standard,—a very liberal one I think, for a minister. Probably good enough for a Presbyterian, but certainly not the standard that he will want to be measured by, one day, when he has to respond for those sins that he may have committed. With reference to this occasion, we call before you Mr. Forbes, the man in whose office this interview took place, although it is probably not necessary to do so, because the minister's testimony don't amount to anything anyhow. He has told you that the Judge was intelligent in his conversation and seemed to have understood the point of his sermon, the night before, and used some learned expressions, and, of course mixed in a little Latin. The minister no doubt thought this was evidence of intoxication, coming as it did from Judge Cox, and could not account for it, except upon the ground that he was drunk. Of course, if a minister had spoken of it, and given his experiences, his conduct would have been perfectly correct; but as it was Judge Cox, of course, it was wrong, and he must have been drunk at the time. But I say we shall call Mr. Forbes, who was present at the time, and he will testify to you that the Judge was not under the influence of liquor at the time. We will also call Mr. Todd, who was with him at the same office.

I call your attention to the fact that this is the same day on which Mr. Drew and Mr. Hunt claim to have seen Judge Cox at Mr. Hunt's hotel in Marshall, drunk. Mr. Hunt places it in the evening, or at dinner time. Mr. Drew puts it at breakfast; and he is just as sure of that as Hunt is of the other. Well, probably Hunt is not very sure, for at first he made the Judge drunk there for four or five days, and then he made the Judge drunk at the time he delivered the temperance lecture, and then he took back the matter about the temperance lecture, and made the Judge drunk the following day; and then, after that, he took back the drunkenness of the four or five days and made him drunk probably one day, when he found out that perhaps the Judge could prove that he had not been in Marshall more than one day after the term closed, and after the temperance lecture. I say that we shall be able to show that on that occasion Judge Cox was perfectly sober; that he was perfectly sober all through the term. Not, as Mr. Hunt testifies, that he was drunk during the term, or under the influence of liquor. and as Mr. Drew also testifies. We think we shall be able to impeach those gentlemen so thoroughly, and to show how they have falsified before you, by so many different and reliable witnesses, that there can be no doubt in your minds at all. We will show that after that temperance lecture was delivered on Sunday, the Judge left on the first train on Monday morn-

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ing, and we will show by Mr. Todd that he was perfectly sober; that he was not near Mr. Hunt's hotel, but that he stopped at that time at Mr. Todd's house, took his meals there, and slept there; and we will prove this by Mr. Todd, that he was not near Mr. Hunt at all.

Mr. Hunt, upon his cross-examination, as it comes out here, shows that when he was examined before the judiciary committee, he swore that Judge Cox had stopped there during that whole term, and that he was drunk all the time. He has taken that back now; but he came there, he thinks, ank stopped the latter part of the term; but we will show that he did no such thing.

Then Mr. Drew also testifies that he saw Judge Cox intoxicated at some other times, to-wit: Once at St. Peter, when he was there with Mr. Forbes to argue a motion to dissolve an attachment, on which occasion Mr. Davis, of St. Peter, was present, and that Judge Cox met him and made such a remark as to cause him to think that he was drunk; and that he most certainly was drunk. We shall show you by Mr. Forbs and Mr. Davis also, that Judge Cox was as sober then as he ever was in his life. That disposes of him; he is the only witness to it.

Then he has given another time at which he claims Judge Cox was drunk, and that was in Mr. Mathews' office in Marshall, in Lyon county, at the occasion when this dog-talk was had. You heard the dog-talk, as it was detailed before you, and how the Judge cursed the dog for being such a fool, and how the Judge cursed the man for having such a fool of a dog; and talked very foolishly, as Mr. Drew thought; that there was no sense in it; that he talked like a crazy man. We shall bring down the man who owned the dog, and who was in there at the time. We shall bring Mr. Bedbury down here, and he will tell you that, although the Judge might have drank a glass or two, he certainly was not intoxicated, nor even under the influence of liquor, and that all this dog-talk of Mr. Drew's, is the production of his own imagination, his spite, his malice and his hatred towards this respondent, and that nothing of the kind took place.

I come next to the testimony of this man from Lake Benton, Mr. Chapman. He testified, and so does Mr. George, and so does Mr. Stites, to the intoxication of Judge Cox under this article at a certain term of court, a sort of a special-general term of court, held in Lake Benton, I think in the year 1880. It was at the close of the term, the last hour or so, when they were waiting for the grand jury to come in, that the Judge was intoxicated, and remained so during the evening, as he claims. Now, I don't know what we shall be able to show about that. All I know is that we shall be able to show that on that day the bar of the county and Mr. Thompson, gave a dinner party to Judge Cox, and I suppose they drank some wine at dinner there, as gentlemen will do when they come together, and as I suppose they have a right to do; and that probably Judge Cox drank some wine; don't know whether that will be shown or not, or just what can be shown about it. I have not talked with the witnesses about it, because we knew nothing about it before, so that I do not know whether or not we shall be able to show he was not intoxicated at that time. But if we cannot, there will not be great damage done, because so many of these charges will be disproved that there will not be enough left to support a verdict of habitual drunkenness, or of habitual intoxication, if they should be all gathered into a period of half a year, instead of being scattered over a space of more than four years.

The next witness is Col. George. He too testified that the Judge

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was drunk at the Nicollet House at St. Peter; that the Judge came up into his room with Mr. Russell, and was so drunk that Mr. Russell had all he could do to get him on to the bed, where he was allowed to stay with his boots on, and that he groaned and made noises all through the night, and lay there drunk in the morning. We shall call witnesses —Mr. Russell himself and another, I think,—to show that the statement that Judge Cox was intoxicated that night is false.

Now, we don't deny but that Judge Cox is occasionally intoxicated, but you will find that we are fully prepared to meet the charges with reference to these occasions which we mention, and to show that, whatever he might have been at other times and other occasions, whatever his failings and deficiencies might be, that upon these particular occasions he was not so intoxicated.

Thomas Downs, the sheriff of Nicollet county, testifies that Judge Cox has been drunk on three occasions that he can remember, during the last year, but he cannot specify a single one: he cannot give us the occasion, the date, or the circumstances. So I say we can pay no attention to his testimony; besides, his spirit and animus has been sufficiently indicated in his evidence. I leave him in your hands. You have seen him upon the stand; you saw with what spirit he testified. He even told you that a majority of the times he had seen Judge Cox in St. Peter the respondent was not perfectly sober.

The last testimony we have is that of Mr. Pierce and Mr. Whitcomb, in relation to the trip from Sleepy Eye to Redwood Falls, in May, 1881. Mr. Pierce tells you that upon the train he was disgustingly drunk; that he was a nuisance to all that were there. When I asked him if they were not in a ladies' car he said it was not a ladies' car, it was a drunkard's car, because there were two of them on board; and he gave his testimony in as vindictive and spiteful a manner as any man can be imagined capable of doing. Mr. Whitcomb corroborates him, and says that he was under the impression that Judge Cox was intoxicated. Now, we do not doubt that Mr. Whitcomb is sincere in his statement that he thought at the time that the Judge was intoxicated, but we claim there is every reason to believe he did not look at Judge Cox with his own eyes, but that he looked at him with Mr. Pierce's malicious, evil eye, and that he got his wisdom from him. He let that prejudice his mind; and probably, not knowing Judge Cox, his eccentricities or his peculiarities, he thought he was drunk. But certainly it cannot be, as Mr. Pierce testifies, that he was disgustingly drunk, or Mr. Whitcomb could have given his testimony in a more definite manner, and would have given stronger evidonce than he did give. We shall show to you that Mr. Whitcomb is mistaken, and that Mr. Pierce has lied, as usual. We never meet Mr. Pierce in this case unless we find him lying. You never find him speaking the truth. I don't believe the man *can* speak the truth, even if it is to his own advantage to do so.

We will show to you that in the morning and forenoon at Sleepy Eye when Judge Cox was there, he was seen by a respectable tradesman who has known him for years; and that at 10 o'clock on the morning of that day he was perfectly sober. We will show you by another man, who saw him at two o'clock, that he was perfectly sober. We will show you by a juror up there that he was in this man's store at 5 o'clock, and that he was perfectly sober. We will show you by two men that saw him at the depot when he took the cars to go to Redwood Falls, that he was perfectly sober. We will show you by Mr. Ensign, the clerk of the

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court, and by Martin Jensen, who were both on the train, that Judge Cox was perfectly sober, when he was in that car, and demeaned himself as a gentleman ought to do. We will show you that when Mr. Pierce comes here with his malicious hearsay testimony, which he knows is not proper evidence, for he is a lawyer—or claims to be; when he comes here and tells you what he has heard others say about Judge Cox being taken in charge of by Billy McGowan, the clerk of the court of Renville county, taken into custody, prevented from drinking, taken care of and nursed, and tried to be sobered up; when he brings this out and volunteers it, knowing that it is not proper testimony, knowing that it only can come in to the prejudice of your minds against the respondent; we will show when he testifies to this he testifies to an entire falsehood. We will show by Mr. McGowan that he took no charge of him, that he did not take him into his custody; that they happened both to be stopping at the same hotel, and that that was the explanation of it; that Judge Cox had a room there, and the other gentlemen had theirs; and that Judge Cox went to bed; while the others went off to another room and sat and had a litte fun during the evening. We have the man who brought up Judge Cox in his wagon from the depot to the hotel; another man, a mechanic, a common laborer, but an honest man, saw him, one who knew the Judge well, and saw him at tne depot when he came in the train to Redwood. These witnesses will all testify that Judge Cox was perfectly sober at the time.

If we succeed in disproving the charges as to these occasions when the witnesses claim that he was intoxicated; if we do not succeed in disproving every one that they have brought against us, you will see from what I have stated, that we expect to disprove them in every case where we have the circumstances, the dates and places given us, or where we can ascertain them—though we have had but a week's time, even with the small part of one week's time, we shall be able to produce witnesses to meet all the charges I have stated to you, if we meet them, it will leave a very small number disproven, and those, only such as nobody could disprove, because there was not the opportunity, nor any hope of obtaining the necessary testimony on account of the indefiniteness and uncertainty connected with those charges. I claim that if all those times which the managers maintain they have proven the respondent drunk until article eighteen, if all those times were to stand uncontradicted, it would not even then make out a case of habitual drunkenness; much less will it do so when we have disproven five-sixths of them.

Allow me, however, before I come to that branch of the subject, to a call your attention to the fact that upon this article we shall produce to you the record book of this respondent. We propose to produce to you a book in which he keeps a record of all his official duties, every motion that he hears, every order that he grants, outside of special or general terms; and we will show you that that book is kept in such a way that it shows the transaction of every day right along. This day such a thing done, that day such a thing done, with an index kept in the most regular shape,—with no drunken signature, such as the managers claim there was, upon a certain case which was tried before him,—we will show his official record, not during the terms of court, but during vacation; we will bring it before you, and ask every one of you to inspect it, and say if a man who is an habitual drunkard can transact business, as he has transacted it; if a man who is an habitual

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drunkard can keep such a record, and keep it in such a shape as he has kept it; especially with such an index attached to it that every man who examines it must see how clear a mind must be to keep up such an index as this. You will find no place in that book when Judge Cox has been intoxicated. You will find, I dare to say, that at least, nine-tenths of the time when he has not been out attending special or general terms of court, he has been at home; you will find he has done something, and that it is recorded in that book. And I shall ask you if a man who can transact business in such a shape, can be an habitual drunkard.

I proposed to call your attention to the question as to what is habitual drunkenness. I had intended as I have said, to read you the law upon that subject, and I have several books here for that purpose, but I do not care to do it now. I will simply raise here a point which I think is proper, and call your attention to it, so that you may think it over until the time comes for the final decision of this case; and it is this: *whether habitual drunkenness is an impeachable offense.*

Now, the constitution says that crimes and misdemeanors are impeachable offenses, that you must impeach; that you must impeach for a crime or a misdemeanor. Can you find upon the statute book anywhere any provision making habitual drunkenness a crime or a misdemeanor? Not at all. But we are told that a statute was passed specifically for the benefit of this respondent, and probably it was at the instigation of the managers, or one of them, that this statute was passed, so as to enable you to remove him from office and to impeach him for habitual drunkenness, or anyone else, who should be caught on the same boat.

Now, I ask your attention to the statute of 1878, to see whether that has any force, and gives any grounds for impeachment that did not exist before. That statute reads as follows: "The habitual drunkenness of any person holding office under the constitution or laws of this State shall be good cause for a removal from office by the authority and in the manner provided by law." It shall be good cause. Do you claim, or can anyone claim for a moment that that gives an authority that did not exist before, for the removal by impeachment of this respondent from office, for habitual drunkenness?

Does or can anyone for a moment claim that the statute can help out the constitution? That if you have no right under the constitution to remove and impeach a man for habitual drunkenness, the statute can come in and give you that right? Is that the way that constitutions are amended? Is that the way that constitutions are construed? Is that the way that constitutions are made effective or non-effective,—by passing a statute to that effect? Can any act that the legislature may pass impair one iota or one tittle of the constitution of this State, before the people have voted upon it, and adopted it as that constitutional amendment, and ratified that act of the legislature? It is, it seems to me, ridiculous to come before sensible and intelligent men, and claim anything of the kind. You all know better. You need not be lawyers in order to understand that point. You do not need to be lawyers to understand that the legislature of this State cannot rob the people of the constitution. That the legislature of this State cannot steal away the rights of protection which are guaranteed and granted to us by the constitution.

There was a way in which this could have been made effective; there was a way in which you could have made habitual drunkenness an impeachable offense; and I will tell you how it could have been done. It

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seems that the House of Representatives did not think of that at the time they enacted this law. They could have made habitual drunkenness a crime, punishable by a fine or imprisonment, or they could have made it a misdemeanor. If they had made it a misdemeanor, then it would have been an impeachable offense. That the Legislature could have done; that the State could have done; but they did not undertake to do any such thing. They say it shall be ground for removal from office, but do they say it is prohibited? Do they say it is a crime to be an habitual drunkard in office? Not at all. They say it is a ground for removal. Do they prohibit it, even without defining it as a crime? Do they prohibit it, and say that no one shall hereafter be an habitual drunkard in office? Or that it shall be a crime hereafter for a man to be an habitual drunkard in office? Or that whoever shall hearafter be an habitual drunkard shall be guilty of a misdemeanor, and shall be punished so, in such a way? Not at all. The statute does not make it a crime. There is no language in it that you can construe or torture into a declaration of a crime,—into declaring habitual drunkenness a crime under the statutes of this State.

That is the only way in which it could have been done; and even then I am inclined to think that it could not have been made to apply to this respondent, because that statute was enacted in 1878, after the election of this respondent. It is a question whether it could, or could not, but I do not need to speak about it. I admit that that is questionable; I admit that it is subject to doubt. But, as I have said heretofore, the constitution cannot be abrogated by statute in this way. An attempt to abrogate the constitution would be unconstitutional, as far as an impeachable offence is concerned. This statute is unconstitutional, as far as impeachable offences are concerned, if it means to refer to impeachable offences. If it means, however, those offences where the man is removable by the Governor, when the constitution provides that he may be removed by the Governor, for any such cause, as the legislature may see fit to establish, it is all right; but, if the legislature attempt to override the constitution, to make that subject to impeachment which was not so before, under the constitution, then I say the act is void and unconstitutional, and it is worth nothing more than the paper upon which it is written.

It is clear that habitual drunkenness was not a crime at common law, but, of course, if it is claimed under this statute, the managers do not claim it under the commen law at all. But it is clear that it was not a crime at common law. Bishop, in his work on Statutory Crimes, Sec. 970, says: "In some of the states there are statutes against being a 'common drunkard,' or an 'habitual drunkard.' What is a drunkard is a question which cannot, said a Pennsylvania Judge, be determined by any 'fixed rule.'"

It shows upon this subject, as well as upon the subject of drunkenness generally, that statutes have been enacted, which again shows that if they were enacted, they were enacted for a purpose; and if it was a crime before, they need not have enacted the statute declaring it to be a crime. But the fact that states have done it, shows at least a legislative construction of what the common law was upon that subject; that it was not a crime, or they would not have enacted the statute.

But I say, we do not need to argue this question in this matter, for no habitual drunkenness has been proved, upon the part of the respondent, even if it is taken for granted that it was a crime. No habitual drunken-

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ness has been proved against him, even taking it for granted that we cannot disprove a single instance which the managers have presented before you. They have shown simple instances, but they must show instances sufficient to make him an habitual drunkard. How many are necessary? I do not desire to argue from the authorities upon that subject. I will reserve that question for another time, when I will show what the authorities have laid down, as being the rule,—that a man must be, at least the major part of the time, unable to attend to his business on account of his habits of drinking; must be, at least a greater portion of his time, drunk. Not, as one of the managers claimed here a few days ago in an incidental argument, that a man was an habitual drunkard who was in the habit of drinking, just as well as a man was an habitual smoker, who was in the habit of smoking. I am going to see if I can destroy the force of that argument, if argument it was. It was an assertion; it was nothing else. Mr. Collins, one of the honorable managers, advanced that line of argument.

Now, what does habitual drunkenness mean? Does it mean the same as habitual drinking? Are habitual drunkenness and habitual drinking the same thing? Why, drunkenness is a term that we all understand,—it is the condition of being drunk. Not of having drank a glass or two, but of being in a condition in which you are not capable of exercising the powers of your body, nor the powers of your mind; that is drunkenness. Now, I say I do not take this from the legal standpoint, I simply take it from a common sense standpoint, at the present time. You say a man is an habitual smoker; but would you say a man was an habitual smoker if he should take a cigar once a month? Or if he should take one every two or three months? And during the whole of the balance of the time did not touch the weed, would you call him an habitual smoker, sir? Not at all. A man would have to smoke every day, probably more than once every day; he would have to smoke constantly, or continually, or a greater portion of the time, before you would say he was an habitual smoker. Now, it is just the same way with an habitual drinker, granted that an habitual drinker is one that is in the habit of taking a drink; and the difference between an habitual drinker and an habitual drunkard is apparant to everybody. Now, would you say that a man who is in the habit of taking a drink of whisky or a glass of beer once in every two months was an habitual drinker? Not at all. You would say that he was a very rare drinker, if you said anything at all; that would not make him an habitaul drinker at all.

Now, take again the man who is drunk, we will take it for granted that the proof, standing as it does uncontradicted, shows that the respondent has been proven during the course of four years to have been drunk at the outside about twenty-two times, and taking into consideration all the articles outside of the eighteenth article making the number say about thirty times. Now, divide that number by four, and you have not to exceed eight times a year that the man has been drunk, as the proof stands which is less than once a month. Does that then make him an habitual drunkard? If he had drank only eight times a year would it make him an habitual drunkard? If he had smoked only eight times a year would that make him an habitual smoker, under the common understanding of the term?

Now, this is common sense; there is no law about it. Every one of you can appreciate the point of the argument and you do not need to

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go to the authorities to explain language that is as plain as this, or to explain an argument as plain as this.

But how much will be left of this question of habitual drinking when we disprove nine-tenths of these charges? when we disprove nine-tenths of these occasional drunks that have been shown under article eighteen, and when we have disproven every one of the drunks that have been alleged against us under each of the other articles, especially when there is left for us a period of four years, with probably about six to ten drunks? How will it be then? Will that show habitual drunkenness? Of course much less than under this. But I claim that, letting them stand as they do, they do not amount to habitual drunkenness, and we need not have touched upon the matter at all. And if it had not been that we desired to countervail some of these charges under article eighteen we would have made a motion, with the fullest expectation that it would have been granted, when the prosecution closed its case, to be discharged upon article eighteen, because no offense has been proven against us under it, no habitual drunkenness having been established. We have not the slightest hesitancy but that the majority of this Senate would have said yea and amen; that it was right that we should be discharged from it. We did not choose so to do, we did not wish to do so, because we desired to disprove every one of the charges, and not let them stand proven, because we want our testimony to react upon the other individual charges that have been brought against us, and thereby impeach testimony of witnesses who have testified both under article eighteen and other articles.

SPECIFICATION FOUR OF ARTICLE SEVENTEEN.

I will state, Mr. President, that although I had intended to call the attention of the Senate to the fourth specification of article seventeen, yet as I do not know what proof we shall be able to adduce under that article, and how far our proof will go, I prefer not even to criticise that article, although I have already made my points upon it. I could, I think, have shown the incongruities and inconsistencies of the two men that testify as I have in another instance where four or five other witnesses have sworn directly opposite to each other. I prefer to leave this article, and not spend any time upon it now, my argument already having been under the circumstances drawn out to a considerable length; and we may not offer any testimony under it, not considering it necessary, and yet we may do so.

SPECIFICATION TWO OF ARTICLE SEVENTEEN.

I think the same remarks may apply with equal force to specification two of article seventeen, although it would probably behoove me on that, as I know what the proof will be, reserving my right towards the close of this case to more particularly call attention to the evidence already introduced by the prosecution as to this article, it would be proper perhaps for me to state what we expect to prove under specification two of that article. This is the case of Coster against Coster, the case in

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which the prosecution, with a sound of trumpets, declared to you that they would show that the respondent rode in a swill-cart up through the strets of New Ulm drunk and howling, and raising "Old Ned" generally. Upon that case you see the managers have gobbled almost every witness that was accessible there, you see that they have got Webber, as a matter of course, (?) they have got Mr. Webber's henchman, Mr. Eckstein; they have got the two Kuhlmans, and all that were present at the court house at the time, exeept young Mr. Manderfeldt. We shall call Mr. Manderfeldt, the only other witness that was present, we shall also call this butcher, Mr. Steibe, whom Mr. Eckstein and Kuhlman swore took Judge Cox in his swill-cart and drove him to the court house; we shall show by Mr. Steibe that that is a falsehood; that Judge Cox never was in his swill- cart nor in his wagon, and that he never, at any time, drove him to the court house or anywhere else. We shall show you that when young Kuhlman says that he went to the Judge's room in the hotel at the Dakota House, and that he found him there asleep and that he had to wake him up, we shall show you by the clerk and the proprietor that Mr. Kuhlman was never inside of the door of the hotel. We shall show you by Mr. Manderfeldt, who was at the court house at the time that this thing was going on, and at the time when the Judge came there, that the Judge did not come there in Mr. Steibe's wagon or in a swill-cart at all, but that he walked up either with Mr. Webber or Mr. Kuhlman, and we shall show by Mr. Manderfeldt that the Judge was sober and all right at the time when this case was heard.

ARTICLE FOUR.

I think, Mr. President, I prefer as to article four—which charges in relation to the settlement of the Brown case at the Nicollet House parlor—that matter involving some questions of law as well as of fact, not to advert to it nor to the proof, but to reserve my remarks upon that until the closing of the case, thinking, that as I now have only a half hour left for my argument, I would ask, if it be convenient, that the Senate allow me five minutes recess before proceeding farther.

The PRESIDENT *pro tem.* The court will take a recess for five minutes.

After recess, Mr. Arctander continued his remarks, as follows:

Mr. ARCTANDER. Mr. President, my last inquiry in this presentation will be, who is this respondent that he should suffer as it is proposed that he should by the honorable House, and the honorable Managers? I think I have already shown some of the grounds and some of the whys and wherefores of this prosecution. I think I have shown already something of the ability, the thoroughness, the manliness, the wholesouledness that has characterized this respondent for years and does so today. That there is no reason why he should be removed from that sphere of usefulness that he occupies by the consent and the authority of his fellow-citizens of the ninth judicial district.

This man, the respondent, sprang from one of the oldest and

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noblest families of Pennsylvania; a family that traces its origin back to the days of William Penn. He came to the State of Minnesota from the east in 1856, endowed with the brilliant gifts of nature, he came here endowed with all the gifts and talents that a thorough education can give; he came here with all the hopes of the future, all the hopes of a man in his position in life, with his ambition, with his family relations, with his ability, with his knowledge could expect and have reason to entertain. He cast his lot with this young State when it was yet in its childhood.

He has served this State faithfully, thoroughly and carefully, not only as Judge, but he commenced early, he served the State faithfully and carefully when he was county attorney, you may say, almost for all the counties from Pembina down to the Iowa border; he served it faithfully as a Senator in the halls of the Legislature. He has served it faithfully in his judicial position, he has discharged his duty faithfully, carefully, impartially and incorruptibly. He has served his country as well as his State.

On the memorable 20th day of April, 1861, when he repaired toward his home from New Ulm, where he had attended a term of court under the presidium of the Hon. Horace Austin, when he, with the other lawyers and the Judge on their way back to St. Peter, crossed the ferry at New Ulm, the news reached them there that the first cannon had been fired on Fort Sumpter—although a life-long Democrat, a friend of the party to which his parents had belonged; a friend of the party in which he had been reared; a friend of the party that he had always stood by in boyhood and in manhood, whose cause he had sought to advance, and naturally, therefore, a friend of the party which was dominant at the South, yet, when that party became a danger to the country, he threw away his party ties, and, strong Democrat as he was, as soon as the news reached him on that ferry at New Ulm, he mounted his horse and rode to St. Peter, and before night-fall he had raised the first company in Nicollet county that was ever raised to fight for the preservation of the Union, by his eloquence inspiring those who were not as brave and gallant as he. He went to the sunny South, he fought and bled for the Union and for its preservation, for the country he loved, the country of his parentage, if not of his birth. After having taken part in the battles of Mill Springs and in the Zollicoffer defeat, and taken a prominent part so that he was honorably mentioned, he was prostrated on a sick bed and suffered from a camp life as long as it could be endured when finally he was discharged on account of his sickness and compelled to resign. He went home, and staid there only long enough to recuperate. As soon as his health had been recovered, and as soon as he felt that he could again stand on his feet and fight for his country, his application went to the Secretary of War to re-instate him in the army that he might shed his life-blood if necessary for the preservation of his country. The application was granted. He again raised a company, and then came the Indian war. The frontier of the state was threatened. The wild barbaric nations were threatening to sweep over this state, and along the Minnesota Valley, to destroy the population, the prosperity and the very existence of the people. Who was the defender of the frontier? Whose name is mentioned to-day almost along side of the gallant General Sibley, and the gallant Col. Flandrau, as the preservers and defenders of the frontiers of Minnesota? It is the gallant name of Capt. E. St. Julien Cox, the respondent in this case.

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Many a brave deed does the history of Minnesota record, many a brave deed of his on the battle field against the savage warriors of the Indian nation.

One incident told me by the gallant Col. Flandrau in regard to the respondent's actions during the Indian war, I cannot forbear bringing before the Senate. When, after the battle and siege of New Ulm, it had become necessary in the judgment of Col. Flandrau to remove the citizens to Mankato, Judge Cox was put in command of the escort of the citizens there. After he had gallantly fought and bled for them, after he had committed deeds that give him the name to-day of the gallant defender of New Ulm. When the train had arrived a certain distance on its route to Mankato, Col. Flandrau considered that it was necessary to occupy New Ulm with a force of men, believing and fearing that the Indians, if New Ulm was not occupied, and did not stand as a breastwork against the enemy, would sweep across the country and destroy and ruin St. Peter, Mankato and all the towns of the valley This was a dangerous undertaking, and one that promised almost certain death for the cause of the country and the cause of the state. The Colonel felt that it was not proper for him to tell his men to go and meet certain death and destruction, to sacrifice themselves for the commonwealth and the common cause. He stepped in front of his little troop of a couple of hundred men and he asked and called for volunteers to go back to New Ulm and face the enemy and protect the frontier. Not a man raised his voice, not a man volunteered to go but Captain Cox and the thirty boys that were left of his regiment. They stepped to the front, followed in his path and offered to brave death and danger if they could do something towards protecting the country and the frontier of the state. He deserves, indeed, the name that he has in the valley of the brave and gallant defender of New Ulm ; he deserves, indeed, the name that he got from the brave Col. Flandrau, "the gallant defender of Fort Cox."

It strikes me that this prosecution, taking into consideration the services that this respondent has given to his state; taking into consideration the gallantry he has exhibited in defense of his State, and of his country; taking into consideration the services he has given to the country and the State in war and peace, it strikes me that this prosecution is a tell-tale of the truth of the old adage that ingratitude is the reward of the public toward its great men. The spectre of the republics of Greece and Rome we meet in Minnesota to-day. It is the same spectre that has brought death and destruction to those republics; the same spectre stands at your door to-day and asks you to admit it, and you can do so, but you do it at the peril of your republican institutions and your republican existence, and your self-rights as free men.

I do not think I will be accused of exaggerating when I state that in every public station of life, as a soldier, a lawyer or a judge, this respondent has most gloriously exemplified the munificient encomium of Blackstone

> "Esse quam prodesse clarissime vir qui honeste vivere,
> Alterum non lædere suum cuique tribuere."

an illustrious man, an honest man, a man who maligns no one, who gives to all their dues, the motto of the respondent has ever been, as his thousands of friends will testify, "do unto others as you would

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others should do unto you," this has been his religion, this has been the talisman of the manhood and life of E. St. Julien Cox.

I am reminded of the fact that the coat of arms of his family bears inscribed upon it the proud words "esse quam prodesse" to be rather than to seem to be; and through his years of manhood, through his years of active life, through trials and tribulations, he has always been true to this, his family advice; and he has reason to be proud of it, and his adopted State has reason to be proud of it. That is the trouble and cause of this prosecution.

Born as he is, a child of the nineteenth century, the age of cant and of supreme hypocrisy, where to most of his fellow men can be applied the old verse

> "Who fears not to do ill, yet fears the name,
> And free from conscience is a slave to shame."

That is a verse that never could be applied to him, whatever his faults have been he has never attempted to hide them, he does not attempt to hide them to-day. That has been the great sin in this age, the spirit of hypocrisy that pervades society at the present day. That is the cause of this prosecution to-day, men have sat as his prosecutors who are probably just as guilty as he, they forget the old advice of the Savior of mankind to the accusers of the Samaritan woman. "Let him who is without sin cast the first stone," If that had been done, if that advice had been followed, I do not believe that the Hon. E. St. Julien Cox, would stand to-day accused by the house of representatives, the virtuous house of representative of the State of Minnesota—of high crimes and misdemeanors such as those withwhich he is charged.

I desire before closing only to call your attention to one thing; that impeachment proceedings are necessarily an attack upon the independence of our judiciary as long as the judges are the subject—matters of the prosecution. More is there danger ahead from those attacks where it is sought to impeach judges of offences which are not crimes and misdemeanors under the constitution. When there is an attempt by one branch of the government to override another branch, I say that there is danger ahead. A pure and enlightened judiciary is the sheet-anchor of our constatution and of our freedom and liberties, snap the cable and our liberties are gone. Attack the Judge's upon every possible given occasion and whenever occassion offers as it has been done for the second time, in this State, within a veay few years,—let unscrupulous persons see that all that is necessary for a man, a set of men, or a corparation, in order to get rid of a Judge who does not satisfy them, who is too independent, too impartial and too incorruptible for them,—let them understand that all they need to do is to come single-handed before the house of representatives, and request the impeachment of that judge, and what will be the result, as far as the the independence of our judiciary is concerned? It will not be independent any longer, it will not be pure any more; it will be subservient to private influence, to the the machinations of politicians, to large unscrupulous and powerful corporations. Gentlemen, if that is the kind of a judiciary you want, go ahead. Let us have some other judges impeached in this State, if that is the object of impeachment go ahead with the business; if it is not, and if it is understood that here is danger to the independence of our judiciary it is high time that a halt is called. When it is attemped on the part of the lower house, and the managers

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of that house to override the constitution, to have you sit here and declare yourselves the guardians of a free and enlightened people, it is time that a halt is called. I tell you the people are not going to stand it. A free people will not permit it, if it will, it is despicable, it is contemptible, it deserves no man's approbation,

When I shall make this appeal to you, to dismiss this prosecution against this respondent after you have heard the proof; when I make this appeal to you not to use the power that is in your hand, though perhaps against your feelings, against what you may consider your own prerogatives, I appeal, gentlemen, to your better feelings, to your better, sounder, cooler judgment; I appeal to you that you abstain from using the powers that you have, lest the State and the freedom of our people may suffer. If I can substantiate, before you, if the respondent can substantiate the claims I have made before you to-day, when we come to the close of the case, we shall confidently ask from your hands a verdict of acquittal. That he may go away from this trial with his honor untarnished; that he may go away from this trial with the judgment of his peers the fabric of falsehood and malice is untrue and unfounded in fact.

And in asking you to render that verdict of acquittal upon the evidence as we shall introduce it before you, we shall have no recompense to offer you, we shall have no reward to give you, but you will have satisfied your own consciences, that you will abstain from using the power that you have; that you will use it cautiously; that you have exercised the greatest power that any man can have—the power over his own feelings, his own self-interests, his own desires to uphold his own prerogatives. If you you do this, I think you will have a sufficient reward and a sufficient recompense.

I will state, gentlemen, that I have occupied a good deal more time than I had intended in presenting the opening in this case. I have done so not with a view to the record that goes down here; I have done so not with a view of trying to be eloquent, for I could not do so were I to try. But I have done it because I consider it necessary to the cause of my client, and in order to do it full justice, to bring out every point that was material in the case, that you might see, before we got into the defence, the shallowness of the whole case that the state has brought against us, and to which we are required to respond, that you might be able to do us full justice. I have no doubt that during this argument I have been tedious; that the argument has been dry and wearisome. Fatigued, as I was when I started, and worn out as I now am, I can only at the present time thank you in the most earnest manner and from the bottom of my heart, for the kind and thorough attention you have given to the dry exposition of facts and of law that I have tried to make before you.

On motion, the Senate then adjourned.

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TWENTY-SEVENTH DAY.

ST. PAUL, MINN., Feb. 10, 1882.

The Senate met at 10 o'clock A. M., and was called to order by the President

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

Messrs. Aaker, Adams, Bonniwell, Buck C. F., Buck D., Campbell, Case, Castle, Hinds, Howard, Johnson A. M., Johnson F. I., Johnson R. B., Macdonald, McLaughlin, Mealey, Miller, Morrison, Perkins, Powers, Rice, Shaller, Shalleen Tiffany, Wheat, White, Wilkin and Wilson.

The Senate, sitting for the trial of E. St. Julien Cox, Judge of the ninth 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 Represenatives to conduct the trial, to-wit: Hon. Henry G. Hicks, Hon. O. B. Gould, Hon. L. W. Collins, Hon. A. C. Dunn, Hon. G. W. Putnam, and Hon. W. J. Ives, entered the Senate Chamber and took seats assigned them.

E. St. Julien Cox accompanied by his counsel, appeared at the bar of the Senate, and took the seats assigned them.

The PRESIDENT. Is the counsel for the respondent ready to proceed with the examination of the witnesses?

Mr. ARCTANDER. Yes, Mr. President. We will call Mr. Blaisdell.

H. M. BLAISDELL,

Sworn on behalf of the respondent, testified.

Mr. ARCTANDER. Mr. President, I will state that this witness, and the following witnesses, are called under article one, the Martin county charge.

Examined by Mr. Arctander.

Q. Mr. Blaisdell, what is your full name? A. H. M. Blaisdell.
Q. Where do you reside? A. Fairmount, Minnesota.
Q. In Martin county? A. In Martin county.
Q. What is your profession? A. I am an attorney.
Q. How long have you been practicing your profession?
A. About fourteen years.
Q. Have you resided in Martin county during that time?
A. I have resided in Martin county thirteen years next May.
Q. Are you acquainted with the respondent, E. St. Julien Cox?
A. I am.
Q. Were you in attendance upon a term of court held by him in Martin county in the month of January, 1878?
A. I was.
Q. How much of the term? A. The entire term.
Q. You were present in court every day, were you?

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A. I was present in court every day and every session, with possibly the exception of a part of one evening session.

Q. I would like to ask you how long that term lasted?

A. I think that, inclusive of Sunday, the day of commencement and the day of ending, that it was eleven days; that is my recollection.

Q. I desire now to call your attention to an occasion of the sitting of the court in an evening during that term, being the evening of the day at which the jury in the case of the State against McDonald was sent out. Do you recollect that occasion?

A. I do.

Q. Were you present in court during the whole of that evening session?

A. I was not. I was there all the time that the court was in session.

Q. In the evening after supper?

A. In the evening after supper? Yes.

Q. I will ask you to state whether or not there were any signs of intoxication on the part of the respondent that evening?

A. None that I could detect.

Q. State whether or not there was anything in his language, his conduct, his actions, or his appearance during that evening indicating in any way that he was intoxicated, or under the influence of liquor?

A. Nothing that I noticed.

Q. If there had been anything of that kind, would you have noticed it?

Mr. Manager DUNN. I object to that question.

Mr. ARCTANDER. I think it is proper for the witness to state whether or not, if there had been anything, he would have noticed it. The witness says nothing that he noticed.

Mr. Manager COLLINS. The Supreme Court has held directly on that question, and the counsel undoubtedly knows it. They have held that that question cannot be answered, that it is improper.

The PRESIDENT. Will the manager please state in what report this decision is given?

Mr. Manager COLLINS. It is a recent report, that is to say, I think about the 22nd. I think the counsel for the respondent will admit the proposition.

Mr. ARCTANDER. I don't admit that there is any such decision on that.

The question was then withdrawn temporarily.

Q. Well, I will ask you to state what your position was relative to the respondent in court that evening. how you sat, etc.

A. The Judge sat the same as here, (witness indicates the position occupied by the President,) and there was a long table, which was placed up and down in front of the Judge, and I sat on the left hand side facing the Judge; and the clerk sat here, (witness indicates.)

Q. State whether or not you heard all that the Judge said and spoke at that time?

A. I presume that I did, (I couldn't say positively) for I was in such a position that very little could escape my attention.

Q. Now, was there anything in what he said, which tended to indicate in the least that he was under the influence of liquor?

Mr. Manager DUNN. Well, we object to that question. We would like to have the witness state all the circumstances. (To Mr. Arctander.) You are cross-examining the witness. You must show the facts and the circumstances.

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Mr. ARCTANDER. Mr. President, in this case we are required to prove a negative; namely, that the respondent was not intoxicated. Now, we can do that in no other way than by proving the circumstances the acts, and the language; certainly it would not be desirable that we should drag in everything that the respondent did and said there. That would be a proper subject for cross-examination, but we have a right to ask the witness, whether or not there was anything in what he said or did, which indicated intoxication. If the managers desire to cross-examine upon that, in order to find out what was said and done, we have no objection, but it is proper for us, and the only way we can get the evidence of witnesses before this court to ask them whether or not the Judge did or said anything that did indicate intoxication, and to ask just this kind of questions.

Mr. Manager DUNN. Mr. President, that is just the position that the managers take,—that they have a right to ask what he did, and what he said, but that is not the question they now put to this witness. Their question was, was there anything in his actions, sayings or doings to indicate intoxication? That is calling for the opinion of the witness as to whether what he said or did indicated intoxication. I undertake to say that it is for this Senate to determine as to whether what he said or did indicated his intoxication. That is the only difference between the counsel and myself.

The PRESIDENT. The chair is of the opinion that it is a proper question, and overrules the objection.

Mr. Manager DUNN. Mr. President, I would like to have that matter submitted to the Senate, because it will probably come up a great many times during the investigation.

The PRESIDENT. Request being made, the chair would submit—

Senator CASTLE. I think, Mr. President, there is no necessity of submitting such a proposition as that to the Senate. It seems to me that the decision of the chair is undoubtedly correct.

The PRESIDENT. The view of the chair was this: That when this matter was presented on the part of the State, the witnesses were asked whether the respondent was drunk or sober on certain occasions, and that in response to that question, the witnesses gave direct answers, thereby expressing in substance what was their opinion in the matter. The same position is now taken by the counsel for the respondent in this case, and he asks the witness, in substance, whether the respondent was drunk or sober.

Mr. Manager DUNN. We have no objection to his asking the witness as to whether in his opinion the Judge was drunk or sober; but this is an entirely different question; it is a question asking him whether, from anything he did or said, there was anything to indicate he was intoxicated. We have no objection to taking the naked opinion of the witness.

Mr. ARCTANDER. I don't want the witness' opinion, merely; I want the facts in this case.

Mr. Manager DUNN. So do we; let the witness state the facts, and the Senate can draw its own conclusion.

The PRESIDENT. As this may be an important question throughout the trial, the chair will submit it to the Senate.

The reporter was then requested to read the question for the information of the Senate.

The PRESIDENT. The question is, shall the objection be sustained.

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The question is objected to, upon the part of the State, as calling for the opinion of the witness instead of for the facts, as the chair understands it.

Mr. Manager DUNN. The objection is, Mr. President, that it is calling for the opinion of the witness, we have no objection to their asking the witness's opinion as to whether the respondent at that time was under the influence of liquor but we have objection to his going further and asking the man whether there was anything in what he did or said that indicated that he was under the influence of liquor.

The PRESIDENT. The discussion of this matter was raised by objection of the question. and the chair overruled the objection on the ground that it was a competent question. Counsel now desire that the chair shall submit the matter to the Senete.

Senator HINDS. Mr. President, the rules are that these questions shall be decided without debate or discussion upon the part of the court—unless the court goes into secret session. As this is the beginning of questions upon matters concerning which there is certainly difierence of opinion, I think that we had better go into secret session, with closed doors, for consideration of the matter; and I would move that the court go into secret session with closed doors for that purpose.

Senator CAMPBELL. I would like to inquire if the Senator himself desires to discuss the question.

Senator HINDS. I do. I do because the Senator from Washington has expressed an opininn different from my own.

The PRESIDENT. It having been moved that the Senate go into secret session, it will be taken as the sense of the Senate unless objection is made.

There being no objection it is taken as the sense of the Senate that it go into secret session, with closed doors. All persons, not officers or members of the Senate will please withdraw.

The Senate then went iuto secret session.

The doors having been opened and the Senate proceeding to the regular order of business.

The president announced the result of the proceedings in secret session:

The PRESIDENT. The chair would inform the counsel that the objection raised on the part of the State is sustained by the Senate. The Senate decided the question as propounded should not be answered by the witness.

The witness will please take the stand.

The witness then resumed the stand and his examination proceeded as follows:

By Mr. ARCTANDER.

Q. Mr. Blaisdell, you may now state whether, on that occasion, Judge Cox was drunk or sober?

A. In my opinion he was perfectly sober.

Q. State, whether or not, there were any motions brought up at that occasion?

A. I don't remember of any.

Q. What, if anything, was the business that was transacted there?

A. The main business was waiting for the jury in the McDonald case.

Q. Was there any other business?

A. Not to my recollection; I don't remember of any other business being transacted that evening.

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Q. State whether or not, all that was done there was that you were sitting around and chatting in a friendly manner?

A. That was all; there was no business to my recollection.

Q. I now desire to call your attention to an occasion testified to by Mr. Higgins, occurring at that term of court, at which it was stated that Senator Wilkinson made a laughable motion, to dismiss a liquor case; do you remember that occasion?

A. I do.

Q. State, whether that was in the evening, or at another time of day.

A. My recollection of the case is, that it was just before supper.

Q. Do you remember what case it was?

A. I think it was one of the liquor cases, but I don't remember which; there were a great number of liquor cases that term, and it was one of those, I think.

Q. State what was the condition of Judge Cox as to sobriety or inebriety at that time?

A. So far as my opinion went, perfectly sober.

Q. Perfectly sober? A. In my opinion.

Q. Was there anything out of the way in his language?

A. Nothing.

Q. State, whether or not, there was anything out of the way in his appearance?

Mr. Manager DUNN. That is the objectionable question right over again.

Mr. ARCTANDER. Now, may it please the court, it seems to me that this is another question altogether. This is not of the same nature. The witness has stated that in his opinion the Judge was perfectly sober. I claim that I have a right to show his actions, his appearance and his language.

Mr. Manager DUNN. I admit it.

Mr. ARCTANDER: I don't want to ask him to state all that the Judge did or said; if this Senate want it they can have it, and have all of it, but I simply desire to call the attention of the witness to anything that was peculiar in what he said or did. I don't desire to drag in all that was done there, I simply asked this witness if there was anything that was peculiar in his appearance, in his language or in his conduct; and if there was anything peculiar to tell what it was, and from that we can find out what it was, and the Senate can Judge whether it indicated intoxication or not. If there was nothing peculiar, that is an evidence I claim tnat there was no intoxication at the time. It seems to me that the proposition is as plain as the nose on a man's face, and if we are going to be hampered in the trial of this case and held down to the simple question as to whether the Judge was drunk or sober in the opinion of the witness, after all the liberality which has been shown by the Senate and the respondent to the learned managers in this case, if it is going to be allowed to go down to posterity that the Senate sat here day after day, and patiently listened to the testimony of the kind which we now offer as produced upon the part of the State, but that when the respondent comes here, and offers like testimony the doors are to be closed and we are to be told that we are not to be heard and that we must be limited simply to the question of opinion as to the condition of the respondent, it will not make any particular difference to this respondent and his counsel perhaps, but it may perhaps make some difference to this Senate.

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Mr. Manager DUNN: I don't desire to make any lengthy argument, but it strikes me that this is of the same class of questions that the Senate has just excluded. The question is, was there anything out of the way with the Judge. That is the same kind of a question which was asked the witness before, objection to which was sustained by the Senate. The witness ought not to be permitted to testify as to whether or not there was anything out of the way, because it is simply the idea of the witness; it is for the Senate to judge whether what he did was out of the way or not. The Senate must judge from the facts. This Senate ought not to be bound up by the opinion of this witness as to what he considered out of the way. He is simply a witness to testify as to the facts. What the witness might consider out of the way the Senate might not consider out of the way, and *vice versa*.

The other side have exhausted their examination when they have asked the witness to give his opinion as to whether he was sober or not at that time. They certainly ought not to be permitted to cross-examine their own witness and obtain his opinion upon the facts.

The PRESIDENT. In view of the decision made recently by the Senate upon the previous question, the chair would sustain this objection.

Senator GILFILLAN, J. B. I do not know as the Senators understand exactly what the question is.

Mr. ARCTANDER. I will waive my question, Mr. President, for the present moment.

Q. Mr. Blaisdell, state whether, at this occasion, there was anything peculiar in the appearance of the respondent, or anything different from what there was at other occasions.

Mr. Manager DUNN. That I object to.

The PRESIDENT. The objection is overruled.

The WITNESS. Nothing.

Q. State whether or not there was anything in his conduct or actions peculiar or different from what it was at other occasions when you have seen him.

A. Nothing.

Q. State whether or not there was anything different in the language that he used, and anything different from what it had been on former occasions when you had seen him.

A. Nothing.

Q. I will now ask you whether there was anything different in the actions, demeanor, behavior or language of the respondent, after the second day, from what it was on the first two days?

A. No; no difference that I noticed.

Q. No difference that you noticed during the whole of the term?

A. No, sir.

Q. I will ask you to state whether or not, at any time, on any evening when you were present in court, you heard the respondent give an order either to the clerk or the sheriff, which was unintelligible or incongruous, so as not to be understood?

Mr. Manager DUNN. I object to that.

Mr. ARCTANDER. I call the attention of the President to the fact that Mr. Walleston, one of the witnesses here, detailed that, at one occasion, he had his doubt as to the sobriety of the Judge, and when asked upon what occasion it was, he could not give any occasion, he could not say when it was; but he stated that at that time the reason upon which he based his opinion was the fact that he had heard the Judge

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give an instruction or an order either to the clerk or the sheriff, he thought to the clerk, which was incongruous and unintelligible, so that the clerk could not understand it, and that the Judge had to give it over again, that is the only way in which he could fasten that occasion. We have shown by this witness that he has been present at every session of that court except, probably, a part of one session. I do not say this is the best evidence; we shall call the clerk and the sheriff here, but it is evidence of some importance, it is evidence which goes for what it is worth; and it is evidence that the Senate may consider. If they believe that it took place at the particular time when the witness was not there during a particular sesssion of court, of course the testimony goes for nothing, but I say it is testimony of some weight and it is for the court to decide when the evidence is in, what weight to give that evidence.

Mr. Manager DUNN. I submit the question under the objection; I dont't propose to take the time of the Senate to argue the question at all.

Mr. ALLIS. The object of that question is to impeach the testimony of the witness upon the other side.

The PRESIDENT. In the opinion of the chair, the question is a proper one.

The WITNESS. I cannot answer that question for the simple reason you do not ask me to be understood by whom, whether by me or some one else.

By Mr. ARCTANDER.

Q. Well, we will leave out the latter part of the question.

A. Well then I will have to hear the question again; I don't know whom you mean, whether me or the clerk.

Mr. Manager DUNN. That is just the objection to the question.

The PRESIDENT. Will the counsel please put the question again, so as to meet the objection of the witness.

Q. I will ask you whether at any of the evening sessions or at any of the sessions of the court when you were present, Judge Cox gave an order, either to the clerk or the sheriff, which was unintelligible or incongruous in your hearing?

A. Unintelligible to me?

Q. Yes.

A. Oh, very often; because I wasn't paying attention to all the questions and conversations that were going on, and the orders to the clerk; I never was paying any particular attention to it, unless I was interested.

Q. But you understand what I mean, Mr. Blaisdell,—whether you heard any order given by him, which seemed to you to be unintelligible, not because you did not listen but listening, seemed to be unintelligible as a matter of fact?

Mr. Manager DUNN. Well, that is objectionable. The witness has answered that he did not hear all the orders.

The PRESIDENT. The answer of the witness was not responsive to the question.

Q. The question is whether you heard any that you perceived to be unintelligible?

A. No, sir; I did not.

A. Mr. Blaisdell, do you remember the occasion of a special venire being issued for the grand jury?

A. I do.

State, what the condition of the respondent was as to sobriety or inebriety?

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A. Perfectly sober.

Q. Mr. Blaisdell, state, whether or not on that occasion, there was any confusion in his manner?

A. Nothing whatever.

Mr. Manager DUNN. I object to that. That is the same question you get right around to again.

Mr. ARCTANDER. Yes, I should remark, Mr. President, it is exactly in refutation of the statement and evidence given by the witness, Mr. Higgins, who said that the Judge was confused in his manner; that his eyes looked red and inflamed. Now, I ask this witness to state; whether or not, he was confused in his manner.

Mr. Manager DUNN. You may ask him if he seemed confused to him; I have no objection to that.

Mr. ARCTANDER. I prefer to ask my questions in my own way.

Mr. Manager DUNN. Well, I object to the question in its general features. I have no objection to your asking the witness whether he appeared confused to him.

Mr. ACRTANDER. Well, we will take the ruling of the court.

The PRESIDENT. The chair sustains the question.

Q. Will you please answer the question, whether there was any confusion in the Judge's manner?

A. No indications of confusion so far as I saw.

Q. State whether or not at that time his eyes were red or inflamed?

A. Nothing noticeable.

Q. Now, I will ask you to state whether or not it is a fact that there was "a general feeling of demoralization" between the attorneys attending that court, during the first three or four days.

Mr. Manager DUNN. I object to the question.

Mr. ARCTANDER. This is offered in answer to the statement by the witness Higgins that there was a general demoralization prevailing among the attorneys the first three or four days of the term; that there was an idea entertained that there was no use of trying to do any business.

The PRESIDENT. The chair will snstain the objection without argument.

Mr. ARCTANDER. I would ask if the President sustains the objection on the ground that it is immaterial, (I have not heard what the objection was,) or whether on the ground that it is an incompetent question. I desire to know this, so as to ferm another question.

The PRESIDENT. In the opinion of the chair it calls for a conclusion, an opinion to a greater extent than it is proper for the witness to give.

Mr. ARCTANDER. That is what I desire to know. I did not know whether the chair held it incompetent or immaterial.

Q. I will ask you to state how many working days there were of that court,—how many days in which work was done?

A. There were ten, inclusive of the first and the last; the first day there was nothing done but charging the grand jury and the preliminary call of the calendar. The last day I think the business ran through the most of the day.

Q. Now, I will ask you to state what amount of business was transacted at that term of court, during those nine working days.

A. A very large amount of business.

Q. Do you remember how many jury cases were tried?

A. There were four.

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Q. Was one of them the case of the state against McDonald ?
A. It was.
Q. Do you remember how many days that trial consumed?
A. I don't; but it was very nearly a week. I don't remember the exact number of days.
Q. State whether or not there were any other cases disposed of and tried.
A. Quite a number of cases by the court and a great many cases argued and dismissed by the county attorney.
Q. State how this term compared as far as business being carried on and dispatched, with other terms before and afterwards.
Mr. Manager DUNN. I object to that question; it is impossible to meet any such evidence as that.
Mr. ARCTANDER. I will waive the question for the present.
Q. Mr. Blaisdell, I desire to enquire of you whether or not you have attended at every term of court in Martin county as an attorney since you came there, thirteen years ago?
A. I think I have attended every term. I won't say for thirteen years; because one year I was away, I have attended every term for ten or eleven years.
Q. You have then attended all the terms except during one year, before, and *all* the terms after this term, that have been held in Martin county?
A. I have.
Q. Now, I ask you to state whether or not more business was done in proportion to the space of time during this term than during any other term before or afterwards?
Mr. Manager DUNN. I object to the question.
The PRESIDENT. The objection is sustained; the question is leading.
Q. I will ask you to state as to the amount of business done at this term compared with other terms?
Mr. Manager DUNN. That I object to.
The PRESIDENT. The objection is overruled.
Mr. Manager DUNN. The proper question, it seems to me, would be to state what the business was that was done at the other terms.
The PRESIDENT. It is the recollection of the chair that the witnesses on the part of the prosecution were permitted to describe what business was done. The foundation has been laid for the opinion of this witness, and in the opinion of the chair the question is a proper one.
Q. Please state as to the amount of business transacted at this term, as compared with other terms, taking into consideration the duration of the different terms.
A. It is my opinion that there was more business, compared with other terms, transacted at that term, than there has before or since for the time I have attended the district court for Martin county, in the same length of time.
Q. Mr. Blaisdell, do you remember of the occasion that there was some talk about issuing a special venire for a petit jury at that term?
A. I do.
Q. There was only once, when there was such a proposition?
A. Only once.
Q. Were you present in court during that transaction?
A. I was.

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Q. What was the condition of the respondent at that occasion as to sobriety or inebriety?

A. Perfectly sober, as to my opinion.

Q. I will ask you to state whether or not there was anything either in the language, demeanor, actions, or rulings of the respondent at that time that was particularly peculiar or different from what it was at other times when you have seen him?

A. Nothing.

Q. I will ask you to state whether or not you were with the respondent the first night of court there, out of court?

A. I was.

Q. It was at a party, was it?

A. No party, simply invited out to tea with the Judge and one or two others. It was not a regular party.

Q. You may state whether this was for supper that you were invited out, or for a late dinner.

A. It was to supper and to pass the evening.

Q. I will ask you to state whether or not there was wine on the table and wine to drink at that party?

A. There was.

Q. I will ask you to state whether or not the Judge drank any.

A. He did not at the table.

Q. I will ask you to state whether or not he refused to drink?

A. He did.

Examined by Mr. Manager DUNN.

Q. This supper was the first evening after the Judge arrived there, was it not?

A. The first evening.

Q. That was at the house of Mr. P. Walleston?

A. Yes sir.

Q. You don't know anything about the Judge drinking there in Fairmount, whether he drank any liquor at all, do you?

A. No, I do not. I never saw him drink a drop of liquor in my life.

Q. You weren't with him socially, much?

A. I think the only time I was with him, socially, was that evening.

Q. You were never in a saloon with him, or any other place?

A. Never.

Q. You never knew of his drinking any?

A. Never.

Q. Have you a clear recollection of all the business that was transacted at the other thirteen terms you have been there at Fairmount?

A. No sir.

Q. Have you any clear recollection of the business that was transacted at any term save the last term that has just closed last week?

A. A clear *general* recolleetion of all of them.

Q. Can you give me the number of cases tried at the general term of court of that county in 1879?

A. No.

Q. 1880? A. No, sir.

Q. Can you give the number of cases tried in 1877?

A. No, sir.

A. 1876? A. No, sir.

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Q. 1875? A. No, sir.
Q. 1874? A. No, sir.
Q. 1873? A. No, sir.
Q. Or any term except the last term?
A. Except the last term, and this term under consideration; the last one of the terms quite a number of jury cases were tried.
Q. Can you give me the length of business of any one of these other terms of court?
A. No, sir.
Q. Can you give me the names of the Judges who attended?
A. Oh, yes.
Q. Well, who attended the one in 1875?
A. Wasn't that the year—
Q. Don't ask me; you are the witness.
A. I couldn't say.
Q. You can't tell who held the 1876 term?
A. I can't say.
Q. Can you give me the name of the Judge that held the 1877 term?
A. Judge Dickinson.
Q. The 1873 term?
A. Judge Waite.
Q. How many jury cases were tried, did you say, at this term Judge Cox held?
A. Four.
Q. What were the titles of the cases?
A. I don't know.
Q. How do you know there were four?
A. I can tell you by my calendar that I have in my pocket.
Q. What were the cases—you have the calendar, have you?
A. I have the calendar I used at the term.
Q. How many cases do you say were argued by the county attorney?
A. I don't remember; I can tell you from my calendar the disposition of every case at that term if you wish for that.
Q. How many jury trials were there at that term?
A. Four.
Q. Can you give me the names of the cases?
A. I can't without referring to my calendar.
Q. Well, refer to your calendar and let us see?
A. Case number two on the criminal calendar, the case of the State of Minnesota vs. Archie McDonald, that was a trial by a jury, and took the better part of the week; I don't remember the exact number of days. Case No. 5 on the criminal calender was that of the State of Minnesota vs. Granville Sharpe.
Q. How long did that take?
A. Oh, that was a very short case.
Q. It didn't take two hours did it?
A. Yes, I think it did.
Q. Did it take half a day?
A. I should think about half a day.
Q. Now, what is the next one?
A. Case No. 4 on the civil calendar. Chas. L. Coleman against Geo. G. Mayne.
Q. How long did that take?

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A. Well, getting the jury and all, about three-quarters of a day.
Q. Now, what was the next one that was tried by jury?
A. Case No. 6 on the civil calendar, George Holden against Bowerman.
Q. How long did that take?
A. Oh, three or four hours; it probably occupied about half a day, the whole thing.
Q. Now, what cases do you say the county attorney was engaged in arguing to the court,—how many cases were there?
A. Well, a great many of them were argued twice owing to that double grand jury.
Q. Well, what cases were actually argued to the court and disposed of there by the county attorney?
A. Do you mean that were tried by the court or dismissed?
Q. Yes, that were tried by the court. Was there one single case tried by the court?
A. Yes, I think there was.
Q. Well, please give me the name of any case that was actually tried by the court without a jury, if you know of any?
A. Case number three, on the civil callendar, Ward & Cadwell against John B. Swearengen *et al.*; it was dismissed by the court.
Q. Well, simply on motion dismissed?
A. Yes.
Q. The attorney came in and said that the case was dismissed?
A. Oh, they had quite an argument about it.
Q. Who did?
A. I think Mr. Dunn had something to say about it.
Q. Wasn't it dismissed by stipulation between myself and yourself?
A. No, sir?
Q. It was simply dismissed by stipulation?
A. It don't appear so by my calendar?
Q. How does it appear?
A. It appears that Mr. Wilkinson was the attorney for the other side and that Mr. Dunn was the attorney for John B. Swearengen and that it was dismissed without costs to either party but, was marked for trial by the court.
Q. Is it your recollection that it was tried by the court or dismissed without argument.
A. There was no evidence introduced; it was dismissed on argument; I mean that you got up, had your say and it was dismissed.
Q. By the agreement of both parties, was it not?
A. I don't know whether it was agreed or not.
Q. Don't you remember that there was a stipulation filed?
A. It is my opinion that there was.
Q. Is it not your remembrance of that case that it was dismissed in open court by consent of both parties?
A. No, sir, it is not my recollection.
Q, You don't remember much about it do you?
A. I do?
Q. What is your recollection?
A. My recollection is that it went off on a technicality.
Q. What was that technicality?
A. I don't remember now, but I say that is my recollection. That is a good while ago. I have not thought of it before, and never had it in my mind since.

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Q. You can't give any idea of the technicality, can you?
A. No, I can't.
Q. How long did that case take? A. Oh, it didn't take long.
Q. How many minutes?
A. I can't tell, after all this length of time, and I am not going to try.
Q. Ten minutes? A. I couldn't say.
Q. Well, give me the next case that was tried by the court.
A. Well, case No. 7 on the civil calendar, Whitaker against Perrine.
Q. Was that case tried by the court? A. Yes, sir.
Q. How long did that take?
A. I wish to correct that statement. It was set down for trial, noticed for continuance, argument for continuance January 23, taken under advisement until after dinner, then it was continued on payment of plaintiff's witnesses fees.
Q. Then that was a continued case; it was not tried by the court?
A. No.
Q. Now, what was the next case that was tried by the court?
A. It was case No. 2 on the civil calendar, in which Mr. Dunn was one of the attorneys,—James E. Blufton against Wray and others.
Q. Was that tried by the court?
A. It was argued and struck from the calendar.
Q. It was not a trial then?
A. No, it was argued and struck off the calendar. It was simply stricken from the calendar.
Q. How long did that take?
A. Well, I am in the same condition about that, that I am about the other. I didn't time it.
Q. Now, what was the next case?
A. The case that was tried or disposed of?
Q. The case that was tried by the court. You have said there were several cases tried by the court; you haven't mentioned any yet.
A. That is all the cases I have on the civil calendar.
Q. Well, now, were there any criminal cases tried by the court?
A. Yes, sir.
Q. Well, sir, what criminal cases were tried by the court?
A Case No. 12. That was put on the criminal calendar after the calendar was printed—State of Minnesota against George McGowan.
Q. Was that tried by the court?
A. It was.
Q. A criminal case?
A. A criminal case.
Q.. Tried by the court without a jury?
A. It was a misdemeanor case, an appeal from justice court upon questions of law. They are *usually* tried by the court. I have the judgment here. The judgment of the justice was reversed. The appeal was filed August 30, 1877.
Q. What day was it tried?
A. I haven't the memorandum of the day when it was tried.
Q. You were in the case, were you not?
A. No, sir; I was not.
Q. Were you present when it was argued?
A. I was.
Q. Who argued it?

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A. I don't remember; I don't remember the case. It was not a case of a great deal of importance.

Q. Did you hear all that was said in that case?

A. No, I did not. If I had been right in court I would not have heard half of what was said.

Q. Then you didn't hear what Judge Cox said?

A. Not unless I was interested.

Q. Now, you have given all the cases that were tried by a jury or tried by the court, have you not?

A. I think so. I haven't given you anything only the trials.

Q. You call these cases, that were dismissed by stipulation, and that were argued for a continuance, trials by the court, do you?

A. I do.

Q. Can you find any case that was tried by the court except the State vs. McDonald?

A. Strictly a trial by the court—I don't think there is is any.

Q. Then you have found one case tried by the court?

A. I call it tried by the court where they take it up and dismiss it on a technicality. It may not be, however; there are better lawyers here than I am that can decide that point.

Q. Now, were there any other cases, according to your calendar or remembrance, that engaged the attention of the court?

A. Oh, a great many of them.

Q. Now, what were they?

A. There is one on the criminal calendar.

Q. I mean where there was any argument in, or anything more than simply on the preliminary call of the calendar, that they were simply continued or set aside without argument; can you recollect any other case that there was any argument in?

A. There were quite a nnmber that were *nolle prossed.*

Q. Well, that was done by the county attorney, but I mean cases that engaged the attention of the court for any length of time.

A. There were those cases where the indictment were all set aside after argument, and a very long argument.

Q. That was argued one evening, was it not?

A. The argument I made was not in the evening.

Q. That was the argument about the grand jury?

A. Yes, the argument about the grand jury,

Q. About the insufficiency of the first grand jury?

A. Yes, we took up a great deal of time.

Q. That was the first day of the term, was it not?

A. No, sir.

Q. What day of the term was it?

A. I don't remember the day, but it was not the first day of the term.

Q. It was the original grand jury?

A. Yes.

Q. That had indicted people at that term?

A. It could not have been the first day, because the grand jury sat until they got all their business done and were then discharged.

Q. Well, how long did the argument take?

A. I don't know how long; I know it took some time to make the motion and the point.

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Q. Did it occupy more than half a day?
A. Oh, yes, sir; the matter in regard to the grand jury took more than that.
Q. Can you give the day that took place?
A. No, I cannot; I don't think I have a memorandum of it.
Q. What did they do there the first day of that term?
A. Swore the grand jury, I think.
Q. Were you there?
A. Oh, yes.
Q. Well, don't you know what they did there the first day?
A. It is my recollection they swore the grand jury.
Q. Was that in the forenoon or the afternoon?
A. It was in the afternoon, I think.
Q Were you there?
A. Oh, I was there.
Q. Were you there in the forenoon?
A. I was there in the forenoon. My recollection is that court did not open in the forenoon, but I could not say that I was there all the time; I remember the charge to the grand jury, distinctly.
Q. How many cases did you try at that term?
A. I didn't try very many. I don't claim to be much of a trial lawyer; I don't try cases very much; I try very few; I can't give the number of cases I was in.
Q. Now, how many did you actually try, if any?
A. I don't think that I tried a jury case at that term, but I was interested in nearly every case there was there, on one side or the other.
Q. Now, what was done the second day of the term?
A. I think there was a peremptory call of the calendar the second day of the term.
Q. What else was done?
A. Oh, a good deal.
Q. Do you remember what was done?
A. No; I don't remember what was done on these different days of the term, and I don't pretend to remember back so far.
Q. Do you remember what was done the third day?
A. No, sir.
Q. The fourth day?
A. I couldn't say any thing about it.
Q. You don't remember what was done on any particular day do you?
A. Why no, certainly not. I remember the particular day when that question of the grand jury was up. But I don't remember whether it was Thursday, Friday or Saturday. I remember the particular day but I don't remember the calandar day.
Q. Well, what day was it?
A. I couldn't say.
Q. Well, you say you remember the particular day. Now what day was it.
A. The particular day; I say I remember the occasion.
Q. Oh, you remember that it was done *some* day, but don't know what day.
A. Certainly, but I can't give the time. I can't tell, and there is no man that can tell what he did four years ago on a particular day in court.
Q. You have been looking this up, haven't you?

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A. No sir I have not.
Q. What did you bring your calendar for?
A. I brought it up because I did't have time to look it up down there.
Q. You have looked it up here since you have been here.
A. I have had my calendar but did not look it up.
Q. You have had plenty of time have you not?
A. I did't care to look it up; I have no interest in this case.
Q. Now, you can tell about what was done about those other terms quite as well as you can about this, can you?
A. Do you mean preceding terms?
Q. Yes.
A. No, I don't think I could becanse they are further back.
Q. And yet I believe you testify here that the amount of business done at that term was greater than at any other term before or since in that county.
A. I did not say so.
Q. I thought that was your answer.
A. It was not my answer.
Q. During the same length of time?
A. Yes, that is my answer.
Q. How do you arrive at that conclusion if you don't know how long any other term took, nor how many cases were tried at any other term? Will you state to this Senate how you arrive at this conclusion?
A. Because I know about the usual length of our terms of court,—
Q. You know about the length of the terms. How long was the term that was held in 1876?
A. I didn't say that I knew about the length of the terms. I was going on to say that I knew *about* the length of the terms; that they commenced on Tuesday and usually, in preceding years, they got through on the same week; that is what I started to say, when you interrupted me.
Q. Do you know that the term in 1877 did that?
A. I do not.
Q. 1876? A. I do not.
Q. That any other term did that? A. I do.
Q. Which one?
A. I don't know which one.
Q. How do you know it was done?
A. Well, the same way I know your name is "Dunn,"—by common report.
Q. And that is the way you are swearing here, by common report?
A. I can't tell about those things from actual knowledge; I have not examined the records of the clerk of court; you will have him here and he can testify better than I can.
Q. Yet you are willing to swear that there was more business done at that term of court than at any other term of court?
A. As a matter of general opinion; yes, it was my general opinion; I don't swear, as a matter of fact what was done. I'm not going to swear to a thing I don't know.
Q. There were a great many orders given by the Judge to the clerk, that you did not hear, were there not?
A. I have no doubt there were.

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Q. Then you were not paying attention, of course, to what the Judge said to the clerk, except you were interested in the business?

A. Certainly.

Q. And you were not paying particular attention to the Judge except you were interested?

A. No.

Q. And you did not try a jury case? A. No.

Q. You simply argued one or two matters before the court. It was the first week of court, was it not, that you argued your questions to the court as to the sufficiency of the grand jury?

A. I think it was; it was either the last of the first week, or the first of the second week, but I think about the last of the first week. I couldn't fix the time definitely.

Q. Was it not before he had finished the McDonald case?

A. I couldn't say; I can't tell whether it was or not.

Q. Well, I believe that was all the matter you did argue to the court, was it not?

A. On that McDonald case I was retained to stay in court during the whole of the trial, by the complaining witness, Mr. Ward, and had to be in court all the time. I was there all the time at the request of Mr. Ward, the complaining witness.

Q. You think that your argument on the sufficiency of the grand jury was on the first week of the term.

A. That is my recollection; it was towards the last of the week or the first of the next; I don't remember about that.

Q. Do you recollect of any other matter you argued to the court the second week of the term.

A, Yes, I spoke against calling the petit jury three times. I mean the special venire for the petit jury.

Q. That was the second week of the term, was it not?

A. Yes, I think so.

Examined by Mr. ARCTANDER.

Q. You have spoken of this question of the new grand jury; you were interested in some of those indictments?

A. Yes.

Q. You were also interested in the petit jury business, were you?

A. I was.

Q. Now, I will ask you to state if there was a supplementary proceeding brought up during that court that took several days or quite a long time?

A. I do.

Q. How long did that supplementary proceeding take?

A. Oh, it occupied somewhere between half a day and a day, the whole proceeding.

Q. That is not one of those cases you have mentioned here?

A. Not on the calendar at all. It was a matter in which I brought the supplementary proceedings myself.

Q. Was there any case besides those you have mentioned to Mr. Dunn as having been tried by the court to which the court's attention was called and which was argued and submitted in any way?

A. A great many cases were continued and dismissed, called up before the court and disposed of. There was an unusually large calendar.

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Q. Disposed of, how?

A. Sometimes there would be an argument for a *nolle prosse*; sometimes an argument for a continuance, but clearing the calendar of a large number. More cases were dismissed that term of court and more were *nolle prossed* I think than any other term we ever had.

Q. The Judge took some cases home to decide did he not?

A. Yes, I have several marked on my calendar as taken under advisement.

Examined by MR. MANAGER DUNN.

Q. Now that supplementary proceeding was the first or second day of the term.

A. It certainly was not the third.

Q. It was the second was it not?

A. I don't think it was.

Q. Well, it was early in the term, was it not?

A. Yes, it was the first week of the term. I wish to correct that; I am not certain as to whether it was the first week or not, I know I had a great deal of trouble in getting Mr. Sherman into court.

Q. Haven't you got a memorandum of it there?

A. Not the slightest, it was not on the calendar at all.

Q. You say they argued for a *nolle pros;* who does the arguing there for a *nolle pros?*

A. The county attorney. It has been the practice of the county attorney to make his statement to the court of his reasons for granting a *nolle pros.*

Q. Is that an argument?

A. Well, I call it an argument.

Q. That wouldn't take long would it? How maay cases of that kind were there?

A. How many that were *nolle prossed*?

Q. No, that he argued to the court.

A. Well, there were six on the criminal calendar, that were dismissed.

Q. Liquor cases, weren't they?

A. Yes, they were all liquor cases.

Q. Well, when he argued the *nolle prosses* the defendants did not object did they? There was no argument against him was there?

A. I don't think there usually was.

Q. There was no argument, was there?

A. I think the usual course in criminal cases was carried out in those cases.

Q. There was no argument against it?

A. I think the defendant did not object to the *nolle pros.*

Q. Those were all done on the first or second day of the term, weren't they?

A. I couldn't say.

Q. They were old indictments were they not?

A. Yes, they were regularly on the calendar; then there were other cases disposed of; case number one—

Q. What case was that?

A. State of Minnesota vs. Joseph N. Hyde. That was argued for a continuance, marked continued, then taken up by consent and then stricken off the calendar.

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Q. By Mr. ARCTANDER. Is that the case that was certified up to the supreme court at that time?

A. Yes, sir.

Mr. ARCTANDER. With the permission of the court I would like to ask one question which I have not, strictly speaking, a right to ask here.

Q. You said you did not try any cases yourself but that you were interested in all of the cases, do you mean that you sat by and took part in the trial but did not stand up and argue.

A. That is just what I mean exactly. My health was very poor and I have not tried cases for several years, but I assisted in the trials, and was interested in them.

By Mr. Manager DUNN.

Q. How many cases of those were there?

A. I don't remember; there was that one you were defendant in, of Mr. Coleman's; I worked harder in that case than I would if I had tried it, I guess.

Q. Wasn't that the only one?

A. I don't remember; the case of Holden against John Bowerman.

Q. Well, then you were in two cases?

A. Yes, and in the McDonald case but not appearing as an attorney; I was there by the request of the prosecuting witness.

Q. You were sworn in the McDonald case, were you not?

A. I think not.

Mr. ARCTANDER. We will now re-call this witness upon another matter in relation to this article.

Q. Were you acquainted in his lifetime with Capt. Jones, that resided at Fairmount?

A. Arthur Jones.

Q. Captain Arthur Jones.

A. I was.

Q. Is that the only man that has lived there that has been known as Captain Jones?

A. The only one.

Mr. Manager DUNN. We ask the court, if there is not a rule that a witness must be exhausted and not re-called in this way.

The PRESIDENT. The chair so understands the rule; it is common however, to recall a witness, and put some question which may have been omitted through forgetfulness or something of the kind.

Mr. ARCTANDER. I did not wish to ask the witness the questions without re-calling him as a witness, to bring out new matter.

Q. Are you the Judge of Probate of that county?

A. I am not.

Q. Do you know what time Captain Jones died.

Mr. Manager DUNN. Well, I object. What is this evidence about Capt. Jones? Captain Jones is not on trial here.

Mr. ARCTANDER. No; but it is in evidence here by one of the witnesses that he drank with Judge Cox at the house of Captain Jones, and we intend to show that Captain Jones died a year before.

Mr. Manager DUNN. Which Captain Jones are you after?

Mr. ARCTANDER. We have shown that there was but one.

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Mr. Manager DUNN. Perhaps you did, when I wasn't listening to the testimony.

[The reporter then read the testimony of the witness upon this subject].

Q. Do you remember when he died?

A. He died about the 15th day of March, 1877.

Q. I will ask you to look at that paper, (handing witness a paper,) and state whether it is not the original letters of administration issued upon the estate of that same Mr. Jones?

A. It is.

Mr. ARCTANDER. We will offer it in evidence.

Mr. Mauager DUNN. We object to this as entirely immaterial. There is no evidence here which this can be produced to rebut. I suppose that the counsel is endeavoring now to prove that a certain Captain Jones is dead. We have no objection to proving that Captain Arthur Jones is dead, but that has no material bearing in this case. For one, I am at a loss to see how proving a dozen Joneses are dead can bear upon any evidence offered here by the prosecution. I presume it is offered to rebut the testimony of the witness Mr. Graham, who testified that he took a drink with Judge Cox at the residence of one Capt. Jones. Now whether the Captain Jones that Mr. Graham testified to is the same Jones they are going to prove here to be dead, is a matter I don't think this senate can get at, at least by proving simply that a certain Mr. Jones is dead.

Mr. ARCTANDER. We have shown that he was the only Captain Jones.

Mr. Manager DUNN. We only do this to save time. So far as this whole matter is concerned, it is immaterial; therefore, I want to save time, and we propose here to admit, so far as that is concerned, that Captain Jones, the man that Mr. Graham speaks of, at whose house he was visiting at the time, is dead.

Mr. ARCTANDER. That is all we care about.

Mr. Manager DUNN. But the residence is there, that Capt. Jones lived in and at which the witness took this drink. The house of Capt. Jones is a sort of a club house.

Mr. Manager HICKS. We admit that Mr. Jones was dead at the time. He was dead, but it was called Capt. Jones' house.

Mr. ARCTANDER. Well, if you admit that Capt. Jones was dead that is all we care about, and we will not insist upon introducing the letters of administration. You admit that Capt. Jones was dead at the time of the holding of this term?

Mr. Manager DUNN. Yes sir, yes.

Mr. ARCTANDER. Well, that is all we care for.

Mr. Manager DUNN. Capt. Jones was dead, but the house was in good running order; the house wasn't dead, and the whiskey was not dead either.

Examined by Senator GILFILLAN, J. B.

Q. Did you, during the January term of court, 1878, notice any indications at any time, of Judge Cox having drank anything?

Mr. ARCTANDER. Well, I wouldn't like to object to the question of the Senator, but I think it is objectionable.

The PRESIDENT. Does Mr. Arctander object to the question?

Mr. ARCTANDER. Well, I object to it as not proper cross-examination, but of course that would not be proper. (Laughter.)

The PRESIDENT. The chair would state that that is a question such as the court has ruled would not be admissible.

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Mr. Manager HICKS. Mr. President, I do not understand that to be the case. I understand Mr. Arctander asked the witness what peculiar thing the Judge did which led him to believe he was intoxicated. Now, this is an entirely different question. I understand that the Senator proposes to call out whether there were any indications that he had been drinking.

Senator GILFILLAN, J. B. As I recollect the testimony of the witness it was that during all that term he is of the opinion the respondent was perfectly sober. Now, this question is whether he did during that January term of court notice any indications of the respondent having drank anything. Of course, it refers to intoxicating drinks.

The PRESIDENT. Yes, but it was the matter of testifying to indications that was objected to before. The objection was raised to the witness testifying regarding indications instead of facts; and the court sustained the objection.

Senator GILFILLAN J. B. I don't understand this to be an analogous question at all.

The PRESIDENT. If not, the chair is in error. The chair so understood it; the gist of the question which was previously objected to, which objections was sustained by the court, as the chair recollects it, was the reference to indications. The witness was asked if he noticed any indications which in the least went to show that the respondent was drunk.

Senator GILFILLAN, J. B. The objection is sustained, is it?

Mr. Manager DUNN. Mr. President, I don't understand that we have any right to object to a question, the court may put to a witness. The Court has a right to put such questions as it may see fit.

Senator GILFILLAN, J. B. I submit to the ruling of the chair if there is objection.

The PRESIDENT. The chair would say this: that it is not proper for an attorney to object to any question from a member of the court. Allusion having been made to the previous action of the court, the chair took occasion perhaps without considering the matter fully, to call the attention of the Senator to what the court had decideded in this class of questions. But the chair will rule that it is not competent for an attorney in this case to object to any question which a member of the court may see fit to to put.

Senator ADAMS. I call for the regular order.

Senator GILFILLAN, J. B. I am willing that the counsel on either side should object with reference to the questions I ask myself, and I would prefer they should do so if they feel it necessary to do so. I have one more question to ask.

The PRESIDENT. The chair does not overrule the question.

The question of Senator Gilfillan, was then read to the witness by the reporter, as follows:

Q. Did you during the January term of court 1878, notice any indications at any time, of Judge Cox having drank anything?

Mr. ARCTANDER. I desire to call the attention of the Senator to the fact that our examination has not gone to the question as to whether the witness noticed any signs of intoxication upon the part of the respondent, during this term, but simply as to four different occasions to which we called his attention, and not generally during the term.

Senator GILFILLAN J. B. Yes, but the answer of the witness as I understood it, covered the whole term.

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Mr. ARCTANDER. I think not.

The question was then again read by the reporter to the witness.

The WITNESS. May I ask the Senator one question simply, so that I can answer the question? Does the scope of the question cover, in court, or out of court, or both?

Senator GILFILLAN J. B. I understand it to cover both.

The WITNESS. In or out.

Senator GILFILLAN J. B. In your answer you may specify just as you please.

A. One evening, when there was no session of court, I thought Judge Cox had been drinking a little too much; but it was not when court was in session. That is why I asked.

Q. Your answer then would be that you did not notice any such indication during his attendance on court?

A. No, sir; none whatever.

Q. State whether your attention was called to his appearance, his actions, or his talk, during his attendance at court during that term, in respect to that.

A. I never did, only on this evening I speak of when court was not in session.

Senator GILFILLAN, J. B. You don't understand the question. The point of the question is this: While the Judge was present there holding court, was your attention called to the fact as to whether he bad been drinking or not?

The WITNESS. At any time when he was holding the term of court, while acting as judge?

By Mr. ARCTANDER.

Q. Did anybody call your attention to it?

A. No, they did not,

By Mr. Manager HICKS.

Q. At any time during the term of court was your attention called to it?

A. It was not.

By Mr. Manager DUNN.

Q. By *any* person?

The WITNESS. By any person.

By Mr. Manager HICKS.

Q. Not at the time court was actually in session, but during that term of court?

A. No.

By Mr. Manager DUNN.

Q. In this evening session you speak of—was that in the court room?

Mr. ARCTANDER. I object to the cross-examination of this witness upon questions propounded by Senators. When I objected before I did so upon the same principle that an attorney did in a case when the court asked a question. He wanted to know on what side the court asked the question; whether he asked in his behalf, or in behalf of the other party; if he asked it in his behalf he would waive his objection, but if he asked it in behalf of the other side he should insist upon his objection.

Mr. Manager DUNN. I don't want to cross-examine; I simply want to ask whether this was in the court room or out of the court room.

By Senator GILFILLAN, J. B.

Q. Where was it that you saw Judge Cox when you thought he had been drinking a little too much?

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A. One evening at Albion Hall, when there was no court in session.
By Mr. Manager DNNN.
Q. That is where court was held, was it not?
A. I said it was in the court room.
By Senator GILFILLAN, J. B.
Q. I don't understand what you mean by that. That is the place where the court was held when it was in session?
A. Yes, sir, when it was in session.

Examined by Mr. Manager DUNN.
Q, Was that immediately after the court had adjourned?
A. It was not; it was after supper, along in the evening, at 7 or 8 o'clock: the court had adjourned at about 5 o'clock.

By Mr. Manager DUNN.
Q. While they were waiting for a verdict?
A. No, sir; there was no business on hand at all. When Judge Cox went from there he went over to the hotel.
Q. Wasn't the sheriff or the clerk there?
A. I didn't see the sheriff or the clerk; there was no court.
Q. Well, what business was going on there?
A. It was supposed that there might be something done, but there wasn't anything done at all; court was opened and adjourned until the next morning.
Q. It was after the adjournment you saw him tight?
A. I didn't say he was tight. The counsel is putting words into my mouth which I didn't say.
Q. Had he been ont of that court room from the time he adjourned court until you saw him?
A. I don't know; it was an hour after court adjourned.
Q. Were you there when the court adjourned?
A. Yes; I was.
Q. Did you stay there all the time?
A. I think I did.
Q. Had he been out of the court room? A. I couldn't say.
Q. What is your impression?
A. I don't know. I know I saw him, and I thought he was a little too talkative, that was all. I didn't say that he was tight.
The PRESIDENT. Recess will be taken until half past two.

AFTERNOON SESSION.

Senator Perkins took the chair, and called the Senate to order, acting as President *pro tem.*
Senator WILSON. Mr. President, there is one matter that ought to be determincd, and perhaps it would be as well to have it settled now as at any other time, whether we are going to have a quorum or not to do business to-morrow. Now, I don't want to remain over, as I have once or twice, to be here Saturday morning, with only nine or ten of the Senators here. If we can't have a quorum, we might as well understand it now, and we can go home to-night instead of stopping over until to-morrow to go home. And for the purpose of getting the expression of the Senate, I move that we hold a session to-morrow all day, until 6 o'clock in the evening.

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Senator MACDONALD. That is the present rule of the court without any motion.

Senator WILSON. Well, if Senators are going to sneak out and go away and leave us without knowing whether we can have a quorum here to-morrow or not, and have a part of us to remain over here at St. Paul on expense which we might as well avoid, if we could determine that matter now, it is not wisdom. And I think we might as well determine the matter right here and now, by getting a pledge if we can, of twenty-one men being here. If not, I shall go home. I don't propose to remain over, as I have on two occasions, on expense, when it don't amount to anything.

Senator RICE. I will make a motion that when the Senate adjourn it adjourn until 10 o'clock to-morrow morning.

Senator WILSON. That won't bind anybody to remain. I propose to go home to-night, unless I have an assurance that there will be a quorum here to-morrow.

The PRESIDENT. Is the Senate ready for the question? It is moved by the Senator from Goodhue that the Senate hold a session to-morrow.

The Senator from Kandiyohi has amended the motion, that when the Senate adjourn, it adjourn to meet to-morrow morning.

Senator MACDONALD. I move that the resolution lie upon the table.

Senator POWERS. It strikes me that if we proceed to take a vote on this question now, it will save breaking into the evidence in the middle of the afternoon. I think the motion of the Senator from Kandiyohi is not strictly in order, because that would be the result if no vote were taken. I appreciate the motives of Senator Wilson in desiring to know whether there will be a quorum here or not. I have been here some two or three times when there were not Senators enough here to act.

Senator WILSON. I don't care a cent whether we have a session to-morrow or not. I suggest that we take a vote now.

The PRESIDENT *pro tem.* If the Senate will permit, I will say that the secretary suggests that he will informally visit Senators here during the session this afternoon, and see those who will be present to-morrow, and report upon the matter, so that it may be understood.

Senator WILSON. That will be satisfactory, so that we find out between now and night, whether we shall have a session to-morrow.

The PRESIDENT *pro tem.* Is there anything further before proceeding with the evidence?

H. M. BLAISDELL,

Recalled as a witness, testified.

Examined by Mr. Manager DUNN.

Q. Did I understand you to say in answering Senator Gilfillan's question, that you thought there was one time when you thought he had been drinking too much?

A. Yes.

Q. That was this afternoon session?

A. No, I am not speaking of any session at all.

Q. You are speaking of the evening in the court room?

A. Yes, when there was no session.

Q. You had been in court ever since the court had adjourned up to that time?

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A. Oh, no; we had gone home and had our supper.
Q. You came back then, did you?
A. Yes, all of us.
Q. And found the Judge there?
A. Well, he was there about the same time we adjourned over, I think, until some time after supper.
Q. Well, you found when you returned to the court room that the Judge had been, in your judgment, drinking too much?
A. I didn't say so; that was not my testimony.
Q. Well, words to that effect?
A. No, sir; nothing of the kind. I said that an hour or two afterward, I thought that the Judge showed signs of having drank too much.
Q. Not when you came in? A. No, sir.
Q. Was he there when you came in?
A. I don't remember; I think he came in about at the adjourned hour.
Q. You and the Judge came in about together?
A. Yes; I presume so.
Q. About an hour after that you discovered that you thought he had been drinking too much?
A. Yes.
Q. Had he been out during the time? A. I don't know.
Q. Had you been out? A. I don't think I had.
Q. Did court open that night?
A. Court opened and immediately adjourned until the next morning.
Q. Court was opened at the time?
A. Yes; court, I think, adjourned immediately. We were round there talking in a free and easy manner for an hour or such a matter.
Q. You say you came in the court room at the adjourned hour with the Judge?
A. I didn't say so.
Q. About with the Judge?
A. I said I presumed we did; came in about the same time; I didn't say I came in with him.
Q. And in about an hour after that you discovered that the Judge had been drinking too much?
A. I said I thought he showed indications that he had; I don't know that he drank a drop.
Q. But you thought by his actions that he had?
A. Yes, my judgment was that he had drank a little too much; that was my judgment.
Q. Then about an hour after you say court opened?
A. I didn't say anything of the kind.
Q. Well, what did you say?
A. Well, I say court adjourned about half past five, and we went home and got our suppers.
Q. I don't want to go all over that again.
A. Well, you are telling what I said, and I didn't say anything of the kind.
Q. Well, I have misstated it; we will go back now and see if I can get it right. You went into the court room about the same time the Judge did, you say?
A. After supper; yes; that is right.
Q. Then you didn't go out; you stayed in the court room all the

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time from that time; in about an hour you discovered that the Judge had been drinking too much?

A. I said I thought so. I didn't make any discovery at all; I don't know that he drank a drop, but I *thought*.

Q. That was about an hour after you went into the court room?

A. Yes; after supper.

Q. About how long after that was it after you first thought he had been drinking too much, that the court opened?

A. Oh, why, I have not testified anything of that kind at all.

Q. Well, I am asking you to testify now.

A. Well, I never—

Q. Well, now I am asking you about that.

A. Court opened before that, and adjourned over until the next morning, an hour before I saw any signs of intoxication; that has been my testimony from the start. They adjourned over until supper, and they came in and immediately adjourned over, and about an hour after that I thought Judge Cox showed some signs of intoxication.

Q. Then court immediately adjourned about an hour after supper?

A. Yes.

Q. And you stayed in court all the time?

A. I think I did.

Q. And stayed there until you thought the Judge had been drinking too much?

A. I didn't stay in court all the time. I say, court adjourned immediately.

Q. Well, you needn't be so technical about that; you stayed there?

A. Yes.

Q. Until you thought the Judge had been drinking a little too much?

A. I stayed there.

Q. Had the Judge been out from the time of the adjournment until that thought flashed across your mind?

A. I have not had any information since I have answered your question three times, that I didn't know.

Q. Didn't you see the Judge?

A. Certainly. There was twenty or thirty of us there, chatting with him.

Q. Were you not there all the time?

A. I don't remember. Some were out and some were in.

Q. You didn't go out?

A. I don't think I did. I could not say positively I didn't, but I don't think I did; you want to take into consideration it was a good while ago.

Q. Now state, Mr. Blaisdell, if you will, when you had seen him before that when you thought he had been drinking just about enough, if this time he had been drinking a little too much?

A. Well, I don't know what you mean by drinking about enough; I don't drink at all myself.

Q. Well, you say he had been drinking a little too much.

A. I thought so too at that time.

Q. Now, was there any period of his history when you thought he had been drinking just about enough?

A. Yes, lots of times. I didn't know that he had been drinking at all, but I thought *that* was just enough.

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Q. When you mean to say that he had been drinking just about enough, was that when he had not been drinking any? Was there any other time when he had not drank any, when you thought he had drank just enough?

A. I don't understand that question.

Q. You say that when a man, in your judgment has not drank any; that then he has drank just about enough?

A. Yes, sir.

Q. Now, was there any intermediate time between that time and the time when he had drank too much?

A. I never saw him when I supposed he was the least under the influence of liquor, only this one time that I have testified to,—not any other.

Q. Then you don't have any way of guaging when he had drank just about enough?

A. I have never gone into the fine points of the whisky question to that extent, I don't know.

Q. Was Senator Wilkinson in the room that night?

A. He was.

Q. Was he making a motion there that night of some kind?

A. No, sir; no, sir, there was no business done at all.

Q. Were you there when Senator Wilkinson made a motion at one time in the evening that created some merriment?

A. Yes.

Q. That was not this evening? A. No.

Q. Was you there when he undertook to put his overcoat on over his feet?

A. I didn't see that, I was there at that time, but I didn't see him putting his overcoat on over his feet, I heard of the transaction at the time, but I didn't see it. That was not this evening; it was not in the evening according to my recollection.

By Mr. ARCTANDER.

Q. If I understand you correctly then, on this evening when you say you thought the Judge had been drinking that evening he was sober at 5 o'clock when the court adjourned?

A. To all appearances so far as my opinion is concerned.

Q. Then you adjourned until 7 o'clock, or some time in the evening.

A. To some time in the evening; I am not as positive as to the hour of adjournment.

Q. When you came in at that time, whatever time the Judge adjourned to in the evening, you adjourned court until next morning?

A. That is my recollection.

Q. And it was about an hour after court had adjourned, more or less that you thought you noticed that the Judge had been drinking?

A. Yes.

Q. You noticed nothing when he came in?

A. Nothing.

Q. That evening?

A. Nothing whatever.

Q. That is the time when you stated you thought he had been drinking, and do I understand you mean that he was intoxicated at that time?

A. Well, I don't understand exactly what the extent of that word intoxicated, is in the counsel's mind.

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Q. Well, drunk or tight?
A. Well, so that he couldn't walk, or so that he couldn't talk, or something of that kind?
Q. Well, I suppose so, that he hadn't the control of his mind?
A. Oh, I thought he was talking a little foolish, that was the extent of it. He was talking a little foolishly, I thought.

ALLISON FANCHER,

Sworn on behalf of the respondent, testified:
Examined by Mr. ARCTANDER.
Q. Where do you reside?
A. I live in Fairmount, Martin county, Minnesota.
Q. Do you know the respondent, E. St. Julien Cox?
A. Yes, sir.
Q. Did you meet him at the term of court, held in Martin county in the month of January, 1878?
A. I did, sir.
Q. What official position, if any, did you hold at that time?
A. I was clerk of the district court, at that time.
Q. Was you as clerk of the court in constant attendance upon that term of the district court, when the respondent was there?
A. I was.
Q. How long did that term last?
A. It lasted 11 days, one Sunday intervening, 10 working days.
Q. Do you remember the occasion of court coming in in the evening during that term of court on the day that the jury were sent out in the case of State against McDonald?
A. I think it was Tuesday afternoon.
Q. I say do you remember that occasion?
A. I remember the occasion, yes.
Q. You remember the occasion of coming together in the evening there that day in the court-room?
A. Yes.
Q. Was court open that evening?
A. It was open a short time.
Q. What business, if any, was transacted there that evening?
A. I think nothing more than an order for the sheriff to procure supper for the jurors; that is all I remember of.
Q. Have you got your minutes with you?
A. Yes, sir.
Q. Do they show whether there was anything else done that evening.
Mr. Manager COLLINS. We object to that.
Mr. Manager DUNN. Let us see those minutes if you have them.
Q. Mr. Fancher you will look at your own minutes, and refresh your recollection from that, and state whether or not there was anything done that evening.
Mr. Manager DUNN. Are those the original minutes?
A. They are. What was the question?
Mr. ARCTANDER. The question was what was done on that evening, if anything else, except that order for feeding the jury?
A. Well, yes, there was an order setting aside a certain indictment made, according to my minutes.

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Q. That evening? A. That was all.
Q. An order made setting aside an indictment; does it state in what case?
A. The State of Minnesota against Walter Hutton.
Q. Having refreshed your recollection in regard to that, do you remember the circumstances of that?
A. It was simply a motion of the attorneys to set aside the indictment.
Q. Any argument?
A. The motion was sustained, and an order of the court that the defendant be discharged. I think not much, don't remember fully how much argument.
Q. Now, I wish to ask you to state what was the condition of the Judge that evening as to sobriety or inebriety?
A. I think he was sober.
Q. Well, can you state it more than as a thought? Do you simply state that as a thought, or as a fact?
A. I have no reason to think otherwise. In my judgment he was sober.
Q. Had you any doubt about it? A. No, sir.
Q. State whether or not there was anything peculiar or different in his manner or language that night from what it had been on other occasions when you had seen him?
A. I didn't notice anything.
Q. State if you remember of an occasion at that term when Senator Wilkinson made a motion to dismiss a liquor case, a motion that created some merriment?
A. Yes, I remember such a circumstance.
Q. State what the condition of the respondent was at that occasion as to sobriety or inebriety?
A. I didn't see any difference in his conduct from what I had previously when he was sober.
Q. I will ask you to state whether or not you saw any difference in his actions or demeanor, either after the second day of the term, or the last week of the term, from what it had been theretofore?
A. I didn't see anything in his actions while he was Judge there that caused me to take any notice but that he was the same all the while, every day.
Q. He seemed to you to be the same all the while, no change?
A. Nothing that I know of; nothing to call my attention to the matter.
Q. Now I will ask you to state whether at any time during any evening session or during any part of the term of that court, Judge Cox gave or made any order to either you or to the sheriff which was unintelligible and incongruous?
A. He didn't make any order to me but what I understood; the Judge was very plain in his orders, and assisted me very much in making up my records.
Q. Did he ever at any time make any order in any such language or in such a manner that you thought he was intoxicated?
A. No sir.
Q. Or that he didn't have the full control of his mind?
A. No, sir.
Q. Did you ever hear any order made to the sheriff that was unintelligible or incongruous?

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A. I did not.

Q. Do you remember the occasion of the issuing of a special venire for a grand jury. The order for issuing a special venire for a grand jury, and the making of the arguments that were made at the time.

A. Well, I remember the circumstance, yes.

Q. You remember the occasion?

A. Certainly.

Q. Now state what was the condition of Judge Cox at that time as to sobriety or inebrity?

A. I didn't see any difference in his condition, but what he was perfectly sober.

Q. He was perfectly sober?

A. Yes, so far as I could see.

Q. State whether or not at that time there was any confusion in his manner exhibited?

A. Nothing that I noticed.

Q. State whether or not you noticed whether his eyes were red and inflamed on that occasion?

A. I didn't notice anything in regard to his eyes as 1 know of at all. I didn't think anything of his being intoxicated; I didn't know or hear anything about it at that time.

Q. You stated that you had ten days outside of the Sabbath, I believe, in that term of court?

A. Yes.

Q. How many working days was there?

A. There was ten working days; there was eleven days of court, including the Sabbath.

Q. Then there was ten working days? A. Yes.

Q. The first day was there any case taken up and tried on that day?

A. I think not; the first day we didn't get together, I think, until 1 o'clock.

Q. What was done the first day?

A. The grand jury were called and sworn.

Q. And charged? A. And charged.

Q. And the preliminary call of the calendar?

A. The preliminary call of the calendar; I don't think there was any case taken up.

Q. Now, how many cases, if you know, were tried during that term of court?

A. I don't know how many cases were tried. I think there was four jury trials.

Q. One of those was the McDonald case, which lasted five days, was it?

A. Yes, sir.

Q. Was there other court business taken up?

A. Yes, sir; a good many naturalizations; several.

Q. You have lately had a term of court there, I believe, have you not?

A. Yes, sir.

Q. Were you there?

A. I wasn't there much; I am not clerk now.

Q. I will ask you now, how the amount of business done at this term compared with the amount of business done at previous terms and subsequent terms while you were clerk in proportion to the time that this

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term occupied, and the time that other terms occupied, during which you have been in attendance as the clerk of the court?

A. I thought at the time that there was more business done than had been done previously for some length of time; but I think we have had as much business done at some terms in proportion, as there was then perhaps.

Q. I will ask you whether you remember the occasion of some sparring between counsel upon the contemplated issuance of a special venire for a petit jury after the second grand jury had come in with indictments against certain persons?

A. I remember something about it.

Q. Well, you remember the occasion? A. Yes, I do.

Q. State what the respondent's condition was as to sobriety or inebriety on that occasion?

A. I think he was sober.

Q. Well, is there any doubt in your mind about it?

A. None in *my* mind.

Q. Not any doubt about it? A. No, sir.

Examined by Mr. Manager DUNN.

Q. You say you think, Mr. Fancher, that there was more business done at this term of court, than was done at any prior terms, do you?

A. More than some of the prior terms.

Q. Now, have you taken any pains to examine to see?

A. Well, I have not looked it up.

Q. You are simply guessing at that, aren't you?

A. Well, that is my opinion.

Q. Isn't it simply an opinion based upon a mere guess?

A. Based upon the rush of business, and the manner in which he conducted business.

Q. Now, you say, based upon a rush of business; the first six days of that term, or rather the first eight days, including the Sunday, was taken up with the charging of the grand jury and the trial of one case, was it not?

A. There was some other business done.

Q. Well, that was the business that engrossed the attention of the court; there was only one case tried?

A. There was one case tried.

Q. The McDonald case was commenced on the second day of the term, wasn't it; on Wednesday?

A. No, sir.

Q. What day was it commenced? A. Thursday.

Q. What was done on Wednesday? A. I can't tell.

Q. Was there any case tried? A. I could not tell.

Q. Look at your minutes. (Witness examines his minutes.)

A. There was a case tried on Wednesday.

Q. What was it? A. State of Minnesota against Granville Sharpe.

Q. That case was tried? A. It was tried Wednesday.

Q. And on Thursday the McDonald case was taken up? A. Yes.

Q. There were two other jury cases tried, weren't there?

A. I think there was.

Q. They were short cases, were they not? A. I think so.

Q. Both of them didn't take a day, did they?

A. I think one case took about a day.

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Q. Which case? A. The Mayne case.
Q. How many witnesses were sworn? A. There wasn't many.
Q. How many were there? A. I don't know.
Q. Well, you can tell; you have your minutes.
A. I can find it if you wish.
Q. Well, please find it.
A. There were but two witnesses sworn, I think; that is all I have a record of.
Q. Now, didn't it commence in the afternoon?
A. Called for trial Wednesday morning, the second week.
Q. What else was done after that?
A. The grand jury came into court in the meantime.
Q. Well, that don't take long. Now, when was it given to the jury?
A. Some time in the afternoon.

By Mr. ARCTANDER.
Q. The case was commenced Wednesday morning and given to the jury some time in the afternoon?
A. In the afternoon, just before adjournment, and the jury in the case came into court in the evening.
Q. And then there was one other case tried?
A. Yes.
Q. And there were only four jury cases in all, were there?
A. That is all I recollect.
Q. Now, were there any cases tried by the court? Were there any cases in which the court took evidence and tried the cases in court, and afterwards filed any decision with you as clerk?
A. I don't remember; I don't remember without looking up these minutes.
Q. Isn't it a fact that you were very busy during that term of court in your clerical duties, and was not paying very much attention to the Judge?
A. I was very busy.
Q. Well, were you paying much attention to the Judge?
A. Why, not particularly, outside of my business with him.
Q. You sat with your back to the Judge, didn't you, most of the time?
A. Yes, when I was busy.
Q. You testified at one time, before the judiciary committee, that you thought the Judge acted a little strange. Now you say the Judge was perfectly sober during all these occasions you have spoken of. Can you state whether the Jndge was perfectly sober during that whole term of court?

Mr. ARCTANDER. That is objected to as not proper cross-examination. We have only asked the witness as to certain occasions.

Mr. Manager DUNN. We have asked the witness whether there was any difference between his conduct and appearance and actions at that time he has stated, than at any other times during the term of court; now, I am going to get at that difference if I can; that runs it over the whole term of court.

The PRESIDENT *pro tem.* Do you object?

Mr. ARCTANDER. Yes; I object to it.

The PRESIDENT *pro tem.* I think the question is proper.

Q. Can you state whether or not in your opinion the Judge was perfectly sober during all of that term of court?

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A. I didn't see anythiug in the Judge during that session that led me to believe he was intoxicated.

Q. During that term of court; we don't confine it now to the session.

A. No; I didn't see anything in the Judge that I thought indicated he was intoxicated during the term of court.

Q. Either on the bench, or off the bench?

Q. No, sir; I did not.

Q. Did you notice any peculiar or strange actions in him?

A. I don't think I did.

Q. Did you notice anything that showed that he was "very weary?"

A. One evening I thought he seemed weary or tired or something. That is what I attributed it to at that time.

Q. You attributed it to his being very tired?

A. Yes; I think that is what I testified to, four years ago.

Q. That was one evening?

A. I think that was one evening.

Q. Well, what evening was that?

A. I can't tell, I think it was the last week.

Q. Did it attract your attention?

A. I think so. I noticed it in talking with him by mere remarks.

Q. Well, what were they? What did you notice?

A. Why, he appeared somewhat tired and sleepy.

Q. Was he trying to explain something to you?

A. Nothing; it was some general remarks we were having; I guess, just at the close of the session in the evening.

Q. You don't remember what the conversation was about?

A. No, I don't.

Q. You don't remember anything about it at all do you?

A. Nothing, only in a general way, probably something I was saying to the Judge or asking him something about.

Q. You noticed that there was something the matter with him did you?

A. I thought he acted tired and weary.

Q. And that was all?

A. And that was all.

Q. Simply tired and weary? Didn't you testify, Mr. Fancher, at one time before a judiciary committee of the House of Representatives that "he was either very weary or something was the matter with him; I didn't think he was right exactly;" didn't you testify to that, sir?

A. I don't remember it, sir,—the language I used.

Q. Well, is that about what you want to say now?

A. I would simply say now, just repeat what I have said, that I thought he was weary that evening or tired.

Q. Do you know whether the Judge had been drinking intoxicating drinks at that term of court?

A. I do not.

Q. Had you heard that he had been?

Mr. ARCTANDER. We object to that. Is that the kind of evidence that the managers are going to bring in on us?

Q. Did you have any reason to believe that he had been, in any way at all?

Mr. ARCTANDER. That is objected to, as being the same question.

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Mr. Manager DUNN. I think it is proper cross-examination. He has testified he was perfectly sober; I have a right to ask him whether he had been drinking, or whether he knew he had been drinking, or whether he had any suspicion.

The PRESIDENT *pro tem.* What is the question?

Mr. Manager DUNN. The question is now, whether he had any reason to believe during that term of court that Judge Cox had been drinking intoxicating drinks.

Mr. ALLIS. That may call for hearsay evidence.

The PRESIDENT. I think the question is proper.

The WITNESS. No, sir.

Q. Did you see him going into any saloon?

A. I did not.

Q. You never go to saloons yourself? A. I do not.

Q. You didn't see him drinking during the whole term?

A. I did not.

Q. No one ever called your attention to it?

A. Not during the term.

Q. They did afterwards?

Mr. ARCTANDER. We object to that.

The PRESIDENT *pro tem.* I think the objection is well taken.

Examined by Senator CROOKS.

Q. How long have you known Judge Cox?

A. The first time I ever saw him was at that term of court in 1878.

Q. Now, during the whole of that term of court you were there yourself?

A. I was.

Q. Did you observe that Judge Cox was drunk at any time during that term of court?

A. No, sir.

Q. In court? A. No, sir.

Q. Did he appear to you, or give you any reasons to suppose that he was incapaciated from doing his business properly?

A. No, sir.

Q. You were there yourself?

A. I was there myself.

Examined by Mr. ARCTANDER.

Q. I will ask you Mr. Fancher, if this evening when you say, you thought he looked a little weary, or something of the kind, whether that was on any of the occasions of which I asked you in your direct examination?

A. No, sir; it was not.

Q. It was not at any of those occasions? A. No, sir.

Q. That McDonald case you mentioned lasted five or six days did it?

A. I think it was called on Thursday morning and given to the jury Tuesday night of the next week.

Q. Five full days? A. Yes, sir.

Q. Mr. Dunn was an attorney in that case, was he not?

A. Yes, sir.

Q. Now, there were several law arguments or law points raised during that term were there not, and submitted to the Judge?

A. Oh, yes.

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WILLIAM BIRD,

Sworn on behalf of the respondent, testified:

Examined by Mr. ARCTANDER.

Q. Captain Bird, where do you reside?

A. Fairmount, Minnesota.

Q. Do you hold any official position there now?

A. I am sheriff of Martin county.

Q. How long have you been sheriff of Martin county?

A. Since 1876.

Mr. Manager DUNN. And will be, probably all his life.

Q. Do you know the respondent, E. St. Julien Cox?

A. I do.

Q. Were you the sheriff of that county and in attendance upon court, at the term of court held by the respondent in Martin county in the month of January, 1878?

A. I was.

Q. State whether or not you was present in court during the whole of that term?

A. I was there the most of the time; yes sir.

Q. Was you there during every session?

A. Sometime during every session.

Q. You was there every session, but probably not the full session?

A. No, sir; I served a good many subpœnaes during that session.

Q. Where did you serve them, in town or out of town?

A. In town, mostly.

Q. Do you remember the occasion of the evening of that day that the McDonald jury had been sent out. The jury in the case of the State against McDonald?

A. Yes, I think so.

Q. You recollect that evening; was you in the court room that evening?

A. I was in the court room a part of the time that evening.

Q. Was you there when court opened in the evening, or when it was called?

A. I was.

Q. How long did court remain in session that evening?

A. A very short time; can't state just how long.

Q. Over an hour? A. I should think not.

Q. Or less? A. I should think less than an hour.

Q. During this session what was the condition of the respondent as to sobriety or inebriety?

A. He was sober.

Q. State whether or not there was anything in his manner or in his language peculiar or different from what it was at other times when you saw him?

A. I didn't notice anythiug different.

Q. Your position in court was so that you would face the court, would you not?

A. Well, not exactly; the clerk sat at the right hand of the Judge, and I sat near the clerk.

Q. So the clerk did not sit in front of him?

A. No sir. The clerk sat more like my position here. The Judge sat here (indicating) the clerk sat next to him, and I sat next to the clerk.

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Q. Do you remember the occasion of a motion being made during that term of court by Senator Wilkinson, to dismiss the liquor case, a motion that rather created some merriment?

A. I don't remember it.

Q. You don't remember of that occasion?

A. No sir.

Q. I will ask you, Mr. Sheriff, if there was any difference in the actions or demeanor of the respondent after the second day from what it had been before?

A. I didn't notice any difference.

Q. Was there any difference in his actions or demeanor the last week from what there was the first week?

A. I didn't notice any.

Q. State whether or not he was more free and easy after he had been there for a couple of days than at first?

Mr. Manager DUNN. I object to that as immaterial.

Mr. ARCTANDER. That is your testimony.

Mr. Manager DUNN. You made that in the argument. There is no testimony upon that point that I recollect.

Mr. ARCTANDER. I took my argument out of the book you know.

The PRESIDENT. I think the question is proper.

Mr. ARCTANDER. You may answer if his manner and behavior was more free and easy just afterwards than it was at first?

A. Oh, about the same I should think. He was always free and easy during the whole term.

Q. Did the Judge at any time during the evening session, or during any part of that term, give or make an order to either the clerk or yourself, which was unintelligble or incongruous?

Mr. Manager DUNN. I object to that unless it was applied to him. He cant't tell whether it was unintelligible to the clerk. He can state whether it was unintelligible to him.

Mr. ARCTANDER. I don't ask you whether it was unintelligible to the clerk.

The PRESIDENT *pro tem.* I think the question is proper.

A. He made no order to me that I didn't understand.

Q. Did you ever hear him made any order to the clerk that you did not understand.

A. No, sir.

Q. Did you ever hear him make any order to any of you that you was incoherent, and showed a wandering of his mind?

A. None.

Q. Now I will ask you to state if you remember on the occasion of a special venire, of a question coming up about issuing a special venire for a grand jury immediately after a certain demurrer had been decided and sustained?

A. I do.

Q. You remember the occasion?

A. Yes.

Q. What was the condition of Judge Cox at that time?

A. He was sober, in my opinion.

Q. Was there any confusion in his manner at that time?

A. None.

Q. Did you notice whether or not his eyes were red and inflamed?

A. I didn't notice anything about his eyes.

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Q. That was in the day time was it not?
A. It was in the afternoon.
Q. Then that question came up in the afternoon during daylight?
A. Yes sir.
Q. Now I desire to call your attention to the occasion of some talk or parley about issuing a special venire for a petit jury after the second grand jury had brought in certain indictments, if you remember the occasion.
A. I do.
Q. State what the condition of Judge Cox was at that time.
A. Sober.
Q. State whether or not you was with the Judge on the second night of the term, in the evening?
A. I was.
A. Where was you?
A. I was at the house of Mr. Smales, who lives about a couple of miles out of town.
Q. And had a dinner party up there?
A. Had a dinner party.
Q. It was in the evening after court had adjourned?
A. Yes sir.
Q. Was there wine and some liquors at the table there?
A. There was.
Q. Did the Judge drink any?
A. He didn't drink anything.
Q. Did you see it offered to him and he refuse?
A. Oh, yes.
Q. He refused to drink, did he?
A. He refused it.

Examined by Mr. Manager DUNN.
Q. He refused at that time did he, Captain?
A. He did.
Q. Did you see him drink at any other time?
Mr. ARCTANDER. That is objected to as not proper cross-examination.
The WITNESS. I did.
Q. You did see him drink?
A. I saw him drink, yes.
Q. You say you did see him drink at other times?
A. At one other time, yes.
Q. Only one other time?
A. Only one other time.
Q. You was not around with the Judge, was you?
A. I passed two evenings with him.
Q. What evenings were those?
A. That was the second evening of the term, and I think it was either the third or fourth evening. I am not sure about that; it was during the first week of the term.
Q. Well, you passed one evening with him at Smales'; where did you pass the other one?
A. I passed the other evening at another Mr. Smales'—a brother.
Q. And he didn't drink either of these nights, did he?
A. Yes, sir.
Q. Oh, he did?

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A. On the fourth night he drank. I don't remember whether it was the third or fourth.

Q. Well, the second night of the term he didn't drink, but the third or fourth he did drink?

A. Yes.

Q. Those were the only times you was in his company, were they not, except in court?

A. Yes; that is, for any length of time. I may have seen him a number of times, but ——

Q. Did you see him in any saloon? A. No, sir.

Q. Did you see him go into a saloon?

A. I never did.

Q. Nor coming out of one? A. Nor coming out.

Q. You don't go yourself into saloons?

A. I do sometimes; yes.

Q. Well, did you go into saloons much during that term of court?

A. I was in a saloon once during that term of court to arrest a man. I arrested a man who had been indicted for selling liquor, and brought him before the court.

Q. Were there licensed saloons in that town then?

A. No.

Q. What saloons were running, were running a little out of the road; —they never allowed you to see them drinking in there, did they?

A. It was a bad place for me during a term of court.

Q. But there were saloons running, weren't there?

Mr. ARCTANDER. We object to that.

Mr. PRESIDENT. I think the objection is well taken.

Mr. Manager DUNN. I can't see why the question is not proper, but I don't care about it.

Mr. ALLIS. It is not cross-examination, that, is the reason.

Mr. Manager DUNN. When you put a witness on the stand, who swears that a man is perfectly sober for 11 days, I haven't got a right to ask him where he goes, have I?

Q. You were not in court all the time, were you, sir?

A. Not all the time.

Q. Did you go away to serve subpœnaes?

A. Yes, sir; about town. I don't think I was out of town.

Q. Didn't you go down into Faribault county to serve a subpœna?

A. I did not.

Q. You don't think you were out of town at all to serve subpœnas?

A. I don't think so; I don't remember of going out of town. I sent a deputy down to Faribault county to serve a subpœna.

Q. You don't think you went? A. I know I did not.

Q. Well, you were at the court a considerable part of the time, were you not?

A. Well, yes.

Q. You had two bailiffs to attend to your business in court there, and you were out a good deal of the time, were you not?

A. I wasn't out a good deal of the time; I was out some.

Q. Well, was you out half of the time? A. No, sir.

Q. Do you say that you were there at every session of the court?

A. Some time during every session, I think I was there.

Q. Well, will you swear that you were there at every session?

A. No, I will not.

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Q. There might have been sessions you were not there at all?
A. There might have been; yes. But I don't think there was.
Q. When you were there, did you have any particular business with the Judge?
A. No, no particular business.
Q. You had nothing to attract your attention particularly to the Judge did you?
A. Nothing special; no.
Q. You were keeping order in the court room? A. Yes, sir.
Q. That was your business? A. Part of my business.
Q. You didn't pay particular attention to the Judge, to know whether he was entirely sober or not, did you?
A. I saw the Judge sitting there beside me all the time.
Q. Well, you was not sitting there, was you; you were down around keeping order in the court room a part of the time?
A. Yes, sir.
Q. Now, you say the Judge was perfectly sober, do you?
A. I do, yes, in my opinion.
Q. Well, how do you account for a man's ebriety or inebriety, by the workings of his mind, or by the workings of his body?
A. Both.
Q. Well, when he is simply so intoxicated that it doesn't affect his body, then how do you ascertain?
A. Why, a man might be drunk, a man might be so drunk he couldn't walk, and still I have seen such men that was quite bright in that condition, and *vice versa*.
Q. Then you have seen men that could walk that were not very bright in their heads?
A. Yes, sir.
Q. Well, how do you account for the Judge's sobriety—by the workings of his mind, or his body?
A. Both. He didn't act drunk neither in his body or mind, in my opinion.
Q. No indications whatever?
A. I didn't see any indications of it.
Q. You remember the evening you say the McDonald jury were sent out, and you were only there a short time that evening?
A. I was there until court adjourned, I think.
Q. Now what evening was that?
A. I can't tell what it was.
Q. You don't remember what day of the week it was?
A. I don't remember.
Q. You don't remember whether it was in the evening or afternoon do you?
A. It was in the evening.
Q. Are you positive of that?
A. Yes, sir.
Q. Are you sure the Judge charged the jury?
A. I remember the Judge ordering supper for them in the evening.
Q. When were they sent out?
A. I think in the afternoon.

Examined by Senator CROOKS.
Q. Now, you were there during the term of court; how long have you known Judge Cox?

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A. I never saw him before that term of court.
Q. You were there most of the time yourself?
A. The most of the time.
Q. During the business of the court?
A. Yes, sir.
Q. Do you swear to the best of your judgment that that man was not drunk under any circumstances?
A. I do.
Q. He was a sober man according to your best judgment?
A. That is my judgment.

By Mr. ARCTANDER.
Q. In regard to this drinking there at the other Mr. Smales' that night, how much did the Judge drink?
A. I don't know how much he drank, we had a pitcher of beer there, ale, English ale, I think, I am not sure.
Q. A pitcher as big as that, or bigger. (Indicating a large pitcher on the table.)
A. Well, I really could not say about the size of the pitcher.
Q. Do you know whether the Judge drank more than one glass?
A. He might have drank more than one, I could not say as to that.
Q. Anyhow, he was not intoxicated, was he?
A. No; there was not beer enough.
Senator J. B. GILFILLAN. Mr. President, I would like to ask the witness one question.
Q. I understood you to say in answer to counsel's question, that you did not hear any order communicated by the respondent to the clerk of court during that term that indicated any incoherency or confusion of mind?
A. I did not hear any such order.
Q. Do you remember now of any circumstances of the Judge communicating an order at all to the clerk during that term?
A. Oh, yes, a great many times.
Q. Can you name any particular one?
A. I cannot.
Q. How? A. No, I cannot.
Q. You cannot? A. No, sir.
Q. Nor what it related to? A. No, sir.
Q. What proportion of the time were you present in court during the session of the court?
A. Oh, I should say I was there three-quarters of the time at least; probably more.
Q. Three-quarters? A. Yes, sir.
Senator ADAMS. I desire to ask the witness one question.
Q. If the Judge had directed the clerk of the court to make an order which would have been out of the usual tone of voice, or his manner of speaking, while you were present, would you have observed it?
A. I would have been likely to, I think.

By Mr. Manager DUNN.
Q. Well you might and you might not?
A. Oh, I might not have heard it, you know.
Q. You might not have heard it? A. Yes.
Q. You might not have been there?
A. I might not have been there at all.

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GIDEON SMALES,

Sworn as a witness on behalf of the respondent, testified:

Examined by Mr. ARCTANDER.

Q. Mr. Smales, where do you reside?

A. I reside in Fairmount.

Mr. ARCTANDER. This is upon the same article, the first article.

Q. You reside at Fairmount, Martin county, Minnesota, you say. What is your business, Mr. Smales?

A. My business at present?

Q. Yes. A. A hotel clerk.

Q. What? A. Clerk at a hotel.

Q. Are you acquainted with Judge Cox, the respondent?

A. I am.

Q. Did you reside in Fairmount during the month of January, 1878, or near by there?

A. I did.

Q. Were you in attendance or present at a term of court held by the respondent in Fairmount in the month of January, 1878?

A. Yes.

Q. What part of the term were you more particularly in attendance there?

A. More particularly during the time that the liquor cases were being tried.

Q. During the latter part of the term?

Mr. Manager DUNN. Well, he does not say that.

Q. Well, I asked you that.

A. Yes, during the latter part of the term.

Q. You were bondsman for one of the parties there, and that brought you into court?

A. Yes.

Q. Were you in court, more or less, during the first week.

A. Yes.

Q. I will ask you to state, Mr. Smales, if there was any difference in the behavior, manner and conduct of the respondent in court during the last week, from what it was the first week?

A. I did not notice any.

Q. I will ask you to state what the condition of the respondent was while you were in court, both the times you were there the first week and also what it was the second week, as to sobriety or inebriety?

A. I consider the Judge was perfectly sober.

Q. All the time. A. Yes.

Q. State whether there were any indications of anything else, either in his manner, his language or his conduct there during any of that time?

A. I did not observe anything.

Q. Were you out with the Judge, at any social gatherings during that term?

A. Yes, I was at a dinner party at my brother's house.

Q. That was in the evening after court had adjourned?

A. Yes.

Q. Were you out more than one evening?

A. Yes, the Judge was at my own house, once or twice.

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Q. In your own house once or twice in the evening, after court had adjourned, at a dinner party?
A. No, just a social gathering.
Q. Now, at this time, at your brothers, when there was a dinner party there, was there wine or liquors on the table?
A. Yes.
Q. Did the Judge drink any?
A. I didn't see him drink any, and I don't believe he did drink.
Mr. Manager DUNN. Oh, never mind what you believe, what did you see?
Mr. ARCTANDER. Well, give us you best impression, that is all we want. Now, at the time he was at your house, did he drink any there?
A. Yes, he drank some ale that I was making at that time.
Q. Some home-made ale?
A. Yes.
Q. That was the occasion that Mr. Bird, testified to?
A. I presume that is the same occasion.
Q. Did the Judge drink any of it?
A. Well, he couldn't have drank very much, because there was only a pitcher amongst five or six of us, one pitcher was brought up.
Q. And the Judge was not intoxicated, or under the influence of liquor, at any of those times, when you saw him there in the evening?
A. No.
Q. At the other time when he was at your house, did he drink anything then?
A. Not to my remembrance.

CROSS EXAMINATION.

By Mr. Manager DUNN.
Q. Mr. Smales, how much of the time were you in court?
A. Well, I can't say how much time I was in there.
Q. Were you in there at all that first week?
A. I was.
Q. Had you any business in there?
A. No, I had no business.
Q. Simply a looker on there occasionally?
A. Simply a looker on.
Q. Had you any business there the second week?
A. Well, I took an interest in the case, that was all.
Q. Which case?
A. The State vs. Sharpe.
Q. He was indicted for selling whisky, was he not?
A. I believe that was it.
Q. He kept a saloon there, did he not?
A. Yes, sir.
Q. He was indicted for selling liquor without a license?
A. I don't believe there was a license that year.
Q. But he kept a saloon there?
A. He kept a saloon.
Q. And you were in there occasionally?
A. Not often.
Mr. ARCTANDER. Where, in the saloon? We object to that.

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Q. Was the Judge in there?
A. No, sir.
Q. You never saw the Judge in there?
A. I never saw the Judge in that saloon.
Senator POWERS. What is that last answer?
Mr. ARCTANDER. That he never saw the Judge in any saloon.
Mr. Manager DUNN. No, in *that* saloon. Now don't be so sharp.
Q. You were not in court every day were you, Mr. Smales?
A. I think I was, every day.
Q. For how much of the time?
A. Oh, probably an hour at a time, just according to how the proceedings interested me.
Q. Well, what trials were going on while you were in court?
A. The trial that I was interested in mostly was McDonald's, and some others.
Q. Were you in court during that trial?
A. I was there most of the time when Senator Wilkinson was speaking.
Q. When he was speaking?
A. Yes.
Q. You weren't there much of the time when any of the witnesses were testifying, were you?
A. I don't remember.
Q. You were there at the time of the argument, you mean?
A. Maybe it was that.
Q. Were you there at any other time than that, than when the argument was made?
A. Yes, as I told you, I was in and out, off and on, all the time.
Q. How much of the second week were you there?
A. Probably most of the time.
Q. Most of the time the second week, day after day, steadily right there?
A. I think so.
Q. Do you know what cases were tried while you were there?
A. I know that the grand jury indicted a good many and those cases were tried.
Q. Isn't it a fact Mr. Smales, that you were brought in simply by your brother, and went on Grant Sharpe's bail bond and went out again?
A. Not that I remember.
Q. Didn't you go on his bail bond? A. I did.
Q. Did you come into court and sign it in court? A. Yes.
Q. Then you went out right after that, didn't you.
A. I don't know.
Q. Well, you don't know whether you stayed there, do you?
A. No, I can't say as to that.
Q. Now, what day of the week was that?
A. I can not recollect.
Q. How long after the McDonald case was tried was it?
A. Oh, I think about three or four days.
Q. Well, between the time of the McDonald case and you coming in there to go on that bail bond, how much of the time were you in court?
A. I tell you I was in and out most of the time.
Q. Then your attendance in court consisted principally of the time when the case of the State of Minnesota against Grant Sharpe was being tried, was it not?

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A. Yes, principally, but not all the time.
Q. How long did it take to try that case?
A. The case of the State vs. Sharpe?
Q. Yes.
A. About a day and a half.
Q. That is what you mean by saying that you were in court most of the time?
A. That is not what I mean. I mean to say that whenever I had a little time to spare I would go into court and stay an hour or two and I might go out.
Q. Well, you say you were there most of the time during the last week?
A. I say most of the time I spent in there was during the last week.
Q. Wasn't the most of the time that you put in during the last week when that case was tried, except occasionally, and wasn't that all?
A. No, that was not all.
Q. How many days of the last week was there court?
A. I can't tell.
Q. Do you know how many days you were in court at all?
A. No, I can't recollect that.

Mr. ARCTANDER. I will state, Mr. President, that our last witness upon this article, Senator Wilkinson, is not present. He has gone to Montana, and we expect him in time for another article, upon which we have called him, and we shall ask leave then to introduce him upon article one. We will proceed to proofs under article two.

DANIEL MURPHY

Sworn on behalf of respondent, testified.

Examined by Mr. ARCTANDER.
Q. Where do you reside? A. Waseca.
Q. What is your business? A. Farming there now.
Q. Are you acquainted with the respondent, E. St. Julien Cox?
A. Yes.
Q. How long have you known him? A. Since 1870.
Q. What was your occupation in the year 1879, besides being a farmer?
A. In 1879?
Q. Yes.
A. Deputy Sheriff of Waseca county.
Q. Were you not, as such deputy sheriff, in attendance upon a term of court held by the respondent, E. St. Julien Cox, in Waseca, in the months of March and April, in the year 1879.
A. I was.
Q. What were your duties around the court, I mean as to what you had to do.
A. I attended court regularly.
Q. Were you court bailiff or jury bailiff, or what?
A. My business was in the court room all the time.
Q. Your business was in the court room all the time; you were the court bailiff to take charge of the court room and to open court, to close it, etc., and to take charge of the court room?
A. Yes, sir.

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Q. I will ask you to state whether or not you were in constant attendance upon that court, from beginning to end?
A. I was, except when I would be sent out by order of the court.
Q. For a short time?
A. On short messages around town.
Q. State whether or not you were present at every session during that term of court?
A. I was.
Q. Morning, noon and evening sessions?
A. I was.
Q. I will ask you to state Mr. Murphy, what the condition of the respondent was as to sobriety or inebriety at that term of court, and all that. You understand my question do you not?
A. I don't exactly understand it.
Q. What was the respondent's condition as to sobriety?
A. Sobriety?
Q. Yes.
A. I should call him sober all through the term of court.
Q. When you say you should call him sober, how do you mean to be understood, that you have any doubt about his being sober?
A. No, sir.
Q. I will ask you to state whether or not there was anything in his appearance, if there was any difference in his appearance, his manner, his conduct or his language in the latter part of that term from what it had been in the first part, the first week say?
A. I had no occasion to notice.
Q. Well did you notice anything?
A. I did not.
Q. You were right there?
A. I was there all the time.
Q. Did you have such a position in the court room, that you could see the Judge from your seat?
A. Yes, sir.
Q. And facing him?
A. No, I was not facing him.
Q. How were you sitting towards him?
A. Well, the Judge's bench was about the centre of the court room on the north side, and at his right hand side sat the clerk, and I sat to the right of the clerk.
Q. So that you were at his side?
A. Partly at his side; I used to sit a little out from the wall facing him.
Q. Facing towards the court?
A. Yes, but not right in front of him.
Q. Now, state whether or not there were any peculiarities about the Judge in the latter part of the term, that there were not, in the first part of the term?
A. I did not see any.
Q. I will ask you whether or not you know anything about the Judge suffering from any malady at that term of court, any sickness?
A. I do.
Q. What was it?
A. He had a boil.
Q. Where? On his posterior?

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A. It was down in that direction.

Q. Did you notice whether or not he seemed to suffer during that term from that?

A. He did.

Q. Constantly? A. Yes, sir.

Q. Now, state whether or not he had that boil and seemed to be suffering from it up to the latter part of the court, the last end of the court?

A. Up to the very last part of the court, all through the term.

Q. Now I will call your attention particularly, Mr. Murphy, to the morning of the second of April, the day when the trial of the case of Powers vs. Hermann commenced; you remember the trial of that case?

A. Yes.

Q. Well, the day when that trial commenced?

A. The first day it commenced?

Q. Yes, the first day it commenced?

A. Was that the 2nd day of April?

Q. The 2nd of April; that is in evidence already. Were there any signs of inebriety or the influence of liquor or any intoxication about the Judge at that time?

A. No, sir.

Q. During the whole day?

A. No, sir.

Q. Or during any part of the day?

A. No, sir.

Q. State whether you were in court the next morning. I will call your attention to that, that is, the morning when court had adjourned in the forenoon, after it had set a little while, were you in court there that morning when court opened?

A. Yes.

Q. Did you see the respondent when he came in?

A. I did.

Q. What time did he come into court?

A. Probably a minute and a half or two minutes, or probably three minutes before it was time to open court.

Q, What did he do when he came there?

A. He came up the stairs; when he came up the stairs he went to the stove; the stove stands between the head of the stairs and the Judge's stand; he came up to the head of the stairs and kind of warmed his hands at the front of the stove, and went from the stove to the hat rack, right back of the clerk's desk, and hung his overcoat and hat on the hat rack, and then took his seat on the Judge's bench.

Q, Then after he had taken his seat, then what did he do?

A. Well, he sat there, probably a minute and a half or so, and he motioned to me to open court, and I opened court.

Q. And that is the way he always gave the sign to you to open court, was by nodding his head to you after he got on the bench?

A. Yes.

Q. Now, what was his condition as to sobriety or inebriety that morning?

A. He was sober, so far as I could see.

Q. Sober, so far as you could see? A. Yes.

Q. Did you stay in the court-room for a while?

A. Not very long.

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Q. Well, you stayed there for a while?
A. I probably stayed there fifteen or twenty minutes, maybe longer, maybe a little bit longer.
Q. State whether there were any arguments, objections, rulings, etc., while you sat in there at that time?
A. The lawyers got up and made some kind of an argument at the bar themselves, some kind of a motion I think it was; I don't remember exactly what it was; I didn't pay much attention to it.
Q. The Judge talked and decided it?
A. Well he talked some while they were talking, spatting back and forth there.
Q. While the lawyers were spatting backwards and forth?
A. Yes.
Q. He spoke up? A. Yes.
Q. You heard him talk at the time? A. Yes.
Q. State whether or not, his talk was plain?
A. So far as I could hear from where I was; I didn't pay much attention to it.
Q. State in what condition his hair was, whether it was combed or uncombed, dishevelled?
A. I didn't remark anything unusual about his hair; no more than it ever was.
Q. State whether or not, his eyes were blood-shot?
A. Well, I never noticed his eyes.
Q. Did you ever notice anything about his eyes at all?
A. I didn't see anything about them to draw my attention to him as to that.
Q. State whether or not, he acted sleepy, or as if he was half asleep?
A. I was not in the court-room long enough to notice.
Q. Well; while you were there? A. Not while I was there.
Q. He was lively enough while you were there? A. Yes.
Q. Just as usual?
A. Just as I have always seen him, I think.
Q. After you sat there awhile, you said you went out of the court-room; who sent you out?
A. The Judge.
Q. He beckoned you to come up and speak to him and he sent you out?
A. Yes.
Mr. Manager COLLINS. We object to that.
Mr. ARCTANDER. Yes; I have no doubt it is immaterial.
Mr. Manager DUNN. Not only immaterial but leading and you know it.
Mr. ARCTANDER. It is leading and I withdraw it.
Q. How did you come to go out of the court room that morning?
A. The Judge called me up to the stand and told me to go to the train and see if the train was on time. There was a witness or a lawyer coming, or somebody; I don't remember what it was now.
Q. You went, did you?
A. I went to the train.
Q. How long did you stay away before you came back again?
A. Well, it is quite a little way from the court house up to the train, probably half or three quarters of an hour, may be an hour.
Q. When you came back, was the court in session?

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A. No, sir.

Q. Well, when you walked down toward the court house, did you notice anybody from there, and if so who was it?

A. I noticed the crowd coming out from the court room; a part of them had got out on the sidewalk.

Q. Got out of the court house and got on to the sidewalk?

A. Got on to the sidewalk and were going up the street; I met some of them at the corner of the first block.

Q. Did you see the Judge?

A. No, sir; I did not.

Q. You went into the court house?

A. Yes.

Q. Who did you find in the court house?

A. The clerk.

Q. Mr. Hayden, Jim Hayden?

A. Yes.

Q. Where was he?

A. He was doing something; he was standing, I think, in front of his desk, handling over some papers.

Q. Working there with his papers?

A. He was not working; he was not inside where he usually sits; he was outside handling some papers.

Q. Now, I desire to call your attention to the afternoon of that day. Were you in court there when court opened?

A. I do not know when court adjourned to that morning; I don't remember.

Q. Were you there in the afternoon?

A. I don't remember whether I was there in the afternoon or not; I was there in the evening session.

Q. What was the condition of the Judge as to sobriety or inebriety then?

A. I should call him as sober as I ever saw him.

Q. You would call him as sober as you ever saw him? A. Yes.

Q. The next day during the proceedings of the trial in the Powers vs. Hermann case, how was he then?

A. The next day?

Q. Yes.

A. That was the fourth?

Q. That was the fourth, on Friday.

A. The third day of the trial? Oh, he was sober then.

Q. During the whole day? A. Yes, sir.

Q. Now, I will call your attention to the fifth day of April, the day upon which the jury was charged in the Powers case, and they were sent out. Do you recollect that day, the Saturday on which the jury went out?

A. I don't remember of him charging that jury more particularly than any others; I was there when he charged all the juries, always am.

Q. Do you know Judge Edgerton? A. I do,

Q. Do you remember of seeing him in the court room?

A. I do.

Q. Arguing a motion?

A. He had some kind of a motion there, I don't remember what it was.

Q. You remember that occasion? A. Yes.

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Q. Now, at that time, what was the Judge's condition? was he sober or otherwise?
A. I should call him sober.
Q. Did you notice anything else?
A. I did not notice any thing that was wrong.
Q. You are acquainted with Mr. Blower, are you not?
A. Yes.
Q. Your brother-in-law? A. Yes.
Q. The man who was a witness in this case? A. Yes.
Q. I now desire to call your attention to the occasion upon which he testifies,—have you read his testimony?
A. No, sir.
Q. Well, I will call your attention to the fact that Mr. Blower testified that on a certain evening during the court he met Judge Cox in the saloon of Wollenstein and Hall and that you were with him drinking at the bar, and that thereafter one Baker, the night watchman, took Judge Cox home up to the hotel; do you remember that occasion?
A. I do.
Q. You remember that occasion?
A. I remember of a night watch taking Judge Cox to the hotel.
Q. What did that taking consist in?
A. I should call it, Judge Cox taking Baker to the hotel.
Q. You would call it Judge Cox taking the night watch to the hotel?
A. Yes, I should call it so.
Q. In what condition was Judge Cox at that time, at the time when he went up with Mr. Baker to the hotel?
A. He was sober.
Q. Did he stagger?
A. No, sir; that is, the night I was with him.
Q. Yes, the night that he went up with the night watchman?
A. Yes, if there was another night I don't remember anything about it.
Q. But you remember the fact of being in Smith's saloon, that is the one I had reference to; I suppose it is the one you had reference to.
A. We went from McGovern's office, me and the Judge that evening, in the first place; the hotel was locked.
Q. Well, you remember of being in the saloon that night with the Judge when Blower came in?
A. I don't remember whether Blower was there or not; I don't remember anything about Blower being there; he probably was there, because he is there pretty often.
Q. You remember about Mr. Baker, the night-watchman, being there?
A. Yes.
Q. And having a lantern with him?
A. I don't remember that there was a lantern.
Q. You don't remember about a lantern?
A. I don't remember anything about the lantern; I didn't pay any attention to that part of it; my impression is, that he had no lantern at the time he went down with us.
Q. Well, do you remember of him and Judge Cox going to the hotel together, that night, and that Judge Cox was sober then?
A. Yes.

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CROSS-EXAMINATION,

By Mr. Manager COLLINS.

Q. What time of night was that, Mr. Murphy?
A. About midnight, I suppose.
Q. Was it after eleven o'clock?
A. I should think it was.
Q. Are you positive about that?
A. Well, I am not so positive; it was late at night.
Q. You say you went from McGovern's office over to the hotel?
A. Yes.
Q. And the hotel was closed?
A. Yes.
Q. And you went from there to the saloon?
A. No; Mr. Cox—Yes; we went to the saloon.
Q. The Judge and you together? A. Yes.
Q. Now, where had you been before you went to McGovern's office?
A. I think I met the Judge at the hotel after the eveniug session; I am pretty sure that I met him and Dr. Cummings at the hotel.
Q. And you went from there, where?
A. To McGovern's office.
Q. Then you went from there to the hotel and found it locked?
A. Yes.
Q. And then to the saloon? A. Yes.
Q. How long did you stay there?
A. Not over four or five minutes.
Q. Did you drink anything there?
A. I presume we did.
Q. You don't remember whether you did or not?
A. We probably might have taken a drink.
Q. Do you remember who was there?
A. I don't remember, we went in search of Baker.
Q. You were hunting up the night watchman?
A. Yes.
Q. Well, where did you go then?
A. From the saloon do you mean?
Q. Yes.
A. Yes, we went along.
Q. Now, was Judge Cox taking Baker to the hotel, or taking you to the hotel?
A. He was taking him to let him in, because Baker had a night-key.
Q. He was not taking Baker because he was drunk?
A. No, sir.
Q. Do you remember of meeting Judge Cox at any other night at that saloon?
A. I do.
Q. Any number of nights; on more than one?
A. No other night.
Q. What time of night was that?
A. Oh, we went from the hotel, me and him, and another man, up to the saloon, after that evening session.
Q. How long did you stay there?
A. Well, we didn't stay in the saloon at all.

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Q. What do you mean; do you mean you went right out and went back to the hotel?
A. No.
Q. What do you mean?
A. We went right through the saloon.
Q. Went right through the saloon, through the back yard, do you mean?
A. Yes.
Q. Then where did you go; tell us where you went?
A. Into a sitting room at the end of the building.
Q. A little ante-room? A. Yes.
Q. How long did you stay there?
A. Probably an hour.
Q. That was a room connected with the saloon?
A. It was in the building.
Q. Connected with it?
A. It was not connected by a door; we had to go through a door into the hall and then into this.
Q. It was used by the owners of the saloon? A. Yes.
Q. For what purpose?
A. For a sitting room.
Q. For cards?
A. Well, I presume they use cards in there.
Q. Who was in there?
Mr. ARCTANDER. I don't know what this is done for, but we object to it as not proper cross-examination. We have not brought out anything as to this occasion on the direct.
Mr. Manager COLLINS. No you have not brought it out.
Mr. ARCTANDER. Then we object to it.
The PRESIDENT *pro tem.* My recollection is that in the direct examination you covered all the time during that term.
Mr. ARCTANDER. In court but not outside of court.
The PRESIDENT *pro tem.* I think the evidence covered the whole time of court.
Mr. Manager COLLINS. And they endeavor to show that it was one night, and I am showing that it is on another.
The PRESIDENT *pro tem.* I think the question is proper, but I will submit it, if it is thought of sufficient importance.
Mr. ACRTANDER Oh, no; we withdraw our objection.
Q. Were you playing cards there?
A. Yes.
Q. How late did you stay?
A. I don't remember when we went in or when we came out.
Q. State as near as you can.
A. Oh, it may have been half past nine or ten o'clock.
Q. Mr. Blower was there?
A. No, he was not.
Q. You are sure about that?
A. Yes, I am sure about that.
Q. Mr. Baker?
A. I can't say about that.
Q. You stayed as long as the Judge stayed?
A. Yes, and after.
Q. He went away and left you there?
A. Yes.

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Q. Now, Mr. Murphy, on the morning of the 2d of April,—on the morning of the 3rd of April, I think it was, that you testified that the Judge came in there, was it a cold day?

A. Not very cold.

Q. You had a fire in the stove?

A. Yes.

Q. And the Judge walked in and walked up to the stove to warm his hands?

A. Oh, he used to walk up to that—just kind of walked—

Q. And then went and hung his coat on the hooks?

A. Yes, on the hat rack.

Q. Did he make any remarks to you?

A. No, sir.

Q. Then went and sat on the bench?

A. Yes, sir.

Q. Looked up at the clock, nodded his head, and you opened court?

A. Yes.

Q. Now, how long ago was that, Mr. Murphy?

Q. How long ago?

Q. How many years?

A. Three years ago.

Q. You remember distinctly just what the Judge did that morning?

A. That morning the court adjourned, if it was the third of April.

Q. Now, won't you tell us why you remember so distinctly about the Judge coming into the court room and warming his hands, walking up to the hat rack and hanging up his hat, going to the bench, looking at the clock, and nodding to you to open court?

A. I remember that was his usual way of coming in every morning.

Q. Well, do you remember that morning in particular?

A. I remember that is the way he came in every morning.

Q. That is the way he came in every morning?

A. Yes.

Q. And you don't remember that morning any more than any other?

A. No, not particularly.

Q. Well, I didn't suppose you did. Now, you say that morning he walked up to the stove, warmed his hands, stopped and looked up at the clock, and nodded to you?

A. He always looked at the clock.

Q. You remember he went through all these performances?

A. He done that most every morning.

Q. You remember that distinctly?

A. That was his usual way of coming in; kind of swinging up stairs and swinging over to the stove.

Q. Now, if you didn't have a fire in the stove on that day he didn't do it?

A. There was a fire in it.

Q. You are positive about that?

A. We always have a fire.

Q. You are positive there was a fire in that stove every morning that term?

A. Yes, sir.

Q. The room got very warm during the day?

A. It used to get warm so that we had to open the windows.

Q. Now, after the Judge opened court, what was done in the case?

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A. Well, the first thing that was done was some kind of a motion.
Q. You are sure about that?
A. No, there was a witness on the stand.
Q. Now, who was that witness?
A. I think it was Powers.
Q. What were they doing with Powers?
A. I think he was on the stand the evening before.
Q. Yes, I presume he was, but what were they doing with him that morning?
A. I don't remember.
Q. You don't know whether they were cross-examining or examining him, do you?
A. They hadn't said but very little to him, anyhow; it was on cross-examination, I think.
Q. Who was cross-examining him?
A. Mr. Collister.
Q. You are positive about that? A. Yes.
Q. You are as positive about that now as you are about anything?
Mr. ARCTANDER. We object to that.
Mr. Manager COLLINS. Now, don't interfere.
Mr. ARCTANDER. The court has already held that that question is not a proper one.
The WITNESS. I mean Lewis was cross-examining.
Q. You mean Lewis was cross-examining?
Mr. Manager COLLINS. Now, Mr. Arctander, you don't object so much as you did.
Mr. ARCTANDER. I stand here for my rights all the same; that is not a proper question, and you know it. President Gilman has already decided that.
Q. Now, did they cross-examine him when they got into this altercation?
A. They had only a few words; I was just in court; I didn't hear only for ten or fifteen minutes.
Q. Ten or fifteen minutes after they commenced?
A. Oh, it was not that long; he didn't ask him more than one question.
Q. And then something happened?
A. There was an objection.
Q. And then what was said?
A. I don't remember what was said; there was some cross-firing.
Q. Any ruling of the court?
A. He meddled in once in awhile?
Q. Well, he meddled in, once in awhile?
A. Yes.
Q. How long was that going on?
A. I didn't stay very long; I didn't stay over fifteen or twenty minutes.
Q. And then you went away?
A. Yes.
Q. And you were gone how long?
A. Probably half an hour or three-quarters, or may be an hour.
Q. The court had adjourned, and you did't see anything of the judge?
A. Yes.
Q. You went up to the court house and there you found Mr. Hayden?

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A. Yes.
Q. Are you positive Mr. Hayden was there?
A. Yes.
Q. Who else was in there?
A. There was nobody else.
Q. Nobody else?
A. I met Dell Rodell going down stairs.
Q. And you met Dell Rodell going down stairs, and found Mr. Hayden up stairs?
A. Yes.
Q. How long did you stay there?
A. I don't remember.
Q. Did you stay there at all?
A. Yes, I stayed and talked a little while.
Q. And then where did you go?
A. I don't remember where I went after that.
Q. You don't know where Hayden went?
A. No, sir.
Q. Did he go away with you?
A. No; Hayden went away before I did.
Q. Now when did you next see Judge Cox?
A. That evening.
Q. At what time?
A. Well, it was the evening session; I think it was about seven o'clock or half past seven.
Q. During this term of court, Mr. Murphy, do you know of Judge Cox drinking?
A. I saw him drink beer.
Q. Except at the times I mean when you have mentioned; did you at other times see him drinking.
A. Yes.
Q. When in the term of court, the first week or the second?
A. All through the term.
Q. You saw him drinking all through the term?
A. He drank beer.
Q. Well did you go with him at recess?
A. No, sir.
Q. At any other time?
A. No, sir.
Q. Did you see him drink during the recess of court?
A. No, sir.
Q. What time of day did you see him drink?
A. In the evening, after the court was over.
Q. In the evening, after the court was over you saw him drink?
A. Yes, sir.
Q. Around in the saloons? A. No, sir.
Q. Where?
A. In his room, and at that time in the ante-room, in the room—the saloon.
Q. Do you remember Saturday the 5th day of April, Mr. Murphy?
A. Not particularly.
Q. Not particularly?
A. Saturday, the 5th of April, court was not in session.
Q. Court was not in session?

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A. Court had adjourned, had it not? I don't remember.
Q. Do you know Mr. Taylor, an attorney from Kasson?
A. Taylor?
Q. Yes. A. No.
Q. You know General Edgerton?
A. I know him by sight; I am not personally acquainted with him.
Q. Do you remember a case that was argued by him?
A. I don't remember anything about what case it was.
Q. Do you remember of a case being argued there by Mr. Bentley of Winona, Judge Edgerton and Mr. Taylor?
A. I know Bently was there; and Edgerton had a motion, and Bentley of Winona.
Q. What day was that?
A. I don't remember what day it was.
Q. Were you present in court? A. Yes.
Q. Was it in the forenoon or the afternoon?
A. I don't remember.
Q. Did you pay any attention to the Judge that day?
A. No; not particularly.
Q. Did you pay any attention to him during any of the days you have testified to?
A. No; nothing more than usual; noticed him coming in and out.
Q. That was about all?
A. And his motions and decisions, or motions and one thing and another.
Q. How long had you known Judge Cox at that time?
A. I had known him nine years, I guess.
Q. Well acquainted with him, were you?
A. Pretty well acquainted with him; I was well acquainted with him at St. Peter.
Q. You didn't pay enough attention to that matter, that Edgerton and Bentley had, to tell us what it was?
A. No, sir; I did not, and I remember at the time, too.
Q. You are acquainted with Senator Daniel Buck of Mankato, are you not?
A. I have seen him; I am not personally acquainted with him.
Q. Did you ever talk with him about that subject?
A. I don't know that I did; I might have talked with him, and I might not; I don't remember of having done so.
Q. You don't remember talking with him about this matter of Judge Cox's drunkenness at Waseca?
A. No, sir; I do not.

RE-DIRECT EXAMINATION.

Q. Mr. Murphy, you say you went hunting up Mr. Baker that night, what were you hunting him for?
Mr. Manager COLLINS. He has testified to that, and explained it.
Q. Wasn't it to get a key? The door of the hotel was locked?
A. Yes.
Q. Now, at the time you were there, playing cards with Judge Cox in the sitting room or parlor was Judge Cox intoxicated at that time?
A. No, sir.
Q. Now, I want you to say, whether at the times you have testified,

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that you saw Judge Cox drinking in the evening, whether or not at any of those times he had drank to excess, or drank to excess in your presence, so as to be intoxicated?

A. He never drank anything but beer during the term of court, in my presence.

Q. Well, a man can drink beer to excess, but did he drink enough in your presence to make him intoxicated?

A. No, he did not drink enough, in my presence.

Q. Nor was he intoxicated in your presence?

A. No, sir.

RE-CROSS EXAMINATION.

By Mr. Manager DUNN.

Q. Was he under the influence of liquor at any time that term?

A. If he drank any he was under the influence.

Q. Then you think when a man drinks anything he is under the influence of liquor?

A. I think he must be.

Q. Now, Mr. Murphy, what degree of intoxication, do you claim a man must have reached before you could call him drunk?

Mr. ARCTANDER. We object to that as improper.

The PRESIDENT *pro tem.* I think the question is proper, and I will admit it.

Mr. ARCTANDER. Well, the objection is withdrawn.

Q. You say that a man is under the influence of liquor when he has drank anything; now, won't you tell us when he arrives at the stage of drunkenness, in your opinion?

A. When he gets full, I suppose.

Q. When he gets "full," what do you mean by that?

A. Well, I can't explain drunkenness; I can't explain it from one stage to another; I haven't got good language enough to do it; I am not a physician.

Q. You can tell us when you consider a man drunk?

A. No, I cannot.

Q. Would you consider a man drunk when he staggered?

A. Oh, yes.

Q. Would you consider him drunk when he indicated by his speech that he had been drinking anything?

A. Yes if he stuttered, or his tongue was thick, or he couldn't talk plain, I might come to the conclusion tnat he was pretty full.

Q. Would you consider him drunk?

A. Yes, I would consider him drunk.

Q. Now, in your opinion, when a man has taken one drink, he is under the influence of liquor?

A. I think he would be.

Q. To some extent of course.

A. He might not feel it of course, that he was under the influence of it.

Senator ADAMS. I desire, Mr. President, to ask this witness a question or two. I want to enquire from him first, whether he ever saw a man that he believed to be drunk.

The PRESIDENT *pro tem.* (To the witness.) Do you understand the question?

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The WITNESS. No, sir.

The PRESIDENT *pro tem.* Will the Senator please repeat the question? By Senator ADAMS.

Q. Did you, in your experience, ever see a man you believed to be drunk?

A. Yes.

Q. Should you meet one of your own acquaintances,—a man that you knew,—either in a saloon, or upon the street, would you be able then to determine under your oath and to your own satisfaction, whether the man was intoxicated or not?

A. I think I could, if he spoke to me or staggered.

Q. Then I ask this question, having answered the previous two: was Judge Cox, in your opinion, under the solemnity of your oath, drunk at any time indicated during this court, on the bench?

A. No, sir.

Senator ADAMS. That is all I have to ask.

Senator GILFILLAN, J. B. I would like to ask a few questions.

Q How many days did that term of court continue in Waseca, in March and April, 1879?

A. I think it lasted,—I don't remember how many days; it was pretty near three weeks.

Q. On how many days during that time, did you see the respondent drink?

A. What was the question?

Q. On how many different days during that time, did you see the respondent drink?

A. Three or four differant times; at three or four different times.

Q. On three or four different days?

A. Yes.

Q. Successive days? A. No, sir.

Q. How many times a day, ranging from once to how many times? Well, how many times is the question, on any one day.

A. Oh, one evening he might have drank, well I couldn't tell—there were four of us, probably, four of us drank five or six bottles of beer one evening; I don't know how many times that would go around.

Senator MACONALD. What were the size of the bottles?

Senator BONNIWELL. Were they pint or quart bottles.

The WITNESS. They were common bottles.

Senator GILFILLAN. Well, but what was the size of them?

A. I don't think they would hold a quart.

Q. You think they were pinched a little?

A. I presume so.

Senator MACONALD. What are commonly called quart bottles?

A. Yes.

By Senator GILFILLAN.

Q. Was that the night you were playing cards in the room adjacent to the saloon?

A. No, sir, that was in the room of Judge Cox, in the hotel.

Q. How many times do you think you drank over that card table in the room adjacent to the saloon?

A. Oh, there were five of us in there, and we probably drank six or seven bottles of beer.

Q. Six or seven?

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A. Yes, I think there were five of us.
Q. Now, on either of these occasions do you think the respondent was excited at all by what he drank?
A. No, sir; I thought he was the coolest man in the crowd.
Q. I didn't ask you to compare yourself with him; that is all.

ALEXANDER WINSTON,

Sworn as a witness on behalf of the respondent, testified.

Examined by Mr. ARCTANDER.
Q. Mr. Winston, where do you reside?
A. In Waseca.
Q. Do you know the respondent, E. St. Julien Cox?
A. I do.
Q. Did you reside in Waseca in the spring of 1879?
A. I did.
Q. Did you see the respondent down there at the time of the term of court held there in March and April?
A. I did, yes, sir.
Q. Do you remember of having seen the respondent in the forenoon of the 3rd day of April?
A. I do, yes, sir.
Q. Were you in the court room that morning? A. I was.
Q. What time did you come there?
A. Between ten and eleven o'clock.
Q. At that time had court adjourned?
A. Well, it had adjourned just about the time I got there.
Q. It had adjourned just about the time you got there?
A. Yes.
Q. Did you see Judge Cox go away from there?
A. Yes, sir. I went away with him.
Q. You went away with him? A. Yes.
Q. Where did you go; I mean did you leave the court room and go up the street towards the hotel?
A. Yes; I went from the hotel.
Q. State whether or not on that morning Mr. Hayden was in his or your company at all?
A. No, sir; he was not.
Q. Jim Hayden, the clerk of court, down there?
A. No, sir; he was not.
Q. Did he leave the court house to your knowledge, at the time, or at all?
A. Who?
Q. Mr. Hayden.
A. No, sir; I didn't notice him leave.
Q. Do you know Mr. Hayden? A. I do.
Q. You walked up the street with Judge Cox?
A. I did, sir.
Q. Talked and conversed with him on the way up, did you?
A. Yes.
Q. What was the condition of Judge Cox as to sobriety and inebriety at that time?
A He was sober.

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Q. Perfectly?
A. I called him so.
Q. You had no doubt about it?
A. No, sir, not a bit.

CROSS-EXAMINATION.

By Mr. Manager COLLINS.
Q. What is your business, Mr. Winston?
A. Running a sample room, now.
Q. What were you doing then?
A. Running a billiard room, the Continental billiard room.
Q. Tell us what a sample room is; there are many Senators who do not know.
A. Well, it is wines, liquors, etc.
Q. Well, it is a saloon?
A. Yes.
Q. And at the time you speak of, did you have a saloon in connection with the billiard hall?
A. Yes.
Q. Then your business is a saloon keeper?
A. Yes.
Q. And was then. A. Yes.
Q. Now, Mr. Winston, what day of the week, was this?
A I can't tell the day of the week.
Q. What day of the month was it?
A. The 3rd day of April.
Q. What year? A. 1879.
Q. You went into the court-room that morning, and they had just adjourned?
A. Yes.
Q. What case had they tried?
A. I couldn't tell, they had just broke up as I went in there; it took me by surprise?
Q. It took you by surprise to find that they had broken up?
A. Yes.
Q. How do you remember that it was the 3d day of April?
A. Well, I had a brother-in-law that came to see me from the oil regions of Pennsylvania on the second; and I know that was the next day, for the next day he went hunting; he was a great fellow to hunt, and he went hunting with the gunsmith who lives next door to me.
Q. That is the way you remember it, because your brother-in-law was there, and he went hunting the next day. How long did your brother-in-law stay there?
A. He stayed until the 13th of September, before he went back.
Q. Did he hunt any more after that time?
A. Yes, he did in the fall.
Q. You remember it from that circumstance?
A. I do.
Q. You have no other way of remembering it?
A. No, sir.
Q. When did you look that matter up?
A. I didn't look it up at all.
Q. But you have remembered it ever since?

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A. Yes, I remembered it for the reason that I spoke to a man, a partner of mine, about it, about his being gone.
Q. About who being gone?
A. About my brother-in-law; I told my partner that I would go down to the court house for a little while; and he said, all right; and I said, I wish my brother-in-law was here to go with me; that is the reason that I know he went hunting that day.
Q. And you haven't thought of it since?
A. I don't know whether I have.
Q. Never thought of it, nor mentioned it to anybody, until you got on the witness stand here?
A. Yes, sir, I did.
Q. To whom?
A. To B. S. Lewis.
Q. When was that?
A. A week ago.
Q. And you told Mr. Lewis that you walked down with Judge Cox at that time?
A. I did, yes, sir.
Q. How long had you known Judge Cox at that time, Mr. Winston?
A. I never knew him until he came there to hold that term of court.
Q. You got acquainted with him that term?
A. Yes.
Q. Had you ever been in the court room before, that term?
A. I don't think I had.
Q. Did you go in afterwards?
A. Yes; I went in once.
Q. When was that?
A. That was when they sentenced some prisoners.
Q. That was the next week?
A. It was a few days afterwards. I don't remember whether it was the next week or not. I know that it was on Saturday that they sentenced them. It was about the last day of the month.
Q. Do you remember the day of the month?
A. I don't know; I think it was about the 7th of April; I won't be sure; that is a kind of an idea that I have got.
Q. That it was on Saturday?
A. I think it was Saturday; I won't be positive about it.
Q. Now, you think Saturday was the 7th of April?
A. Yes, I think that is it.
Q. Had you met Judge Cox before that day, Mr. Winston?
A I met him once before that.
Q. And you walked down with him to the hotel?
A. I did that day, the 3d of April.
Q. Where did you leave him?
A. I left him at the hotel on the corner.
Q. And where did you go?
A. I went around up the street, to Hall & Smith's.
Q. Do you know where he went?
A. Yes.
Q. Where did he go to?
A. He went over to the livery barn.
Q. Did you see him go there?

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A. I saw him start to go there. I don't know whether I saw him go in there or not; he told me he was going there.

Q. Did you see him afterwards during that day?

A. Well, I can't say whether I did or not; I don't think I did; I didn't see him after we left there. I might have seen him, but I don't know.

Q. Now, did you see Mr. Hayden at the court room when you went in there?

A. I don't remember.

Q. You don't remember that?

A. No, sir.

Q. Who walked down to the hotel with you besides the Judge?

A. There was nobody with us in our company, there were lots of them along on the walk at the same time, but he and I were walking together, and nobody with us or talking to us.

Q. And you had met him, you say, the day before?

A. Yes.

Q. Where had you met him?

A. I met him at the hotel.

Q. Was your brother-in-law with you at the time?

A. Yes.

Q. That was the day your brother-in-law arrived.

A. Yes.

Q. Were you introduced to Judge Cox that day?

A. I was.

Q. By whom?

A. My brother-in-law.

Q. Your brother-in-law introduced you?

A. He got acquainted with him that morning; he came in there at 5:30 that morning, that was before I was up, and the Judge, it seems, was up, and the Judge and he sat alone there or pretty much alone, in the hotel and got acquainted. I came in, I had seen the Judge there before, but I had never spoken to him, and I was surprised to find him; and he said, I have been visiting with the Judge here, and of course I talked with the Judge; that was the first time, I think, I ever spoke to him.

By Mr. ARCTANDER.

Q. I will ask you, Mr. Winston, whether or not Judge Cox has at any time, drank or purchased any liquor, at all, at your bar.

A. No, sir.

Mr. Manager COLLINS. Is that re-direct examination?

Mr. ARCTANDER. Yes, you have shown that he was a saloon keeper, and we are showing that we haven't had anything to do with that; I do not care to press it.

THOMAS BOHEN.

Was called as a witness in behalf of the respondent, and sworn.

Mr. Manager COLLINS. I would like to ask the witness who has just left the stand, one or two questions.

The PRESIDENT *pro tem.* The witness will again take the stand.

Q. Let me ask you, Mr. Winston, what is your brother-in-law's name?

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A. Charles Ecob.

Mr. ARCTANDER. We will now proceed with the examination of Mr. Bohen.

Q. Mr. Bohen, where do you reside?

A. In Waseca.

Q. How long have you resided there?

A. I have lived in Waseca, about eight years.

Q. What is your business?

A. Insurance, real estate and loans.

Q. Are you acquainted with the respondent, E. St. Julien Cox?

A. I met Judge Cox—yes, I am acquainted with him.

Q. Did you see him at a term of court that was held down in your county, by him in the year 1879?

A. Yes.

Q. In March or April; the term of court that was held in March or April?

A. Yes.

Q. Do you recollect, Mr. Bohen, of having been in court, in his court, one morning, when the case of Powers vs. Hermann was tried?

A. Yes; I was there present that morning.

Q. The morning when an adjournment was had on account of a witness, as it was stated here?

A. Yes.

Q. Were you there in court that morning?

A. I was there as a spectator that morning.

Q. I will ask you to state what time in the morning you got in there; whether at the opening of the court or after?

A. Court had just opened when I got there.

Q. Just opened? A. Just opened.

Q. And you sat down there until court adjourned?

A. Until court had adjourned; yes, sir.

Q. Now, I will ask you to state what was the condition of the Judge that morning, as to sobriety or inebriety?

A. The Judge, to me, was perfectly sober, apparently, for anything that I could detect.

Q. Did you look at him particularly?

A. I looked at him and noticed him as a person ordinarily would the Judge or court, as he seemed a little fatigued on account of a boil that I understand he had upon his posterior; and I presume that was the cause of his apparent weariness.

Q. An apparent weariness over his face? A. Yes, sir.

Q. You noticed that weariness on his face at the time? A. Yes.

Q. Did you notice anything else out of the way with him, any trouble with his hair?

A. I did not.

Q. Can you tell whether his hair was combed or uncombed?

A. I didn't pay any particular attention to his hair.

Q. Can you state whether or not his eyes were bloodshot or red?

A. I don't think they were; I couldn't be positive whether they were or not: I don't think they were.

Q. But it is your impression that they were not?

A. It is my impression that they were not.

Q. I will ask you to state whether at this time, when you say he looked very wearied, whether or not he seemed to be sleepy, or asleep at all during this proceeding, while you were in there.

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A. He was not asleep.
Q. He was not asleep?
A. He was not asleep; I am positive he was not asleep.
Q. Did any objections come up, arguments and rulings of the court, so that you heard him speak?
A. Yes, he spoke some, but very little I think; there was some motion made there for an adjournment on account of some witness.
Q. Were there any objections before that, or arguments by lawyers, and sparring, etc?
A. Yes, there was between the lawyers.
Q. He decided that?
A. Yes, made his rulings all perfectly proper; I heard attorneys express themselves at the time—
Q. Well, I suppose that is not proper?
Mr. Manager COLLINS. Oh, let the gentleman argue the case.
Mr. ARCTANDER. Well, I am perfectly willing, if you are. [To the witness.] Now, in making his rulings, he spoke in a clear and distinct manner; or was he thick?
A. He seemed to me to be perfectly clear, perfectly clear.
Q. Did he talk sensibly? A. Certainly.
Q. I will ask you to state whether or not on that occasion, one witness testified to that, I believe, whether on that occasion his eyes were bleared, or hung down, or anything of that kind.
A. They were not, in my opinion; I didn't observe anything of the kind.
Q. State whether or not his face was flushed?
A. I don't think it was.
Q. State whether or not at any time during the time you stayed there, until the adjournment of court, his head dropped down on his bosom or breast?
A. No, I don't remember that it did; he would come this, of course, occasionally. [Witness indicating.]
Q. Sitting this way, resting his head on his hand?
A. Yes, resting his head; I didn't notice anything else.
Q. You have been in there several times during the term of court?
A. I have been in there a few times, short times, at intervals.
Q. Now, I will ask you whether you noticed anything different in his behavior, conduct or action at this time from what you saw when you were in there before?
A. He always appeared the same to me; always.
Q. Always the same? A. Yes.
Q. Now, I will ask you if you noticed any difference in his appearance except, as you say, this look of weariness over his face, from what there was on other occasions?
A. That is the only difference that I ever observed.

CROSS-EXAMINATION,

By Mr. Manager COLLINS.
Q. Mr. Bohen, what did you say your business was?
A. Insurance, real estate, and loans.
Q. How long have you lived at Waseca?
A. About eight years.
Q. How long have you known Judge Cox?

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A. I never knew Judge Cox until that term of court.
Q. Did you get personally acquainted with him at the time?
A. Not personally acquainted; only saw him.
Q. What was your business then?
A. The same business.
Q. Then you didn't have a speaking acquaintance with Judge Cox that time?
A. No, sir; I did not.
Q. When you went into the court room that morning, you say cou was opened?
A. It had just opened.
Q. And it was the case of Hermann vs. Powers? A. Yes.
Q. Was there a witness on the witness stand?
A. Mr. Powers was the witness.
Q. What were they doing with him?
A. They were examining,—I don't know whether it was cross-exan ination or direct, or anything about it.
Q. You can't tell who it was that was examining?
A. Well, I hadn't been there long enough to know before they ha started their argument; I didn't know whether it was cross-examinatic or not.
Q. What argument do you mean that they started?
A. The lawyers.
Q. I know; but what were they talking about?
A. Some questions of rulings, I think; and I think they spoke this motion for adjournment about that time.
Q. Well, shortly after you got there, they spoke of this motion adjourn?
A. Yes.
Q. Did you see Mr. Collester step up to Mr. Lewis, while Mr. Lew was examining a witness, and speak to him?
A. I don't remember exactly as to whether he did or not; I am nc sure.
Q. How long after you got there was it before Mr. Collester move for his adjournment?
A. Probably half an hour; probably along there somewhere.
Q. Now what rulings were made by the Judge and upon what poin during that half hour?
A. I don't know what they were, I am sure.
Q. Can you tell a thing that the lawyers said, or a thing that th Judge said?
A. Well, I didn't pay any particular attention, only simply remem ber the fact of there having been spats.
Q. Then they were having spats, were they? A. Yes.
Q. Upon the admission of testimony, I suppose?
A. Something of the kind, I presume.
Q. Can you tell me who it was that was questioning the witnes when they got into the discussion about the admission of testimony?
A. Mr. B. L. Lewis.
Q. He was examining Mr. Powers? A. Yes.
Q. Now, during this time the Judge was ruling frequently upon thes motions and these objections?
A. Not very frequently, there were not very many.
Q. How many were they? A. A few, not very much.

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Q. How many? A. A few; probably two or three.
Q. Was Mr. Hayden there?
A. The clerk of the court was present, I think.
Q. You stayed there till they adjourned? A. Yes.
Q. And then you went out?
A. I left immediately after the adjournment of court.
Q. Have you ever seen Judge Cox since? A. Yes.
Q. Since that term of court? A. I saw him,—yes.
Q. When? A. Saw him a few months ago, I think.
Q. Where? At Waseca.
Q. Since the commencement of this trial? A. I think it was.
Q. Then it was a few weeks ago, was it not? A. Yes.
Q. This trial commenced on the 10th of January? A. Yes.
Q. Now, when was it?
A. I don't know when it was; it was since the trial began.
Q. Did you see him last week? A. No, sir.
Q. Did you see him the week preceding the 10th of January?
A. No, I don't remember the day; I am sure it was since this trial started.
Mr. ARCTANDER. It was before Christmas?
The WITNESS. Was it? Well, I don't remember the time, and didn't pay any attention.
Q. How many times did you see Judge Cox during that term of court?
A. Well, I saw him probably four or five times during the term of court; and maybe more times.
Q. In the court room?
A. In and out of tha court room.
Q. What is your age; Mr. Bohen?
A. Twenty-six.

JAMES MURPHY,

Called as a witness on behalf of the respondent and sworn.

Examined by Mr. ARCTANDER.
Q. Where do you reside? A. Waseca.
Q. Did you reside there in the spring of 1879?
A. I did.
Q. Are you acquainted with the respondent, E. St. Julien Cox?
A. I am.
Q. Did you see him at the term of court he held there in the months of March and April, 1879?
A. I did.
Q. State whether or not, Mr. Murphy, you were a juror in the case of Powers against Hermann, that was tried at that term?
A. I was.
Q. Attended the whole of that trial as such juror?
A. Yes.
Q. What was the condition of the respondent, E. St. Julien Cox, on the first day of that trial?
A. In health, or what would it be; was he healthy?
Q. What was his condition as to sobriety or inebriety? That is what I mean?

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A. I think he was sober.
Q. Have you any doubts about it?
A. No, sir.
Q. Did you have any evening session the night of that day?
A. We did.
Q. Do you remember how late?
A. I don't remember exactly the hour; I know that the business places were closed up when we went out of court.
Q. All the business places were closed up?
A. Yes.
Q. Rather late?
A. It must have been between 10 and 11 o'clock; probably as late as 11.
Q. Now, the next day was the day when the adjournment was had, Mr. Murphy, that you have probably heard about?
A. Yes.
Q, In the forenoon?
A. Yes; I have heard about that.
Q. Now, in the morning of that day, and before that adjournment, and up to the time of the adjournment, you saw Judge Cox in court during all of that time, in the morning after court came in, and up until the adjournment?
A. Yes, sir.
Q. Now, I will ask you what was his condition as to sobriety on that morning?
A. Sober.
Q. Now, I will ask you, in the afternoon—did you see him then, Mr. Murphy?
A. Yes.
Q. At the time to which court had been adjourned, half past one?
A. Yes.
Q. What was the Judge's condition then, as to sobriety?
A. Sober.
Q. Now, I will ask you to state whether or not the Judge adjourned that court until evening?
A. Yes.
Q. Did he say anything at the time he adjourned it as to why he adjourned it?
A. Yes, he had a sick headache; that he couldn't possibly hold court that afternoon.
Q. Now, before he sent the jury away in the morning, did he give them instructions, and caution them in the usual manner?
A. Yes.
Q. In the evening of that day what was his condition as to sobriety?
A. He was sober.
Q. The next day, during the trial of that case, what was his condition as to sobriety?
A. He was sober.
Q. That would be the 4th of April. Now, the 5th of April, the day that you were there, do you remember the court charging you, in the afternoon, on Saturday, in that case, and sending you out?
A. Yes.
Q. During that day, and up to the the time when you went out into your jury room, what was the condition of Judge Cox as to sobriety or inebriety?

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A. Sober. I didn't see any difference from that.
Q. Now, Mr. Murphy, I understand that you were in attendance upon court there, as a juror, for quite a length of time during that term, were you not?
A. Yes.
Q. During the greater part of the time.
A. The latter part of the term, yes.
Q. The whole of the latter part of the term.
A. Yes.
Q. You were on the special venire that was called the 29th of March, were you?
A. Yes.
Q. Had you been called as a talesman on a jury case before that time?
A. Yes.
Q. On how many?
A. On three, I think.
Q. On three cases before the 29th?
A. Yes.
Q. After the 29th you were in constant attendance upon the court, were you?
A. Yes.
Q. Now was there any difference in the Judge, was there anything peculiar or anything different in the Judge's appearance or actions, manner or language in the latter part of that term, from what it had been in the former part, in the early part of the term, when you were in court?
A. Not in his language or actions, there was not.
Q. There was nothing in his actions or language; was there anything in his appearance?
A. There was on the night of the 3rd and the morning of the 4th. He looked as though he was weary and tired out.
Q. Don't you mean the night of the 2nd and the morning of the 3rd; don't you mean the day that court adjourned?
A. Yes.
Q. Well, that was the 3rd.
A. The night of the 2nd.
Q. The night of the 2nd and morning of the 3rd?
A. Yes.
Q. You say that he looked weary and tired on those two occasions?
A. Yes.
Q. You heard him during that morning and during that night. Did you hear him speak and decide upon questions which come up in the case?
A. I did.
Q. How was his speech?
A. His speech was as usual.
Q. Clear, not thick?
A. Yes.
Q. What is that?
A. Yes, sir.
Q. Did he talk sensibly? A. Yes.
Q. Had you any reason to believe either on that night of the 2nd, or in the morning of the 3rd that the weariness upon his face was caused by drinking or intoxication?

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A. I do not.
Q. Did you so believe at the time? A. What is it?
Q. Did you so believe at the time, that it was caused by drinking or intoxication?
A. I did not.
Q. Now, I will ask you whether on the morning of the 3rd of April, at the time the adjournment was had in that case, whether or not his eyes were bloodshot?
A. No, sir, I didn't take particular notice; I didn't take any more notice of him that morning than any other morning.
Q. You claim that his appearance was just about as it usually was, except so far as that weary look?
A. Yes.
Q. Did you notice anything about his hair? A. I did not.
Q. If it had been uncombed would you have seen it?
Mr. Manager COLLINS. He did not notice it.
Q. You couldn't tell whether it was combed or not?
A. I suppose it was combed; the Judge generally combs his hair.
Q. Well, was it your impression that it was combed that morning?
A. Yes.
Q. Now, I will ask you to state whether or not his eyes on this occasion were bleared and hung out, and his face flushed.
A. No, sir, they were not.
Q. I will ask you to state whether or not he kept his feet upon the wall during that morning?
A. He did not.
Q. Did he keep them upon the table before him? A. He did not.
Q. Not at any time in either of those two positions? A. No, sir.
Q. Now, I will ask you to state whether or not he occupied the same position that morning that he did on former days in the term when you were there.
A. Most of the time he did.
Q. Now, describe to the Senate how he sat.
A. He sat with one foot upon that little box. [Witness here indicated the Judge's position.]
Q. The box on the side? A. Yes.
Q. Not on the table?
A. It is something that is started from the desk to come out, I couldn't describe it; it is a little square box.
Q. It is a little square box?
A. From thirteen to fourteen inches high, I should think.
Q. That was the way he used to sit before that morning?
A. Yes.
Q. And that is the way he sat that morning?
A. Yes, some mornings he sat facing the jury in that way.
Q. With more of his side to the jury?
A. He would sit that way [indicating.]
Q. Now, I will ask you to state whether or not the Judge that morning was sleepy, or half-asleep.
A. No, sir.
Q. He was not asleep? A. No, sir.
Q. Did his head ever drop down in this way [indicating] while he was sitting there on the bench that morning?
A. No, sir.

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Q. You were sitting near him in the box, where you had a full view of him?

A. I was sitting to the left.

Q. Now, I will ask you to state whether or not there were any objections, arguments and rulings by the court that morning?

A. There was.

Q. And you heard him deciding questions that came up there?

Mr. Manager COLLINS. I object to that as leading. The questions have been leading all the time.

Q. I will ask you to state whether or not there were any decisions made by the Judge there that morning; state whether or not you heard him make any rulings that morning,

A. No, I don't know as I could hear him, I heard him once or twice from where I sat; they talked very low and generally whenever they would get up a jangling that way, between the counsel, it would make so much noise there that I couldn't hear, where I sat.

Q. Well, you could hear talk?

A. Yes, I heard him say to Mr. Collister once, "Mr. Collister, you take particular pains to delay the proceedings of this court;" that was in some jangle between him and Lewis.

Q. That morning? A. Yes.

Q. State what the Judge was doing while they were arguing their objections, and he was sitting there, what was he doing on the bench?

A. He was writing when he first went on, and took the seat for quite a spell; I don't know, probably five, ten or fifteen minutes, while they were arguing some between themselves, and he was writing that morning.

Q. After he was through with that, how did he then sit?

A. How did he, what?

Q. How did he sit, after he was through writing; in what position?

A. When he sat that way, he sat this way [indicating] as though he was looking over what he had wrote, for quite a spell, and after he sat there for a few minutes and looked over what he wrote, he shoved the paper from him and turned around that way; his chair turned around, he didn't turn in the chair; his chair is one of these chairs that wheel around.

Q. A revolving chair? A. Yes.

CROSS-EXAMINATION.

Q. Mr. Murphy, you are a brother of the witness who was just on the stand?

A. Yes, sir.

Q. What is your business? A. I run a gents' furnishing room.

Q. A sample room?

A. I don't generally let them sample; I generally dish it out myself. [Laughter]

Q. Oh, you run a saloon? A. Yes.

Mr. Manager COLLINS. That is all; bring on another witness.

By Mr. ARCTANDER.

Q. I will ask you whether the respondent at Waseca at that time, or any other, drank or purchased any liquor at your bar?

A. He never was in my place that I know of in his life.

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H. LANSING

Sworn as a witness on behalf of the respondent, testified.

Examined by Mr. ARCTANDER.

Q. Mr. Lansing, where do you reside?

A. St. Peter.

Q. How long have you resided there?

A. Twenty-six years it will be in June; call it twenty-five years.

Q. What is your business? A. Carpenter and joiner.

Q. Are you acquainted with the respondent, E. St. Julien Cox?

A. Yes.

Q. How long have you known him?

A. Twenty-five years.

Q. Have you known him intimately during that time?

A. Very intimately.

Q. Are you one of his nearest neighbors?

A. I used to be.

Q. For how long were you one of his nearest neighbors?

A. I don't remember exactly how long he lived in the place, but he lived in the next block to me; he sold out there some seven or eight years ago, I don't remember exactly, and moved off three or four blocks.

Q. Now, I will ask you to state, Mr. Lansing, whether or not you were present at the term of court held by the respondent, in the county of Waseca, in the months of March and April, 1879.

A. I was.

Q. What was your connection with the court?

A. I was in there as a witness in the case between Father Hermann and Mr. Powers.

Q. On what side were you a witness?

A. On Mr. Power's side.

Q. Now, do you remember the time when that case was first called up?

A. I do.

Q. How long before the case was first commenced, were you around the court there, before that case was reached and commenced?

A. I was there about a week before.

Q. I will ask you to state, Mr. Lansing, what was the condition of the Judge during that week, prior to the taking up of the Hermann case, as to inebriety or sobriety?

A. I always found him sober.

Q. In court? A. Yes.

Q. Did you see him every day?

A. Yes.

Q. During that week?

A. Yes; every day.

Q. In court? A. Yes.

Q. Invariably sober? A. Invariably.

Q. Now, I will ask you to state how he was the day that the Powers case was taken up; or I will ask you first another question: were you a juror in the case of Fuller vs. Fuller, that was taken up in the afterno on of the second day of April, after the jury had been impannelled in the other case?

A. I was; after the jury went out, between—

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Q. No, it was not when the jury went out in Father Herman's case; do you remember the trial of Fuller vs. Fuller?

A. Yes.

Q. You were called by the sheriff of that county as talesman, as a juror in that case?

A. Certainly.

Q. And acted as a juror in that case of Fuller vs. Fuller?

A. Yes.

Q. That case was taken up, was it not, in the afternoon of the day that the trial commenced in the Powers case?

A. Yes.

Q. Was you present at the whole of the afternoon session, and the evening session of that day, during the trial of the Powers vs, Herman case?

A. I was there in the afternoon, but I don't think I was there in the evening.

Q. What was the Judge's condition on that day, during the time that you were in court, as to sobriety or inebritey?

A. Always sober, as far as I could tell.

Q. Were there any signs upon him at all, of intoxication?

A. No, sir.

Q. Now, you may state as to the 3d day of April—do you remember of this adjournment being had?

A. I do.

Q. In the middle of an evening session?

A. I do.

Q. During the trial of that Powers vs. Herman case?

A. Yes.

Q. On that morning, were you in court?

A. I was.

Q. What was the condition of the Judge, as to sobriety or inebriety?

A. He seemed to be about the same as usual, except to look a little fatigued.

Q. But outside of that he was just as usual, to you?

A. Yes.

Q. Now, I wish you would state whether or not—you said, you were sure, have you any doubt about his sobriety that morning?

A. I had none.

Q. And had none now?

A. No, sir,

Q. Did his looks that morning impress you at all as if he had been on a spree the night before?

A. No, sir.

Q. I suppose that before the Judge was elected, you have on several occasions, seen him intoxicated?

A. Oh, yes; of course.

Q. You have seen him drunk and seen him sober?

A. Yes.

Mr. Manager DUNN. Is that under article eighteen?

Mr. ARCHANDER. No; that was before he was Judge.

Mr. Manager COLLINS. Well, we are not trying his acts before he was elected Judge.

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Mr. ARCTANDER. I was simply showing the experience of the witness.

Q. You say you are fully able to tell whether the Judge was sober or drunk?

A. I think I am.

Q. Now, this morning was there anything the matter with his eyes, in the nature of being bloodshot, or anything?

A. No, sir.

Q. I will ask you to state, Mr. Lansing, whether or not you have ever noticed the eyes of the respondent bloodshot, even after the most fearful spree.

A. I don't think I have.

Q. Was his hair uncombed?

A. I never saw him go out without his hair was combed.

Q. Well, was it that morning combed and in good shape?

A. As far as I remember.

Q. Now, in the afternoon of that day did you see the Judge?

A. I don't think I did.

Q. Did you have any talk with the Judge in the morning after he adjourned court?

A. Yes, I spoke to him every day, more or less.

Q. Well, during that day, did you have any conversation with him in regard to any suffering?

Mr. Manager COLLINS. Hold on now! I object to that as leading.

Q. Well, state whether he did or not; now, this morning after the court was adjourned, Mr. Lansing, did you see the Judge go away and leave the court room?

A. Yes.

Q. Did you see him walk up the street?

A. I did; I followed right up after him.

Q. Did he walk up with anybody?

A. I think there was somebody on each side of him, but I couldn't say exactly who it was.

Q. Do you know Jim Hayden, the clerk of the district court down there?

A. Yes.

Q. Was it he?

A. I don't think it was.

Q. Did you see this witness, that was here on the stand awhile ago, that testified that he walked up with him?

A. I couldn't exactly say, it was somebody whose back was to me.

Q. Was it a stout, big man?

A. He was a stranger to me.

Q. You know that it was not Hayden?

A. I know it was not Hayden.

Q. You followed after him up to the hotel, did you?

A. Yes.

Q. Was the Judge sober or drunk, at that time.

A. I should call him sober.

Q. You were in court that day in the evening were you not; the evening of the seeond day of the trial of Powers against Herman, of the day when the adjournment was had?

A. I don't think I was.

Q. You don't believe you were?

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A. No.
Q. Were you there the next day?
A. Yes.
Q. State in what condition he was then, as to sobriety, the next day?
A. He was sober.
Q. Did you notice anything out of the way with him at all?
A. Not at all.
Q. During the whole of the day he was sober?
A. Yes.
Q. Now were you there on the next day, the day when the jury was charged and sent out in the Powers case?
A. Yes.
Q. What was his condition that day?
A. Sober.
Q. Were you there when the jury was charged and sent out?
A. Yes.
Q. You were. At that time was he sober or otherwise, when the jury were sent out in the afternoon?
A. He was sober.
Q. Do you know Judge Edgerton?
A. I do not.
Q. Mr. Lansing, did you know of the fact of the Judge suffering from this boil during the trial of the Powers vs. Herman case?
A. I did.
Q. Did you observe him during that trial, and see whether he seemed to suffer pain, or not?
A. He seemed so to me.

CROSS-EXAMINATION.

Q. You say you resided at St. Peter; how far is that from Waseca?
A. Somewhere near forty miles.
Q. In another county?
A. Yes.
Q. You were down at this term of court as a witness in the case of Herman vs. Powers?
A. Yes.
Q. And you were serving as a juror down in that county, it seems?
A. Yes sir, on that particular case.
Q. While you were down there from St. Peter in Nicollet county you served as a juror in a case that was tried there in Waseca county?
A. Yes.
Q. A case that was presided over, I suppose, by Judge Cox?
A. Yes.
Q. Now, Mr. Lansing, what was done the first day of that trial of the Powers vs. Hermann case?
A. The first day they took up the case and argued it.
Q. What did they argue?
A. I don't know as I could tell.
Q. Did they argue it to the jury?
A. No, sir; between themselves.
Q. Well, whom did they argue it to?
A. The lawyers had their points to make, I suppose. They had

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to go through the regular routine of business, I suppose, as lawyers always have; that is as near as I can get at it.

Q. And then what took place there that first day?

A. Then, when that was settled, they went on with some of the witnesses.

Q. What witnesses?

A. I couldn't tell you now.

Q. Do you know what witnesses were sworn; can you give me the name of a witness that was sworn the first day?

A. I think I was sworn the first day.

Q. Who were you a witness for, the plaintiff or defendant?

A. The plaintiff; well, I was for Powers.

Q. Well, you think you were sworn the first day?

A. I think I was.

Q. Then what was done besides that? Do you remember of any other witness?

A. I don't remember their names now.

Q. You remember there were some sworn?

A. Yes.

Q. Was Mr. Powers sworn that day?

A. I think he was.

Q. And then you adjourned the next morning; what was done the next morning?

A. They called court as usual.

Q. What else was done before the adjournment?

A. Well, they were talking over the thing, they wanted a witness; that is the only thing I could understand; I was sitting on the bench.

Q. How far were you from the lawyers?

A. Oh, I was perhaps nearly as far as it is across this room.

Q. Nearly as far as the width of this room from the lawyers; then you were further than that from the Judge?

A. No, he was inside of that distance.

Q. Was Judge Cox between you and the lawyers?

A. No, I didn't understand you right.

Q. I asked you how far you were from the lawyers.

A. Only three or four benches.

Q. Could you understand what they said?

A. Yes, I could some part of it.

Q. Now, what else was going on that morning besides this motion?

A. I don't remember exactly.

Q. Was there a witness examined?

A. I think they were having some talk over Powers.

Q. Was there a witness examined?

A. There was something about some papers and another thing; it was adjourned for want of a witness.

Q. There was a motion made to adjourn for the want of a witness?

A. Yes.

Q. And then they adjourned soon after that?

A. Yes.

Q. How long were they in session that morning?

A. Well, I should think they were in session from half part eight, the time they usually call the court, until somewhere about ten o'clock; well, I couldn't say exactly.

Q. And you walked up town behind Judge Cox?

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A. Yes.
Q. How long had you known Mr. Hayden, at that time?
A. Oh, I had not known him very long.

Q. Well, how long?
A. I had known him for about a week from the time I went there.
Q. You had known him about a week?
A. Yes.
Q. You had never seen Mr. Hayden until you got down to that term of court?
A. I had seen him perhaps, but I was never acquainted with him.
Q. Had you ever seen him? A. I wouldn't swear that I had.
Q. But you are very positive, however, that it was not him?
A. Yes.
Q. But you are positive, however, that it was a total stranger?
A. He was a stranger to me.
Q. Now, how many times since that, or when after that, did you think who walked up the street there behind Judge Cox; or with Judge Cox, I should say: have you ever thought of it from that time until this?
A. I don't know that I thought much about it.
Q. You never thought much about it? A. No, sir.
Q. Have you ever thought how you walked up street there behind Judge Cox, and that a man was with Judge Cox, from that time to this?
A. Well, it was a usual thing for me to walk up beside him, unless there was somebody else walking with him and talking.
Q. Yes, but you were walking behind him at that time?
A. Yes.
Q. Now, from that time to this, have you thought of the affair at all,—who walked up with Judge Cox?
A. No, sir.
Q. You say you had known Hayden for a week; had you spoken to him?
A. I had an introduction to him.
Q. Had you a conversation with him.
A. Not particularly. I knew he was clerk of the court.
Q. And you knew that somebody walked up with Judge Cox that time, and you walked behind, and you are positive that it was not Hayden?
A. I am positive that it was not.
Q. Now, Mr. Lansing, can you tell me any other time that Judge Cox walked up the street with any other person, during that term of court; or did he invariably walk up the street with you?
A. Sometimes he walked with me, and sometimes with McGovern.
Q. With whom?
A. With different parties; with different lawyers there.
Q. Did you ever see him walk up with Hayden?
A. I don't remember whether I have or not.
Q. Did you ever see him walk up with any other person whose name you can tell?
A. I don't think I can; they were all strangers to me, except that I got acquainted with the town while I was down there.
Q. Mr. Lansing, would you know Hayden now if you should see him?

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A. I think I would.
Q. When did you see him last?
A. It was a year ago last fall.
Q. Was there any other person walking with Judge Cox besides this Winston, on that day?
A. I don't remember that there was.
Q. You don't remember that there was?
A. No, sir; there might have been, of course.
Q. But you are not positive that it was Winston. I assume that it was Winston, but you said, I believe, that you didn't know who it was?
A. No; he was a stranger to me.

RE-DIRECT EXAMINATION.

Q. In this case that you say, you served as a juror, you were picked up by the sheriff as a talesman?
A. Yes.
Q. Nobody challenged you or objected to you; none of the lawyers?
A. No, sir.
Q. You were picked right up in the court room and put on the jury?
A. Yes.
A. And that was the only jury you served upon down there?
A. That was the only jury; the balance of them were picked up in the same way.
Q. Now, in the morning when the argument was made, besides the argument and talk between the attorneys, was there an examination of witnesses, Powers or anybody?
A. I think there was.

RE-CROSS EXAMINATION,

By Mr. Manager COLLINS.
Q. What sheriff picked you up there?
A. I think it was the sheriff that is here, the deputy sheriff.
Q. This Dan Murphy? A. Yes.
Q. Had you known him?
A. Oh, yes; I had been acquainted with Murphy for years.
Q. You had been acquainted with Murphy for years before that?
A. Yes.
Q. He knew where you lived, didn't he?
A. Yes.

Senator JOHNSON, F. I. I move, Mr. President, that when the Senate adjourns, it adjourns to meet to-morrow morning at 9 o'clock.

The motion having been put by the President, it was carried.

On motion, the Senate adjourned.

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TWENTY-EIGHTH DAY.

ST. PAUL, MINN., Feb. 11, 1882.

The Senate met at 9 o'clock A. M., and was called to order by Senator Wilson, President *pro tem.*

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

Messrs. Aaker, Adams, Bonniwell, Johnson, F. I., Johnson, R. B., Langdon, McCormick, Mealey, Miller, Morrison. Perkins, Powers, Rice, Shalleen, Tiffany, Wheat, White and Wilson.

There being no quorum, Senator Aaker moved a call of the Senate which was ordered.

The following Senators answered to their names:

Messrs. Aaker, Adams, Bonniwell, Johnson, F. I., Johnson, R. B., Langdon, McCormick, Mealey, Miller, Morrison, Perkins, Powers, Rice, Shalleen, Tiffany, Wheat, White and Wilson.

After some time spent under the call, the Sergeant-at-arms being unable to secure a quorum, further proceedings under the call were dispensed with, and on motion of Senator Langdon, the Senate adjourned.

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TWENTY-NINTH DAY.

ST. PAUL, MINN., Feb. 13, 1882.

The Senate met at 10 o'clock A. M., and was called to order by Senator Wilson, acting as President *pro tem.*

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

Messrs. Aaker, Howard, Johnson, R. B., Langdon, Powers, Wheat and Wilson.

The Senate, sitting for the trial of E. St. Julien Cox, Judge of the ninth 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. A. C. Dunn and Hon. W. J. Ives, entered the Senate Chamber and took the seats assigned them.

On motion of Senator Langdon, no quorum being present, the Senate adjourned.

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THIRTIETH DAY.

ST. PAUL, MINN., Feb. 14, 1882.

The Senate met at 10 o'clock A. M., and was called to order by Senator Wilson, acting as President *pro tem.*

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

Messrs. Aaker, Adams, Bonniwell, Campbell, Clement, Gilfillan, C. D., Hinds, Howard, Johnson, A. M., Johnson, F. I., Johnson, R. B., Langdon, McCormick, McCrea, McLaughlin, Mealey, Morrison, Perkins, Powers, Rice, Shaller, Shalleen, Tiffany, Wheat, White Wilkins and Wilson.

The Senate, sitting for the trial of E. St. Julien Cox, Judge of the Ninth Judicial District, upon artieles 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. Henry G. Hicks, Hon. James Smith, Jr., Hon. O. B. Gould, Hon. L. W. Collins, Hon. A. C. Dunn, Hon. G. W. Putnam and Hon. W. J. Ives, entered the Senate Chamber and took the seats assigned them.

E. St. Julien Cox, accompanied by his counsel, appeared at the bar of the Senate and took the seats assigned them.

The PRESIDENT. In order to facilitate business with rapidity, it is desirable that there be quiet in the room. I hope there will be little walking around, and as little talking and whispering as may be.

Are there any motions or resolutions before proceeding with the regular business?

Are the counsel for the respondent ready to go on?

Mr. ARCTANDER. Yes; may it please the President.

J. R. HERMANN

Sworn as a witness on behalf of respondent, testified.

Examined by Mr. ARCTANDER.

Q. Father Hermann what is your profession?

A. Catholic priest.

Q. Where do you reside?

A. In Dakota county, State of Minnesota,

Q. Where did you reside in the year 1879?

A. In Waseca county, State of Minnesota.

Mr. Manager DUNN. What article is this witness called under?

Mr. ARCTANDER. The second article.

Mr. Manager DUNN. We object to the examination of any other witness under article two. The defense have exhausted their five witnesses under article two, and we object to any farther testimony under that article.

The PRESIDENT *pro tem.* Was that the rule adopted?

Mr. Manager DUNN. Yes, sir; we were limited to that strictly, by vote of the Senate.

The PRESIDENT *pro tem.* The objection on the part of the managers is

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that the number of witnesses that was stipulated on either side, has been exhausted by the defense, five having already testified as to article two. What is the pleasure of the Senate?

Mr. ARCTANDER. Mr. President, I desire to call your attention, and the attention of the Senate to the fact that when we made the application for more than five witnesses, it was stated by Senators individually, and stated on this floor, that the respondent should not be restricted except that he should produce a reasonable number, and as he had one hundred and thirty witnesses to subpœna, he had a right to do it then, and that if he needed any more than those he could apply to the Senate for more witnesses. That was at the time when the articles all stood, which gave us a right to one hundred and thirty witnesses. Since that time some articles have been stricken out, but enough are left outside of the eighteenth article, upon which the State was allowed to bring forward twenty-five witnesses, to allow us a right to eighty witnesses under the articles outside of the eighteenth article. We have subpœnaed, outside of the eighteenth article, only seventy-five witnesses; and we now claim the privilege of bringing those witnesses upon any charge we may see fit. There are charges, as I have stated, upon which we shall not bring witnesses, or upon which we shall only bring two or three.

There are other charges upon which we desire to use the seventy-five witnesses that we are entitled to, and I claim that we were notified here sometime ago by the President of this Senate, who had the chair, that in secret session the matter had come up, and that although there had been no definite resolution passed, yet the respondent's counsel would be allowed to ascertain from members of the Senate privately as to what the feeling of the Senate in the matter was. I did so apply to several of the Senators, on both sides of this question, you might say, and was assured by all, that up to that number of witnesses we would be allowed to call. And as was also remarked by the Senator from Scott, upon the motion, in the first instance,—to abrogate or modify the rule,—that we would be entitled to bring them forth here if we needed any more upon simply making application. Now, I claim we certainly should be allowed to bring these witnesses. We have two more witnesses on this article besides this respondent and I claim we have a right to produce them if we see fit. If we see fit to limit the number of witnesses upon any certain article, we have a right to use those same witnesses examined upon other articles; and it is with that understanding that we bring this witness forward here. I understood there was a feeling upon the part of the Senate that the defence should not be restricted if the counsel for the respondent did not abuse their discretion in producing the witnesses. I would state to the Senate that I have subpœnaed witnesses right along with that view, so that the expense would be the same if the Senate should throw out evidence of some of the witnesses already here, and you would have to sit and wait until other witnesses could be brought in. The expense would be the same, because the witnesses would have to be paid for their attendance whether examined or not. I will call attention to the further fact that as appears by the index which I have furnished to the Senate, under this article two the state examined six witnesses and were allowed so to do, and I shall ask the privilege to examine this witness at this time. I make no offer of what I expect to prove by this witness because I apprehend the Senate does not desire it. If the Senate should rule that we could not have any more witnesses, I

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should feel it my duty to make an offer of what I expect to prove, so that it may go out to the world what this Senate has seen fit to do in the matter.

The PRESIDENT *pro tem.* The chair would state that as the rule adopted restricts to five witnesses unless otherwise ordered by the Senate, it does not feel like ruling upon this question.

Senator BONNIWELL. I move that the witness be heard,

Which motionwas seconded.

The PRESIDENT *pro tem.* It is moved and seconded that the witness be heard.

Senator HINDS. Mr. President, I would state that the prosecution have examined six witnesses upon this article; the sixth witness was probably examined by an oversight; I so understood it.

The PRESIDENT *pro tem.* It is moved and seconded that the witness be heard. As many as favor that motion will say aye; contrary, no. The motion prevails and the witness will be heard.

Q. Father, were you present at the session of the district court held in the spring of 1879, by the respondent, in Waseca county?

A. I was.

Q. Were you a party to any of the suits at that term?

A. I was.

Q. How many? A. Two.

Q. What was the title of the suits?

A. One of them was Hermann vs. Kelliher and the other was Powers against Hermann.

Q. Now, I will ask you to state what days the trial of the case of Hermann vs. Kelliher occupied?

A. It is about two years ago, but I think I can state it: That case occupied from the morning of the 27th of March until the afternoon of the 29th of March.

Q. During that time, were you constantly in attendance upon court during the sessions of the court,—during those days, I mean?

A. With the word *constantly* modified; I was not all the time there.

Q. You were not all the time there, but the greater portion of the time?

A. Yes, sir.

Q. Now, I will ask you to state what was the condition of the respondent during those days, as to sobriety or inebriety?

A. He was perfectly sober.

Q. Now, the case of Powers vs. Hermann, what days was that up?

A. In the same term of court, from the second of April, until the afternoon of the 5th of April.

Q. Were you in there on the morning of the 2nd of April?

A. I was present.

Q. Were you present during the trial of the case of Rasmurson vs. Buckston, in which Mr. Lewis and Mr. Brownell were attorneys?

A. I recollect Mr. Lewis and Mr. Brownell being attorneys in some case that morning. I don't remember the title of the case.

Q. Did you sit there in court and listen to the proceedings?

A. Not during the whole of the case.

Q. During a part of the case?

A. I was there about half an hour; during the trial of that case.

Q. During the afternoon of that day, were you there the whole time?

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A. On the 2nd day of April?
Q. Yes, on the 2nd day of April.
A. Yes, during that part when my case was up.
Q. Your case occupied a greater portion of the afternoon; did it not?
A. Yes, it occupied, as near as I can fix the time, from three o'clock in the afternoon, until eleven at night, including the recess for supper.
Q. What was the condition of the respondent during that day, and the whole of the day, as to sobriety or inebriety?
A. During the time that I saw him he was perfectly sober.
Q. You said that session lasted until about eleven o'clock that night of the second of April?
A. I have so stated.
Q. You may state what the condition of the atmosphere in the room was during that evening session?
A. The court was very crowded.
Q. How was the air in the court room?
A. I felt it very warm.
Q. Now, I would call your attention to the morning of the third of April. Do you remember that as the day upon which an adjournment was had in the forenoon during the trial of your case.
A. I remember.
Q. I will ask you to state, what was the condition of the Judge in the morning of that day as to sobriety or inebriety?
A. He was perfectly sober.
Q. I will ask you to state, whether or not, there was anything the matter with his hair or eyes,—anything unusual, different from what he had been before?
A. I didn't notice any difference.
Q. Where did you sit in the court-room with reference to the respondent?
A. I sat before him at the lawyers' table.
Q. Facing him? A. Yes.
Q. During the course of that trial that morning, as well as other mornings, did you observe him?
A. Yes, I observed him.
Q. State, whether or not, there was any difference in his position from what it had been during the trial of the Kelliher case,—in the way in which he sat, I mean?
A. It was about the same position.
Q. Did you observe his position during that term of court, when you were there and how he would sit?
A. At one time I observed it during the trial of the Kelliher case.
Q. I mean in regard to his feet,—whether they were stuck up?
A. At one time during the Kelliher case, I was a witness on the chair, and the Judge had his foot placed sideways towards me, and he apologized that he was obliged to do so from pain.
Q. Did he occupy the same position this morning of the third?
A. At one time he did.
Q. I will ask you to state whether on this morning of the third, he ever sat with his feet on the table.
A. Do you mean on the desk on which he was writing?
Q. Yes, on the desk.

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A. If he placed his feet on the desk before him?
Q. Yes?
A. No, sir, he did not.
Q. Where did he have them at this time when you observed him?
A. He took two positions generally during that morning.
Q. Well, what were they?
A. At one time he extended his feet towards the petit jury and the witness, and at another time his right foot towards the clerk of court.
Q. Did he rest them upon anything?
A. There is a little projection from the wall on either side of the Judge's chair——
Q. As high as the chair?
A. No, a little lower; and he extended his leg sometimes on that.
Q. Now, what I wanted to ask you was if you had noticed that same position before that morning,—his extending his legs over to those little projections.
A. I observed it during the trial of the Kelliher case.
Q. Now, I will ask you to state, Father Herman, whether or not the Judge was sleepy, or asleep on the bench that morning?
A. I did not see him sleeping or sleepy.
Q. State whether or not any law questions came up there during the morning,—objections, arguments, etc.?
A. During the morning of the trial?
Q. Yes. A. Yes, the attorneys quoted some law.
Q. Raised some objections, did they?
A. They made some appeals to the Judge for decisions?
Q. Did you hear the Judge make decisions?
A. I heard him, yes, answering the attorneys.
Q. I will ask you to state whether or not, in any of those decisions or rulings that he made, there were any incongruities.
Mr. Manager DUNN. I object.
Mr. ARCTANDER. That is proper.
Mr. Manager DUNN. I would like to have him state the rulings and let the Senate judge. We do not want the opinion of this witness upon everything; we are willing to take it upon a great many things; but we do not want it on the law. We are willing to have it on theology.
Mr. ARCTANDER. Well, we will have another witness upon that point.
Q. I will ask you to state, Father Hermann, whether the Judge announced his decision in a clear, or in a drowsy manner, or seemed not to do it in a plain way?
A. He used consecutive language and spoke rationally.
Q. I will ask you to state whether at any time during that morning he sat with his head falling down on his bosom?
A. He sat with his head down while he was writing.
Q. While he was writing? In what position; give us the position he sat in with your hands.
A. He turned a little towards his right hand and sat that way [indicating] before his desk.
Q. Not with his head falling down on his breast or anything?
A. Falling loosely?
Q. Yes. A. No.
Q. You meen by that that he bent his head down when he was writing, but not that it fell down on his breast?

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A. I mean that he took such a position as an intelligent man would take in writing; he sat firmly.

Q. I will ask you to state, Father Herman, whether or not that morning there were any signs of intoxication, either in the Judge's appearance, or in his conduct or language, that he used upon the bench?

Mr. Manager DUNN. That question is objected to. I believe that is the very question that was ruled out by the Senate.

The WITNESS. I should say not.

Mr. ARCTANDER. I will withdraw it. I claim it is not objectionable, but to avoid sparring I will withdraw it.

The PRESIDENT *pro tem.* It is the same question that was asked before.

Mr. ARCTANDER. No, sir; that question was whether there was anything that indicated it. I do not ask him that now.

Q. Was there any peculiarity either in the appearance, the actions or conduct of the Judge that morning different from what it had been during prior days, when you had been in his court and observed him?

A. I perceived no difference. Yes, I did.

Q. Well, what was it?

A. He looked a little fatigued.

Q. Now, I will ask you, to go back to that adjournment, to state, if you know, whether that adjournment was had on account of the Judge's condition?

Mr. Manager DUNN. I object to that. I don't like to have to interpose objections to leading questions all the time.

Mr. ARCTANDER. I do not think that is leading.

Mr. Manager DUNN. It strikes me that it is. You can ask the witness what was the cause of the adjournment, but I don't want you to lead him along in that way; you might just as well do the testifying yourself.

Mr. ARCTANDER. Does the court rule that that is a leading question. I understand that our supreme court has already held that a question is not leading when a witness is asked whether or not he knows.

The PRESIDENT *pro tem.* You had better vary the question as suggested.

Mr. Manager DUNN. If he knows what was the cause of it, he can state.

Q. Father Herman, what was the cause of the adjournment of court that morning?

A. I caused the adjournment of the court.

Q. You caused the adjounment of the court?

A. Yes

Q. In what way, and under what circumstances.

A. I wished to read a brown wrapper which had been torn by Mr. Collister, from a package of papers.

Q. Some of Mr. Collister's papers, who was the attorney against you?

A. Yes, sir.

Q. You had seen a brown paper that had fallen down from his papers, and wished to read it?

A. It did not fall down.

Q. It remained on the table?

A. It remained on the lawyers table.

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Q. Now, what means did you use to read it?
A. Very easy.
Q. What did you do. State all that took place. I will ask you to state the whole circumstances there, in connection with this paper; what means you took to get possession of it?
A. I told my attorney, Mr. Lewis, to go forward and take the witness and examine him quickly.
Mr. Manage DUNN. You need not state what you told your attorney.
Mr. ARCTANDER. I think that is proper to show the whole transaction.
The WITNESS. Will you please state to me what I shall say.
Mr. Manager DUNN. I object to what you said to your attorney.
The PRESIDENT *pro tem.* Let him answer that question.
Q. Gone on, please, Father.
A. And he went up and pursued the witness by cross-questions, and before he went up, I told him that knowing Mr. Collister's disposition, that he should go to the protection of the witness, and whilst he would be there, to come back and take that brown wrapper, and pass it to me and let me see it. He did so; I read it and he returned it back on the table, I think; I cannot state.
Q. Mr. Lewis returned it to the table?
A. Yes.
Q. You handed it back to him?
A. Yes, sir.
Q. Now, Father, having read it, what if anything, did you say to Mr. Lewis in regard to the adjournment?
A. I told him that we should have to have the court adjourned; that the case was going to take a new departure; we should go to the office to consult and to say to him we wanted a witness from Janesville.
Q. And to get the case adjourned?
A. Yes.
Q. For what purpose?
A. I stated to you for what purpose.
Q, So as to consult with him upon the new departure; I didn't understand you definitely?
A. I saw the case was going to be a little different from that brown paper wrapper; that they were going to introduce a different kind of evidence; I thought so:
Q. And you told him you wanted to get an adjournment so that you could consult together upon what course to take in the case?
A. Yes.
Q. What did Mr. Lewis then do?
A. He made a proposition to the Judge for an adjournment, to have a carpenter come from Janesville,—Janesville, Waseca county.
Mr. Manager DUNN. Who did that, Mr. Lewis?
Mr. ARCTANDER. Mr. Lewis.
Mr. Manager HICKS. The witness states that, does he,—that Mr. Lewis did?
The WITNESS. What do you say, sir?
Mr. Manager HICKS. It was Mr. Lewis that did that?
Mr. ARCTANDER. Was it Mr. Lewis, that stated it to the court?
The WITNESS. Mr. Lewis made the motion.
Mr. Manager HICKS. Yes, sir, that is what we understand, that Mr. Lewis made the motion.

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Q. Well, did the court grant the motion right off?
A. No, sir.
Q. Well, what was said, if anything, by the Judge, or by Mr. Collister, at that time when he made the motion?
A. Do you want me to state his language?
Q. Yes, as near as you can.
A. I cannot do that.
Q, Well, as near as you can?
A. I can give you the substance of it. I can put in some of his words.
Q. Well, what was it, as near as you can remember?
A. I can form a sentence from what I remember of his words, "This is the most extraordinary motion I have ever heard at this time of the case, whilst the witness is on the stand," that would be about the meaning of the decision.
Q. Well, what did Mr. Lewis do, after the Judge had said that.
A. I suggested to Mr. Lewis to get Mr. Collister, to join with him in that motion.
Q. And did he do so?
A. He did so.
Q. Mr. Lewis went over and saw him, and Collister did join?
A. He did.
Q. And the court granted the motion?
A. Yes.
Q. Did the court grant the motion then?
A. Yes, then.
Q. Now, I wish you would describe so the senate can understand it, what the importance of this brown envelope was; what bearing it had in the case first; I want to ask you whether this case was an action for part of the price of building a church, a Catholic church down there?
A. That was the case.
Q. I will ask you to state whether that case—
Mr. ARCTANDER. I suppose I can more easily lead this witness as to the nature of the case than he can state it.
Mr. Manager HICKS. Let him state it; we would rather have him state.
Mr. ARCTANDER. This witness is not easily led.
Mr. Manager DUNN. No, but he is human, not infallible.
Q. Now, what was that wrapper, and what bearing did it have on the case?
Mr. Manager DUNN. That I object to; give us the wrapper.
The PRESIDENT *pro tem.* I don't see how that is material.
Mr. ARCTANDER. It seems to me, Mr. President, that it has been testified here by the other witnesses, Mr. Collister and Mr. Lewis, I believe, that this motion was had on account of the condition of the Judge. Now, it is shown by this witness that the adjournment was had, not on account of the condition of the Judge, but on account of a new departure in the case. The witness, so far as he has gone, has given only his conclusion as to the importance of this paper, and as to why this thing was done. It seems to me that it is perfectly proper for us to give reasonableness to our theory, to show that that thing was really a material departure in the case, and that it was a matter of necessity for them to have an adjournment. That is the only reason why I ask it.
The PRESIDENT *pro tem.* State the question again, and I will submit it to the court without debate.

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Mr. Manager DUNN. The objection is, that we want the wrapper produced instead of having the witness state what were its contents.

Mr. ARCTANDER. I do not suppose the Senate is afraid of the truth in this matter, or has any objection to the truth coming out. The reporter has the question, and it can be read.

The PRESIDENT *pro tem.* The question I understood you asked was, what were the contents of that wrapper; and the wrapper itself, if you have it, is the best evidence of its contents.

Mr. ARCTANDER. It is not shown that we have it; it is in the opposite parties hands, and it is not to be presumed that we have it. That was not the objection however; it was that it was incompetent and immaterial, and not that the wrapper was not produced.

Mr. Manager DUNN. He seeks to draw from this witness a legal conclusion as to what bearing the wrapper had upon the case. Now, this witness is not a lawyer, and he is not competent to testify what bearing that wrapper has upon the case; and even if it was competent, the best evidence is the wrapper itself. They have shown it in their custody once, and there it is left. They have shown it in the possession of this witness, surreptitiously obtained, or by some means obtained from the possession of the opposite party. At least they have shown the paper in their hands, by fair means or foul, and certainly by not very honorable means, as far as the testimony has gone; and certainly I claim, sir, that they must produce the wrapper, and not ask this witness for his conclusion as to its contents.

The PRESIDENT *pro tem.* What is the pleasure of the Senate?

Mr. ARCTANDER. I waive the question just now.

Q. Father Herman, state whether you have ever seen the wrapper since you handed it back to Lewis?

A. I have not.

Q. State whether that wrapper was ever afterwards introduced in evidence in the case?

A. I never saw it introduced.

Q. You may state, if anything occurred right there in the court-room in the evening, when you came back in regard to the loss of that wrapper?

Mr. Manager DUNN. What is the question?

Mr. ARCTANDER. You may state, whether anything occurred there in the court-room in the evening when you came back, in regard to the loss of that wrapper, or the next day; I don't know which time it was?

A. I couldn't say, whether the conversation referred to the wrapper or not, but I would infer it did,—some conversation between Mr. Collister and Mr. Power.

Q. In regard to a lost paper? A. Yes.

Mr. ARCTANDER. Now, after having shown that the paper is last seen in his possession, I will ask him to state, what the nature was of the writing on that wrapper, and what bearing it would have on the case?

[To the witness.] State in what it was material to the case. I don't ask your conclusions, but what bearing it would have?

Mr. Manager DUNN. That is objectionable for the same reason as before. In the first place, they have laid no foundation at all for introducing secondary evidence of the contents of a written document. The instrument has been shown to be in their possession, either in the posession of this witness, or of his attorney, Mr. Lewis, and so it is left. Now, there is no statement before this Senate, or no foundation whatever laid for intro-

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ducing any oral testimony as to the contents of that written document, and it seems to me to be rather presumptious in the counsel to undertake to offer oral proof of the contents of that paper, without having laid, at least, some kind of a foundation. He merely says that he does not know where the paper is. It is a paper that by their own evidence is traced into their hands. They must at least show some kind of a diligent search for it among their papers, or among the papers of the attorneys into whose hands it is traced.

The PRESIDENT *pro tem.* I shall decide that the objection of the managers is good unless the Senate determines otherwise.

Mr. BRISBIN. Will the chair permit me?

The PRESIDENT *pro tem.* Certainly.

Mr. BRISBIN. It seems to me that the counsel is under a misapprehension in saying that this is in the nature of secondary evidence. Now, the facts, so far as developed by the examination of the witness are just these: That pending the trial, the witness, Father Hermann, discovered a brown wrapper, which, for some reason or other—and it is immaterial to inquire what that reason was,—he believed to be important to the case,—a material substantive item in the case; and therefore he gave directions to his attorney, Mr. Lewis, such as have been stated, for the purpose of permitting him to examine this paper; that was so done; that thereupon an adjournment was asked by Mr. Lewis, which was resisted for the nonce, by Mr. Collister, the adversary attorney, and the Judge used the expression which has been given by the witness, that it was an extraordinary circumstance that the trial should be interrupted, pending the examination of a witness for the purpose of sending out to procure a witness from Janesville; that afterwards, upon the suggestion of Father Hermann, an interview took place between the opposing attorneys, and an adjournment was agreed upon, and the court adjourned. Now, as a consequence of this, the paper never belonged to Father Hermann, in any sense whatever; it is not his paper; it is a paper which we have seen was examined for a purpose, a very legitimate purpose, in connection with the progress of that trial; that that paper afterwards went out of the hands of Father Hermann, and that he has never seen it since it went into the hand of their witness, Mr. Lewis, who is brought here as opposing the respondent; it is out of our possession.

Now, it is not for the purpose for which secondary evidence is ordinarily used that we ask this. It is for the purpose of showing the existence of this fact and the nature of the act; for the purpose of proving not exactly the paper, but for the purpose of proving what the nature of the tranasaction was; viz, that this was a substantial matter which indicated to Father Hermann, as a party to that action, the necessity of an armistice for the purpose of consultation with his attorneys. We do not propose to offer the paper. It is impossible for us to do so. It is presumptively with the adversary, or with their witness. We cannot be called on to produce it, because we never had the legitimate custody of it; and it is not for the purpose of proving what that paper was, specifically, as a paper, but for the purpose of proving the interior nature of the transaction on this adjournment, in connection with what was regarded to be the enforcement of a substantial right of the party.

Mr. ARCTANDER. Before it is submitted to the Senate, if the President intends to submit it, I desire leave to state what we expect to show by the witness. It may clear the matter up very materially. We expect to show by this witness simply that this was a wrapper that had

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inscribed upon it, on the outside, the name of Mr. Powers, the plaintiff, and the contractor in that case; that the wrapper had been used before, and had been turned outside; that on the inside was the address of the Right Reverend Bishop Grace of St. Paul, and the postmark upon it, showing that it had contained a paper that had been sent to Bishop Grace and by him returned, and Father Hermann thereby inferred that they intended to show an acceptation and approval of the plans and contracts for that church by that envelope; that is all we intend to do.

The President *pro tem* Shall the objection of the managers be sustained; those in favor of the motion will say aye.

Senator GILFILLAN, J. B. Mr. President, for information, before voting upon this question I would like to ask if there is any evidence that this paper is not in existence at the present time?

Mr. Manager DUNN. Not at all.

Senator GILFILLAN, J. B. Or that any effort has been made to produce it here.

Mr. Manager DUNN. None at all.

Mr. BRISBIN. It is shown that it went out of our possession.

Mr. ARCTANDER. There is evidence, Senator, that it disappeared, and that there was something in connection with the loss of that paper occurring immediately afterward, and Mr. Collester testified when he was on the stand for the prosecution that he lost that paper.

Senator GILFILLAN, J B. In this trial?

Mr. ARCTANDER. Yes, sir, he said he lost the paper.

Mr. Manager Dunn. No, sir, I would ask, Mr. Arctander, if Mr. Collester has testified to anything about this paper. You asked him if he lost some paper, and he said no, not that he knew of, but he was not asked about this particular paper; his attention was not called in any of his evidence to any particular paper.

Mr. ARCTANDER. He said that it was a material paper in his case, and that it was lost and he never saw it afterwards.

Mr. Manager DUNN. It is a bold attempt to introduce secondary evidence without first showing the loss of the original paper.

Mr. ARCTANDER. There was nothing about a brown wrapper; it was not identified as such; but it was an important paper that was lost in the case. If you will hand me the book I will find it.

Mr. Manager DUNN. You asked him if there was an adjournment had on that account.

Senator BUCK, C. F. Mr. President, if I understand the object of the examination, it is to show that the motion for that adjournment was for some other reason or purpose than that alleged by some of the witnesses,—that the respondent was intoxicated. Is that the object of the examination, to show that the adjournment was had for some other purpose?

Mr. ARCTANDER. That is the object.

Senater BUCK, C. F. It seems to me that it is entirely legitimate, and that circumstance should be brought out to show what the adjournment was for.

Mr. Manager DUNN. May I be pardoned for saying just one word to the Senator. The management have no objection, and have raised no objection, to any legitimate evidence showing that that adjournment was for any other cause than that testified to by the witness for the State. We make no objection to that; that is a right the defense have, and we concede it of course; but we do object to introducing illegitimate evidence for the purpose of proving that fact. We object to their proving

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by this witness, the contents and legal effect of a written document, the absence of which has not been accounted for before this Senate, and which they have not attempted to account for. We claim that they ought not of right to be permitted to offer evidence here by the mere opinion of the witness, by the mere statement of the witness as to what a written paper contained, when they make no attempt whatever to account for its absence, or to produce the paper. The paper is traced to their possession by the evidence of this witness himself, traced to the possession of this witness and his counsel, and that is the last heard of it, and now the presumptions are that it is still in their possession.

If they show that it is not in their possession or that it has been lost in some way, they might produce oral evidence of its contents, but failing in that, we claim that the rule of evidence is emphatic that they are shut out from showing any oral evidence as to the contents of that paper. We have no method of contradicting it if they are permitted to introduce evidence of that class by witnesses.

Senator BUCK, C. F. It seems to me that what were the contents of the paper is immaterial.

Mr. Manager DUNN. We admit that.

The PRESIDENT *pro tem.* That is the view the chair took of it.

Senator BUCK, C. F. If they show the circumstances of the loss of that paper, and the counsel asked for an adjournment or a recess in that case, because of the absence of the paper, and not because the respondent was intoxicated, we do not care what the paper was,—if they show that the adjournment was had for that purpose.

The PRESIDENT *pro tem.* The question of the counsel called for the contents of that paper; we do not think that is material.

Mr. Manager DUNN. I would like to say to the Senator that he is mistaken in saying that the witness testified that the cause of the adjournment was the loss of that paper. That is not the fact. It was not because of the loss of that paper that the adjournment was had, but because the witness found a paper which, in his judgment, necessitated an adjournment of the case in order to meet the contents of the paper, if produced before the court. It was the finding of the paper which produced the adjournment, and not the loss of it. Now they seek to give evidence of the contents of that paper by this witness.

The PRESIDENT *pro tem.* Does the Senate desire to pass upon the question?

Senator J. B. GILFILLAN. The ruling of the chair will no doubt be satisfactory.

The PRESIDENT *pro tem.*. I have already ruled that the question was immaterial.

Senator CASTLE. In what form, Mr. President, is the present question put?

The PRESIDENT *pro tem.* It is as to the contents of the wrapper.

Mr. ARCTANDER. And its bearing in the case.

Mr. Manager HICKS. Certainly, the Senate ought to be the judges of the contents of the paper and its bearing upon the case, and its contents can only be proved in a proper way.

Mr. Manager DUNN. Well, the chair has already ruled upon the question. Now go on with something else.

Senator LANGDON. Do I understand the decision of the chair?

The PRESIDENT *pro tem.* I have decided that the witness need not answer the question.

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Q. After this adjournment was had, Father Hermann, did you see the Judge?

A. Yes.

Q. What, if anything, did he do; I mean did he stay there, or go away in your presence?

A. I saw him going down the stairs.

Q. You remained in the court-room after he had gone down the stairs for a while?

A. Yes.

Mr. Manager HICKS. Do not lead him; let him tell it; he can say where he was as well as to hear you tell him. You are too much of a lawyer not to know that that is improper.

Q. State, Father Hermann, whether you saw Mr. Hayden around there, the clerk of the court? You know Mr. Hayden, the clerk of the court there, Jim Hayden?

A. I know him.

Q. Did you see him arouud there after the Judge had left?

A. I saw him in the court room when the Judge had gone out.

Q. Where did you see him after the Judge had gone out?

A. At his table or desk.

Q. At his table or desk, in the court room?

A. Yes.

Q. Where did you next see the Judge during that day?

A. During the third of April?

Q. Yes.

A. I saw him on the bench, in the court room.

Q. At what time?

A. I can only approximate the time.

Q. I mean was it in the afternoon?

A. In the afternoon or evening or forenoon.

Q. Was your case taken up that afternoon?

A. No, sir.

Q. What was the reason given?

Mr. Manager DUNN. Well, never mind the reason. I object to that.

Q. I will ask you to state, Father Hermann, whether or not the Judge gave any reason at the time, for not taking up your case or for adjourning court until evening, if he did?

A. He said he had a sick headache.

Q. Did you notice him at the time; did you observe him?

A. I observed him.

Q. State whether or not he looked like a man that was in pain at the time?

Mr. Manager DUNN. Now, Mr. Arctander, I object to that. I trust that you won't pursue that method of examination.

Mr. ARCTANDER. That is just my method.

Mr. Manager DUNN. Then I will have to object to every question and have the Senate rule upon it.

The PRESIDENT *pro tem.* State how he looked and the Senate will judge for itself.

Q. Very well; answer that question, Father Hermann. State how he looked.

A. It is a very difficult thing to state the looks of a sick man.

Q. Well, did he look like a sick man; is that what you mean?

Mr. Manager DUNN. Let him state how he looked.

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The WITNESS. I think he looked a little pale and worn looking; wearied, just as I notice any man with a sick head ache.

Q. State, Father Hermann, what his condition was at that time so far as inebriety or sobriety was concerned?

A. He was perfectly sober.

Q. He was sober? A. Yes.

A. Did you see him again in the evening?

A. I saw him after recess in the evening in court.

Q. After recess in the evening, and when the case went on again?

A. Yes.

Q. How long a session did you hold that evening? the evening of the third; how far into the night?

A. To the best of my opinion Mr. Powers was examined till near eleven o'clock at night on the evening of the third.

Q. What was the condition of the Judge that evening?

A. Sober and ——

Q. The next day, the fourth?—did you want to say anything?

A. I didn't understand the question.

Mr. Manager DUNN. He asked, what was his condition that evening?

Q. The evening of the 4th of April, when he was sitting there?

Q. Do you refer to his sobriety?

A. Yes, sobriety or inebriety. A. He was sober.

Q. I will ask you to state the condition of the Judge on the fourth of April. The case went right on didn't it?

A. This all has reference to sobriety,—your questions?

Q. Yes.

A. He was sober.

Q. The 5th of April, Saturday; what was done in the forenoon of that day in court?

A. There were some witnesses examined, and the two attorneys had made their arguments to the jury.

Q. The attorneys made their arguments to the jury?

A. Yes, sir.

Q. Well, in the forenoon, what was the Judge's condition as to sobriety or inebriety?

A. Sober.

Q. Now. in the afternoon, what was the first thing done?

A. Charged the jury.

Q. The Judge charged the jury?

A. Yes.

Q. Now, in the afternoon when he charged the jury, you went in the court—were you in court any further until he had charged the jury.

A. I remained for some time in court after he had charged the jury, because there was another real estate case about the church coming up, and I was remaining for that; it was a court case.

Q. A motion coming up? A. Yes.

Q. Between the charge and that motion in that church case, were there any motions which came up, in which any attorneys were concerned that you know?

A. I do not know of the names of the attorneys. Yes, I do; I saw General Edgerton there.

Q. You saw General Edgerton in the motion that came in between the charge and the motion in the church case?

A. Yes.

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Q. Now, I will ask you to state, Father Hermann, what was the condition of the Judge as to sobriety or inebriety on that afternoon, during the whole of the afternoon when you went there?

A. When I was present in the court during the afternoon, I perceived that he was sober.

Q. Were his eyes red during that afternoon, during the motion on that argument; were his eyes red?

A. His eyes were not red when he was charging the jury in my case.

Q. They were not?

A. No, sir; I didn't pay particular attention to his eyes.

Q. I will ask you now, one thing; was there any recess; state whether or not there was any recess between charging the jury in that case and the Edgerton motion, or whether they came right on, one on the heels of the other?

Mr. Manager DUNN. He has not testified that there was any Edgerton motion, as I understand it.

Mr. ARCTANDER. That is your misunderstanding of it.

Mr. Manager DUNN. He said that he saw General Edgerton there, but not that there was any motion.

Q. Well, to remove all doubt on that, Father Hermann, what was General Edgerton doing there, what was he engaged in?

A. He was delivering an argument to Judge Cox.

Q. In some matter before Judge Cox?

A. In some matter that he was pleading.

Q. I will ask you to state whether or uot that afternoon the Judge talked indistinctly or whether his voice was thick in any manner.

A. During my presence in court?

Q. Yes.

A. No, it was clear and distinct.

Q. There has been some testimony that I have already called your attention to, by Mr. Taylor, in regard to a mistake which he claims the Judge made in regard to the side he was on. Did you notice anything like that; and, if so, state what it was?

A. I was not interested in Judge Edgerton's case particularly; I heard the pleadings; I drew my attorney's attention to a young attorney from Winona; he pleaded and quoted law from his books, and reasoned so nicely from his quotations that I directed my attorney to listen to him. I thought he would make a very brilliant lawyer I said, and I also remarked that the Judge was courteous to him, because he was so kindly spoken to General Edgerton; he always addressed him so politely.

Q. Well, do you remember anything about any other motion; any other young man that was there?

A. Yes, some man stood up at the west end of the attorneys table and made some remark.

Q. What, if any thing, did the Judge say there?

A. He said something sarcastically, towards him; I could't state the words; something that he mentioned General Edgerton's name in, he connected General Edgerton's name with his remark.

Q. Well, what was the remark, if you can remember it? Give us the substance of it.

A. Similar to my own remark; I concluded that some person stood up that had something committed on paper, and had lost his paper and was kind of rambling in what he was saying, and the Judge indicated that he was pleading as General Edgerton did.

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Q. That he had been pleading the same way as General Edgerto did?
A. Yes.
Q. While he was on the other side virtually?
A. Yes.
Mr. Manager DUNN. Do you say that, or was that his testimony [To the witness.] Do you know that?
A. Yes, sir; I know that.
Q. That he was on the other side?
A. Yes, sir; I so stated on my oath.
By the PRESIDENT *pro tem.*
Q. Do you know Mr. Taylor?
A. No, sir; I do not.

CROSS-EXAMINATION.

By Mr. Manager DUNN.
Q. You live at New Trier?
A. I do not.
Q. Where do you live, Father Hermann?
A. I reside at Inver Grove, Dakota county, State of Minnesota.
Q. You are a Catholic priest, I understand?
A. I am a Catholic priest.
Q. Have you any charge at present?
A. I have. What do you mean by charge?
Q. Yes; what is a charge?
A. Define what a charge is.
Q. I mean have you a parish; have you a parish under your charge?
A. Yes.
Q. What is the parish?
A. It is the parish of Inver Grove, in Vermillion, in Dakota county.
Q. How long have you known Judge Cox?
A. I have known him since the 27th of March, 1879.
Q. That was at this Waseca term?
A. Yes.
Q. Never had met him before it?
A. Never. No, I couldn't state that; not to my recollection.
Q. Well, you had never met him to know him?
A. No, sir.
Q. Have you ever seen him when he was drunk?
A. No, sir.
Q. You don't know the difference, then, between the Judge drunk and the Judge sober, do you?
A. I can tell a sober man when I see him.
Q. Well, answer that question whether from comparison, you know the difference between Judge Cox drunk and Judge Cox sober, from your knowledge?
A. Do you mean——I don't understand you.
Q. From your own knowledge?
A. Well, you will have to define what Judge Cox is drunk and then what he is sober, and then I can answer you.
Q. You say you have never seen him drunk.
A. No, sir.
Q. But you know you have seen him sober.

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A. Yes, sir.
Q. That is all about that?
A. Yes.
Q. You state that you perceived the Judge was sober.
A. I get my ideas from external perceptions.
Q. You perceived that he was sober.
A. I perceived so.
Q. You got that idea simply from your observation,that you thought he was sober.
A. I got that observation from the condition of my mind through my external senses.
Q. From the conviction of your mind?
A. Through my external senses.
Q. You simply got up and looked at the Judge did you, and perceived that he was sober?
A. How do you know I stood up. I didn't so state?
Q. Then you sat down and looked at the Judge and saw that he was sober.
A. I was sitting when I saw him.
Q. Then you sat down and looked at the Judge and perceived that he was sober; is that what you mean?
A, I mean that was the position I held in the court when I perceived that he was a sober man.
Q. When you perceived that he was a sober man?
A. Yes.
Q. How far were you from him?
A. I was as about as far as from here to the Honorable Senators, in the first row, and he would occupy that position. [Indicating the position occupied by the Presiaent *pro tem.*]
Q. Did you have any conversation with him from the position you occupied?
A. No, sir.
Q. Did you have any conversation with him during that court, except while you were on the witness stand, while he was on the bench?
A. Oh, yes.
Q. Do you mean in the court house? while he was on the bench,was the way I asked the question.
A. Once I was on the witness stand, and he explained a question to me.
Q. I say except while you were on the witness stand; my question was directed to times other than while you were on the witness stand.
A. You do not now include that there would be a conversation in any other places beside the court?
Q. No, sir; simply while he was on the bench, and you in the court house, did you have any conversation with him while he was on the bench, except such conversation as might occur between a witness and a judge?
A. I shall not understand your question to limit that I did not speak to him outside?
Q. I said while he was on the bench; you certainly understand me; I said while he was on the bench, while he was presiding in court on the bench?
A. Whilst he was presiding?
Q. Yes.

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A. Just at one time.

Q. You had no conversation except while you were on the witness stand?

A. Yes; and I doubt if I spoke to him then.

Q. Did he address any remarks to you?

A. He did.

Q. While you were on the witness stand?

A. He did.

Q. And asked you a question?

A. No, sir.

Q. Well, in what respect?

A. It was in respect to a definition. One of the lawyers put me a question that I did not understand rightly; and in order to understand rightly, and in order to understand before I answered the attorney in the case, I requested him to explain it.

Q. You requested the attorney to explain it?

A. Yes, sir.

Q. Well, what did the Judge do?

A. The Judge listened to him.

Q. Did he have any conversation with you?

A. The Judge gave me a definition of the same word, and then I answered the question.

Q. Right in court. He gave you the definition of the word, in court?

A Yes.

Q. And that was all the conversation you had with the Judge, was it?

A. During that term, in court?

Q, In court?

A. Yes.

Q. Then all your observation is that you perceived the Judge while he was in court, and while you was sitting down and looking at him?

A. No; by his language.

Q. Well, what was there in his language that you perceived?

A. I cannot give it.

Q. Can't you give us anything about it?

A. No.

Q. You say there was a young attorney in the court on the 5th day of April when you were there, to whom Judge Cox was very courteous, did you?

A. I have not made that statement.

Q. And another one to whom he was sarcastic? Is that correct?

A. He made a sarcastic remark.

Q. Now, give me that remark, if you please?

A. I can't do it; I forget it.

Q. Well, why do you think it was sarcastic?

A. Because my judgment,—drawing my conclusion from the Judge's premises in the case, I understood the language—

Q. But you can't give the language? A. No, sir.

Q. Well, give me the substance of it, if you can't give the language.

A. It is so long, and the case was an indifferent one to me, sir. I had no interest in it except as a listener.

Q. You drew the conclusion that it was sarcastic, and that the other was courteous. Now, what was the substance of the language that was sarcastic?

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A. I can't state the substance of the courteous language, neither can I state the substance of the sarcastic language; I don't remember.
Q. Do you know the name of the attorney to whom the courteous language was directed?
A. I do not.
Q. Do you know the name of the attorney to whom the sarcastic language was directed?
A. I do not.
Q. On the 3rd day of April—you testify that Mr. Lewis was your attorney in that case?
A. Yes, sir.
Q. You were the defendant in the case? A. Yes.
Q. How far from the court house in Waseca were you stopping during that term of court on the third day of the term?
A. Honorable Manager, may I understand now when I give my assertion that it will not be a definite measurement, only approximately?
Mr. Manager DUNN. Oh, of course.
The WITNESS. I was stopping,—you mean where my hotel was?
Q. Yes, yes; your hotel.
A. During this term of court?
Q. Yes.
A. My hotel was about as far from the court house in Waseca as the German Catholic church is from this court room. [Something more than a block.]
Q. Was it the same hotel that Judge Cox was stoppiug at?
A. No, sir.
Q. What time did you arrive at the court house on the morning of the 3rd of April?
A. Before court was called.
Q. The Judge came in and took a seat on the bench, didn't he, and the court was regularly opened?
A. I recollect the Judge stepping into the—
Q. Do you recollect court being opened that morning?
A. I do.
Q. Who opened the court?
A. Mr. Murphy.
Q. And then Mr. Power took the witness stand, did he?
A. Just when the court was opened?
Q. Yes.
A. Oh, no.
Q. Well, what was the first thing done, when court was opened?
A. I think the lawyer—I know they had some law-points.
Q. What were those law points?
A. I can't state.
Q. Can you give the substance of them?
A. No.
Q. Were they in that case?
A. Yes, they were in that case.
Q. How long did that occupy?
A. Up until about nine o'clock.
Q. Then who went on the witness stand, if anybody?
A. Mr. Power.
Q. Who commenced to examine Mr. Power?

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A. My attorney.
Q. Mr. Lewis?
Witness nods assent.
Q. He was cross-examining him, was he?
A. Yes, sir.
Q. How long did he cross-examine him?
A. The court adjourned, I presume about 10 o'clock. I think a little after ten, and Mr. Power was examined until sometime before the court adjourned. The attorneys had some little discussion at the time; they were talking about the motion; and Judge Cox had made some remark to Mr. Collister about delaying the court, I couldn't state it.
Q. What was the remark?
A. I couldn't state the remark; I heard Mr. Murphy giving testimony here in court.
Q. Well, never mind, I don't care anything about his testimony; then you went up to Mr. Lewis, and what did you tell him?
A. At that time?
Q. Yes.
A. No; Mr. Lewis was beside me at that time; I did not rise.
Q. Well, when Mr. Lewis was examining the witness you went up to him did you?
A. Oh, no; I never do such things.
Q. Well, when was it you told him about getting an adjournment?
A. At the time I stated to Mr. Arctander.
Q. State it again to me if you please?
A. I shall sir; when he went up to examine the witness.
Q. Before he went up to examine the witness you told Mr. Lewis, as I understand you, that you wanted him to go and crowd the witness, or words to that effect?
A. That will be the meaning of it.
Q. Can you give me the language you used to Mr. Lewis?
A. Well, I cannot give the exact language; I can give the meaning of my idea.
Q. What was your idea?
A. I told him to go and examine the witness quickly, and that Mr. Collister—
Q. What do you mean by quickly; put his questions quickly to him; in other words, to excite Mr. Power, to take some advantage of him, do you mean?
A. Well, you might so consider it in your legal terms.
Q. That is what you meant was it not?
A. Draw out his intellect a little.
Q. To muddle him up and confuse him was it not; didn't you want him to testify to something that wasn't straight, or the truth?
A. Oh, no; I wouldn't want a man to swear to an untruth.
Q. Well, what did you want Mr. Lewis to go up there and crowd and examine him quickly for?
A. I just wanted Mr. Lewis to go up there and examine Mr. Power, not for anything that he would take out of Mr. Power to my advantage, but merely to draw Mr. Collister's attention to the fact.
Q. To what fact?
A. To Mr. Powers' statements, and to Mr. Lewis' manner of proceeding with the witness.
Q. Well, why were you interested in drawing Mr. Collister's attention

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to the witness; isn't Mr. Collister a pretty intelligent lawyer, so that he could see for himself?

A. Mr. Collister is a very good attorney.

Q. So Mr. Lewis got up and began to crowd the witness at your suggestion?

A. He did.

Q. And he examined him about an hour that way, did he not, before Mr. Collister took notice of it?

A. Oh, no.

Q. Well, how long?

A. Well, I have just stated, from about 9 o'clock until sometime before 10, I suppose.

Q. How long before 10?

A. I just stated some time, a short time before 10.

Q. Well, was it a quarter before 10?

A. It might be.

Q. Then three-quarters of an hour he pursued that witness before Mr. Collester paid any attention to it, did he?

[No audible answer.]

Q. From 9 until a quarter to 10 o'clock he crowded and persecuted him, did he; is that a fact?

A. That is a fact.

Q. And then Mr. Collester struck in and thought his witness was being abused?

A. Well, now, you stated so; I didn't so state.

Q. Well, is that so, or not?

A. Well, Mr. Collester read some passages from one of his legal books.

Q. To whom was he reading that?

A. He was reading that to the Judge.

Q. While Mr. Lewis was examining a witness?

A. Oh, no.

Q. Now, did he ——

A. I beg your pardon, Mr. Manager; if you put your questions slowly they won't excite me.

Q. You don't want to be questioned as Mr. Power was, do you, or *you* will get muddled. Well, now, Father Hermann, there were three-quarters of an hour elapsed from the time Mr. Lewis commenced examining that witness until Mr. Collester interposed. Now, what did Mr. Collester say when he interposed there?

A. Some time very near the termination of Mr. Lewis' cross-examination he came back and took up one of his books,——

Q. Did Mr. Collester interpose before Mr. Lewis finished his cross-examination of Mr. Power?

A. Oh, I have stated that he interposed before that; he went on again and asked some questions.

Q. You were going to say that some time before or after Mr. Lewis closed his cross-examination,—which was correct?

A. Please repeat that question again?

Q. You stated that some time afterwards, as I understood you, that Mr. Lewis closed his cross-examination, Mr. Collester went over and picked up his law book?

A. No; you will get through this better if you wouldn't try to play that.

Q. Which was it, before or after?

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A. Before what, sir?

Q. Before Mr. Lewis closed the cross-examination, sir?

A. I said he asked Mr. Power some questions when Mr. Collester had concluded his reading and remarks to the Judge. He asked him some questions again.

Q. Now, when did that reading and remarks to the Judge take place? Did it take place before Mr. Lewis commenced to cross-examine him or after he stopped examining him?

A. I have just stated.

Q. Well, I didn't understand you. State it again, so that we can understand it.

A. A short time before he closed.

Q. A short time before he closed? A. Yes.

Q. Well now, were Mr. Collester's remarks to the Judge addressed by reason of any objection that he raised to Mr. Lewis's question or otherwise?

A. It was a little in reference to his manner of proceeding with the witness, and some objection he took—

Q. Mr. Collester then objected, did he, that Mr. Lewis was not pursuing a proper line of cross-examination?

A. Something to that effect.

Q. And that was about a quarter to ten o'clock, was it?

A. Sometime before the court adjourned.

Q. Well now, what did the Judge say in answer to that?

A. He said,—do you want me to state his language or the meaning?

Q. I want to know what the Judge said in answer to the statement that he was cross-examining the witness improperly, when Mr. Collester first made his objection and read the law. What did the Judge say?

A. He told Mr. Lewis to proceed.

Q. Then he did proceed, did he?

A. He proceeded.

Q. How long did he proceed and continue?

A. I presume a long time; I was not interested so much in keeping the dates. He proceeded some moments.

Q. Then what took place?

A. What took place when Mr.—

Q. Yes, after you say he proceeded some moments, then what took place after that?

A. Mr. Collister made some remark.

Q. What did Mr. Collister say?

A. I cannot state.

Q. Well, give us the substance of what he said?

A. I could not state.

Q. Well, then what took place after Mr. Collister made that remark?

A. I think Mr. Collister retained the book in his hand; I cannot state whether he went back the first time he read to the legal table or not. If he retained his law book in his hands he may have made some quotations from it.

Q. Well, then, what took place after he made his quotation?

A. If he did; I can't state whether he did or not.

Q. Well, if he did or did not, then what?

A. Then Mr. Lewis came down to me and handed me that—

Q. Handed you what?

A. Handed me a brown wrapper.

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Q. How did Mr. Lewis get the brown wrapper, do you know?
A. He had torn it off from the roll of papers.
Q. Did he get it before Mr. Collister got through quoting his law or afterward?
A. He was reading or engaged in speaking, I can't state; he had the book in his hand.
Q. Who?
A. Mr. Collister.
Q. Well, did Mr. Lewis get the brown paper or wrapper while he was pursuing his cross-examination of Mr. Power, or did he get it afterward?
A. Oh, he couldn't have got it while he was cross-examining Mr. Powers.
Q. Well, then, he got it afterward, did he?
A. He got it afterward.
Q. Well, how long afterward did he get it?
A. Between the time Mr. Collister began to read until he finished his explanations.
Q. Well, about how long did that occupy?
A. I couldn't state; it was some time before the court adjourned.
Q. Well, now, Father Hermann, didn't he get that paper from you?
A. Who, Mr. Lewis?
Q. Yes, sir. A. No, sir.
Q. Didn't you hand him that paper yourself?
A. Oh, do you mean when I returned it?
Q. Yes, sir; didn't you give that paper to Mr. Lewis yourself?
A. Now ———
Q. Didn't you take it from Mr. Collister's papers and give it to Mr. Lewis?
A. Will you just put the question, if you please?
Q. Now, you know what I mean.
A. No, because your language is not clear.
Q. Did you not take that paper, which you call the brown wrapper, from Mr. Collister's papers and give it to Mr. Lewis yourself?
A. Take it out of his papers?
Q. I say, take it from his papers? A. No, Mr. Manager, I did not.
Q. How did you get the paper—you read it? A. I read it.
Q. How did you get it? A. I got it from Mr. Lewis.
Q. When did you hand it back to Mr. Lewis?
A. Just when I had read it.
Q. Then, after Mr. Lewis read that paper he made the motion for an adjournment, did he?
A. I stated it differently.
Q. Well, how was it?
A. He made the motion for the adjournment, and it was not granted.
Q. Well, he made the motion for an adjournment as soon as he read that paper, did he not?
A. Oh no, I didn't state that.
Q. Well, he read it shortly after?
A. Shortly after.
Q. Shortly after he read that paper there Mr. Lewis made the motion for an adjournment?
A. Shortly after, yes sir.
Q. But you say he did that at your suggestion?
A. That he made the motion at my suggestion?

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Q. Yes.
A. I can't understand this word *that* so often repeated because it may refer to various things.
Q. I used the word *that* referring to the motion; he did that at your suggestion?
A. He made the motion at my suggestion, yes.
Q. What did you say to him when you suggested that you wanted him to make that motion?
A. I told him to call for an adjournment of the court until we could get a witness from Janesville.
Q. Did you want a witness from Janesville?
A. Yes, I wanted a witness from Janesville.
Q. Well, what was his name? A. Mr. Coughlin.
Q. Did he live in Janesville?
A. He resided in Janesville.
Q. Did you know he was there?
A. I had presumptive evidence he was there.
Q. Did you afterwards get him in the case?
A. I got him in the case.
Q. Had he been subpœnaed at that time?
A. There was no subpœna ever issued for him that I know of.
Q. Did you subpœna him that day?
A. I don't know as he ever got a subpœna in the case.
Q. How did you get him there?
A. Sent for him.
Q. When? A. Sent for him in the afternoon,
Q. Did you get him that afternoon?
A. I cannot state.
Q. Are you sure you sent for him that afternoon?
A. Oh, yes.
Q. By telegram or letter? A. By messenger.
Q. And it was because you wanted him to testify and because of matters you had learned from reading that brown paper, was it not?
A. No.
Q. Well, what was it?
A. I wanted him to hear Mr. Power's evidence.
Q. Hadn't Mr. Powers testified the day before in chief?
A. Yes; he had testified before in that case.
Q. Didn't he testify the day before, on the second day; was he not witness on the stand almost up to 11 o'clock?
A. He was the witness on the stand all the evening session.
Q. Well, up to eleven o'clock, wasn't he?
A. Until about 11 o'clock.
Q. You didn't know you wanted Mr. Coughlin, until you had read that brown paper?
A. Yes, I knew I wanted him before the case commenced.
Q. You knew you wanted Mr. Coughlin there to hear Mr. Powers' evidence?
A. I knew I wanted Mr. Coughlin from the beginning, before the case began.
Q. Then it was not because of anything you read in that brown paper that you wanted him?
A. No.
Q. Then the brown paper didn't cut any figure in the case at all: did it?

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A. It did; a very important one, sir.
Q. Was it on account of Mr. Coughlin?
A. No.
Q. What figure did it cut then?
A. This Mr. Coughlin had been a carpenter under Mr. Power, and I wanted him to give testimony about building the church.
Q. Well, you knew that from the beginning, didn't you?
A. I knew that before the case commenced, sir.
Q. Well then what figure did the brown paper cut; didn't you testify here that a few minutes after you read that brown paper you found you had to have another witness?
A. Oh, I had to have many witnesses.
Q. Now I want to know the name of your other witnesses.
A. I didn't want him about the brown paper.
Q. What witness did you want, about the brown paper?
A. I wanted the trustees of the church.
Q. Who were they?
A. Mr. Campbell, Mr. Ryan and Mr. Cunningham.
Q. Where did they live?
A. They lived in the town of Byron, Wilton and Freedom, Waseca county, Minnesota.
Q. They were the witnesses you wanted to make out your defence, were they not?
A. They were.
Q. Didn't you know you wanted them when the case was commenced? Didn't you know you wanted the trustees of the church, about which this whole controversey was, at the time you went into your defence in that case?
A. No.
Q. The brown paper was the matter that brought that up was it?
A. I was sued personally, and not the trustees.
Q. The brown paper then called your attention to the fact that you wanted those trustees, because you were sued personally and not they?
A. Because I knew there was going to be another set of plans introduced, besides the one that Mr. Powers had contracted to build the church by. Mr. Powers was going to show another set of plans there in evidence.
Q. Did you know that before you read that brown paper?
A. No, that is where the case turned.
Q. Didn't Mr. Powers bring an action against you there for services for building the church according to a certain plan?
A. He did.
Q. Didn't you set up in your answer that it was built according to the plan you furnished him?
A. Yes, sir.
Q. Did he reply to that and say that it was according to another plan?
A. I have forgotten how he pleaded or what his pleadings were.
Q. Did you send for those witnesses?
A. Yes sir.
Q. Did you get them there?
A. I got them there.
Q. Did they swear in the case, were they witnesses in the case?
A. Mr. Campbell swore and Mr. Ryan swore.

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Q. What day did Mr. Campbell swear?
A. Well, I can't state now, it is a difficult thing to remember, sir.
Q. Did you send for him that day?
A. Yes, we sent the sheriff for him.
Q. You sent the sheriff for him the second or third day of April, which was it?
A. In the afternoon.
Q. Of the second or the third?
A. Of the third of April.
Q. Are you sure of that?
A. This is the day you are talking of.
Q. Your case was called upon the second, the day of the adjournment; was that the afternoon you sent for him?
A. You know as well as I.
Q. I am asking you if you sent for him on that day, the third.
A. Yes sir.
Q. You sent for the other trustees, did you?
A. I sent a private messenger for them.
Q. The same day?
A. Yes,
Q. How long did you remain in the court room after that case?
A. Will you please repeat that question to me,—I did not understand you right about sending for those witnesses.
Q. I asked you if you sent for those trustees on the 3rd day of April, the same day that the adjournment took place?
A. Yes, sir, I sent for them that day.
Q. Whom did you send?
A. The sheriff.
Q. For all of them?
A. I couldn't state, sir.
Q. Which sheriff?
A. Mr. Keely.
Q. Did you send for them, or did your attorney send for them?
A. I sent for them and my attorney did.
Q. Well, your attorney did the business for you, didn't he?
A. Yes, sir.
Q. You didn't have anything to do with sending for them personally, did you?
A. Well, as we speak of those things.
Q. Did you get a subpoena for them?
A. The Sheriff got a subpoena for them.
Q. Now, do you know that to be a fact?
A. Oh, yes.
Q. Did you ever see the subpœna? A. No.
Q. Well, how do you know it?
A. I know they drew their pay.
Q. Well, how do you know there was a subpæna issued for them, if you never saw the subpœna?
A. There are two ways of knowing things; one is by observation, and the other is by knowledge derived from others. I know that the city of Constantinople exists, although I never saw it. I know it exists on good authority.
Q. That is not the way we know things in legal parlance; is that the way you know this subpœna was served, because somebody told you?
A. Yes, quite a reliable authority told me.

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Q. Is that the way you know Judge Cox was sober, because somebody told you?
A Oh, don't ask me such a question.
Q. I want you to answer my question.
A. No, sir; I wouldn't answer that question.
Q. Well, you needn't answer that question unless you want to. Now which of these three witnesses were sent for?
A. All three of them were sent for that afternoon.
Q. How long did you remain in the court room after the court adjourned in the morning?
A. Just while I was taking up my papers, and assisting Mr. Lewis in doing the same.
Q. And then you and Mr. Lewis went out together, did you?
A. No.
Q. You went out of court alone? A. Yes.
Q. Did you go with the Judge? A. No.
Q. The Judge went out before you, did he? A. Yes, sir.
Q. Did he go out, or did he go into the clerk's room?
A. I think there is no room for the clerk there in that court room.
Q. Is there a room down stairs where the clerk stays? A. Yes.
Q. Did the Judge go in there?
A. I didn't see him; only going down stairs.
Q. When did you see Mr. Hayden go down stairs?
A. I didn't see him go down.
Q. You don't know whether he went down or not, do you?
A. Oh, of course he went down.
Q. He was in the court room, you say, when you went down?
A. Yes, sir.
Q. And the Judge had gone?
A. The Judge had gone.
Q. You were sworn in that case on the 4th of April as a witness, were you not; the day after the adjournment?
A. It is so very long, it is two years, and it is pretty hard for me to remember those court records.
Q. Was it before or after the adjournment?
A. Oh, I must have been sworn after Mr. Power.
Q. There was some paper shown you for identification, was there not?
A. I think there was a specification shown me.
Q. Wasn't there a letter shown you from Bishop Grace?
A. No.
Q. Eh? Do you swear there was not?
Mr. ARCTANDER. We object to that as immaterial and irrelevant and not proper cross-examination.
Mr. Manager DUNN. Well, it is proper cross-examination; we have a right to test this witness upon any spot and corner of his remembrance of that transaction.
Mr ARCTANDER. Well, we will take the ruling of the court upon it.
The PRESIDENT *pro tem.* What is your object?
Mr. Manager DUNN. The object is to test the recollection of this witness; a witness who comes here and testifies so particularly and point blank about these matters which transpired on the first, second, third, fourth and fifth days, and about the eminent sobriety of the Judge; we

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have a right to know what he knows about other things connected with that case.

The PRESIDENT *pro tem.* You may answer that question.

Q. Was not there a letter shown you?

A. The time, if you please.

Q. At the time you were being examined as a witness in that Power vs. Hermann case.

A. Yes.

Q. There were some papers, you say, shown you for identification?

A. Yes. Now, if you get your questions straight and in good firm language, I can answer right off.

Q. Well, we don't get them that way, Mr. Arctander does that, and you can answer, yes or no.

The WITNESS. Now, please put the question again.

Q. You say there were some letters offered to you for identification while you were on the witness stand?

A. Some letters? No, I didn't say some letters.

Q. Well, some papers. Now, I ask you if there was not a lettrr shown you, written by Bishop Grace?

A. Will you please define what you mean by showing.

Q. Well, did you see it; did you see a letter there, written by Bishop Grace?

A. You ask me a strange question.

Mr. ARCTANDER. Well, answer it as near as you can.

THE WITNESS. Well, I couldn't say whether that was a letter of Bishop Grace's or not; there was a letter held up to me.

Q. Who held it up?

A. Mr. Collister; he only said he had a letter from Bishop Grace, and presented it to the Judge to admit it as evidence.

Q. Was it shown to you?

A. It was shown to me in as much as it was held up in the attorney's hands at a distance from me.

Q. Wasn't it shown to you to identify as Bishop Grace's handwriting?

A. No, sir; it was not admitted into court, therefore, it could not be shown to me.

Q. Did you read the letter?

A. I told you—

Q. Did you read it?

A. Did I read it?

Q. Yes, sir.

A. No, sir.

Q. At that time or any other time?

A. Or at any other time. I did not read it at that time.

Q. Whom was the letter addressed to?

Mr. ARCTANDER. Well, we object to that.

Q. Whom was the letter addressed to, if you know?

A. I do not know, because I was not near enough to identify the handwriting, nor to read it.

Q. Well, now, isn't that a letter that we have been speaking of here, that you say that the attorney held up and said was from Bishop Grace; isn't that the letter which you took instead of that brown paper you are speaking about?

A. This letter was not presented at that time; this letter was not presented until—

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Q. Isn't that the letter you took and read?
A. No.
Q. That you took instead of the paper with the brown wrapper which you have been testifiing about?
A. No.
Q. Aren't you mistaken about that?
A. No, sir.
Q. You can't possibly be mistaken?
A. No, sir.
Q. You are just as certain of that as you are that Judge Cox was sober at that time?
Mr. ARCTANDER. We object to that as having been ruled out by President Gilman. Upon the first day when I asked a witness, if he was just as certain of that as of anything else he had testified to, it was ruled out.
Mr. Manager DUNN. If you object to it, I will withdraw the question.
Q. When you say Judge Cox was perfectly sober upon these three or four occasions, I suppose you mean to be understood, that you saw nothing to indicate in your judgment, any other state or condition.
A. Neither in his language or demeanor.
Q. That is what you mean by that?
(Witness nods assent.)
A. Nor his appearance.
Q. Now, Mr. Hermann, I want to know if you had any conversation with James B. Hayden, the clerk of the court, about that brown wrapper or brown paper, which you have been testifying to here, and which you claim was the cause which moved you to ask for a continuance of that case on the third day of April. Have you had any conversation with James B. Hayden about that paper since that time?
A. Never.
Q. Or with any other person?
A. Oh, yes.
Q. Well, whom?
A. A good many.
Q. Well, who? A. I had a conversation about it with the attorney of Judge Cox.
Q. When? A. Upon two occasions.
Q. When were they? A. During the session of this court.
Q. I want to know if you did not state to James Hayden, the clerk of the court, and in presence of some other person, whose name I have not now got, that you saw the letter lying on the table after you had been excused from the witness stand, in the case of Power against Hermann, that you saw this letter lying on the table, and picked it up and put it in your pocket, thinking that it was your letter, and that you had a right to, and stating at the same time that you thought it was providential that the letter lay where you could get it, or words to that effect?
A. I could not make any such statement.
Q. I did not ask you whether you could or not; I asked you whether you did?
A. I did not.
Q. Neither to Mr. Hayden or to any one else?
A. No; I never made any such statement to Mr. Hayden.

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Q. Neither to Mr. Hayden nor to anyone else?
A. That I picked the letter up?
Q. Did you make that statement, or words to that effect?
A. Please repeat it again.
Q. The question is whether you stated to James Hayden, or any other person, that when you were excused from the witness stand, or at that time, that you saw the letter lying on the table, and took it and put it in your pocket, thinking that it was your letter and that you had a right to, and that at the same time you stated that you thought it was providential that the letter lay where you could get it?
A. No.
Q. You speak of a brown wrapper; was there a letter inside of that wrapper?
A. No.
Q. It was simply a piece of brown paper, was it?
A. Yes, sir.
Q. Simply a piece of brown paper; was it an envelope—is that what you mean by a wrapper?
A. No, sir; a piece of brown paper torn from around some plans which had been passed through the mails.
Q. Was there anything on that wrapper?
A. Yes, sir.
Q. How many lines of writing?
A. The address, the man's name.
Q. Whose address?
A. Patrick Power.
Q. How many lines of writing?
A. Patrick Power, Esq., Janesville, Waseca county, Minnesota.
Q. That is all there was of it, was it?
A. Post-mark and stamp.
Q. There was no other writing on the wrapper than that, was there?
A. Yes.
Q. There was other writing? A. There was.
Q. How many lines?
A. On the reverse side was "Rt. Rev. Thomas L. Grace, Bishop, St. Paul, Minnesota."
Q. Was there anything else on it?
A. That is all; postage stamp and mailing office.
Q. Now, that is what that wrapper was, was it?
A. That is what it was.
Q. It contained on one side the address of Patrick Power, Janesville, Minnesota, and on the reverse side "Rt. Rev. Thomas L. Grace, Bishop, St. Paul, Minnesota?"
A. Yes, sir.
Q. There was nothing else connected with that except these two writings, was there?
A. Yes, there was.
Q. I mean, nothing else written except that?
A. Now you have it.
Q. There was nothing else written on it?
A. That was all.
Q. You knew in whose handwriting they were, both of them, did you?
A. No; I knew Bishop Grace's handwriting.

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Q. Well, was the address to Patrick Power in Bishop Grace's handwriting?

A. The address "James Power, Waseca county," was in Bishop Grace's handwriting.

Q. In whose was the other?

A. That I don't know. I presume it was Mr. Power's; I am almost certain it was.

Q. Now it was because you found that paper with those two writings on it, that you concluded you wanted an adjournment, was it; and you wanted the trustees of the church—?

A. Yes.

Q. And that was all the writing there was on it?

A. That was all.

Q. Was that wrapper lying loose by itself?

A. It was connected with the papers.

Q. Connected with what papers? A. Mr. Collister's.

Q. Well, was the wrapper lying loose; did it contain anything inside of it, or was it simply a loose wrapper lying there?

A. Did it contain anything in itself whilst it lay on the table?

Q. Yes, that is it. A. No, sir.

Q. You simply took up that wrapper, or Mr. Lewis handed it to you, you say?

A. Yes.

Q. Mr. Lewis handed you that wrapper? A. Yes.

Q. Then you state, that upon the mere perusal of that wrapper, you stated to Mr. Lewis that there had got to be a consultation, and that it opened a new field entirely; is that your idea?

A. That is my idea.

Q. Merely upon a perusal of that wrapper,—

(The WITNESS, interrupting). Mr. Manager, I beg leave to call your attention to a question you asked me; you asked me if I got any letter from Mr. Power.

Mr. Manager DUNN. I never asked you that.

The WITNESS. Something to that effect.

Mr. Manager DUNN. I have never asked you that.

The WITNESS. Well, I want to correct myself if I have made a misstatement; that is why I call your attention to the fact.

Mr. Manager DUNN. I have not asked you any such question that I remember of.

Q. Father Herman, you may state whether you saw Judge Cox at any time during that term of court drink any liquors of any kind?

A. I did not.

Q. Neither in court, nor out?

A. Neither in court nor out.

Q. You drank nothing with him yourself? Wasn't present at the time he was drinking either, was you?

A. No.

Q. So you don't know that he drank a drop during the whole term of court?

A. I never saw him drink intoxicating liquor of any kind.

Q. You wasn't with him much, was you? A. No.

Q. Simply what you saw of him you saw in court?

A. Yes; I saw him at another time.

Q. Where was that?

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A. Another occasion, at the depot, when I was going to Janesville.
Q. That was when he was going away.
A. No, he was taking a morning walk, to the best of my opinion.
Q. How did that case of Power against Hermann terminate?
A. I won the case.
Q. You won the case? A. Yes, sir.
Q. You had two or three law suits there at that time didn't you?
A. I had a lawsuit about the real estate property of the church of St. Mary I think every term of court for four years.
Q. I mean at that term of court?
A. That term I had, representing Bishop Grace or the church property; I had three there.
Q. You haven't much experience with men that get drunk, have you?
A. Oh, yes.
Q. Well, I mean you don't have much association with them,—personal experience?
A. What do you mean by association sitting down and drinking with them? or merely go to see them while they are drunk. or speak to them kindly, or take them home; is that it?
Q. Well, I don't mean in the performance of your duties in your parish, as parish priest; I mean socially?
A. No.
Q. Of course, I understand that a parish priest deals with all kinds of people. I believe that is all.

CROSS-EXAMINATION.

By Mr. ARCTANDER.
Q. Father Hermann, I ask you to state whether or not, in this statement about the witness that was needed from Janesville to hear Mr. Power's testimony, you mean to he understood that that was the reason why you wanted an adjournment, or that was given as excuse for an adjournment?
A. That was an excuse for the adjournment.
Q. Now, I desire to ask you whether or not it was a fact that there had been two plans and specifications made as to the building of this church that the lawsuit was about?
A. There had.
Q. You claimed that it was under one, that was the less expensive, did you?
A. No, claimed it was built upon one that was the most expensive, —that the contract was for the most expensive one. I claimed that the contract for the building of the church, executed by Mr. Power, was for the more expensive plan.
Q. Well, did it cost any more, or do you mean more elaborate, a finer church?
A. Oh, it would cost about $800 or $900 more than the other.
Q. It was a more elaborate plan,—a more elaborate building?
A. Yes.
Q. He claimed that it was built under another plan?
A. Yes.
Q. He claimed also that the bishop had to approve the other plan was that a part of what he claimed?
A. I couldn't make that statement, but there were two sets of plans allowed in court.

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Q. And the questions was which one it was built under. Which one was the proper subject of the contract?

A. Yes sir.

Q. What was it you wanted to explain about a letter?

A. My imagination seems to show that the counsel asked if I had received any letter of Bishop Grace from Mr. Power, and I think I said no.

Q. Well, did you desire to correct that?

A. I desire to correct that. I received a letter of Bishop Grace's with my private account book, from Mr. Power, not from his hand, butthey were sent by express, on a stipulation.

Q. Letters that he had got into his hands some way or other, and you got them back from him?

A. I had my private account book in the vestry of the church in Janesville, some letters belonging to Bishop Grace; the account book was lost,—gone and these letters.

Q. You got them back again afterwards from him?

A. Yes, sir; I had him arrested for theft.

By Mr. Manager DUNN.

Q. Had Mr. Power arrested?

A. Yes, sir. I didn't, you understand, get them from Mr. Power's hand, but I got them from the express.

By Mr. ARCTANDER.

Q. Now, I will ask you to state, whether or not, as parish priest, you come in contact with drunken people more or less by reason of your duties?

A. Yes, I come in contact witk them very often.

Examined by Mr. Manager DUNN.

Q. You say that the excuse given for the adjournment, was that you wanted this witness to hear Mr. Power's testimony?

A. Mr. Coughlin?

Q. That you wanted a witness to hear Mr. Power's testimony,—that that was the excuse given for the adjournment, was it?

A. The motion proposed to the court for a witness?

Q. Well, you just testified that the excuse given for the adjournment was that you wanted a witness to hear Mr. Power's evidence?

A. No, that was not stated in court.

Q. Well, I am asking you whether that was the excuse given in court,—the excuse given by you to your counsel.

A. I told him to make a motion in court at the time court adjourned, to get a witness from Janesville.

Q. Well, the counsel asked you the question, whether you wanted a witness in court, or simply a witness to hear Power's testimony, as I understood the question; you say that was an excuse for this adjournment? Do you wish to be understood that the excuse was given in court?

A. He proposed to have an adjournment for a witness.

Q. Did you say that he wanted him to hear Mr. Power's testimony?

A. No.

Q. Then the excuse was the excuse given between you and your counsel and not between Lewis and the court?

A. It must have been between Lewis and the court.

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Q. Did Mr. Lewis state that to the court that he wanted a witne to hear Mr. Power's testimony.

A. No, he wanted an important witness from Janesville.

Q. You are sure that was Mr. Lewis that made that motion, and n Mr. Collister.

A. I am sure.

Q. Perfectly positive?

A. Perfectly positive.

Q. Well, if Mr. Lewis and Mr. Collister both say that it was not, yo would still stick to it that it was, would you?

A. I would, because I recollect the matter so well.

Q. You know they do both say to the contrary don't you.

A. If you swear they say so I shall believe it.

Q. Have you read their evidence?

A. No.

Q. Don't you know what these two men testify to?

A. I read an abstract in the newspaper.

Q. Don't you know that both testify that Mr. Collister made th motion and asked for the adjournment instead of Mr. Lewis?

A. No, I think they did not. I think Mr. Collister testified that M Lewis made the motion.

Q. You do?

A. That is my impression.

Q. That is the way you remember it?

A. It is my impression it was so.

Q. That is the way you remember it? A. Yes.

By Senator GILFILLAN, J. B. Mr. Witness how many days were yo present at that Waseca term of court in 1879.

A. Will you allow me a pencil and some paper, or I can name ou the days for you.

Q. No, you can state from recollection; the number of days.

A. Well, I was present on the 27th,—during that term of court, d you say Mr. Senator? On the 27th of March, the 28th of March, th 29 of March, the 2nd of April and part of the 3rd, 4th and 5th o April.

Q. About 7 days in all—or six and a half?

A. These days I have named to you.

Q. That would be about six and a half days, consecutive days?

A. They could not be consecutive days, sir.

Q. Excepting the one-half?

A. Mr. Senator, they are in different months, they could not b consecutive days; so please put the questions in a different way.

Q. Now during any of those days was your attention, or mind, call ed to the consideration of the question whether the respondent was a all under the influence of intoxicants or had been drinking?

A. No.

Q. When after that was your attention or your mind first called to a consideration of that question, and where and by whom?

A. By the assembling of the Senate of Minnesota,—the report in th newspapers.

Q. I understand as far as you have gone but you don't state th time.

A. Well, you know the time, you were one of the members.

Q. When was it you read this report of the proceedings in th Senate which called you attention to the subject matter?

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A. I think I read the proceedings of the House first.
Q. Well, now, when was that, or about when?
A. Oh, it was during the session that was here, the daily paper—
Q. Yes; but what session was it?
A. This last session.
Q. Was it the session which led to this impeachment?
A. Yes, sir; at this session that was called for the adjustment of the bonds.
Mr. Manager DUNN. What we call the extra session?
A. Yes.
Q. That would be then, about two years and a half after the term of court in question?
A. It would from the 27th of March, 1879, until your extra session here.
Q. You didn't then remember anything in the appearance of Judge Cox, or what you saw or heard that indicated to your mind, anything as to whether Judge Cox was under the influence of liquor?
A. I didn't notice anything in his language of demeanor that would incapacitate him from business.
Q. I say you did not at that time when your attention was called to it, at the last extra session, then remember anything which indicated that Judge Cox was at all under the influence of liquor, at the term of court in question?
A. I paid very little attention to it; I gave it very little notice.

Examined by Mr. ARCTANDER.
Q. You say you gave very little notice?
A. I gave very little attention.
Q. Was it the proceedings here in the house that you meant, or his his actions in the court, that you did not give very much attention to?
A. Why, the Hon. Senator is asking me relative to the proceedings in this House.
Q. Well, that is what I want to know,—whether you meant you did not pay much attention to the proceedings of the House?
A. Yes.
Q. Now, I would ask you to state whether or not at that time when you were at Waseca you heard and were aware of the fact that Judge Cox was reputed to be a drinking man?
A. My associations were not mixed with people during that time.
Q. I mean did you at that time, during the term, hear any remark calling your attention to the fact that he was a man that *would* drink occasionally?
A. I cannot state.

LEWIS BROWNELL

Was then called as a witness on the part of the respondent.
Mr. Manager HICKS. One moment; is the witness to be sworn on this article?
The PRESIDENT *pro tem.* I cannot state.
Mr. ARCTANDER. I think so.
The PRESIDENT *pro tem.* What article do you wish to have him testify under?

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Mr. ARCTANDER. That is on this second article, Mr. President. I will state he is a very short witness.

Mr. Manager DUNN. If he is to be sworn on article two, may it please the court, we object to any further testimony now to be taken under this article two. I do not wish to be understood as agreeing to the remarks of my friend, the counsellor for the respondent, that he made in the other argument, because I did not answer him, or reply to him. I do not understand that there is any such latitude allowed here as the counsel seems to think there is. In other words, that because there are so many articles, and five witnesses are allowed to each article, and because the management have seen fit to abandon some of the articles, that they may be allowed to call just so many witnesses, or that they may call three witnesses to one article and eight witnesses to another, or seven to another. The management were directly restricted to any greater number than five, on any one article or any specification, without allowing us to lap over at all. That was the vote taken by the Senate here upon the introduction of evidence. We were refused upon some of the articles. A vote was taken upon that point, and the rule was decided to be rigidly adhered to. If they are going to have seven upon this article, they may be allowed to have eight, ten, or fifteen on other articles. It is a matter for the Senate to determine whether they ought to allow the rule to be violated, when the management have been compelled to adhere to it strictly. Six witnesses were not sworn as to that article. The witness Blowers was called directly under article eighteen, although it was uot stated at the time in the record as to what article he was called under; the record does not disclose as to what article he was called upon. He was called under article eighteen because he was not in court at all during the time of the holding of court by Judge Cox. Mr. Blowers was not in the court-room, and we called him out of his order because he was here and wanted to get away.

Senator GILFILLAN, J. B. You don't claim his testimony then under this article?

Mr. Manager DUNN. No, sir; not under that article.

The PRESIDENT, *pro tem.* What is the pleasure of the Senate?

Senator POWERS. I have been opposed from the first to shutting out any light on either side of this investigation. I am satisfied I never voted against allowing any witness to be heard upon the part of the management; and if this witness knows anything that will give us any information, or throw any light upon the other side, I want to hear it, and I move that the witness be heard.

Which motion was seconded.

The PRESIDENT, *pro tem.* As many of the Senate as favor—

Mr. ARCTANDER. To obviate this matter being reiterated I would ask the Senator if he would include in his motion another witness on this same charge; he was a juryman who was present. His evidence will be short and so will that of Mr. Brownell. Mr. Brownell was not present at some of the time when the jurymen was present, and *vice versa.*

Senator POWERS. I move that he be heard.

Which motion was seconded and the ayes and noes were called for.

Mr. Manager DUNN. I would simply state, Mr. President, that if this rule shall be adopted, when the managers come to rebut, we should dislike very much to have the door shut against us, so that we should not be permitted to bring up the rest of the jury who were present at the time.

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The President *pro tem.* The question will be taken upon the motion; the roll will be called.

Senator HINDS. It seems to me, Mr. President, that we had better get through with this matter in some kind of system. The order that was adopted by the court when this matter was up in the early part of the session provided that the court would adhere to the rule that had already been made limiting the number of witnesses to five upon each article.

THE PRESIDENT *pro tem.* Unless otherwise ordered by the court.

Senator HINDS. That was the original order,—unless otherwise ordered by the court. When it was brought up at a subsequent time the order made was this: That the prosecution would be confined to five witnesses until they had exhausted the number of witnesses that were allowed, and that upon the close of their case, the managers or the defense would be permitted to make application to the court for an additional number of witnesses upon any article that they desired to examine by stating the name of the witnesses and the article to which their testimony should relate. The managers rested their case without making application for the introduction of any further evidence. Now, it seems to me, that if the defense desire any greater number of witnesses than five, upon any article, they should adhere to that order,—that they should make their application stating the number of witnesses that they desire to examine, in addition to those that are allowed under the order, and give the names so that the court can take up and consider that application as a whole, instead of frittering away our time with the witnesses as they are called. If we decide that this witness shall or shall not be examined, the next moment we may have the same question to decide over again upon another, and so on throughout the whole examination.

Senator GILFILLAN, J. B. I submit that if there is to be any discussion of this question it should be done in secret session.

Senator HINDS. I am not discussing the question at all, but merely the order of the business. Our rules do not permit discussion as to the admission of witnesses. I am suggesting that under the order which has been adopted we ought to require the defense to make their application in accordance with that order, and I rise to a point of order.

Mr. ARCTANDER I beg leave to call the attention of the Senator to the rule which was adopted at the time. The amendment that the Senator (Mr. Hinds) proposed himself did not have reference to the five witnesses upon each article, but to application being made after that number of witnesses had been exhausted.

Senator HINDS. The language of the rule applies merely to an excess over five upon each article.

The PRESIDENT *pro tem.* What is the pleasure of the Senate?

Senator BUCK C. F. The witnesses are already here, and it seems to me it would be very foolish to wait until the defense is through, or to go to the expense of sending for them again. So far as I am concerned I should like to find out what the condition of Judge Cox was at Waseca, and if there is any man here ready to be sworn who can testify, I am in favor of hearing him, and hearing him now.

The PRESIDENT *pro tem.* The question is upon whether this witness shall be sworn upon article two.

Senator POWERS. I beg your pardon, Mr. President, this witness and the other that they refer to, I put them both in the same resolution in order to save this waste of time again.

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The PRESIDENT *pro tem.* Can you give the name of those two witnesses?

Mr. ARCTANDER. Yes, sir; Mr. Brownell and Mr. Max Forbes.

Senator HINDS. Are there any others under this article?

Mr. ARCTANDER. No, sir; no, sir.

The PRESIDENT *pro tem.* The question then will be upon admitting the testimony of these two witnesses. The ayes and noes are called for.

Senator J. B. GILFILLAN. I move that we go into secret session.

The PRESIDENT *pro tem.* I don't think there is any necessity for doing that. The Clerk will call the roll.

Mr. ARCTANDER. I will state that I shall be prepared to-morrow morning to make an application as to the other articles and give the names of the witnesses, and if it is required, what we expect to prove by them; they are all subpœnaed already.

The Clerk then called the roll.

The roll being called, there were yeas 17, and nays 9, as follows:

Those who voted in the affirmative were—

Messrs. Adams, Bonniwell, Buck C. F., Castle, Clement, Hinds, Howard, Johnson A. M., McCrea, Mealey, Perkins, Peterson, Powers, Shaller, Tiffany, Wilkins and Wilson.

Those who voted in the negative were—

Messrs. Aaker, Gilfillan C. D., Gilfillan J. B., Johnson F. I., Johnson R. B., Langdon, Shalleen, Wheat and White.

The PRESIDENT *pro tem.* The question being on the motion, there were ayes 17, and nays 9; so the motion is adopted. The witness will be sworn.

LEWIS BROWNELL,

Sworn as a witness on behalf of the respondent, testified:

DIRECT EXAMINATION.

By Mr. ARCTANDER.

Q. Judge, where do you reside? A. Waseca.

Q. What is your profession? A. Practicing law.

Q. Lawyer? A. Yes, sir.

Q. Are you acquainted with the respondent, E. St. Julien Cox?

A. I am.

Q. Were you in attendance at his court at the term held in Waseca county, in the spring of 1879?

A. I was.

Q. State whether or not you were there during a great majority of the time of that court.

Mr. Manager DUNN. Let him state how much of the time he was there.

The WITNESS. I was there, I think, every day during the term. There was no important event in connection with this matter that was up there when I was not present, except the morning adjournment in the Power case; I was not in there then. I kept the run of the entire term, and had a good deal of business there, except that morning of the adjournment; I was not there then.

Q. Were you there in the afternoon of the day of the adjournment?

A. I was.

Q. Did you see Judge Cox there at that time?

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A. I did.

Q. State in what condition Judge Cox was as to sobriety or inebriety that afternoon.

A. Why, the Judge was entirely sober. He was looking sick, complained, I think, of a sick headache; he was looking rather pale and sick.

Q. But he was entirely sober, you say?

A. He was as entirely sober as I am now.

Q. Now on the day before, do you remember of having been engaged in the trial of the case of Rasmurson against Buckston?

A. I remember being engaged in the trial, but I could not remember the day.

Q. Do you remember the trial and of having been engaged in that as an attorney?

A. Yes, sir.

Q. State in what condition the Judge was during that day, during that trial. It is already in evidence that it was the 2d of April?

A. Why, he was sober.

Q. Were you present in court at the time when his charge was made to the jury in the case of Power against Hermann?

A. I was; I heard that charge.

Q. Were you present and did you see any other business transacted there that afternoon?

A. Well, it is three years ago and I can't give the details of that court. I can't tell you what I heard there and what I saw; I think I heard every important charge during that term.

Q. Well, I mean that afternoon, when the jury was charged in the Power case, were you present, and did you make any motions there or any of the attorneys on either side?

A. If the case, or the attorneys are mentioned, I will probably remember it.

Q. Do you remember a case in which General Edgerton and Mr. Bentley and Mr. Taylor were engaged in a motion?

A. I do.

Q. Were you present in court during that?

A. I was.

Q. Now, I will ask you to state what was the condition of Judge Cox during the hearing of the motion as to sobriety or inebriety?

A. He was sober. I can cover the whole of that business there during that term of court with one answer.

Q. All the time you were there he was sober was he?

A. He was clear-headed and sober and directed the business of that entire court with intelligence, skill and ability,—the whole of it,—a long and important term.

Q. I will ask you if you were present during the argument there?

A. Yes, I heard that argument.

Q. You heard Mr. Taylor argue, did you?

A. Yes.

Q. Did you hear any remark made by the Judge in regard to his argument, in regard to what side he was on?

A. Well, I heard this remark, I don't know whether it is what the question refers to. During the argument,—of course I can't state now whether it was a motion, or demurrer, or what it was; but there was an argument. I remember Gen. Edgerton being there and Mr. Taylor; I

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knew them both well, but never heard them in court. I sat and listened to them. But my impression is that Gen. Edgerton or someone else had been arguing and then Mr. Taylor got up to argue and was not stating the question very clearly, and the Judge turned to him and said "which side are you on?" Or "which side are you going to argue on?" I remember the remark because it came out in that way.

Q. I will ask you whether or not you had been paying strict attention to the arguments as they went along?

A. I was.

Q. I will ask you to state whether from anything said by Mr. Taylor, you could make up your mind upon what side he was arguing?

Mr. Manager DUNN. I object to that.

Mr. ARCTANDER. I intend to follow it up by showing that this witness was perfectly sober and never had drank a glass of liquor.

Mr. Manager DUNN. Well, that don't make any difference, he is not Judge yet.

Mr. ARCTANDER. I apprehend that when it has been testified here, as a matter to show the inebriety of the Judge, that he did not know as to which side Mr. Taylor was arguing upon, that it is proper for us to show that his argument was so blind that attorneys of long standing, sitting in the court and listening intently to the matter could not comprehend upon which side he was arguing at the time the Judge asked him the question. I claim that it would rather tend to show that the Judge, instead of being intoxicated was clear-headed, and knew what the conduct of the attorney was. It certainly is proper evidence. I do not know why in the name of heaven these managers are afraid of letting in the truth in this case. When the prosecution were introducing their evidence we were willing upon our part to let in everything that was in proper shape. It seems, by the way the managers of the prosecution have been conducting themselves, from the time we put our first witness upon the stand, that they are afraid to have the truth come out in this matter. I say it is remarkable, and it certainly is not good law to say that such a question is incompetent, immaterial, or irrelevant, because it tends directly to prove or disprove the charge.

The PRESIDENT *pro tem.* You may answer the question.

The WITNESS. Not clearly; his argument was not clear; it was confused.

Q. Do you say you could not understand it clearly?

A. I think I should ask the same question if I had been in the Judge's place; it was not clear.

Q. Now, Judge Brownell, I desire to call your attention to the order that the Judge made in the premises, at last?

A. I can't tell what order he made.

Q. Can you tell whether or not there was anything out of the way,—any contradictions in it?

Mr. Manager DUNN. I object to that, the witness says he don't know what it was.

The WITNESS. I didn't say I didn't know what it was, if it had been anything out of the usual order I should have noticed it.

Mr. Manager DUNN. (To witness). Do you know that is objectionable; you are a lawyer?

The WITNESS. I don't know it; I don't want to answer any questions that are not proper.

By Mr. ARCTANDER.

Q. Now, Mr. Brownell, I will ask you how long you have been practicing as an attorney?

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A. Twenty-seven years the 6th of February.

Q. Where, before you came to this State?

A. In New York; was in New York city some seven or eight years before I came here.

Q. You said you were present during every day there more or less?

A. More or less every day; several times a day.

Q. You said you had yourself some important cases there?

A. I had some important cases.

Q. I will ask you if you have been present at other terms in Waseca before and after this term and taken a part?

A. In every term since 1868, except I think in the March term of 1873; that winter I spent in California.

Q. I will ask you how the business was dispatched at that term of court as compared with other terms?

Mr. Manager DUNN. That we object to.

The PRESIDENT *pro tem.* The time has arrived under the rules, for taking a recess. Will this witness take you long to finish?

Mr. ARCTANDER. I suppose the cross-examination would take too long to finish now. He is to be called on another article anyhow, so I suppose it won't make any difference.

The PRESIDENT *pro tem.* The Senate will stand adjourned until—

Senator Gilfillan C. D. Mr. President, I would like to have a matter of business arranged before we adjourn. There are nine witnesses here who have been here several days. Under the first rule that was adopted they would not receive sufficient compensation to pay their expenses. I think we had better adopt the same rule in regard to these as was adopted in regard to a portion of the witnesses upon the part of the prosecution,—pay them four cents a mile for coming and returning, and two dollars a day while they are here.

The PRESIDENT *pro tem.* Do you make that as a motion?

Senator GILFILLAN C. D. I make that as a motion.

The PRESIDENT *pro tem.* You have heard the motion; those who favor it will say aye, contrary no.

The ayes have it.

The motion is adopted.

The Senate will now take a recess until half past two oclock.

AFTERNOON SESSION.

Senator WILSON in the chair.

LEWIS BROWNELL.

Direct examination resumed.

Senator POWERS. Mr. President. before we begin the business of taking testimony this afternoon, I wish to move that when we adjourn this evening at six o'clock, that we adjourn or take a recess until eight in the evening, with a view of having a night session. I voted to introduce this testimony, and I think we can work harder than we have been doing. I have been here three or four times, hoping to have a session on Saturday or Monday, and have failed every time, and next Saturday morning I shall go home, and I think we can work some at night.

Senator CASTLE. I second the motion.

The PRESIDENT *pro tem.* The Senate has heard the motion which has

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received a second; that when we take a recess it will be until eight o'clock this evening. As many as are of the opinion the motion should prevail, will say aye.

The ayes have it. The motion is adopted.

The examination of the witness will be resumed.

By Mr. ARCTANDER.

Q. You may state, Judge, in what manner the business was discharged during that term by Judge Cox?

A. In what respect, do you mean?

Q. In what manner it was dispatched?

A. With rapidity and correctness.

Q. I wish you would speak so the Senators can hear it.

A. It was dispatched rapidly and I think with much more than the usual degree of rapidity and intelligence and ability.

Q. All through the term?

A. Through the entire term, except that morning I was not there; I speak only of what I saw.

Q. I will ask you to state, whether or not, it was a fact that court was run during the whole of the term, night and day; I mean with night sessions?

A. There were evening sessions frequently; it was run for a full day's work, and a large amount of business transacted.

Q. Was business at any time there during any time when you were present, either trying cases or were present in court attending and looking at other cases being proceeded with,—was business any time delayed there on account of any condition of the Judge?

A. Not a minute.

Q. I will ask you to state, Judge, whether or not it was not a matter of common praise and commendation during that term the way in which the Judge had despatched business?

[To Mr. Manager DUNN.] I suppose you would object to that.

Mr. Manager DUNN. Of course, that is an objectionable question. We do not propose to try this case upon mere rumor.

Mr. ARCTANDER. I admit that the question would be incompetent and that the answer would be incompetent for the purpose of showing the way the business was transacted. I do not offer it with any such purpose, however. It would be hearsay then, and I do not offer it for that, but I offer it to lay the foundation for the testimony that I hereafter shall introduce on the part of the respondent explaining the remark that Mr. Taylor claims he made to them, which at the time rather created the inference that Judge Cox had reference to what he had seen about there, heard about his way of managing court,—that that was about intoxication on his part; that was the inference that was sought to be drawn out, and that was exactly the inference that every Senator drew from that remark. Now, I intend to show by Judge Cox hereafter that that remark had reference simply to the general praise and commendation that had been bestowed upon him for the manner in which he dispatched business at that term, and I ask this question simply to lay the foundation for it, and to show that as a matter of fact that it had really been so, and then call Judge Cox to show what the basis of that was, why he made the remark; and then I think it would be competent. I do not claim that it is competent to show that the business was dispatched in a proper manner. I do not claim that it would have any

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bearing at all, or that it would be competent to show anything of that kind, and I do not offer it for that reason. I offer it, as I said, simply for the purpose of laying a foundation, and I think the learned Manager will admit, with this explanation, that it is proper, not as showing that there was reason for commendation, but as showing the fact that there was a general commendation.

Mr. Manager DUNN. I cannot see that that lays any foundation for anything whatever. The counsel states that he proposes to call Judge Cox for the purpose of having him make a statement to parry what may be called an inference drawn from the testimony of the witness Taylor. Now there can be, of course, no objection to the respondent taking the stand, and testifying to that remark; but it would be, perhaps, very doubtful whether he can testify as to what his intention was in making that remark. If the remark was made, why it bears its inference upon it own face, and the circumstances under which it was made carries its own inference, and a necessary deduction must be made from that remark, whatever it is.

Mr. ARCTANDER. That is what we want,—the circumstances under which it was made.

Mr. Manager DUNN. He proposes to parry the effect of the proper inference that would be drawn from the making of that remark, that is, the inference drawn, necessarily, on account of its surroundings,—he proposes to parry that effect by asking this witness what the general street talk is in Waseca. Now, it will be seen at a glance, if that kind of evidence can be allowed here even for foundation purposes, that it may be necessary for the management to scour the village of Waseca to find that the witness is testifying to what was not so. Suppose it was general talk in Waseca, what an excellent Judge this was, and what an excellent term of court they had, it would be necessary on our part to counterbalance that, to go there and ascertain from other parties, if possible, that they had a poor term of court. The counsel admits that it is not admissible for any legitimate purpose in the case, except to make a foundation to bear out a statement which he expects hereafter this respondent himself to make. It is not admissible for any legitimate purpose. I submit it is not admissible at all.

The PRESIDENT *pro tem.* I do not think it is material to show what the reputation of Judge Cox was in the streets.

Mr. ARCTANDER. Simply as a circumstance to explain that remark; that is one of the circumstances. We do not want his reputation; we do not care to take it from the streets; we shall simply give it as a circumstance to explain that remark.

Mr. Manager DUNN. The witness cannot show circumstances by street rumors; he can only state facts.

Mr. ARCTANDER. Well, it is a fact, if it is a street rumor. It is a fact that it is a street rumor, and that is all we want to prove. We don't want to prove the fact itself, only the rumors.

The PRESIDENT *pro tem.* The objection of the managers will be sustained.

Q. I will call your attention, Judge Brownell, to the trial of the case that was referred to by Mr. Taylor, of the Waseca county bank against Reeves?

A. That is the bank slander case?

Q. Yes.

A. I was counsel in it, and had chief charge of the defense.

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Q. Were you present in court and took part in the proceedings?
A. I conducted the whole defense in substance.
Q. I will ask you to state whether at the time of any proceedings in that case, and more particularly at the time of the charge by the court in that case, what the condition of the Judge was as to sobriety or inebriety?
A. Oh, he was perfectly clear minded and sober.
Q. I will ask you to state whether at that time in charging the jury, there was any thickness in his language.
A. I never saw or discovered any.
Q. State whether or not there was any indistinctness in the language that he used, or the way he pronounced the words?
A. Nothing to my recollection.
Q. Was there any twang in his mouth?
A. Nothing different from his usual mode.
Q. What is that?
A. Nothing different from his usual mode of doing business?
Senator CASTLE. I would like to ask, Mr. Arctander, what the answer of the witness was to your question, whether or not he was engaged in the actual trial of the case. He said he was of counsel, but I didn't understand the remainder of the answer?
The WITNESS. I conducted the trial almost alone, myself; had chief charge of it in court.
Q. I will ask you to state whether there was anything peculiar or anything different during the latter part of the term, in Judge Cox, either in his appearance, conduct, manner or language, from what it had been during the first week of the term?
A. I saw none.

CROSS-EXAMINATION.

By Mr. Manager DUNN.
Q. How long have you lived in Waseca?
A. Since March, 1868.
Q. What acquaintance had you with Judge Cox prior to this term of court?
A. I think the only time that I met him personally, was at our place, before he was elected. It was in a horse thieving case tried at Ackerman, by Frank Conway.
Q. I don't care about the case. How much acquaintance had you with him?
A. Oh, he was around there two or three days, and I saw him there.
Q. How much acquaintance have you had with him since that term of court?
A. Not a great deal.
Q. Have you ever been before him as a judge, since that term of court?
A. I think I was up on a motion that Mr. Lewis made in the trial of the case of Long vs. Albrecht that has been mentioned here; I was up on the motion, that was once; and I was up last May, at New Ulm, on the first day of the term; I don't remember being before him except at those two times.
Q. Have you ever seen Judge Cox when he has been under the influence of liquor.
A. I have.

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Q. Frequently or infrequently?
A. Not frequently.
Q. Then it was at some other of these times when you have been before him in court.
Mr. ARCTANDER. That is objected to as being improper.
The WITNESS. I will tell you when if it is desired.
Q. I ask you if it was at those terms?
A. No, sir; it was afterward.
Q. It was since the last May term at New Ulm?
A. No, sir; it was since the Waseca term.
Q. Well, you spoke of being before him in May, and I asked you whether it was before or after these terms, and you said since.
A. I mean since the Waseca term.
Q. Was he much under the influence of liquor at that time?
A. Well, he was so that I could see that he had been drinking.
Q. How much; what degree of intoxication?
Mr. ARCTANDER. I object to it when it gets further than this, Mr. President, because they cannot prove acts of intoxication by our witnesses, independent of what they have testified to.
The PRESIDENT *pro tem.* I didn't notice what the question was. Was it with reference to this same term of court?
Mr. Manager DUNN. No, sir; it is cross-examination to test the recollection or knowledge of this witness; to ascertain what he knows of Judge Cox, drunk or sober. The cross-examination is perfectly legitimate. We are not disclosing every point that we have in cross-examination to the opposite counsel.
The PRESIDENT *pro tem.* The witness may answer the question.
THE WITNESS. What was the question?
Q. State the degree of intoxication he was in when you saw him compared to a sober man?
A. Well, he was a little jolly and a little free and easy in his manner; he was a little talkative, and, if I might say, perhaps a little silly.
Q. That is the only time you have ever seen him under the influence of liquor?
A. No, sir. Oh, no, sir; I did not say so; but it was the only time when he appeared to me to be intoxicated.
Q. You have seen him under the influence of liquor at other times?
A. That is my impression.
Q. Well, how many times?
A. Oh, several times.
Q. Whereabouts?
A. I saw him——
Mr. ARCTANDER. Mr. President, I think we shall insist that this is not proper cross-examination. It seems to me that the sense of justice of every man would be shocked by such an attempt as this under the pretense and cover of showing what chances the witness has had of observing the Judge when he was intoxicated to try to make out, under the charge in article eighteen, by our witnesses, and under our defense, their charge. It seems to me that it is not proper; that it is improper cross-examination and entirely immaterial and irrelevant to the direct examination. The witness has sworn that the Judge was sober; he can be cross-examined as to whether he knows a man sober or intoxicated, and how he judges of it; but it seems to me to come in here, and, under the pretext and cover of showing that this witness does not know what

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he is talking about, to try and prove distinct occasions of drunkenness upon the part of the Judge, outside of those charged here, outside of the proof that has already been introduced, is, it seems to me, improper and highly improper.

Mr. Manager DUNN. Counsel for the defence was very urgent, and was very vehement a moment ago in his denunciation of the prosecution for their endeavor, as he said, to shut out the truth. Now, when the light begins to break in a little, we find where the shoe pinches. This is cross-examination strictly, if I am any judge of what cross-examination is.

Mr. ALLIS. Well, perhaps you are not a very good judge.

Mr. Manager DUNN. Well, perhaps I not am a very good judge the counsel says; take that for what it is worth, but, if I am, it is strictly proper cross-examination. The witness stated positively and distinctly, upon all these occasions that the Judge was perfectly sober, when evidently there is some misconception as to what sobriety and inebriety is, between this witness and some other witnesses that have gone before him; they do not all agree; and therefore it is my province and my right in cross-examining this witness to get at the whole knowledge that this witness has as to Judge Cox's condition, from the time he has known him down to the present hour, so that we might see if he is a proper man to decide as to the condition of the Judge when these witnesses have testified that he was inebriated, and he testifies that he was perfectly sober, It is for that purpose that we have a right to probe the knowledge and the conscience box of this witness, so far as we can possibly do so. I am satisfied that it is correct.

Mr. BRISBIN. Will the reporter read the question that was asked the witness?

The reporter read the last question.

Mr. BRISBIN. Mr. President, the manager and myself disagree fundamentally as to the purposes of a cross-examination. Judge Brownell has been interrogated as to the conditions as to facts as he saw them exist, and believed them to exist, at Waseca, during a term of court, and he has testified as to his condition with reference to sobriety or the contrary. Now, for the purpose—and that was the reason, I apprehend, that my associate did not interpose the objection before,—for the purpose of arriving at the means of knowledge that the witness had, he was allowed to be interrogated as to whether or not he had seen him intoxicated, in order to ascertain whether he was competent to judge whether Judge Cox was, at the time he speaks of, intoxicated or not. Now, he has already asked him how many times he has seen him; he has stated "several times." Now, the last question is, where did you see him intoxicated? That transcends extravagantly the limits of cross-examination. How can it affect the witness' knowledge, or his capacity of judgment in this regard, to prove where he saw him intoxicated? That is the question, and that is the ground of the objection. I saw him, he says, on one occasion since that term of court. I saw him when he talked silly, when he acted silly, when he did not, perhaps, command my respect as Judge Cox had done uniformly, when I saw him on the bench. That is the extreme limit of the cross-examination, the extreme limit to which it can go. It is immaterial whether he was intoxicated in St. Paul, or in New Ulm, or in Waseca, or in the city of New York, or where it was; the *fact* of the intoxication, we admit the competency of, for the purpose it was undoubtedly first offered, and failed to invoke

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our objection. It is so clearly against well established rules of evidence, that I feel it a duty upon me to disagree, and disagree emphatically, with the learned manager who proposed to pursue this investigation into an extreme, which is frivolous and contrary to all rules of cross-examination.

Mr. Manager DUNN. Pardon me for one word.

Mr. BRISBIN. I speak, of course, respectfully.

Mr. Manager DUNN. Allow me to ask the counsel who has just taken his seat, and I think it is a pertinent question and answers the objection, —I am endeavouring to test the witness's knowledge as to the main fact; as to whether he was sober, and also as to the opportunities he has had to be able to judge as to whether he was sober or not. Now, he has testified that he has frequently seen him intoxicated. He has testified that during this term of court he was not intoxicated, that is, during any of the times that he has been in court, at least. Now supposing in the honesty of this witness, I shall come to ask him where, and before he takes time to reflect a moment he says there. Where?

At Waseca, at that term of court. What would you say to that kind of cross-examination? Wouldn't you say that was cross-examination to some purpose, or would you say otherwise? It strikes me that the question propounded must answer the objection of the gentleman. I have a right to ask him whether he has seen him intoxicated or not, or seen him under the influence of liquor frequently, and I have a right to ask him where? He may say, if he corroborates other witnesses, that he saw him intoxicated at Waseca at this term of court, but it is because I ought not to be compelled on cross-examination, to disclose my points to my adversary that this objection is made, in order that they may be disclosed. The counsel knows fully the force of making an objection of that kind; he wants the point disclosed. Now, of course, I have disclosed the point and the witness is on his guard.

Mr. BRISBIN. What did I understand the ruling to be, Mr. President?

The PRESIDENT *pro tem.* I said he could answer the question.

The WITNESS. If I stated—I wish to correct one thing—if I stated I saw him intoxicated more than once, I didn't mean so to say. I saw him under the influence of liquor more than once; that is what I meant to say.

Mr. Manager DUNN. That is the way I understood it Judge, under the influence of liquor.

A. Now, what is the question?

Q. Now, I ask you where; you have said you frequently saw him intoxicated. I ask you where?

A. Under the influence of liquor?

Q. Yes, under the influence of liquor; now, where?

A. I saw him once at Waseca; after the term of court had adjourned; he missed the train.

Q. After this term of court had adjourned?

A. He missed the train, and laid over a day.

Q. You needn't explain; you saw him at Waseca after this term of court adjourned?

A. Yes.

Q. What day was it?

A. Well, if you will tell me the day the court adjourned, I can tell you.

Q. Well, I don't mean the day of the week, but how many days after the court had adjourned, the same day, was it not?

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A. My impression is that the court adjourned in the evening. I can only give you my best impression, and this was in the evening.

Q. What time in the evening?

A. I should say nine or ten o'clock.

Q. He was under the influence of liquor then?

A. Somewhat, slightly.

Q, That was once. Now when did you again see him in Waseca?

A. I saw him in front of the hotel, at the Continental,—no, it is the Goodwood.

Q. Now, at what other time did you see him under the influence of liquor?

A. I saw him in New Ulm when Mr. Lewis and I went up to argue the motion, and we took a drink of beer with him.

Q. He was under the influence of liquor then?

A. He must have been for he took a glass of beer.

Q. And that is all you mean?

A. I know he was under the influence of liquor, if beer is intoxicating, because I saw him drink it.

Q. Then all you mean to say is that he was under the influence of liquor, because he took a glass of beer?

A. Yes.

Q. And you were under the influence of it too, were you?

A. Certainly, but not drunk, not intoxicated.

Q. Now, where else or when?

A. In the evening of the first day of the May term of court at New Ulm. Dick Jones, they call him,of Rochester, was up there attending to a case, and in the evening he and I took a glass of beer with Judge Cox.

Q. And you were all under the influence of liquor?

A. Certainly, not intoxicated though; I have not been drunk for twenty-five years.

Q. But you were all under the influence of liquor?

A. Certainly.

Q. And that is the only time?

A. No, that is not the only time, I saw him when I thought he was in a slight degree under the influence of intoxicating liquors, not so much by what I saw as by what I heard during that term of court.

Q. Well, what was that?

A. Well, you don't want me to state what I heard.

Q. If you heard it from Judge Cox I do.

A. I didn't hear it from Judge Cox.

Q. Or, if he was a party to what was said?

A. Well, I will tell you what it was.

Q. If he was present.

A. No, he was not present.

Q. Was it in court?

A. No, he was not present; I said I thought that he was under the influence of liquor to a slight extent, and I was going to tell you why I thought so.

Q. Was that during the Waseca term, of 1879?

A. Yes, sir.

Q. Well, I don't care why you thought so; you say he was; that is enough for me.

A. I was going to say why I thought so,—that it was not by his appearance, but by what I heard.

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Q. Well, I don't care about those fine spun theories. You have testified that you thought he was under the influence of liquor.

A. Not from what I saw, but from what I heard.

Q. Well, it impressed you that he was under the influence of liquor?

A. From what I heard and not from what I saw.

Q. Well, you thought so.

A. I did from what I heard the night before.

Q. And you think so now.

A. What is that?

Q. That he was under the influence of liquar then?

A. Yes, sir; but not intoxicated or confused in intellect.

Q. No, his intellect is a little clearer, is it not, when he is under the influence of liquor?

A. I don't think it is.

Q. Does it make it any duller; is his intellect any duller, when he is under the influence of liquor?

A. I don't think that a glass or two of beer effects his intellect the least in the world.

Q. How do you know that he is under the influence of liquor?

A. I know that when he takes it he must be, from my knowledge of human anatomy.

Q. If it has no effect upon him, either to make him duller or brighter, what is its influence?

A. I don't say that it had no influence; I say it didn't make him drunk.

Q. You say you have seen him when he was under the influence of liquor; now, explain in what way the influence exerted itself upon him, so that you knew he was drunk?

A. Just as it does on any man that takes a glass of beer, stimulates him a little.

Q. Well, you didn't see him take all this beer, when you saw him at Waseca the next morning, you did not see him drunk, when you thought he was under the influence of liquor?

A. Yes, sir.

Q. Well, how did he act then, that made you think he was under the influence of liquor?

A. Well, he acted as a man does that has been drinking some considerably.

Q. Not intoxicated?

A. Well, I wouldn't say to a great extent; he walked straight; he did not stagger, but he was a little unusually gay and easy in his manner, very social, unusually friendly, just as men are in that situation.

Q. A little profane?

A. I don't recollect; he might have been; but of course I don't recollect it.

Q. Now, that was a manifestation that he was under the influence of liquor, or somewhat intoxicated, the way he acted?

A. Yes, at that time I could see plainly.

Q. Now, at these other times, when you didn't see him drink liquor, but you think he was under its influence, what were its manifestations?

A. None whatever. I never should have thought of his drinking if I hadn't heard of his being out with the boys the night before

Q. He didn't act the next morning as if he had been out with the boys the night before?

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A. No, sir; I never saw him on the bench when he was not straight, and intelligent, and clear-headed.
Q. You never saw him?
A. No, sir; on the bench.
Q. You are judge of probate in that county, judge?
A. No, sir; that is purely an honorary title.
Q. You are not judge at all?
A. No, sir; you are doing me too much honor up here, altogether. They sometimes give me the cheap title of Judge. I suppose it is my age; I lay no claim to it, and am satisfied to be a modest member of the bar.

RE-DIRECT EXAMINATION.

Q. This time you say that you noticed him when he was jolly and seemed to be more easy, was not on the bench?
A. No, sir; that was after court had adjourned the next day.
Q. That was after court had adjourned the next day?
A. Yes, sir.

MAX FORBES.

Sworn as a witness on behalf of the respondent, testified.
Q. Mr. Forbes, where do you reside?
A. Waseca.
Q. What is your business?
A. Clerk in the Goodwood House, at present.
Q. Are you acquainted with the respondent, E St. Julien Cox?
A. I am.
Q. Did you see him during the term of court that he held in Waseca in the spring of 1879?
A. I did.
Q. Were you during any of the time, on the jury as a juror?
A. I was.
Q. Were you in more than one case?
A. No, sir.
R. Which case was that?
A. Power against Hermann, I believe it was.
Q. When did the trial of that case commence, as to the time of day?
A. It commenced on the afternoon of the second.
Q. On the afternoon of the 2d of April?
A. Yes.
Q. Was there an evening session?
A. There was.
Q. How long did it last?
A. It lasted until about 11 o'clock.
Q. What was the condition of the Judge as to sobriety or inebriety during those sittings of court, afternoon of evening?
A. Sober.
Q. What was his condition the next morning?
A. Sober.
Q. State whether or not his eyes were bloodshot that morning?
A. They were not.
Q. State whether his hair was uncombed or disheveled in any way?
A. It was not; it was combed all right.

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Q. State whether or not he was asleep there on the bench any time that morning.
A. He was not.
Q. Was he sleepy?
A. I don't think he was; he didn't look sleepy.
Mr. Manager DUNN. That is the morning of the 2d that you are talking about?
Mr. ARCTANDER. The morning of the 3d.
Q. That was the morning on which the court was adjourned, was it not?
A. Yes.
Q. I will ask you to state whether or not you knew at the time of his suffering from this boil that has been spoken of?
A. I did.
Q. Do you remember whether there were any objections or questions raised that morning by the lawyers?
A. They were asking about something, I couldn't tell what it was; I didn't pay much attention to it.
Q. I mean before the time for adjournment?
A. Yes; they got up and made some.
Q. Were there any rulings made by the Judge there; did you hear him speak?
A. He said something; I couldn't tell what it was exactly.
Q. Said something in response to the lawyers?
A. He said something to the lawyers.
Q. On that morning, state whether or not his eyes were bleared or hanging down.
A. I didn't notice it, and don't think they were.
Q. Was his face flushed?
A. No, sir.
Q. How was that?
A. He looked pale.
Q. Was there anything in his actions, manner or appearance there, peculiar or different from what they had been before there when you had seen him, and what they were afterwards during that term?
A. No; I didn't see anything different.
Q. Did you see what he did there in the morning,—in what position he sat, as to what he did with his hands or with his head, or anything?
A. Well, I don't remember what he did do; I didn't see anything out of the way with him.
Q. Didn't see anything out of the way with him?
A. No, not that anybody would notice.
Q. Did you see his head drop down?
A. No; I didn't see his head drop down.
Q. Did you see him writing any time that morning?
A. No; I can't say whether he wrote or not; I don't know.
Q. Now, during the balance of that term, in the evening,—you came back again, did you?
A. Yes, sir.
Q. What was his condition then?
A. Sober.
Q. And you were there the whole of the next day. The trial lasted the whole of the next day?
A. I believe it did.

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Q. What was his condition as to sobriety or inebriety during that day?

A. Sober.

Q. No difference in his appearance during any of those days or on the 5th of April last, the last day?

A. Not so long as I was on the jury; there was no difference in his appearance.

Q. In his appearance or actions?

A. No, sir.

CROSS-EXAMINATION.

By Mr. Manager DUNN.

Q. You were on the jury how many days?

A. Three days and a half, I believe it was.

Q. Were you on the regular panel?

A. No, sir.

Q. You were picked up as a talesman, were you?

A. I suppose that is what you would call it.

Q. Were you in the room there when you were called?

A. Yes, sir; I was.

Q. What was your business at that time?

A. I was not doing anything at that time.

Q. What had you been doing before that?

A. I had been working in the Goodwood House, or at least the Continental at that time; I was laying off at that time.

Q. You had been a clerk there? A. Yes.

Q. Do they keep a bar there? A. No, sir.

Q. You may state what time of day the court commenced when you were summoned as a juror on the 2nd of April?

A. It commenced in the afternoon, I believe.

Q. After dinner?

A. They empanelled a jury after dinner; I was there.

Q. You didn't pay much attention to the Judge during the trial of that case?

A. I saw him on the bench.

Q. Yes, you saw him, but you didn't pay much attention to him?

A. I don't know what you would call attention.

Q. Well, you didn't observe him very closely?

A. I didn't go up and look at him; I saw him from where I was sitting.

Q. Did you observe him closely?

A. Observe him closely?

Q. Yes.

A. Why, I looked at him as I would look at anybody.

Q. Did you observe him for any particular purpose?

A. No, sir; I looked at him as I would any ordinary man.

Q. Did you observe him so closely for the purpose of ascertaining whether he was under the influence of liquor or not?

A. I did not.

Q. It was not called to your attention was it?

A. I didn't think he was under the influence of liquor.

Q. Well, was it called to your attention or not?

A. No, sir.

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Q. Well, was it called to your attention that he was under the influence of liquor?

A. I think he was under the influence of liquor at that term of court?

Q. When was it called to your attention?

A. When did I see it first?

Q. Yes.

A. I heard it talked about there, when this Senate—

Q. When this Senate—that was the first time it had ever been called to your attention?

A. No, I said I heard it talked about.

Q. And you hadn't thought of it since?

A. I said I heard it talked about.

Q. When; in Waseca?

A. Yes, during the session of the Senate.

Q. Well, I say, that from that term of court you never thought about whether the Judge was sober or otherwise?

A. No, sir, I never heard anything about it.

Q. Did you hear anything said about it until after you got off that case, or after you left that lawsuit?

A. I didn't hear anything about it then.

Q. You didn't hear it spoken of, did you, by anybody or mentioned whether the Judge was under the influence of liquor or not?

A. I did not.

Q, Were you in the Judge's company much during that term of court?

A. I was not with him at all.

Q. Had no social connection with him at all during that term of court?

A. No.

Q. You stopped at the hotel?

A. We didn't stop at the same hotel; I was not doing anything at the time and I was living at home.

Q. How old are you, Mr. Forbes?

A. Thirty-one.

Q. Have you a family living at Waseca?

A. I have no family.

Q. You live there at Waseca?

A. With my mother.

Q. Do you know anything about Judge Cox drinking any liquor at that term of court, Mr. Forbes?

A. No, sir.

Q. You wern't around anywhere where you saw him drinking?

A. No, sir.

Q. Never saw him drunk?

A. No, sir.

Q. Never saw him in Hall's saloon there during the term?

A. No, sir.

Q. Weren't in there yourself during the term? A. No, sir.

Q. Or any other saloon?

Mr. ARCTANDER. We object to that. This witness has a right to go into a saloon if he wishes to. The counsel has no right to insult a witness with such questions.

Mr. Manager DUNN. I disclaim any such intention. We do not ask

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him whether he has been in a saloon, but whether he has ever seen Judge Cox in one.

The WITNESS. Do you ask me whether I ever saw Judge Cox in a saloon?

Mr. Manager DUNN. Yes, sir.

The WITNESS. No, sir; I did not.

A. RINKE,

Sworn as a witness on behalf of the respondent, testified.

Mr. ARCTANDER. This witness, Mr. President, is called under the eighth article.

Q. Mr. Rinke, where do you reside?

A. In Sleepy Eye, in the State of Minnesota.

Q. What is your occupation? A. Merchant.

Q. Do you know the respondent, E. St. Julien Cox?

A. Yes, sir.

Q. For how long a time have you known him?

A. I have known him personally for years, for six or seven years, and have been acquainted with him more or less for the last four years.

Q. Were you present at a term of court held in Brown County in May, 1880, when the case of McCormick against Kelly was tried?

A. Yes, sir.

Q. State whether or not you were a witness in that case.

A. I was.

Q. How much of the time were you in court during that trial?

A. I was there mostly for two days.

Q. A part of two days? The case was being tried during a part of two days, and you were there during the whole trial of the case.

A. I was there throughout the whole case.

Q. You were there when the Judge charged the jury?

A. Yes, sir.

Q. And the proceedings immediately before that?

A. Yes.

Q. I will ask you to state, Mr. Rinke, whether or not you had been present at that term of court at any time before the McCormick against Kelly case came up?

A. I think I was there before, for the case was to come up the day before; but didn't come off, and I came down from Sleepy Eye to New Ulm, and when we got down there they were trying another case, and the attorneys told us we could go back again, and come back the next day, and so we did; we stayed in the court room for about an hour or two.

Q. Were you there at any time when any other cases were being tried except that time?

A. Well, I think I was there when there was a case coming up from—a criminal case, Cober was the prosecutor; it was the case of the State against Raschka.

Q. You were present in court during that trial?

A. Yes.

Q. Now, I will ask you to state, Mr. Rinke, what was the condition of Judge Cox as to sobriety during the whole term of this McCormick against Kelly case?

A. Well, by my judgment I thought he was perfectly sober.

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Q. Well, have you any doubt about it; had you any doubt about it at the time?
A. I had not.
Q. Have you any now?
A. No, sir.
Q. I will ask you to state whether there was anything peculiar or different in his appearance or his actions or language or conduct, during that trial from what it was during the two other trials when you were present during that term?
A. I think not.
Q. I will ask you to state whether there was anything peculiar or different in his appearance, his conduct or his language, in the latter part of that trial of McCormick against Kelly, on the last day, than it was in the first part of the trial on the first day?
A. He looked very natural to me.
Q. The same?
A. Just about the same appearance as he always had.

CROSS-EXAMINATION

By Mr. Manager DUNN.
Q. Mr. Rinke, you were at New Ulm at that court about two days?
A. Yes, sir.
Q. A witness?
A. Yes, sir; I was a witness on the Kelly case.
Q. What day did you testify, the first or the second day?
A. I think the first day; I can't say for certain whether it was the first or second, but I was down there two days.
Q. Did you go home after you got through testifying?
A. No, sir; I stayed in New Ulm.
Q. Well, you didn't stay in the court-room after you testified?
A. Yes, I stayed there; I couldn't go, and you might as well stay there as to go out and loaf around the town.
Q. You had to wait until the next morning to go home?
A. Yes, we missed the train; the train had gone up and we couldn't go up any more.
Q. And you stayed in the court room during the whole time?
A. A good portion of the time.
Q. Were you there when the Judge charged the jury in that case, Mr. Rinke; will you swear that you were?
A. In which case?
Q. The case of McCormick against Kelly.
A. Yes, sir.
Q. You were there when he charged the jury?
A. Yes.
Q. Can you recollect any of the charge?
A. No, sir; I did not confine my attention so much that I can recollect now.
Q. Can you give a single word of the charge now?
A. Not a single word.
Q. Do you know how long he was in charging the jury?
A. No, sir.
Q. Do you know whether it was in the evening or after supper?
A. After supper.

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Q. You think it was after supper?

A. According to my oath, I cannot say for certain.

Q. Do you remember what objections were made by the lawyers to his charge?

A. No, sir.

Q. Do you remember any conversation at all about that, what was done and said about that?

A. No, sir.

Q. Then you were not observing the Judge very close?

A. I was looking at him as much as I would at any Judge.

Q. Did you notice anything peculiar about the charge?

A. I can't remember, sir.

Q. You wouldn't if there was; you are not a lawyer?

A. Well, such things as you might have remarked perhaps I would not notice from that time to now, but if anybody would ask me soon after, perhaps I could tell.

Q. Your memory is pretty distinct about it now?

A. Well, about such matters, perhaps, yes.

Q. Do you think the language of the charge to the jury, at that time, was coherent?

A. I could not say.

Q. You couldn't say whether it was or not?

A. All the remarks that I could say were that sometimes the lawyers got to arguing about some points, and he objected to the method, and made a few remarks, and of course I have forgot now all about what the remarks were.

Q. Was your attention, during the term you were there, called to the Judge's condition as to sobriety or otherwise; did anybody speak to you about it then?

A. The Judge was called up as a witness to testify—

Q. No, you don't understand, Mr. Rinke; as to the condition of the Judge, was your attention called to his condition at that time, while you were there?

A. Yes, it was.

Q. Who called your attention to it?

A. My attention was called to the Judge.

Q. To the Judge's condition?

A. To his appearance?

Q. Yes.

A. Nobody called my attention to it, for when I was in the court room I had my attention on the Judge and the lawyers, and everybody else interested in the case.

Q. You don't quite understand my question yet.

The PRESIDENT *pro tem.* He means did anybody call your attention to him as to whether he was sober or otherwise.

A. No, sir; they did not.

Q. Then your attention at that term of court was not particularly called to the Judge's condition as to whether he was sober or not?

A. Oh, no, not at all.

Q. And you didn't think at the time anything about it?

A. No, sir.

Q. But you have no hesitation in saying that he was sober at that time, any more than you would at some other time, that he was sober on the bench?

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A. Well, if a man is drunk a man generally notices him more than when he is sober. A drunken man will make different movements from what a sober man will, and he will make different remarks.

Q. What you mean, then, by saying that he was sober is, that you didn't see anything but what he was sober?

A. If Mr. Cox had been drunk at that time I should have remembered it to-day.

Q. You have seen him drunk then, have you?

A. I have seen Mr. Cox, perhaps, under the influence of liquor, but I have not been in company with him, so that I should say he was drunk; he was just under the influence of it.

Q. Well, you mean, when you say a man is under the influence of liquor, that he is not very drunk?

A. Well, sometimes a man is a little under the influence, and still not drunk.

Q. Well, you have seen Judge Cox in both conditions, so that you are able to judge?

A. I have seen Cox under the influence of liquor once.

Q. Only once, in your seven years' acquaintance with the Judge?

A. Well, I have not been such intimate friends with him as to be in his company, or know when he was drunk; I have not been in his company when he got on a spree.

Q. You haven't? A. No, sir.

Q. So that you cannot tell when he really was on a spree, and when not?

A. I have seen him when he was really under the influence of liquor; and if I saw him in court drunk I would remember it to-day.

Q. You mean that if you saw him in court when he was really drunk?

A. Yes, or even under the influence of liquor, I would recollect, to-day, that he was.

Q. Even if he was not saying or doing anything?

A. Well, you can tell, whether he says anything or not, whether a man is drunk or not.

Q. Do you recollect anything that he said there that day, during the trial of that case?

A. No, sir.

Q. Cannot recollect anything?

A. No, sir.

Q. Or what any lawyer said?

A. Only what I said myself; I can remember that.

Q. You can remember what you said yourself?

A. Yes, sir.

Q. You didn't have any conversation with him at that time, that term of court?

A. Only just to bid him good morning and good day; that is all.

Q. You say you are a merchant in Sleepy Eye?

A. Yes.

Q. Engaged in selling goods there?

A. Yes.

Q. What kind of goods?

A. Dry goods and groceries.

Q. You have been there how long?

A. Ever since the town started.

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By Mr ARCTANDER.

I will ask you one question, Mr. Rinke, whether, if Judge Cox had been intoxicated, or under the influence of liquor on the bench, and had done or said anything out of the way, you would then have remembered his language?

A. I would, yes, sir.

FRANCIS BAASEN.

Sworn as a witness on behalf of the respondent, testified.

By Mr. ARCTANDER.

Q. Colonel, where do you reside?

A. At New Ulm, Minnesota.

Q. What is your profession?

A. I am a lawyer.

Q. You were the first Secretary of State of the State government here were you?

A. Yes.

Q. How long have you known the respondent, E. St. Julien Cox?

A. At least 25 years.

Q. Have you known him intimately during that time?

A. Yes.

Q. Mr. Baasen, do you remember having been present at the Brown county, May term, 1880, when the case of McCormick against Kelly was tried?

A. Yes.

Q. Did you spend any portion of your time up at the court, attending court during that term?

A. Yes.

Q. How much of the time? I wish you would go on and explain.

A. During the Kelly trial; I was particular to witness that.

Q. To stay there during the trial of the case?

A. Yes, to stay there during the trial of the case.

Q. Why were you particular?

A. I am city justice at New Ulm, and that case was tried before me and taken on appeal to the district court.

Q. So you were interested in seeing how it would be tried in the district court?

A. Yes, and Mr. Lind, the plaintiff's attorney, was dissatisfied about some of my rulings in the case;—we are good friends together,—and he took an appeal and I, for that reason, took particular pains to see how the court would rule upon the same subject.

Q. So you were there at that time, paying particular attention at the time?

A. Yes.

Q. You were there on both days, the first and the second day that the case was tried?

A. Yes.

Q. Now outside of the Kelly case were you in court during the time?

A. I was off and on in court, just as my business permitted.

Q. Now, I ask you to state Colonel, what was the Judge's condition as to sobriety or inebriety, at the time of the Kelly case, or any portion of it?

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A. While I was there, I didn't see anything out of the way; I believe he was perfectly sober then.

Q. Had you any doubt about it in your mind? A. No, sir.

Q. You have none now? A. No, sir.

Q. Did you notice anything different in either his manner, his language, or his appearance, during the trial of that case, or any portion of it, from what his appearance, manner and conduct, and language, have been on other occasions, during that term of court, or other occasions when you have met him before?

A. No, sir.

Q. No difference? A. No difference.

Q. Was there anything peculiar, or anything different, on the second day of the trial, from what there had been the day before or during any portion of the term?

A. I can't recollect anything different.

Q. You can't remember anything different?

A. No, sir.

Q. You have seen Judge Cox, I apprehend, before he was elected Judge, intoxicated a number of times, or under the influence of liquor, at least?

A. Well, I have seen him before he was elected Judge. He lived at St. Peter, and I lived at New Ulm.

Q. Yes, but had you, before he was elected Judge, seen him intoxicated?

A. Yes.

Q. You know him drunk, and you know him sober, do you?

A. Yes.

Q. Now, if he had been under the influence of liquor, at this stage of the trial of the case of McCormick against Kelly, during any part of that trial, you would have noticed it, Colonel?

A. I would certainly have noticed it.

Q. But you noticed nothing of the kind?

A. No, sir; I didn't notice anything of the kind.

CROSS-EXAMINATION,

By Mr. Manager DUNN.

Q. Mr. Baason, you were simply interested in looking on in that case, because the case had been tried before you as city justice, and you had decided it; and you desired to see what the rulings of the Judge would be upon questions that you had ruled upon?

A. Yes.

Q. Will you give us one of those questions?

A. I cannot state any more; just the particular questions. The general questions were questions of agency and questions of guaranty, I think, in which Mr. Lind and myself—

Q. Well, give us one question which you had decided in that case, to which the attorneys took exception and upon which they appealed?

A. I cannot tell you a single question.

Q. Can you tell how the Judge ruled in comparison with your rulings—I mean Judge Cox?

A. He ruled generally like I did. There was some change in the programme of the management of the case in the district court from what it was before me.

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Q. But you were sustained by Judge Cox?
A. As a general thing, I was sustained.
Q. And he was overruled by the supreme court?
A. I understand that.
Q. So that you were both wrong?
A. That is another question. [Laughter.] There was one peculiarity about that case too; those cases were tried by a jury, and the jury gave in my court to the defendant $150 damages, and in the district court it gave $120 damages, while the defendant only demanded $100. That was another peculiarity in that case.
Q. That was a case against a machine firm?
A. Yes, sir.
Q. That is a common thing, is it not, to get such verdicts against machine firms?
A. No, sir; it is not.
Q. Well, it is different then from what it is in my county?
A. You can ask Senator Peterson about that; he lives up there.
Q. That is the only interest you had?
A. I had no interest in the case.
Q. You were not an attorney in the case?
A. No, sir.
Q. Simply a looker-on, if anything?
A. Yes.
Q. Now, there was another question; you say you have seen Judge Cox drunk and seen him sober?
A. Yes, sir.
Q. You don't mean to say you have seen the *Judge* drunk?
A. On the bench, do you mean?
Q. The Judge drunk?
A. Well, I believe I saw him under the influence of liquor.
Q. Well, drunk; you said you had seen the Judge drunk, and had seen him sober; do you want to qualify that?
A. That is very good; the word used is a very elastic word.
Q. Well, I want you to use it now just as you used it before; you said, in answer to Mr. Arctander, that you saw the Judge drunk and saw him sober; you don't mean to say you saw Judge Cox drunk?
A. You asked me the question if I ever saw him drunk before he was elected Judge.
Q. I have not asked you that; I asked you if you ever saw Judge Cox drunk?
A. I have seen Judge Cox under the influence of liquor.
Q. When he was judge?
A. After he was elected judge.
Q. And before, too? A. Yes.
Q. Haven't you seen him just as drunk since he was elected Judge as you did before?
Mr. ARCTANDER. We object to that as not proper cross-examination.
Mr. Manager DUNN. Well, to get round to it, you want us to disclose the point again.
Mr. ARCTANDER. I say that it certainly is not only improper cross-examination, Mr. President, but—I do not want to characterize it properly.
Mr. Manager DUNN. You can characterize it in any way you please. If you are going to draw a distinction between Judge Cox before and

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after his election, I am going to bring it right down, not alone to the time of his election, but all through his judicial career.

Mr. ARCTANDER. I have inquired of the witness whether he is able to judge between Judge Cox drunk and Judge Cox sober, and whether he has seen Judge Cox intoxicated before he was elected judge. It is perfectly proper in cross-examination upon that branch, to inquire how many times and at what times; but I claim that these managers have no right, under cover of cross-examination, to go outside of what we have brought forth, in an endeavor to prove by our witness what they could not prove upon direct examination,—the habitual drunkenness of Judge Cox. It is not fair, it is not just: and, in any decent court, with a lawyer sitting as a judge, they would not be permitted to do so; and the counsel would not dare, in such case, to have the effrontery to attempt to do such a thing. Even if it was within the rules of cross-examination the judge would use his discretion in the matter and say, if you attempt things which are not proper under the cover of pretext that you do it to test the recollection of the witness, we shall not allow you to do so. Now, I take it that every lawyer on this floor will bear me out in the statement I make here. Every lawyer that has ever practiced before a court of justice will know that such a thing is not allowed; that on cross-examination, though it is sometimes given the widest range, it is not allowable to come in and prove in the case independent facts which have not been touched upon by the direct examination; because, if that is to be done, how many charges are we going to meet here?

When are we going to stop meeting charges of intoxication other than upon the bench, or on other occasions, which we do not ask our witnesses about? Is this trial going to be dragged into eternity? Is every witness summoned here to be asked how many times he has seen Judge Cox drunk since he was elected Judge, and when and where, and under what circumstances, under cover of cross-examination? If this court is going to permit it, I can only say, very well, if they can do so; but it is evident that it is time to cry halt. It is evident that the managers are very much elated at the rulings which have been made, so far, by the President to-day, because they see a way opened to them, which they could not have under any legitimate rule of law, and I do not wonder that they are using it to try to make all the capital they can out of it, but I say it is unfair, unjust and improper.

Mr. Manager DUNN. I have simply to say this, Mr. President, and Senators; this witness is produced upon the stand here to prove that at the May term, 1880, Judge Cox was perfectly sober. In order that it may be apparent that he is a good witness for the defendant and perfectly competent to judge as to the sobriety or inebriety of the respondent, they ask him this very peculiar question, Have you ever seen Judge Cox drunk or intoxicated before he was elected Judge? and, although he was elected Judge in the fall of 1878, they want this court to adduce from the fact that the witness saw Judge Cox drinking some time in 1877, that in 1880 he was a good judge as to whether the respondent was drunk or sober.

Mr. ARCTANDER. Not at all.

Mr. Manager DUNN. That is all right; I would have had the right to ask that question. They anticipate the cross-examination and go that far; but they are very careful not to follow it up with the legitimate cross-examination which we have a right to make, so as to bring it down from that time to 1880, in order to show whether he is competent

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to judge whether the respondent was sober or intoxicated,—to show whether he is competent to discriminate between the Judge drunk and the Judge sober. Therefore, I cross-examine; but because, forsooth, they have simply touched upon the condition of the Judge before he was elected Judge, they say I am shut out from cross-examination as to that fact. Why, I undertake to say there is not a lawyer within the sound of my voice that can gainsay the position that I take here upon this cross-examination, that we have a right to prove the knowledge of this witness from the time of the Judge's election down to the time when it is in evidence that he was intoxicated, which is in the month of May, 1880. I think the very answer I made to the counsel upon the other side, as to the question which would be pertinent here, when we get to that question, (for it is coming right along in regular sequence and is going to be followed up in the same way as the other witnesses have been)—the fact that they produce witnesses here by whom they are afraid this evidence will be brought out, because they know that the witnesses which they have produced and must produce will have to testify that they have seen the Judge under the influence ef liquor,—then they claim that because that is apparent, the managers are endeavoring to do something which is not proper under the rules of evidence,—to prove a case under cross-examination. We do not attempt to prove our case upon cross-examiuation, we are not attempting to do that, and know better than to try and mislead this Senate, or the lawyers in this Senate by such an attempt, but we do claim that we have a right to pursue every legitimate method of cross-exination and one of them is to ascertain the knowledge of the witness whom is testifying.

The PRESIDENT *pro tem.* I wish to say to the Senate, in as much as the counsel, Mr. Arctander, has insinuated that the chair has decided unfairly and partially in favor of the State, that I desire to submit this question to the Senate.

Mr. ARCTANDER. I did not intend to do so, and I beg to disclaim any intention of insinuating partiality on your part, Mr. President. I simply stated that the court had so ruled, and that the managers felt joyous over it, and were going to use it to our disadvantage. I did not mean to charge any partiality on the part of the presiding officer.

Mr. Manager HICKS, Allow me to state, Mr. President, that the management do not feel joyous upon this cross-examination; it is impossible to bring men from the Ninth Judicial District that had not seen Judge Cox drunk and sober; it is a fact that they and we both knew before starting in.

Mr. ALLIS. It seems to me that a question of evidence is presented here which is exceedingly simply, and I am not only surprised but amazed, at the statement of the learned counsel here, that there was not within the sound of his voice a lawyer who would have any doubt about the proposition which he has laid down. I do not think that there is myself; but I have no doubt that the rule is directly the reverse of what he stated it to be. The question is not in regard to the motives which may animate the counsel in asking this question, but what is the effect and object of the evidence? Now, in the first place, if this court please, the prosecution have introduced certain evidence for the purpose of establishing the allegations contained in this article. We are now introducing evidence to contradict these witnesses, and it is confined entirely to the same period. Now, under the pretence of cross-examining this witness for the purpose of testing his knowledge, what are they doing?

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They are endeavoring to sustain the original articles, and, in fact article eighteen.

Mr. Manager DUNN. Not at all,

Mr. ALLIS. That is the effect and that is the object; I care nothing about the motives of the counsel. I am just as good a Judge as he as to the effect of the question, and so are the Senators here. He asks him in regard to whether he has seen him intoxicated since he has been Judge; now it is not pretended that his cross-examination refers at all to any question that has been asked him on examination—

Mr. Manager DUNN. It certainly does.

Mr. ALLIS. But it is for the purpose as the learned counsel says of testing the recollection and the knowledge of this witness as to the times in which he had seen him intoxicated. Now, under the pretence of testing the knowledge of the witness he is, in effect, (if the question is to be answered so as to be of any benefit to him,) endeavoring to prove his own, case, that is, instances of drunkenness on the part of the respondent here during his judgeship. It can have no other effect; that is the necessary effect of the evidence, if the answer is given in the way the counsel expects it to be given, or I suppose, he would not ask the question. Now, that evidence as this Senate can see, does not have any bearing at all towards illustrating the knowledge of the witness, towards illustrating the nature of the testimony which has been brought out; neither does the counsel, I presume expect that it will have; certainly that is not the effect of it, and consequently not the legal object of it. But the effect is to show that the respondent in this case has been guilty of some of the offences charged in these articles. Now it seems to me that the Senate, every Senator—even the laymen—can see that it is improper for the counsel for the prosecution here to take a witness offered on the part of the respondent and continue with their case; under the pretence of testing the knowledge of this witness. There is no such rule as that. That is the principle and the object of the testimony. He can ask of course this witness any question which will illustrate or throw any light upon the testimony he has already given; he can also test his means of knowledge and his means of recollection in regard to the testimony he has given; but the idea that he can go on and pump out of this witness all that he knows in regard to this or any other matter, for years back, down to the present time, under the pretence of testing his knowledge, is certainly erroneous. They can only test the knowledge of the witness as has been suggested, in regard to the matter about which he has been testifying.

Mr. Manager DUNN. That is the very thing he has been testifying about, his being sober; that is what I am talking about.

Mr. ALLIS. So you can ask him whether he has been drunk, and sustain all your conclusions.

Mr. Manager DUNN. I am cross-examining in my own way, and not to let you know what it is about.

Mr. ALLIS. You can cross-examine him in your own way, but you must *cross-examine* him; that is the point; this is not cross-examination.

The PRESIDENT *pro tem.* You had better vary your question, Mr. Dunn.

Mr. Manager DUNN. Please read the question, Mr. Reporter.

The reporter then read the question as follows:

Q. Havn't you seen him just as drunk since he was elected judge as you did before?

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Mr. Manager DUNN. That was the question. The question was as to whether he had seen him as drunk since he was elected as he did before. That perhaps was a question which ought not to have given rise to all this argument, because it was a mere question of comparison; but the argument has been directed to the merits of the cross-examination and not simply to that question, as I understand it. To avoid any question I will ask him another question. I believe the witness has testified to the fact that he has seen the Judge under the influence of liquor since he was elected judge; am I right in that Colonel?

A. Yes, sir.

Q. When and how often?

Mr. ARCTANDER That is objected to as improper, irrelevant and not cross-examination.

Mr. Manager DUNN. Well, I will take out the how often and ask when?

Mr. ARCTRNDER. That is objected to for the same reason.

The PRESIDENT *pro tem.*. I don't think it is material to ask when.

Mr. Manager DUNN. We will suppose Mr. President, the witness should say he had seen him intoxicated at this term of court; wouldn't that be a proper question for cross-examination?

Mr. ARCTANDER. Then ask him that.

Mr. Manager DUNN. I ought not to be compelled to expose every question I have to ask on cross-examination. If a cross-examiner is to be compelled to disclose every point he has he might as well shut up his book. The object of the cross-examination is to elicit the truth, and not have everything exposed. I never have seen such a method of cross-examination. The question was, *when.*

Mr. ARCTANDER. That is objected to.

The PRESIDENT *pro tem.* Ask him if he saw him at that term of court at Waseca,

Mr. Manager DUNN. Well, I don't want to ask him that question.

Mr. ARCTANDER. No, that is not what you are after.

Mr. Manager DUNN. That would do for a direct examination, but hardly for cross-examination.

Q. Have you seen him intoxicated at New Ulm since he has been elected Judge and before 1880?

Mr. ARCTANDER. That is objected to for the same reason as above.

Q. Do you recollect the charge of the Judge upon that occasion?

A. No, sir.

Q. Did you hear the charge?

A. I can't state that for certain.

Q. You don't know for certain, Colonel, whether you were there when the charge was made?

A. I don't remember whether I was there when the charge was made. I heard Mr. Lind in conversation on the subject.

Q. You can't testify then that you were present when the Judge charged the jury?

A. I wouldn't state that.

Q. Well, what is your impression?

A. I have no impression; I would not swear whether I was present at the charge or not. I was present through most of the testimony and through most of the argument in the case; of that I am sure.

Examined by Mr. ARCTANDER.

Q. Were you present during any of the arguments, Colonel.

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A. Yes, sir.
Q. During the argument of Mr. Lind?
A. During the argument in the Kelly case.
Q. Did you hear Mr. Lind's argument?
A. Well, I heard from both of the attorneys.
Q. You heard both of the attorneys argue the case?
A. I did.
Q. But you have no recollection of the charge?
A. I have no distinct recollection of the charge.

Examined by Mr. Manager DUNN.
Q. Did you say you were there all the time during the argument by the attorneys?
A. I expect I was there during the whole argument, but I wouldn't swear positively as to that; but then I heard the main argument *pro* and *con*.

W. W. KELLY,

Sworn as a witness on behalf of the respondent, testified.

Mr. ARCTANDER. This testimony is also offered under article 8.

Examined by Mr. ARCTANDER.
Q. Where do you reside?
Senator CASTLE here took the chair to act as President *pro tem*.
A. At Sleepy Eye, Minnesota.
Q. What is your business?
A. Farmer.
Q. Do you know the respondent, E. St. Julien Cox?
A. Yes, sir.
Q. For how long a time have you known him?
A. Ever since he commenced to practice at New Ulm.
Q. How long a time is that?
A. Well, I think it is over twelve years.
Q. Mr. Kelly, were you present at the general term of court for Brown county, in the month of May, 1880,—the term during which the case of McCormick against Kelly was tried?
A. Yes, sir.
Q. The respondent presided at that term of court, did he?
A. Yes, sir.
Q. How large a portion of the time were you present in court?
A. I was there two days and a part of another day. The case was called, and we went down, and the case could not come off that day; I stopped a part of the forenoon, and then went home, and went down the next day; and there was a case come on ahead of this case, and then this case came on, and I stayed until the court closed the next day.
Q. Were you on the jury in any of those cases that were tried there that term?
A. Yes, sir.
Q. What case was that?
A. It was Brown county Bank against Hanson,—Chadbourn against Hanson.
Q. Chadbourn was the banker there?
A. Yes, sir.

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Q. Were you present during the trial of the State vs. Raschka?
A. That was the last case.
Q. That was the case immediately preceding the Kelly case.
A. That was for an assault and battery, wasn't it?
Q. I don't remember what it was for.
A. Yes, sir; when we was in the jury room this case—I don't know the name,—but there was an assault and battery case tried; then after that was tried the Kelly case came on.
Q. How long were you in the jury room?
A. Less than half an hour; they had not got the jury empanelled for this other case when we came out.
Q. Were you a witness in the Kelly case?
A. Yes, sir.
Q. Did you stay and attend court during the whole of the trial in the Kelly case?
A. Yes, sir.
Q. Now, I will ask you to state what the Judge's condition was, as to sobriety or inebriety during the trial of the case of McCormick against Kelly?
A. He was perfectly sober.
Q. Was there anything peculiar or different in his appearance, language, behavior, actions or conduct, from what it had been at other times when you had seen him?
A. No, sir.
Q. During the whole of the Kelly case, there was no difference?
A. There was no difference; I discovered no difference.
Q. State whether or not there was any difference, anything peculiar or anything different in his appearance, language, conduct or manners during the last part of the Kelly case, as compared to the first part?
A. I saw no difference in him during the whole term of court, that I sat there.
Q. Now, where you sat and the position you had at the different times, as juror, witness and by-stander, were you where you could see and observe the Judge all the time?
A. Yes, sir; I was in the court room in different positions and distances from him; and not only that, but I talked with him. I see nothing that indicated to me that he was under the influence of liquor at all; I see no difference in his conduct the first or the last.
Q. You mean you saw no difference?
A. I saw no difference
Examined by Mr. Manager DUNN.
Q. You were the defendant in that case were you?
A. No, sir, I was a witness.
By Mr. ARCTANDER.
Q. You were the brother of the defendant were you not?
A. Yes, sir.
Q. Where is the defendant, do you know?
A. He is in the court room.
Q. Were you in court all the time during the trial of that case, sir?
A. Yes, sir; I was on the jury the rest of the time I was there. I was on the jury in the Chadbourn case.
Q. During the trial of the Kelly case, were you there all the time?
A. Yes, sir; I was there all the time.
Q. Did you have anything to say to the Judge?

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A. No, I did not speak to the Judge; I spoke to the Judge at noon when he came up from town.

Q. Did you hear the Judge charge the jury?

A. Yes, sir.

Q. Can you give us any statement of what his charge was?

A. Well, I cannot. He charged them and read them some law.

Q. You don't know whether the Judge was right or wrong, do you?

A. Well, I dont know anything about law; I couldn't say whether it was right or wrong; I am a farmer; I dont make any practice, nor try to read up law at all.

Q. I understand, you couldn't tell?

A. I couldn't tell.

Q. You were a witness in one case, and that was this Kelly case?

A. Yes, sir.

Q. And a juryman in another case? A. Yes, sir.

Q. You say the Judge was perfectly sober? A. Yes, sir.

Q. What called your attention to the fact, that he was perfectly sober?

A. Well, I will tell you why; I never heard a charge that E. St. Julien Cox was drunk on the bench until this impeachment trial came up.

Q. You never did?

A. No, sir; I never did; and when it came up, I couldn't believe that he was drunk, and me sitting there,—and I have talked with E. St. Julien in the front of the court house, and I couldn't distinguish anything wrong or anything out of the way at all.

Q. You knew you were able to judge between E. St. Julien drunk and E. St. Julien sober,—you had seen him both ways, had you not?

A. Oh, I have seen E. St. Julien under the influence of liquor; yes, sir.

Q. You have seen him what they call drunk, have you not?

A. Well, I have seen him pretty full, yes; yes, I have seen him feeling happy.

Q. How long before this court had you seen him so?

A. Oh, it was a long time.

Q. How long a time?

A. Well, sir, it was before he was elected Judge.

Q. You have never seen him so since he as been elected Judge, have you?

A. I have seen him since.

Mr. ARCTANDER. We object to that as immaterial, and not cross-examination.

Q. I ask you this question: Have you seen Judge Cox, during the time he has been Judge and prior to May, 1880, at the time when this court was held, intoxicated or under the influence of liquor?

Mr. ARCTANDER. That is objected to as immaterial, irrelevant, and not proper cross-examination. It is evidently offered for the purpose of sustaining or bolstering up the case of the prosecution upon article 18.

Mr. Manager DUNN. I withdraw that question with this witness.

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J. J. KELLY,

Sworn as a witness on behalf of the respondent, testified:

Mr. ARCTANDER. This is under the same article, Mr. President.

Q. Mr. Kelly, where do you reside?

A. Sleepy Eye.

Q. How long have you resided there?

A. Something over fifteen years.

Q. What is your business?

A. Farming.

Q. How long have you known the respondent?

A. I think something near twelve years; it has been quite a long time.

Q. Were you in attendance upon the district court in and for Brown county, in May, 1880?

A. I was, yes, sir.

Q. You were the defendant in the case of McCormick Bros. against Kelly, were you not?

A. I was; yes, sir.

Q. Were you in court during the whole of the trial of that case?

A. Yes, sir; I was.

Q. Were you in court any time before the day when the Kelly case was commenced?

A. I was; yes, sir.

Q. How great a portion of the term did you attend there, outside of the two days that the Kelly case lasted?

A. I was there during two suits, I think, before my case was called.

Q. Where did you sit; did you sit in a place where you could observe the Judge, both when your case was up and before?

A. Yes, sir; I sat, during my suit, with my counsel, at a desk in front of the Judge's desk, something like there,—(Witness indicates the position occupied by the president and secretary of the Senate),—quite close to the Judge.

Q. And before, when you were there, during the other two trials?

A. While I was a juror on the case of Chadbourn against Ole Hanson?

Q. Then you sat right by the side of the Judge?

A. I sat the same as here (indicating), facing the Judge.

Q. When you were sitting there by your counsel, you were facing the Judge, and had a full view of him?

A. I was, sir.

Q. On this third case, did you sit so you could observe him and see what was going on?

A. Yes, sir.

Q. Now, I will ask you to state what the condition of Judge Cox was during the trial of your case as to sobriety or inebriety?

A. I should say sober?

Q. You say sober? A. Yes, sir.

Q. Had you any doubt about it at the time?

A. I had not.

Q. Have none now? A. No, sir.

Q. I will ask you to state whether there was anything peculiar in the appearance, language, manner, or conduct of the Judge on any of those days from what there had been at the trials you attended before yours came up?

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A. No, sir; I didn't notice anything.

Q. State whether or not there was any difference in his appearance or in his language, manner, or conduct during the latter part of your trial from what there was during the first?

A. I saw nothing different.

Q. Mr. Webber was your attorney, was he not?

A. He was; yes, sir.

Q. State whether or not you told Mr. Webber, after notice had been given of motion for a new trial, that if he did not consider the case perfectly safe he should allow them to get a new trial without going to the supreme court?

A. I did sir.

Q. Or words to that effect?

A. I did sir; I stated to Mr. Webber that after the evidence was written out, if there should be any chance of a new trial being granted, to let them have it there.

Q. Without going to the supreme court?

A. Yes, sir; I did. I have told Mr. Webber so since.

Examined by Mr. Manager DUNN.

Q. Did you have your attention called at all, Mr. Kelly, to the condition of the Judge during the trial of that case?

A. No, sir; not during the trial of that case.

Q. Did you shortly after?

A. Yes, sir; I did.

Q. By whom?

A. By Mr. Webber.

Q. He was your attorney?

A. Yes, sir.

Q. How long after?

A. That evening before I left for home.

Q. After you had gotten a verdict?

A, Yes, sir. That is what made me make the request I did of him.

Q. And then you told him what?

A. I told Mr. Webber, after the evidence had been written out, so he could see it, that if there was any chance for them to have a new trial, to let them have it there. That is what I told Mr. Webber.

Q. And he said that was all right, I suppose?

A. Mr. Webber said he only feared one point. I believe he went to St. Peter and argued against a new trial, and thought it would come out all right. That was the language he used to me. He charged me for it just the same; he didn't forget that part of it.

Q. Well, you agreed to pay him?

A. Yes, sir.

Q. He didn't charge you anything out of the way, did he?

A. I don't say that he did. I don't intend to state that; I don't know how much his services were worth.

Q. You wanted him to do all he could, didn't you, to prevent a new trial?

A. No, sir; I didn't ask him to do anything to prevent a new trial. I told him, if there was any show to get a new trial in the supreme court, to let them have it; that I would sooner let them have a new trial, if there was any show to get beat, than to have it go up and have it reversed or sent back.

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Q. You said your attention was called to the Judge's condition by Mr. Webber, did you not?

A. I did, sir.

Q. Did you argue the point with him as to the Judge's condition?

A. I did not.

Q. Mr. Webber told you the Judge was intoxicated, did he not, at the time?

A. No, sir, he did not tell me he was intoxicated.

Q. Did he give you his opinion as to the Judge's condition?

A. I will give you the words; he said that the Judge "slopped over" on the last, and we were all right only for that, he said. He wished to put the blame on the Judge, I suppose.

Q. Is that what you mean by calling your attention to the condition of the Judge?

A. That is what I mean, sir, to state.

Q. Well, what did you understand by "slopping over?"

A. Well, I don't know what it could be without it would be that he might have meant that he was impartial [partial] to me; or that he was tight or some such thing as that.

Q. What made you think he would mean tight, if he didn't say tight?

A. I wouldn't certainly think that he meant tight for the looks of the Judge.

Q. Well, that is not the point; I say why did you think he meant tight, if he did'nt say tight?

A. Well, I didn't wish to give that as evidence, that he meant tight either; he might have meant tight or he might have meant that he was impartial.

Q. *Impartial*; that is the way you knew him to be, is it not?

A. I had a clear case; I had paid more than the machine was worth.

Q. You thought he ought to have been partial on your side?

A. No, sir, I didn't ask him to; I made the proposition before the suit was commenced——

Q. Well, I don't want to go into that; you said Mr. Webber might have meant that the Judge was impartial or that he was tight?

A. He might have meant it for all I know of, yes sir.

Q. Why did you think he might have meant tight?

A. I didn't say that he meant tight.

Q. Well, why did you say that he might have meant tight? what reason had you to suppose that he might have meant tight?

A. Well, I don't know as I can give any reason.

Q. Well, then, why do you say tight?

A. I don't think I gave my evidence that he was tight.

Q. I ask you if you have any reason for using the word "tight" at all before it had been used by any one else?

A. Myself?

Q. Yes. A. No, sir.

Q. You don't know why you used it, do you?

A. I don't know why I have used the word "tight" any more than I have used the word "impartial" or any other word.

Q. Well, then, what did Mr. Webber state to you?

A. I stated that Mr. Webber said we were all right, except that towards the last, the Judge "slopped over."

Q. Didn't Mr. Webber tell you that the Judge was drunk?

A. He did not, sir.

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Q. You will swear he didn't?
A. No, sir, he did not tell me that the Judge was drunk.
Q. Or that he was tight? A. No, sir.
Q. Or intoxicated? A. No, sir; nor no time since.
Q. He simply said he was under the influence of liquor, did he?
A. No, sir; he didn't say that.
Q. Simply said that he "slopped over?" A. Yes.
Q. And then you told him that if there was any chance for a new trial, to give it to them there, did you?
A. I told Mr. Webber if there was any show for getting a new trial granted in the supreme court to let them have it there.
Q. Well, were you talking about a new trial in the supreme court the night you got your verdict?
A. We were talking about the suit, and we were not talking in particular about a new trial in the supreme court. He said we were all right.
Q. Then why did you tell him that night when you first got your verdict, that if there was any chance for a new trial in the supreme court, to let them have it there,—if you were not talking about the supreme court?
A. Well, sir, I have given you my reasons exactly; I don't know as I could make it any plainer if I should sit here until to-morrow morning.
Q. Why did you use the words supreme court if you hadn't been talking about the supreme court?
A. Because Mr. Webber said it was all right unless they went up to the supreme court. I am no attorney; I wouldn't hire an attorney if I was one myself, and pay the price I have to. I don't make my living with my mouth, I make it with my hands.
Q. Did you write Mr. Webber a letter on the second day of April, 1881, in relation to that case?
A. Well, I may have wrote to him; I don't know; I didn't charge my memory. I may have wrote to him.
Mr. ARCTANDER. I apprehend, Mr. President, that under the rules of evidence as laid down by Steven and Wharton, it is proper, at least, if the witness desires it, before any question like this is put to him, to show him the instrument that is claimed to have been written by him.
The PRESIDENT *pro tem.* I think that question is proper as a preliminary question, which I understand it to be.
Q. You don't remember whether you did or not, you say, after the case had been appealed to the supreme court?
A. Well, I don't remember, I might have wrote to him, I went and seen him and he told me about what costs I would have to pay, and I think I had to pay, too.
Q. Did you tell him not to go to the supreme court?
A. No, sir.
Q. You couldn't help that; the other side went to the supreme court with it?
A. Yes, sir; but I told Mr. Webber as I have stated, that if there was any show of a new trial being granted to let them have it without going up with it.
Q. But still you wanted to take all the advantage you could, didn't you; to prevent a new trial if you could?
A. Didn't wish any advantage at all sir.

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Q. Didn't you wish to prevent a new trial if you could?

A. No, sir; I didn't wish to prevent a new trial if they wanted one. I wanted them to have it, if it was right.

Q. Just look at this card and see if you wrote it? [Handing witness a card.]

A. That is my writing, yes, sir.

Q. Read the card and see if it refers to the case we are talking about.

A. Yes, sir; I wrote that to him.

Mr. Manager DUNN. I will ask to put this in evidence as a part of the cross-examination of the witness upon that point.

The WITNESS. I have Mr. Webber's letter at home. He charged me so much for presenting it on briefs.

Mr. ARCTANDER. We object to it as immaterial and irrelevant.

Mr. Manager DUNN. It has a direct bearing upon the testimony of this witness.

The PRESIDENT *pro tem.* Oh, I don't think it is very material, and I should not feel disposed to rule it out, there may be a purpose which you have in view which I cannot see. I will rule that it may be admitted.

Mr. ARCTANDER. I ask, if the Manager has any purpose that we may be informed of it now so that the witness may be allowed to explain about it while he is here.

The PRESIDENT *pro tem.* The witness will undoubtedly be permitted to explain.

The card was then marked by the President *pro tem* "Exhibit A. on cross-examination by prosecution."

Mr. ARCTANDER. Let's have it read.

The clerk then read the exhibit as follows:

"Sleepy Eye Lake, Brown county, Minnesota, fourth, second, '81."

The WITNESS. Fourth month, second day.

"Dear Sir—Yours at hand, and I think the case submitted on brief sufficient. I want to do all I can, but think if this case is decided against me, any new law you may produce would not help us; hoping you have looked the case up thoroughly, and as soon as I thresh you shall be remembered. I am,

Yours truly, J. J. KELLY.

When will the case be tried. Please let me know as soon as tried, and if against us, on what ground, and oblige.

(Addressed,) B. F. Webber, Esq., New Ulm, Brown county, Minnesota.

Examined by Mr. ARCTANDER.

Q. I will ask you whether or not that was an answer to a letter written by Mr. Webber, asking whether he should go down and argue the case.

A. Yes, sir; that was the reason I wrote him. I sent him that card in answer to a letter of his wanting to know if he should go. He said that Mr. Lind—

Mr. Manager DUNN. I object to stating the contents of the letter, you may produce Mr. Webber's letters and we will admit his handwriting.

Mr. ARCTANDER. Well, you may send me that letter of Mr. Webber's then

The WITNESS. I don't generally keep such letters, but I might find it. It was written anyway and answered.

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Q. Well, what you wrote there was in reference to his submitting it on briefs, instead of going down to argue it.
A. Yes, sir.
Mr. ARCTANDER. Mr. President, we desire now to introduce testimony under specification two of article seventeen, the Coster divorce matter.

CHAS. STEUBE,

Sworn on behalf of the respondent, testified.

Examined by Mr. ARCTANDER.
Q. Mr. Steube, where do you reside?
A. New Ulm, Minnesota.
Q. What is your business?
A. Butcher.
Q. How long have you been engaged in New Ulm as butcher?
A. You mean how long I keep business for myself?
Q. Yes.
A. About eight years.
Q. Do you know the respondent, E. St. Julien Cox?
A. Yes, sir I do.
Q. How long have you known him?
A. I have known him for about eight or nine years.
Q. You were living there and doing business in New Ulm in the year 1879 were you?
A. Yes, sir, I was.
Q. And in the year 1880 too?
A. Yes, sir, I am living there for nine years.
Q. I will ask you to state whether you had, during those years, a cart used to carry off offal in?
A. Yes; I don't know whether you call it a cart; what do you mean by cart; a wagon with two wheels or four wheels?
Q. Well, I don't know what it was.
A. Well I got a wagon just for that business, yes.
Q. Just for the purpose of carrying off offal?
A. Yes, sir.
Q. Now, I will ask you to state if at any time, that respondent has rode with you or asked to ride with you in that cart or wagon?
A. He never has rode with me; he never asked me about it.
Q. Has he ever rode with you in any wagon or swill cart, or any other kind of a wagon in New Ulm?
A. If Judge Cox ever rode with me in a wagon, you mean?
Q. Yes.
A. He never did in that wagon or any other wagon.
Q. Neither to the court house nor any where else?
A. No, not anywheres.
Q. Now, I will ask you if at that time there was, or now is, any other gentleman by the name of Steube or Steibe, or anything similar to it in the butcher business in New Ulm?
A. No.
Q. You are the only one there?
A. Yes, sir.
Q. There is nobody there that has a similar name even?
A. No, sir.

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Q. Who was the other butcher there at the time?

A. Well, there was another butcher, he is there yet, by the name of Epple; and then there is another butcher shop, I couldn't tell you exactly who was in that butcher shop at that time because there have been in about eight or nine butchers and they have been changing around.

Q. There was nobody by the name of Steube, was there?

A. No, sir.

Q. Do you know whether that butcher-shop had any such swill-cart or any such wagon for carrying offal at that time?

A. Well, Mr. Epple got one, but I don't know about whether the others had one.

By Mr. Manager DUNN.

Q. How much of a butcher shop do you run; how large?

A. Mine shop is large,—well, I couldn't tell you that exactly; I think about thirty-five feet long.

Q. Well, what amount of meat do you sell in a year?

A. Well, that is different. I might from two to three a week; and last summer I cut so much as six or seven.

Q. How much meat did you cut in 1879?

A. Well, perhaps five in a week on an average in the summer time, and in the fall.

Q. Do you do all that work alone?

A. I do not.

Q. You don't do your killing alone, do you?

A. At that time I done some. I guess I didn't kill this year nothing.

Q. What part of the work do you generally do?

A. Oh, it is different kind; going out buying cattle and buying horses, trading horses, and something like that. Buy myself cattle and hogs, and sheep,—what I need in my meat market; and sometimes tend the shop.

Q. You don't do the dirty work about the shop?

A. No, I help very little.

Q. Nor the outside dirty work? A. No, sir.

Q. You have a boy to do your dirty work, don't you?

A. Yes, at present I have got three hands; a little while ago I had four.

Q. In 1879, how many hands did you have?

A. Two.

Q. How many did you run in 1880?

A. Well, in 1880, it was two hands,and sometimes, in the winter time I might change off.

Q. What was the business of those two hands?

A. Well, there is one fellow, he had to do the killing and cutting sausage meat, I helped to do that; and then I got another extra fellow doing the outside business, feeding cattle and horses and hauling off the slop and doing such business.

Q. You had a fellow on purpose to haul off the slop, and do such work as that?

A. Yes; I had one doing that business and some other work outside.

Q. *You* didn't do that kind of work, did you?

A. No, sir.

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Q. You didn't drive the swill-cart, did you?
A. Yes; I done it twice this year; I had to do it.
Q. You didn't do it then as a business?
A. No, sir; never.

Examined by Mr. ARCTANDER.
Q. What was the name of this man who did this driving of the swill-cart for you that year, 1879?
A. Well, that was a fellow by the name of Charles Meyer; he was there over two years.
Q. What was his name?
A. Charles Meyer.
Q. He lives up there in New Ulm now, does he?
A. Yes; he is farming.
Q. Now, do you know Joseph Eckstein?
A. Yes, sir; I do.
Q. Have you had any talk with him lately; he claiming you were the man we have reference to, here?
Mr. Manager DUNN. Oh, I object to that.
Mr. ARCTANDER. I simply do it to identify the man.
The PRESIDENT *pro tem.* Let me enquire, and I think I will dispose of this at once. My recollection of the testimony of the witness that you refer to, is that he stated that some person mentioned to him—
Mr. ARCTANDER. Here is the testimony, Mr. President:

"While he was talking that way, a butcher named Steibe came along; [and that is spelled S-t-e-i-b-e]; he had an old wagon, that he hauls off the offal of the meat market, and he stopped him and asked him to take him up to the court house that day. That was about 3 o'clock."

The PRESIDENT *pro tem.* Now what is your question?
Mr. ARCTANDER. My question is whether or not since Mr. Jos. Eckstein testified here the witness has had any conversation with him in which Mr. Eckstein has referred to him as the man to whom he referred in his testimony so as to identify this Mr. Steube, if it is spelled in any other way than this man spelled his name.
Mr. Manager DUNN. The court can see I think, that that could not of course be admissible.
The PRESIDENT *pro tem.* I don't think that is quite proper Mr. Arctander the better way would be to have your witness in court.

PETER MANDERFELDT.

Sworn as a witness on behalf of the respondent testified.

Mr. ARCTANDER. This is under the same specification.

Examined by Mr. ARCTANDER.
Q. Where do you reside?
A. Two miles west of New Ulm.
Q. What is your business?
A. Farming.
Q. Are you any relation to the sheriff of Brown county, the one that was sheriff in 1879 and 1880?

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A. Yes sir, my father.
Q. Your father was sheriff there then?
A. Yes sir.
Q. How long have you known the respondent, E. St. Julien Cox?
A. I have known him for five or six years.
Q. While your father was sheriff, you used to live above the court house there or at the court house?
A. Right in the court house, in the same building.
Q. Have you seen in the reports of this court reference made to a divorce proceedings in the case of Coster against Coster at New Ulm in which Mr. Webber and Mr. Kuhlman and Mr. Eckstein testified. Have you seen reference to it in the reports in the papers.
A. No sir, I have not.
Q. Well do you remember of any proceedings outside, on the court house steps in the case against John Coster?
A. Yes sir.
Q. You remember that?
A. Yes, sir.
Q. In 1879?
A. Yes, sir.
Q. Now, I will ask you to state if you were around when the Judge came up towards the court house?
A. Yes, sir; I was.
Q. How did he come up?
A. Well, I seen him; he came walking.
Q. You are positive he didn't drive up there?
A. No, sir; not *to* the court house.
Q. Did he drive up any *below* the court house?
A. No.
Q. The road goes right by the court house, doesn't it?
A. Yes, sir.
Q. You saw him coming up walking from—
Mr. Manager HICKS. Won't you let him tell that story instead of yourself?
Mr. ARCTANDER. Very well.
Q. What street is it that the jail is located on?
A. It is on the side of Centre street.
Q. I mean the court house?
A. Well, they are both on the same street.
Q. Now, where was it you saw Judge Cox coming up, walking there?
A. He came up on the left side of Centre street, up through the vacant block, coming up towards the court house.
Q. Was there anybody with him?
A. Not that I seen of.
Q. Now, I will ask you to state if you saw him when he came up there to the court house?
A. Yes, sir.
Q. Where?
A. I was standing at the window, and seen him come through the gate, and I went up stairs to the court-room at the same time he came up.
Q. He walked up too, didn't he?
A. Yes, sir.
Q. Now, I will ask you to state whether, when he came up there, there was anybody present there at all except you and he?

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A. No, sir; I and him, all alone.
Q. You know Mr. Kuhlman?
A. Yes, sir.
Q. George Kuhlman, the lawyer?
A. Yes, sir.
Q. Do you know Webber, the lawyer?
A. Yes, sir.
Q. Were any of those gentlemen there?
A. Not just at that time.
Q. Not when he came up? A. No, sir.
Q. Had they been there before?
A. I couldn't say.
Q. You hadn't seen them before?
A. No, I hadn't seen them.
Q. After you came into the court room did you have any conversation with the Judge?
A. Yes, sir, I did.
Q. What was it?
A. Well, the first thing he asked me, he asked me if the sheriff was at home. I said no. Well, he told me I should see to getting the sheriff home, or a deputy, to open court; so I went down after the deputy sheriff.
Q. Who did you go after?
A. Mr. Eckstein.
Q. Did you and he come up together?
A. No, sir.
Q. Who came up first, you or he?
A. I did.
Q. You came first and he came after?
A. Yes, sir.
Q. When you came up there, who did you find?
A. I found Cox and Webber and J. B. Coster and George Kuhlman.
Q. Where did you find them?
A. I found them outside, on the stairs.
Q. The stairs going down from the court room?
A. Yes, sir.
Q. Now, was E. Kuhlman there?
A. I didn't see him.
Q. Was he there during any of the proceedings there?
A. Not that I can tell of.
Q. I mean Ed. Kuhlman; he is the son of George Kuhlman, you know?
A. Yes, I understand.
Q. Now, at this time, what was the condition of Judge Cox as to sobriety or inebriety; that is, I mean by those words as to being sober or drunk?
A. Well, my opinion about him was that he was then just as I met him all the time; just the same way. I didn't see no difference with him.
Q. You saw no difference in his appearance, in his face?
A. No, sir.
Q. Any difference in his actions, in the way he acted and talked.
A. No, sir, just the same as I always meet him.
Q. State whether or not you had any doubt at the time, about his being sober?

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A. Not a bit.
Q. You have none now?
A. No, sir.

Examined by Mr. Manager DUNN.
Q. Mr. Manderfeldt, when did this take place; what occurrence are you talking about?
A. Well, I couldn't tell you exactly what day it was.
Q. Well, what year was it?
A. 1879.
Q. Well, what month was it?
A. Well, that is what I couldn't tell you.
Q. Well, about what month?
A. Well, I couldn't come near to it anyhow.
Q. Couldn't you tell whether it was in the spring, fall or winter?
A. It was at a special court, but I couldn't tell just what time that happened.
Q. Well, now, can't you give us any idea of the month it was?
A. Well, if I should give some, I think my recollection is that it was in May.
Q. In 1879?
A. Yes sir.
Q. Well, now you say the Judge had been up there that morning, and went into the court room to get you to open court.
A. Not in the morning.
Q. That afternoon?
A. Yes, sir.
Q. You are positive about that?
A. Yes, sir.
Q. Then did you go after the deputy sheriff, and leave him there?
A. Yes, sir.
Q. Who did you get?
A. Mr. Eckstein.
Q. And when Mr. Eckstein got there, the Judge was there, was he?
A. Yes, sir.
Q. Well, were you there when they sent for the beer?
A. I was.
Q. Who got the beer?
A. J. B. Coster.
Q. You know all about the beer?
A. Yes, I do.
Q. They drank the beer there, didn't they?
A. Yes, sir.
Q. Did the Judge drink some beer?
A. Yes, sir.
Q. Coster?
A, Yes, sir.
Q. Did you drink some of it?
A. I didn't.
Q. Do you know who paid for the beer?
A. That's what I don't know, I could not tell.
Q. Did you hear the conversation between them about the beer?
A. No, sir, I didn't hear no conversation at all about the beer.

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Q. Did you hear any conversation about the case?
A. Well, I was looking on but I couldn't tell what was said, or anything like it.
Q. How far off were you?
A. I was just in the same place sitting on the stairs.
Q. You didn't pay much attention to it, one way or another?
A. Well I paid so much attention to it that I knew what was going on, you know; that is about all. It is so long ago I couldn't recollect every word that was said.
Q. You haven't read any account of this in the paper have you?
A. No, sir.
Q. Nor anywhere?
A. No, sir.
Q. How old are you?
A. Twenty-two.
Q. Was it after dinner that the Judge came up there, and got you to open court?
A. Yes, sir.
Q. Asked you to find your father?
A. Yes, sir; —no he didn't ask me to find him, but he asked me if he was home; and I said he wasn't home; and he said I had to look after somebody.
Q. Now wasn't that in the morning?
A. No, it was not.
Q. What makes you think it was in the afternoon?
A. Because I know it was in the afternoon.
Q. Well, what makes you think so?
A. Because I know he didn't come up in the forenoon; because I know that day was to be a special court.
Q. How do you know it was?
A. Well because it was. It was the first Tuesday in every month that we had special court.
Q. Do you know whether that was the first Tuesday?
A. Well, I couldn't say.
Q. Well, how did you know it was special term then?
A. Because my father told me if Judge Cox was coming I should fix up the room.
Q. You didn't have any suspicion then when that Coster trial was had on the steps, that he was intoxicated, had you?
A. Not a bit.
Q. You never thought of such a thing did you?
A. No. sir, he looked to me just as ever.
Q. He was perfectly sober was he?
A. I wouldn't say that.
Q. Well, how was he?
A. He looked just to me as I always met him.
Q. Did you always meet him when he was perfectly sober; or when he was tight?
A. I always met him in a decent way.
Q. Well, answer my question—will you swear that he was sober at that time?
A. Yes, I could swear that he was sober.
Q. Perfectly sober?
A. At that time, yes, sir.

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Q. Perfectly sober?
A. Yes, sir, prefectly sober.
Q. Well, why did you say you wouldn't say so, a few minutes ago?
A. Well, I didn't know what you meant by the word sober, the first time.
Q. You didn't know what sober meant?
A. Well, I knew what it meant but I couldn't understand what you meant at the time.
Q. You say he was perfectly sober?
A. Yes, he was just as I met him always.
Q. Did you ever meet him when he was not sober?
A. No, sir.
Q. Did you ever see Judge Cox when he was under the influence of liquor?
A. I never did.
Q. Nor tight?
A. I never did.
Q. You never had met him very often in New Ulm, then.
A. Well, not very often; only just at court time when I was there.

ALBERT SEITER

Sworn as a witness on behalf of the respondent testified.

Mr. ARCTANDER. This is under the same specification.
Q. Mr. Seiter where do you reside.
A. New Ulm.
Q. What is your business? A. Hotel business.
Q. Are you running the Dakota House? A. Yes, sir.
Q. Were you running that in 1879? A. Yes, sir.
Q. Do you remember of hearing at the time of a proceeding in the case against John Coster.
A. Yes, sir.
Q. By which he was ordered to go to jail? A. Yes, sir.
Q. Do you remember of the Judge being there and stopping at your house at the time when he was up there on that occasion? A. Yes, sir.
Q. State what condition he was in as to sobriety or inebriety while he was stopping at your house that day.
A. Well, he was perfectly sober as long as he was at our house.
Q. As long as he was in your house he was perfectly sober?
A. Yes, sir.
Q. After that you don't know anything about him?
A. No, he drove out in the country and came back and I didn't see him. He came back in the evening I guess; I don't know what time.
Q. I will ask you to state whether on that day, in the afternoon, after dinner, you were around the house yourself?
A. Yes, sir.
Q. Are you generally around the house after dinner? A. Yes, sir.
Q. Do you know whether Ed. Kuhlman,—you know him don't you?
A. Yes, sir; I do.
Q. Do you know whether or not Ed. Kuhlman was in the Dakota House that afternoon?
A. I didn't see him.
Q. Well, could he have got up there and found out Judge Cox's room without inquiring of you down stairs?

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A. Well, he would have had to inquire of me or my father.
Q. He didn't inquire of you? A. No, he did not.
Q. You say at the time when the Judge was there that time you heard talk in town about this Coster case coming up?
A. Yes.
Q. And that is the way you fix it in your mind?
(Witness nods assent.)
Q. You wasn't there yourself at the court house?
A. No, sir; I knew at the time; he had his boy up with him.
Q. You mean the Judge had?
A. Yes, sir.

CROSS-EXAMINATION.

By Mr. Manager DUNN.
Q. The Judge stops at your house there, does he not?
A. Yes, sir; for the last twenty years.
Q. Have you any means of telling when he was there?
A. Well, I couldn't tell you.
Q. Do you remember any particular time when Judge Cox stopped at your house?
A. Well, it is hard to tell; if I had my register here I could tell you.
Q. Do you remember any particular month that he stopped at your house other than when he would have his terms of court?
Q. Yes, he stopped at our house two or three weeks ago.
Q. That was the last time he was there was it not?
A. Yes, that was the last time he was there.
Q. Do you remember any particular time when he has been at your house when he was not perfectly sober?
A. Yes, sir.
Q. When was that?
A. Well, it was in the summer of 1879 or 1880.
Q. He was there then when he was not perfectly sober was he?
A. Yes, sir.
Q. Intoxicated at your house?
A. Well, what do you mean by intoxicated?
Q. Well, under the influence of liquor,—drunk; is that what you mean?
A. Yes. When a man can't tend to his business?
Q. Yes, he has been there in 1879 and 1880 when he couldn't attend to his business?
A. Yes, sir; but he didn't have any business to attend to.
Q. Well, I didn't ask you about that; of course you were very anxious to put that in. (Laughter.) I have no doubt you want to get that in as fast as you can. Now, Mr. Seiter, isn't it of very frequent occurrence that when he comes to your house he gets under the influence of liquor?
Mr. ARCTANDER. Well, now, that is objected to as improper cross-examination.
The WITNESS. What do you mean by that?
Mr. ARCTANDER. Wait a moment.
The PRESIDENT *pro tem.* If you put that question in the way you put it before I am inclined to think that I shall allow it. I have no ob-

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jection to stating to the Senators, the managers and the attorney for the respondent, how I should hold in the matter; I think I would hold that you would be permitted to inquire if he had seen the respondent on other occasions drunk,—I think I would permit you to inquire the number of the times, for the purpose of testing the knowledge of the witness with reference to the character of the respondent when he was drunk and when he was sober. Further than that I should not permit you to go for the reason that it would be immaterial I think, and would also be perhaps permitting you to show matters outside of the direct examination that would be proper for you to show on the examination in chief on your own side. That would be my holding and I shall so hold.

Mr. Manager DUNN. Well, the chair misapprehends the object for which this question is asked.

The PRESIDENT *pro tem.* I am inclined to think, Mr. Dunn, this question is not exactly in a line with either one but if you insist upon it,—please repeat the questionMr. Reporter.

The reporter then read the question.

Mr. Manager DUNN. That is direct and proper cross-examination.

Mr. ARCTANDER. Do you ask if it has been of frequent occurrence?

Mr. Manager DUNN. Is it not, and was it not, of frequent occurrence up to this time,—1879 and 1880?

The PRESIDENT *pro tem.* I am inclined to think I will permit you to ask that question, although I have some doubt as to whether it does not go across the line a little. You may ask the question, unless the Senate otherwise orders. If any gentleman has a desire to have the matter submitted to the Senate, I certainly do not wish to take the responsibility of deciding.

Mr. ARCTANDER. We are satisfied upon our side.

Mr. Manager DUNN. [To the witness.] Just answer the question, Mr. Seiter: Is it not a frequent occurrence that he is drunk, when he comes to your house?

A. No, sir.

Q. It is of rare occurrence, is it?

A. Yes, sir.

Q. How many times has he been at your house within the last four years, and since he has been Judge?

A. Oh, a good many times, sir.

Q. How many?

A. I couldn't tell you how many times.

Q. Do you remember when this case of Coster against Coster was tried in New Ulm?

A. I do.

Q. When was it? A. In 1879.

Q. Well, what part of 1879?

A. In the summer of 1879, I know, but I couldn't tell you the month.

Q. In the summer of 1879, when was your attention first directed to the trial of that case?

A. Well, the Judge told me when he came up, that he was going to have that trial.

Q. The Judge told you when he came up that day?

A. Yes, sir.

Q. When did he get there?

A. He came up with a team.

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Q. When did he get there?
A. I couldn't tell you for sure.
Q. Just recollect, if you can, when he came there?
A. I couldn't recollect.
Q. Now, what did the Judge tell you?
A. Well, he told me, that he was going to have a trial, and he said after that, he was going out hunting. He had his boy with him, and he told me to take care of Willie; after he came home I told him about Willie, and he gave him a good scolding; and if he had been under the influence of liquor, he would have said: "Willie you are a good boy!"
Q. Well, what was he going out hunting for; was it in chicken season?
A. Well, I couldn't tell you what he wanted to go out to hunt for.
Q. Did he have his dog with him?
A. He had two dogs with him.
Q. And a gun?
A. Yes, sir.
Q. And did he go hunting?
A. Well, I don't know whether he went hunting or not.
Q. Did he come back to your home?
A. Yes; he came back.
Q. Did he bring any game with him?
A. No, sir.
Q. Did he take his boy with him?
A. No, sir.
A. He left his boy at your place?
A. Yes, sir.
Q. What did he say to his boy when he came back?
A. I told him something about the boy, and he gave him a good scolding.
The PRESIDENT *pro tem.* Was that when he came back from hunting, or when he came back from court?
A. When he came back from hunting.
Q. What time did he go hunting that day?
A. As far as I can recollect, it was in the afternoon; I couldn't tell you what time.
Q. Now, do you recollect of his going hunting at all?
A. Yes, sir, I do, sir.
Q. What did he go with?
A. With a team.
Q. A driver?
A. He had Henry Subilia with him.
Q. Henry Subilia drove the team, didn't he?
A. I don't know which drove; but I know Henry Subilia went with him.
Q. Do you know that was the day the Coster case was tried?
A. I don't know if it was the same day or the next one.
Q. You don't know whether that was the same day or not?
A. No.
Q. Do you know anything about the day that that case was tried?
A. Nothing else; that is all I have to go by.
By Mr. ARCTANDER.
Q. Do you mean what he has told you now, or what he told you at the time when he was up there to try the Coster case?

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A. When he was up there to try the Coster case. He told me at the time, he had been up there, and not here.

By Mr. Manager DUNN.

Q. I will ask you one or two more questions. You say, Mr. Kuhlman could not have got in there without seeing your father, do you?

A. Up to Judge Cox's room?

Q. No; up into your room and found Judge Cox's room?

A. Yes; he could see me or my father.

Q. Wasn't there any one else that could have told him?

A. Well, it is between twelve and two o'clock; I and my father were the only ones that were there.

Q. *What* is between twelve and two o'clock?

A. At noon time.

Q. How do you know he was there at that time?

A. He [Mr. Arctander] asked me.

Q. You say he could not find out from any body but you and your father, where the Judge was?

A. We had only one stair.

Q. Only one stair,—wasn't there any women there about the house?

A. Yes, in the kitchen.

Q. Well, weren't there some little folks running around there that people sometimes ask questions of?

A. Yes, a few small boys, but they been going to school them days.

Q. Weren't there some servants around there?

A. No, we didn't have any at that time.

Q. Weren't there boarders there?

A. Yes, sir; boarders.

Q. And people there that he might ask?

A. Yes.

Q. Did Ed. Kuhlman ever stop at your house?

A. Yes.

Q. Doesn't he know the way up as well as you do?

A. Of course he don't.

Q. Hadn't he been up there in 1879?

A. No, sir.

Q. He had never been in your house at that time?

A. Well, when they first came up to New Ulm, about ten or twelve years ago, when he was a small boy, then he stopped at our house.

Q. Isn't it a fact that you don't pay very strict attention to business there yourself?

A. How so?

Q. Being out of the house a good deal yourself when people want to find you?

A. Well, I am always there from 12 to 2.

Q. Always? A. Yes, sir.

Q. Never fail; but, at other times you may be away?

A. Yes, sir.

Q. You don't know exactly what time Kuhlman came there, do you?

A. After Cox? Well, I didn't see Kuhlman there at all.

The PRESIDENT *pro tem.* I am requested to announce that the Senate, on convening after dinner, voted to hold an evening session; so that, when we take a recess at 6 o'clock, it means until 8 this evening instead of 10 o'clock to-morrow morning, under the rule.

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Mr. ARCTANDER. With the leave of calling further witnesses upon this specification, we now desire to introduce testimony under specification 7 of article 17—the last May term of court in Brown county. We will call Mr. Brownell.

LEWIS BROWNWELL

Re-called on behalf of the respondent, testified,

Examined by Mr. ARCTANDER.

Q. Mr. Brownell, I desire to call your attention to a general term of court held in and for the county of Brown, in the month of May, 1881. Were you there any part of that term?

A. The first day of the term only.

Q. Were you present there when Judge Cox came in from the country and drove up to the court house?

A. I was.

Q. Did you see him when he came?

A. I did.

Q. You were at the court house at the time, were you?

A. Yes, sir.

Q. What did he do as soon as he came in?

A. He jumped right out of the buggy and came into the court house.

Q. Commenced to call court at once?

A. Yes, sir; he had court called right off.

Q. Now, I will ask you to state what his personal appearance was at the time.

A. Well, my recollection is that there had been a rain, and it was muddy; that he had ridden through the county, and didn't look very much like a Judge. He looked pretty rough. He had been up the country somewhere, and drove in that morning.

Q. Did you notice whether he was shaved or not?

A. I think he was not. He had the general aspect of what I should call rough, frontier-like.

Q. Did you notice whether or not he seemed to have a clean shirt on when he came in?

A. If he did, I thought it was mussed. He was looking roughly when he came in.

Q. I will ask you to state what, in your opinion, was his condition as to sobriety or inebriety at the time he came in?

A. He appeared to be sober?

Q. Had you any doubt about it at the time?

A. No, I hadn't; I will say that he seemed fatigued. It was a warm morning.

Q. He seemed fatigued, and his personal appearance was not very neat, that was all?

A. Yes, sir.

Q. Was there anything else peculiar or different in his appearance from what it was at other times when you have seen him?

A. Nothing except his general rough appearance from not having arranged his toilet.

Q. Now, I will ask you to state whether at that time there was any lack of expression in his eye?

A. I did not observe any.

Q. Were his eyes glaring?

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A. I think they were not.

Q. The forenoon session lasted only a short time?

A. A short time. It seems to me the empanelling of a jury was practically all that took place.

Q. What case was that?

A. That was the case of Howard against Manderfeldt. I was associated with Dick Jones in the case.

Q. You were there all the time? A. Oh, yes.

Q. You took part in the trial? A. Yes, sir.

Q. Now, I will ask you to state whether you were present during all the proceedings in the afternoon until the jury were sent out?

A. Yes, I was.

Q. I will ask you to state what the Judge's condition was in the afternoon.

A. No alteration as I know of; I didn't notice any.

Q. His personal appearance was changed, was it?

A. Yes, he was washed up and looking better.

Q. Do you know what his condition as to sobriety or inebriety was that afternoon?

A. I saw no indications of drinking or being under the influence of liquor at all, during the day or evening.

Q. You have said that there was no change from the forenoon to the afternoon, except his personal appearance, that is, he was cleaned up. Now, I will ask you to state whether there were any more interruptions during the progress of that trial than you have noticed before in Judge Cox's court, or in your own terms of court?

A. No more than usual; I think that after the trial of one case there was considerable sparring back and forth between Mr. Webber and Mr. Jones, in regard to the evidence and the points of the case.

Q. And the Judge made his rulings?

A. Promptly.

Q. Now, how did he seem to understand the points made?

A. Well, he seemed to understand them. He was very clear and decided in his views and rulings.

Q. Grasped them clearly?

A. Yes.

Q. And quickly?

A. Oh, yes; there is no question about that.

Q. I ask you to state whether or not during that trial the Judge made any remark to Mr. Webber about some evidence that was in there, that if he didn't have any evidence to disprove that evidence, that he might save the county expense, etc. Do you remember any such remark? If not that remark, state what you do remember.

A. My recollection is that it was an alleged fraudulent transfer, and as the evidence came out showing that the party paid nothing and substantially had nothing, the alleged purchaser, he says to Mr. Webber, "You have no other testimony than this?" Don't recollect just what his reply was, but the Judge substantially said, "If you haven't, we could save expense to drop this. You don't expect a verdict upon such testimony, do you?" or something like that. I don't pretend to give the words, but the general idea.

Q. Now, that case was an action brought,—you may state what it was.

A. Why, it was a failing debtor pretending to make the transfer to

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this man Howard, the plaintiff in the case, and the creditors of the failing party came on and attached the property belonging to the debtor.

Q. And this was an action of replevin or trover brought against the sheriff?

A. Against the sheriff.

Q. Well, you may state what it was as near as you can?

A. For the moment I forget the debtor's name; there were two parties—one was a client of ours, and the other a client of Jones & Gove, of Rochester. We both attached the goods as the goods of the debtor, and both idemified the sheriff. But the goods were applied upon the debts of Jones' client in fact, and they were the real parties, although my clients had got the bond out, and we went up there to see that the matter was fully tried as their bondsmen, and the suit was brought by this pretended purchaser against the sheriff for the conversion of these goods.

Q. Now I will ask you to state whether or not the evidence that came out when Judge Cox made that remark was evidence showing want of good faith in the purchaser?

A. Well, as counsel for the other side, I thought so.

Q. When Judge Cox made that remark, was there anything wrong in the remark, or showing that he did not understand the law or the evidence?

Mr. Manager DUNN. I object to that; let him state what it was, and the Senate can judge, we object to further examination.

Q. Well, you stated, I believe, that at this time when he made this remark that it had appeared by his own witness that he did not have any money, and he had not paid any money.

Mr. Manager DUNN. I object to that.

Q. Well, what was it you testified to in regard to that?

A. You are going so fast, I don't know as I hardly know.

Q. What was the testimony?

A. I say the testimony of the plaintiff as I remember, was very flimsey; of course, I may be prejudiced, being an interested party in the case.

Q. I will ask you to state whether or not there was anything in the remark that Judge Cox made there under the circumstances, that led you to believe that he was intoxicated?

A. There was nothing to indicate it to me.

Q. Or that he was under the influence of liquor?

A. No.

Q. The Judge seemed a good deal fatigued that day?

A. He was wearied, I have seen him brighter than he was that day; but there was no evidence of intoxication, nothing at least, that I saw during the day.

Q. I will ask you to state whether or not there was anything in his rulings that showed a wandering of his mind at the time?

A. It didn't occur to me so; his rulings seemed correct.

Q. Was there anything in his rulings, language or actions there that showed want of a possession of mental ability or mental capacity?

A. I didn't think so.

Q. I will ask you to state whether or not there were several objections raised on that trial during the afternoon?

A. Oh, I think there was, although,—there usually is in such cases.

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Q. I will ask you to state whether or not upon any of those objections any of the rulings of the Judge were contradictory to other rulings, or contrary to what he had already decided?

A. I don't recollect that they were.

Q. If there had been anything of that kind, one ruling contradictory to the other, would you have been liable to have remembered it?

Mr. Manager DUNN. I object to that question.

Mr. ARCTANDER. Is that objectionable, Mr. Dunn?

Mr. Manager DUNN. Yes, sir; that is an objectionable question as I understand it. Let him state what the opportunities were, and it will be for the Senate to judge whether he would have remembered it.

Mr. ARCTANDER. Well, I guess that is not the law.

Mr. Manager DUNN. That question, as I understand it, has been ruled upon by our supreme court.

Mr. ARCTANDER. Not that question.

Mr. Manager DUNN. Well, it is the same class of questions.

Mr. ARCTANDER. I suppose the Senate can't judge of this man's memory; he is probably the best judge of that himself.

The PRESIDENT *pro tem.* I think, the witness having testified as to the interest he had in that trial,—that he went there for the purpose of watching it, and looking after the interests of his client, and that he remained there during the entire trial, and did watch it, that it would hardly be competent to ask the witness the question if there had been any contradictory rulings, he would have noticed it, after his having stated that under those circumstances he did not notice it.

Q. Now, did you hear his charge to the jury in that case, that was before adjournment was it not?

A. It was before the adjournment in the afternoon.

Q. Yes, before the evening adjournment.

A. Yes, the jury went out if I recollect before the evening.

Q. Well what was his condition at the time he charged the jury, as to sobriety or inebriety?

A. I saw no difference.

Q. State whether or not his charge was all right, given in a clear and concise manner.

A. It was entirely satisfactory to us.

Q. That was not really what I asked you for; of course I don't doubt that you won the case; but the question is if his charge was given in a clear and distinct manner.

A. I didn't think it was given in as clear a manner as his charges usually were. The Judge was weary and somewhat dull that day, and his charge was not as bright and clear as his charges usually are; that is my recollection of it, I don't recollect the details of it.

Q. Now I ask you to state whether or not the Judge during that trial at any time was wild by spells, or acted in a wild and incoherent manner?

A. No, sir. he was not.

Q. There was nothing of that kind, was there?

A. No. sir, if there had been I should—

Q. If there had been you would have noticed it?

A. Well, I stopped because I knew the counsel had some question about that. I simply say there was not.

Q. State whether or not it was a fact that this trial proceeded irregularly during the afternoon?

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A. Not in any way that I now remember of.
Q. Nothing irregular?
A. I have no recollection of any irregularity.
Q. Now, were you present in the evening, when the verdict in the case was given?
A. I was.
Q. I will ask you to state what the condition of the Judge was at that time in the evening when the verdict came in—when the jury rendered their verdict—as to sobriety or inebriety?
A. I don't the Judge was—to use the phrase some of you nsed—"perfectly sober," and I think he was not drunk.
Mr. Manager DUNN. He was betwixt and between?
A. I think so; that was in the evening. I think Mr. Jones and I went up with him from the hotel where we stopped.
Q. Was that at the time that you had been drinking a couple of glasses of beer with him?
A. Drank a glass or two, I don't remember which.
Q, Was that the reason you could not say he was perfectly sober, because you had drank with him?
A. Well, I thought that the Judge—if I hadn't drank with him, I think that I shouldn't have perceived that he was. He was a little happy, feeling a little well: not drunk, but——
Q. But not intoxicated?
A. No, not drunk.
Q. Now, I will ask you, if at that time that he was up there and received that verdict, whether or not he talked indistinctly in any manner?
A. I think not; I have no recollection of any—
Q. Indistinctness in his talk?
A. No. Of anything in the evening.
Q. I will ask you to state whether or not when he sat upon the bench there he sat with his mouth partially open, as if he had lost control of his under jaw?
A. He never sat there in that way when I was in court.
Q. I will ask you whether or not his face that evening looked stolid?
A. I think he was a little brighter than he was during the day. That is, feeling a little more lively; that is my recollection of it.
Q. I will ask you to state whether or not it was a fact that at that time he talked foolishly up there in any way; silly, as you call it?
A. No, I don't recollect of his talking, except upon the bench when he went up there, and the verdict was received. There was nothing that was foolish, or incoherent to my recollection.
Q, I will ask you to state whether or not (if you remember) there was a written verdict in that case?
A. Really, I don't remember.
Q. What is your impression about it?
A. There was a verdict received, but I don't recollect. I know Mr. Jones and I waited until the verdict was delivered, we saw that the verdict was right and then went out.
Q. You saw that the verdict was right?
A, Yes.
Mr. Manager DUNN. The verdict was in your favor?
A. Yes, it was in our favor, and that it was properly received.
Q. Now, I will ask you to state, whether or not, the Judge at that

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time, when asking the jury whether they had agreed upon a verdict, asked them, without reading the verdict to them, if they had found a verdict for the defendant, no cause of action?

A. The verdict was handed in there and was read or stated to the jury by somebody, the clerk or the Judge, I can't tell which, and was received without objection by counsel. I cannot remember the details of it. We were up there and the jury came in and the verdict was received.

Q. I will ask you, if he had asked the jury in that case, not having received a written verdict, and without having the verdict announced, if they found a verdict for the defendant no cause of action, whether or not, it could have escaped your notice at the time and your memory now?

Mr. Manager DUNN. I object.

Mr. ARCTANDER. [To the witness.] The Senate may not understand this; I will ask you to state first, if that would have been proper at all?

Mr. Manager DUNN. I object to that. He is not an expert on the law.

The PRESIDENT *pro tem.* Mr. Brownell, let me ask you a question. You say you have been practicing how long?

A. 27 years.

The PRESIDENT *pro tem.* Was there anything in that verdict, in its reception or rendering different from the reception and rendering of verdicts in ordinary cases?

A. There was not. I will say one thing that I know: the Judge did not, when the jury came in, ask them if they had agreed upon a verdict for the defendant, unless it was after the verdict was opened and handed to the Judge. I know there was nothing of the kind ever occurred.

By Mr. ARCTANDER.

Q. Now, at this time, after the verdict was received, do you remember of the fact of Mr. Webber giving notice of a motion for a new trial?

A. I will state what I remember about it. My recollection is that when the verdict was read and recorded, while Mr. Webber was sitting to the right and Mr. Jones here (witness indicates). Mr. Webber got up and said to the court, "I want a stay of proceedings to make a motion for a new trial." Mr. Jones turned to him and said, "We will stipulate and give you all the time you want; we will arrange that in the morning." This was about eight o'clock in the evening, I should judge. Mr. Jones stayed over to arrange with Mr. Webber, and I came away.

Q. Was there anything said by the Judge to the effect that he wanted the motion made right off, and that he would decide it in a minute?

A. I think there could not anything of that kind have occurred.

Q. Well, are you positive about it?

A. Why, yes; there wasn't anything of that kind. That is, I didn't hear it. I was paying attention to nothing else except this case, until the verdict was received, and we got through.

Q. I will ask you to state whether or not Mr. Jones at that time made any remark to Mr. Webber about the Judge being out of condition, or anything of that kind?

A. Not there; I never heard a word of it. I was right close by him; I heard everything he did say.

Q. How close to him?

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A. I was sitting right by the side of him. I heard all that was said between him and Mr. Webber. I was paying attention to nothing else.

Q. What he did state there is what you have just stated; that they could arrange that in the morning?

A. Yes.

Q. And the next morning you were not in court any more?

A. I arranged for Mr. Jones to attend to it, and I left on the first train in the morning.

Examined by Mr. Manager DUNN.

Q. Mr. Brownell, you were the attorney for the defendant in that case?

A. No; not the attorney.

Q. Well, you represented the defendant?

A. Yes; that is, Messrs. Jones & Gove put in the answer.

Q. Who were the attorneys of record?

A. Jones & Gove.

Q. Well, you were there without taking any part in the trial of that case, were you not?

A. Well, I would not say that; Mr. Jones was taking the leading part.

Q. Did you take any part as a matter of fact?

A. I don't think I made any argument or addressed the jury, or examined witnesses.

Q. Well, then you took no part?

A. No, sir; I did take a part; I consulted with him all through the case.

Q. I mean during the trial?

A. I didn't do the talking, but I took a part in the trial.

Q. You didn't examine any witnesses nor argue to the court or jury?

A. No, I did none of the talking, the leading part was done by Mr. Jones.

Q. Now do you pretend to say that you heard everything that Mr. Webber and Mr. Jones talked about, sir?

A. I heard all that Mr. Webber and Mr. Jones said upon that evening when the proposition was that he asked for time to make a motion for a new trial that evening.

Q. And it could by no possibility be that Mr. Jones might have said anything to Mr. Webber that you didn't hear?

A. Oh, a thousand things might be possible. I don't think it is possible.

Q. And yet you won't say it might not have occurred, will you?

A. Well, everything is possible, but I was paying attention to nothing else.

Q. I understand that, but will you say that that conversation which Mr. Webber says occurred between him and Mr. Jones could not by any possibility have occurred?

A. I don't think it did or could, without my hearing it and remembering it.

Q. Now isn't it the fact that you don't remember it because you didn't hear it?

A, No, sir; because it didn't occur.

Q. When was your attention first called to this conversation?

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A. Why, I had never thought anything about this matter, that I recollect until these charges came up.

Q. Then you have never thought of the conversation or anything about this case?

A. Nothing special to call my attention to this. But it was last May, and when I attend court in cases where I am interested, I know all about them.

Q. Now in that case, Mr. Brownell, you were successful, were you?

A. We got a verdict.

Q. Did that verdict stand?

A. It was set aside by Mr. Jones, and they made some stipulation about it.

Q. They stipulated for a new trial in that case, din't they?

A. I don't know; they got a new trial.

Q. Don't you know that Mr. Jones and Mr. Webber stipulated for a new trial, notwithstanding your verdict?

A. I do not; but I was told, and I believe so.

Q. You know it from the records, don't you?

A. I have not looked at the records; Mr. Jones had the papers; I understood they stipulated they would try it before a referee up at Mankato.

Q. Set aside that verdict?

A. Yes.

Q. You were told that was done?

A. It was done; I was present at the second trial.

Q. It was done on account of some bad law the Judge gave to the jury, wasn't it; didn't Mr. Jones tell you it was done because the Judge was tight?

A. No; he didn't tell me that. I will tell you what he did tell me: He thought he could beat them twenty times as well as once.

Q. That is the way he practiced law in that case?

A. I don't know; in substance, he told me that.

Q. Then he said he would just as soon try it over again as not?

A. I am not giving the words, but the substance of what he told me.

Q. What did you understand, as an attorney in the case, that the new trial was stipulated upon?

A. I don't know anything more about it than you do.

Q. You was an attorney in the case?

A. I was not the attorney in the case, but was simply a sort of an associate counsel; I was there, and my clients were paying me for my time for looking after it.

Q. Wasn't your client's interests jeopardized just as much by a new trial, as in that trial?

A. Just the same;

Q. Wasn't you interested in the matter of giving them a new trial?

A. I was not.

Q. You never expressed an opinion one way or the other to Mr. Jones, about their having a new trial, either that night or at any other time?

A. I don't recollect that I did.

Q. Do you say you didn't?

A. I don't know whether I did or not, I don't remember of doing it.

Q. Don't you know it was spoken of between yourself and Mr. Jones that night when that case was tried, that the Judge was not right?

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A. I don't think so.
Q. Do you swear that you didn't have a conversation to that effect?
A. I have no recollection of any such conversation.
Q. Will you testify that you didn't have such a conversation?
A. Now what is the question?
Q. If between yourselves and Mr. Jones, when that verdict was rendered that night, there was any conversation to the effect that the Judge was not in a right condition to try that case?
A. We never had one word in regard to that at all.
Q. That night or at any other time?
A. No.
Q. Never?
A. No, not that know of, I don't recollect of having a word.
Q. You would not swear it was not understood between you and Mr. Jones, that that was the fact?
A. I think Mr.——
Mr. ARCTANDER. Well, I guess we will object to that. We don't want what was understood.
Q. There never was any talk between you, was there, on that subject?
A. About what?
Q. About the Judge being intoxicated at the trial of that case?
A. I have no recollection of a word in regard to it.
Q. But you wouldn't say it didn't occur, would you?
A. What?
Q. Why, the conversation?
A. I don't think that I ever had any conversation about it; I am positive we did not. I don't recollect it, certainly.
Q. And the first time your attention was ever drawn to the fact that the Judge could by any possibility have been intoxicated at this term of court was since these proceedings?
A. No, I told you he was a little "happy" at the the time.
Q. Didn't you talk about it?
A. Why, no, there was no occasion to mention it; there was nothing mentioned.
Q. Was he so intoxicated that it was patent to everybody?
A. He was not so intoxicated as to interfere with his intelligence and the proper discharge of his duties.
Q. Well, we don't want you to go into that.
A. I want to get it in because it is necessary for me to tell the truth, and as I understand it; and you can't make me testify to anything else.
Q. That is not proper, and I want you just to answer my questions. Now, I will ask you if he was so happy that night (as you are pleased to term it) that it was was patent to everybody, and didn't need a remark?
A. No, it was not anything of the kind.
Q. It was not?
A. He was feeling well, but that he was drunk or incapable of transacting his business——
Q. I didn't ask you that.
The PRESIDENT *pro tem.* Mr. Dunn, I would suggest that the witness answer the question, and then if you have any other question, that you put it; when you want to put your questions the witness must not interrupt you.
Mr. Manager DUNN. How much of an answer must he give?
The PRESIDENT *pro tem.* I will take the responsibility of stopping the witness when I think he has answered.

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Q. Do you recollect the Judge's charge in that case?
A. Only generally, the reporter is here I suppose; he took it I think.
Q. Have you seen the charge since it was given?
A. I think I saw it at Mankato. I looked it over casually.
Q. You don't remember then whether that charge was coherent or otherwise, or whether it was a fearful mixed-up charge, do you?
A. It was not as clear as the most of his charges are.
Q. Now, Mr. Brownell, is it a fact or not, in your judgment, that when the Judge delivered that charge he was a little "happy?"
A. Not in the least, in my judgment. It was after supper when the verdict came in; that was the time I alluded to as his having been a little happy.
Q. But the charge was not quite so clear as some other charges?
A. No, he was dull that day.
Q. He was dull or fatigued?
A. He came in there and rode in that day. It was a warm day,—had been raining, and he appeared dull and fatigued.
Q. How do you know where he had ridden from?
A. I dont know, only he came in muddy. I suppose that he told me. I dont know that he did ride in, only that he was in the wagon when I saw him.
Q. He told you he came 30 or 40 miles, didn't he?
A. No, he told me, probably, the place; but I am not familiar with that country.
Q. Do you know whether he had been drinking any liquor that day?
A. He had the appearance—
Q. Did you get near up to him?
A. Oh, I shook hands with him when he came into the court room; I think I was in front of the court room.
Q. You wasn't up stairs when he came in?
A. I am not certain; I might have been when he came up.
Q. And he shook hands with you; did you see him shake hands with anybody else?
A. Oh, yes, he shook hands with a number of people I think.
Q. You remember that distinctly, do you?
A. Oh, no, not distinctly, only generally; I think so.
Q. You remember that simply because it is the custom, isn't it?
A. Well, yes; I shook hands with Judge Cox.
Q. Will you swear positively you did?
A. I will swear that is my best recollection I did. I might, and I might not. I saw him and spoke to him I know, when he came in.
Q. What did you say to him?
A. Oh, I can't tell.
Q. What did he say to you?
A. Well, the usual civilities were passed.
Q. But this made an impression on your memory?
A. No, it didn't make any impression, no more than if I should meet you.
Q. Isn't it a fact that you went up and spoke to him?
A. I say it my impression that I did.
Q. What would lead you to think you did?
A. Because I think I remember I did it.
Q. Can you think about what you said?
A. Well, my recollection is I spoke to him. If I should speak to

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twenty people I would use the same phraseology: "How do you do?—Glad to see you;—Pleasant day;—How has everything been?" etc.

Q. Now can you remember what phraseology you used on that occasion?

A. No, not in the least in the world. There is one of twenty expressions that I might have used.

Q. Now, how long was that before he took his seat on the bench?

A. Not more than a minute or two; he went right to work and called court at once.

Q. You got it there the night before, didn't you?

A. No, sir, I got it in that morning.

Q. What time of day did you get there?

A. Well, I forget, we had to get up pretty early I recollect.

Q. It was at the time the train got in there in the morning?

A. We took rather an early breakfast I think, for me,—at Kasota and then ran up there. It was before the time court usually opens. Perhaps a little before nine, I don't remember exactly.

Q. You examined the Judge very critically that morning?

A. No, sir.

Q. You did not? A. I never do.

Q. You didn't examine him critically to see whether he was drunk or sober?

A. No, it was just as if I would come into this court-room to see how people look.

Q. Can you tell from gentlemen you have seen in this court-room, whether they have been drinking or not?

A. I think I can whether they have been drinking or not. I think I can generally tell if I look at them whether they are drunk or sober.

Q. But you didn't examine the Judge critically?

A. Why, I examined him just as I would look at you, or anybody else, when I look at a man I generally see.

Q. But you mean to say you made no critical examination of the Judge?

A. I had no occasion to make any critical examination, I am not a critic anyway.

Senator POWERS. Mr. President, Mr. Arctander informs me that he has not his witnesses present.

Mr. ARCTANDER. I stated I have not prepared any evidence farther than this article and consequently shall have nothing in the morning to go on with, unless I have some little time allowed me, or sit up all night and do it. I believe the Senate would not gain anything by an evening session to-night.

The PRESIDENT *pro tem.* I understand that we shall probably not meet to-morrow morning until 11 o'clock.

Senator HINDS. We want to have an evening session here every night this week and get through with this.

Senator RICE. Mr. President, I would move that when the Senate do adjourn it adjourn until 11 o'clock in the morning, so that members of this Senate can attend the funeral of Hon. Dillon O'Brien.

The PRESIDENT. I suppose that can be considered this evening as I understand there is to be an evening session.

Senator POWERS. This will undoubtedly give the counsel an opportunity for getting his witnesses together in the morning, and to-night we can decide whether we shall meet a little later than usual. I for

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one, Dillon O'Brien being a friend of mine, would like to attend the funeral to-morrow, and I think others will feel likewise.

The Senate then took a recess until 8 o'clock P. M.

EVENING SESSION.

President WILSON in the chair.

Senator CASTLE moved that when the Senate adjourned this evening it adjourn until to-morrow morning at 11 o'clock. The motion, having been seconded was put by the President *pro tem.*, and adopted.

M. C. ROBERTSON

Sworn as a witness on behalf of the respondent, testified.

Examined by Mr. ARCTANDER.

Q. Where do you reside?

A. In Springfield, Minnesota.

Q. Is that in Brown county?

A. In Brown county.

Q. What is your profession?

A. Attorney at law.

Q. Do you know the respondent, E. St. Julien Cox?

A. I do.

Q. Were you present during the May term of court in Brown county during the year 1881?

A. Part of the term.

Q. Part of the term? A. Yes.

Q. I will ask you to state whether or not you were present in the evening of the first day, at the time the jury came in and brought in a verdict.

A. I was, sir.

Q. Do you know what kind of a verdict that was, whether it was written or verbal?

A. My remembrance is that it was a written verdict.

Q. A written verdict A. Yes.

Q. Do you recollect whether or not it was read to the jury, by either the Judge or the clerk?

A. Well, as to that I don't remember; I think it was.

Q. I will ask you to state what in your opinion was the condition of the Judge on that night, as to sobriety or inebriety?

A. I think he was sober from my personal observation.

Q. What is that?

A. So far as my personal observation went I considered him sober.

Q. You considered him sober.

A. Yes.

Q. I will ask you to state whether at that time he talked indistinctly?

A. I think not.

Q. I will ask you to state whether his mouth was partly opened and his under jaw hanging down?

A. Well, his mouth was open when he was talking, that was all that I noticed.

Q. Was it opened in any unusual manner, more than people that talk; was it open when he was sitting there, talking?

A. Not that I observed.

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Q. You may state whether his face looked stolid?
A. No; I didn't observe anything unusual about him.
Q. State whether he talked foolishly or not?
A. I think not.
Q. Now, at this time, state whether or not you scrutinized the Judge particularly, and, if so, for what reason?
A. Well, I did somewhat; it was the first time I had ever seen him; I had heard considerable of him and observed him rather closely.
Q. You had not seen him during the day; this evening was the first time you had ever seen him in court?
A. The first time I had seen him.
Q. Now, I will ask you to state whether you were present in court there during the second day of that term?
A. I was.
Q. During the whole of that day?
A. I was there in the forenoon and a portion of the afternoon.
Q. I will ask you to state whether or not you were a juryman upon the case of Youngman against Lindt?
A. Yes.
Q. Sat and acted as a juror in that case, tried the second day of the term?
A. Yes, sir.
Q. I will ask you to state what the Judge's condition was during the day until you went out with the jury to your jury-room, when, of course, you don't know anything further, up to that time, as to his sobriety or inebriety?
A. Sober, I think.
Q. Have you seen him after that time, any time,—met him sometimes in court?
A. Not after that term, with the exception of one time I met him afterwards.
Q. One time you met him in court afterwards?
A. Not in court.
Q. You heard, of course, being one of the jury, you were the foreman of that jury?
A. Yes, sir.
Q. You heard, of course, the charge he gave to the jury in the case of Youngman against Lindt?
A. Yes, I did.
Q. State what that charge was, so far as being lucid or the contrary?
A. It was clear, succinct; a very able charge, I considered.
Q. Clear, succinct, a very able charge?
A. Yes, sir.
Q. Now the third day of that term; the third and last day, were you in court there during any of that day?
A. I was in court about an hour.
Q. About an hour?
A. About an hour when court first convened, perhaps longer; I can't be sure as to the time.
Q. You saw him transact business there at the time?
A. Yes, some little.
Q. I will ask you now to state what his condition was that morning as to sobriety or inebriety?
A. He was sober.

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CROSS-EXAMINATION.

By Mr. Manager DUNN.

Senator POWERS. This is under what specification?

Mr. ARCTANDER. Article 17, specification 7, the same as the foregoing witness.

Q. How long have you been practicing law, Mr. Robertson?

A. About 4 years.

Q. At Springfield, all the time?

A. No, sir.

Q. Whereabouts?

A. In the State of Indiana.

Q. Well, I mean how long have you been practicing in this state?

A. Well, about a year I guess; about a year and a-half, I guess; perhaps longer; a year and a-half.

Q. Where were you admitted to the bar in this state?

A. New Ulm.

Q. Before Judge Cox? A. Yes, sir.

Q. In what year, 1880? A. In 1881.

Q. Had you any case in that term of court, the last term?

A. No, sir; I had none in court.

Q. You got there in the evening you say? A. Yes, sir.

Q. And you paid attention to the Judge simply because it was the first time you had ever seen him?

A. Yes.

Q. Were you there in court when he delivered his charge to that jury?

A. No, sir.

Q. In the first case? A. What case?

Q. The case he tried the first day? A. No, sir.

Q. You were there simply when the verdict was rendered? A. Yes.

Q. Do you have any distinct recollection about that verdict, whether it was a written verdict or not?

A. Well, my remembrance is that it was a written verdict.

Q. Well, do you have any distinct recollection about it, so as to know positively?

A. I won't swear positively; no sir.

Q. Have you any distinct recollection whether it was read by the Judge or the clerk?

A. I am not positive as to that.

Q. The second day you were a juryman? A. Yes.

Q. What was the case in which you were a juryman?

A. Youngman *versus* Lindt, I think.

Q. How long did that case occupy?

A. That case occupied all the forenoon, and, I think, until about 3 o'clock in the afternoon, to the best of my belief.

Q. Who were the attorneys in that case?

A. Mr. Thompson for the plaintiff and Mr. Somerville.

Q. When the court adjourned that evening you were on the jury—you went out with the jury?

A. In the afternoon.

Q. Were you in court that evening when court adjourned, the second day?

A. In the evening?

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Q. Yes; were you in court in the evening of the second day when court adjourned?

A. When I was discharged from the jury I went down town.

Q. What time was it discharged?

A. I think about 3 o'clock.

Q. You were not there then when court adjourned?

A. I think not.

Q. You had never met Judge Cox before, and only met him once since, I understand you to say?

A. Only once since, until I saw him here in the city.

Q. Have you ever seen Judge Cox under the influence of liquor?

A. I think I have.

Q. How often?

A. Well, once or twice, I think.

Q. Well, you haven't seen him but twice; when were the two times you saw him under the influence of liquor?

Mr. ARCTANDER. We object to that under the former ruling of the chair.

Mr. Manager DUNN. The chair has ruled on the question once.

Mr. ARCTANDER. I understood that the last rulings, both by the President *pro tem.*, and the regular President, were to the contrary.

The PRESIDENT. If the witness only saw him twice, and saw him twice under the influence of liquor, it must have been at those particular times.

Q. State the times you saw him?

A. I think he was under the influence of liquor the second day of that term of court.

Q. Of that term of court?

A. Yes, in the evening.

Q. When was the other time?

Mr. ARCTANDER. We object to when it was, and claim that that question establishes affirmative charges. The witness has told him what time it was he saw him, and when was the last time.

Mr. Manager DUNN. That question has been ruled proper.

Mr. ARCTANDER. I understand that was virtually the ruling of the chair; before, before Senator Castle took the seat; and I understand he laid down the rule at the time, which I understand to be the proper one; that you might, in order to test the ability of the witness to testify in the matter, show whether or not he saw Judge Cox drunk, and at how many times, but that you cannot go farther and show the times when and the places where it was.

Mr. Manager DUNN. I do not understand that there has been any such ruling here.

Mr. ARCTANDER. The Senator is here and can say as to that.

The PRESIDENT *pro tem.* I wish to inform the Senate what the principle is that has governed me in my rulings here to-day. We all know this is not a technical court, and that in the cross-examination of the witnesses for the State in this case, as I know, the largest liberty was allowed Mr. Arctander in cross-examining the witnesses. There has also been a good deal said about the desire of Senators to obtain light on this subject. I know that according to the strict rules of evidence, obtainable in courts of law, that a question as to where the respondent was intoxicated, after the witness had stated that he had seen him intoxicated several times, would not, perhaps, be admitted; but while I desired to

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be perfectly impartial in my ruling, I thought for the sake of getting at the facts of the matter, that I would allow a somewhat wider latitude than would be permitted in a court of law. I do not see that there is any objection to answering this question.

Senator CASTLE. I think, Mr. President, if it is not distinctly understood that we might as well, perhaps, settle the question now once for all. I did lay down the rule this afternoon as I understood it, that for the purpose of testing the knowledge of the witness you might, (after the respondent's counsel had asked him, whether or not, the respondent was drunk and he had replied that he was not drunk), then ask him whether he had ever seen the respondent drunk and if he had, how many times he had seen him drunk, but that you could not ask him when it was, or where it was.

The PRESIDENT *pro tem.* Well, that is in accordance with the law, if we are strictly confined to the rule.

Senator CASTLE. I believe there is no question about that being substantially the law, but still lawyers sometimes differ. I would ask Senator Hinds what his idea would be upon that.

Senator HINDS. I think the rule as laid down by Senator Castle is correct; and I also think it is very important that it should be adhered to. If they are permitted to show the time and place and the circumstances of outside intoxications, on the part of the respondent on cross-examination, then they would be establishing new charges, charges certainly that the defense, perhaps, will feel themselves under obligations to call other witnesses to refute.

The PRESIDENT *pro tem.* I wish the Senate to pass upon that.

Mr. Manager DUNN. Mr. President, I would like to be heard to say just a word about that. I think in my judgment that both the Senators that have spoken, have a misconception of the objects of this evidence. It has two objects; one, it is true, is to test the knowledge of the witness. Now we have an instance of it right with this witness. The instance that I wish to allude to is this, the object of the testimony being not only to test his knowledge but also to test the truth of his statement,—this witness has testified that he was sober when he saw him in court there, and, at the same time, has testified that he saw him under the influence of liquor, at times. Now, the question, "where did you see him under the influence of liquor?", if the witness has made a mistake, (I wont say sworn to that which was not true, but has committed an error,) shows that one of the times that he saw him under the influence of liquor was in that court-room. It is certain that I have a right to ask him a question which may draw out an answer of that kind. It is to test the accuracy of the testimony of the witness, as well as his knowledge as to the main facts, as to the comparison, I mean. There being two objects, it is certainly correct on cross-examination for either of those two objects; first, to test the knowledge of the witness as to his ability to compare, between a man that is sober and a man that is intoxicated, and next, if possible, to test the accuracy of his statement that he had not seen him intoxicated at that term of court. Upon the latter ground, I certainly insist that that question is admissible upon cross-examination.

The PRESIDENT *pro tem.* I would like to submit to the Senate whether or not the question shall be answered.

Senator CASTLE. Mr. President, I wrote out my ruling at the time and submitted it to some Senators. I will submit that as an order,

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which will perhaps settle the question once for all; at least, if it should happen to be sustained.

The PRESIDENT *pro tem.* If we have it settled, then whoever is in the chair will know what the sense of the Senate is.

Senator CASTLE. The stenographer can take down what I say. I move, Mr. President, that when the respondent or his counsel draws from a witness the answer that the respondent was not drunk upon a certain occasion, or any occasion, that the attorneys for the prosecution may enquire if the witness has ever seen the repsondent drunk; and if so, how many times, but that they shall not be permitted to enquire when or where.

The PRESIDENT *pro tem.* Will the reporter read the motion of Senator Castle.

The reporter read the motion offered by Senator Castle.

The PRESIDENT *pro tem.* Is the Senate ready for the question?

Senator HINDS. Mr. President, this seems to be a very important question. We have had the opinions of two Senators who are lawyers. Senator Gilfillan C. D., is, I understand, a very accurate and able lawyer and I would like to enquire what his opinion is. Let us see if there is any difference in the opinions of our legal friends on this question.

Senator GILFILLAN C. D. I hope, Mr. President, that no Senator will take me as a guide upon legal questions. I have had nothing to do with law, except to pay lawyers for three or four years [Laughter.] I have my own opinion upon the question; but I do not desire to assume to act as a guide to other gentlemen upon so important a question as this.

The PRESIDENT *pro tem.* As many as are of the opinion that the resoluion of Senator Castle shall be adopted, will say aye, the contaary no.

The ayes have it.

The thing is settled; proceed with the examination of the witness.

Mr. Manager DUNN.

Q. Well, one of these times you say was during this term of court?

A. Yes.

Mr. Manager DUNN. I suppose I am not allowed under the ruling of the Senate, to ask him the other time was.

The PRESIDENT *pro tem.* I think not.

Q. When was the other time?

Mr. ARCTANDER. We object to that.

Mr. Manager DUNN. I would like to have that straight question submitted to the Senate in order to ascertain whether the state is to be confined to a straight cross-examination. I do not think the Senate understands the purport of that kind of a cross-examination. If we are permitted to ask the times, and the numbers of times, there is no reason why we should not be permitted to ask where it was. I ask the question, and the Senate can rule upon it.

The PRESIDENT *pro tem.* The Senate has just ruled upon that.

Mr. Manager DUNN. The question is now, When was the other time? He has answered as to one time, The chair decides that out of order?

The PRESIDENT *pro tem.* That is what the Senate just decided to be out of order.

Senator HINDS. But the Senate had not decided that it would be out of order to show that it was on this occasion to which the witness has been called.

Mr. ARCTANDER. Oh, no.

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Mr. Manager DUNN. That compelled the management to expose its point to the witness.

Senator HINDS. It also prevents them from proving new charges.

Mr. Manager DUNN. It also prevents them from proving new charges. But is it a fact that because a cross-examination tends, or may possibly tend, to prove something else, that it ought to be shut out if it is proper to ask it?

Senator HINDS. It should be shut out, because that seems to be the object of the cross-examination.

Mr. Manager DUNN. It is not the object; and we would like to have every Senator strike from his mind the idea that that is the object of it. It is the object of the management to conduct this cross-examination in a lawyer-like style, leading up to the point aimed at, instead of asking the witness, as you would on the direct examination, the straight question. I cannot ask this witness whether it was there.

Q. Your acquaintance with Judge Cox has been very limited, has it, Mr. Robertson?

A. Rather so.

RE-DIRECT EXAMINATION.

Q. You stated that you had seen the Judge in a condition when you thought he was under the influence of liquor during that term; was that during court, or was it after court had adjourned in the evening?

A. It was after court had adjourned in the evening.

Q. The second day? A. Yes.

Q. I understand you to say that he was not intoxicated, but that you thought he was under the influence of liquor.

A. Well, that is what I thought, that he was under the influence of liquor.

Senator HINDS. Mr. Robertson, I would like to ask you a question. How many days were you in court at that term?

A. I was in court, as I stated before, in the evening of the first day and the forenoon of the next day, and part of the afternoon; and the next morning about an hour, perhaps.

Q. During any of that time was there anything in the Judge's appearance, or in what he said, or the mode or manner of his talk, that indicated that he had been drinking intoxicating liquors at all?

A. Nothing that indicated to my mind that he had been drinking at all.

Q. You didn't observe anything? A. No, sir.

E. W. PETERSON,

Sworn as a witness on behalf of the respondent, testified:

Q. What is your business?

A. Selling machinery.

Q. Agricultural implements? A. Yes.

Q. How long have you known Judge Cox?

A. About twelve years.

Q. Were you present in court at any time during the general May term of the district court in and for Brown county in the year 1881, this last year?

Q. State whether or not you were in Judge Cox's court the first day of that term.

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A. I was there from the time the court sat, at about 11 o'clock, when the jury were empanelled.
Q. How long did you stay in court that day?
A. I staid there about two hours.
Q. You didn't stay the whole time there in the forenoon?
A. No, I was there about half an hour in the forenoon.
Q. And about an hour and a half in the afternoon?
A. Yes, sir.
Q. Now, during that time, the forenoon and the afternoon of that day, what was the Judge's condition as to sobriety or inebriety?
A. Perfectly sober.
Q. You weren't there in the evening, were you?
A. I was not.
Q. When the jury came in with a verdict?
A. I was not.
Q. Now, I will ask you to state whether or not you have frequently before seen Judge Cox in court, and acting—
A. I have seen him in St. Peter.
Q. At prior terms?
A. I have seen him in St. Peter on different occasions.
Q. Have you seen him in court before this term?
A. Not since he got to be Judge.
Q. Were you in court the third day of that term?
A. Yes.
Q. What portion of the day were you in court?
A. When the Howard against Manderfeldt case was called.
Q. The third day?
A. The third day in the afternoon.
Q. What was going on when you were there?
A. There was a case of Rosalia Wildt against John Wildt.
Q. The Wildt divorce case?
A. Yes.
Q. Did you hear the proceedings in that case?
A. Some of them.
Q. Now, I will ask you to state what was the condition of the Judge as to sobriety or inebriety at that time?
A. Perfectly sober.
Q. Now, I will ask you to state whether when the Judge went to court, or from court, any time that day, you went up with him or down with him?
A. I went up with him at dinner.
Q. In the afternoon?
A. Yes.
Q. Went up with him to the court room?
A. I was a little back of him, about five steps behind him.
Q. Did you talk with him?
A. I talked with him on the sidewalk before he turned on to the street as he left his hotel.
Q. Was there anything in his appearance or talk that afternoon, or in his conduct or manner or language that was peculiar in any form, shape or manner whatsoever?
A. No, sir.
Q. Nothing different from what you had seen at any other time?
A. Just the same as he always was.

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Q. Now, at this time do you remember anything about the proceedings there?

A. Well, when John Wildt was called in the afternoon, the court asked him what excuse he had to offer for not obeying the rules of the court, and he couldn't talk English, so they went and got Joe Schneider to interpret for him.

Q. Well, after he got Joe Schneider up there what happened.

A. The Judge told him he could fine him all the way from one hundred to twelve hundred dollars.

Q. Did he say that to you?

A. He said that to Schneider to tell him.

Q. To tell Wildt? A. Yes.

Q. Did he say anything to the clerk about that, one hundred dollars, twelve hundred dollars, or anything?

A. The court turned to the clerk and told him at one time to make out an order for John Wildt to sign, but for how much I don't know.

Q. That was afterward; after the adjournment?

A. That was afterward.

Q. He turned round to the clerk and told him to make out an order?

Mr. Manager DUNN. "For John Wildt to sign;" that is what he said.

The WITNESS. Well, I don't know whether it was for him to sign; that was a mistake.

Q. Was there any talk about any other amount, except the $1,200 and the $100.

A. There was talk about $500.

Q. When was that, afterwards, or the first time?

A. Afterwards.

Q. After the adjournment? A. Yes.

Q. What did Wildt do at the time that Judge Cox told the interpreter to tell him that he could fine him from $100 to $1,200; what did Wildt do?

A. He got mad and kicked up quite a rumpus in the court-room.

Q. Did anybody kick up any rumpus except Mr. Wildt and the interpreter there; did the Judge kick up any rumpus?

A. No, sir.

Q. Did the Judge act wild, in any manner, or talk, so as to interrupt the other men, or anything of that kind,—talk when they were talking?

A. No, sir.

G. W. STURGES,

Sworn as a witness on behalf of the respondent, testified.

Q. Mr. Sturges, where do you reside?

A. In New Ulm, in Brown county.

Q. What is your business?

A. Deputy sheriff and teamster.

Q. Deputy sheriff and teamster? A. Yes.

Q. You are deputy sheriff of that county now, are you?

A. Yes.

Q. Mr. Sturges, are you acquainted with the respondent, E. St. Julien Cox?

A. Yes.

Q. How long a time have you known him?

A. Nearly three years.

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Q. Known him three years? A. Yes.
Q. Did you see the respondent, or were you present during any time of the general May term in Brown county, in the year 1881?
A. I was.
Q. What part of the term?
A. The last day, the third day.
Q. What part of the last day?
A. In the afternoon; I was there a short time in the forenoon, just before they dismissed for dinner.
Q. Just before the court took a recess for dinner?
A. Yes.
Q. Now, at the time when the court took a recess for dinner did you have any talk with the Judge?
A. I did.
Q. Well, what did you do?
A. I walked with him from the court house down town.
Q. And talked with him on the way?
A. Yes.
Q. What was the Judge's condition at the time you were there in court, and at the time you walked down with him and up with him; as to sobriety or inebriety?
A. Perfectly sober.
Q. Did you see him in the afternoon?
A. I did.
Q. What time in the afternoon?
A. Well, along in the middle of the afternoon.
Q. Soon after the court had convened after the noon recess?
A. Well, it was later; it was when the last case was tried there.
Q. What is that?
A. It was the last case that was on trial there.
Q. Which matter was it?
A. The Wildt trial; I was there through part of that.
Q. The Wildt matter; it was no trial, was it; just an order to show cause or something?
A. Yes.
Q. No witnesses were examined while you were there?
A. No, sir.
Q. Were you there when Mr. Wildt was brought in?
A. Yes.
Q. You heard from the beginning up to a certain point?
A. No, I was not there when he was brought in; he was there when I got there, and they were talking to him.
Q. Did you hear any talk between his attorney and the Judge and the interpreter, or any other parties there?
A. Yes; Mr. Wildt was a German, and kept talking German all the time.
Q. Talk loud so that the Senators can hear you.
A. He was talking German, so they couldn't understand him. And he kept talking all the while and they had quite a time keeping him quiet; and finally the Judge ordered an interpreter, Joe Schneider I think it was, to interpret, and still he kept talking.
Q. And finally the Judge made the remark that he could fine him from $50 to $1,200.
Q. From $50 to $1,200?

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A. Yes, I think it was.
Q. Did he say anything to the interpreter about that?
A. He told Joe Schneider; he told Schneider, and Schneider told the man.
Q. He told Schneider to tell it to Wildt? A. Yes.
Q. On this occasion, what was the Judge's condition as to sobriety or inebriety?
A. He was perfectly sober.
Q. Was there anything in the forenoon or afternoon peculiar or different in the conduct, language, manner or actions of the Judge from what it had been on different occasions when you have seen him, both in court or out of court?
A. No, no difference.
Q. State whether or not, at any time while you were there, any order was made by the Judge to fine him any amount at all?
Q. That he *could* fine him?
A. That he could fine him; he told him, "You tell him that I can do it." That is the remark he made.
Q. Well, was there any other amounts mentioned while you were there, at all?
A. No, sir.
Q. $250, $500, or $1,000?
A. Fifty to twelve hundred dollars, I think it was; I am pretty sure it was.
Q. You don't think more than two figures were mentioned?
Q. The two figures, from fifty to twelve hundred dollars.
Q. Now after the Judge told him, what did the Judge do?
A. Well——
Q. After the interpreter had told him?
A. Then he got kind of mad and made a good deal of noise and jumped up and wanted the sheriff to go and lock him up; he wouldn't pay nothing.
Q. Wanted the sheriff to go and lock him up?
A. Yes.
Q. What did the sheriff then tell the interpreter?
A. I don't remember then what was said.
Q. Well, do you remember about their going for a lawyer.
A. No, sir.
Q. Were you there afterwards during the whole proceedings?
A. No, sir.
Q. You went away during this thing?
A. Yes.
Q. State whether or not there was any disorder or confusion in the Judge's manner or talk at this time?
A. Not any.

CROSS-EXAMINATION.

Q. You weren't there all the time this Wildt matter was being tried?
A. No, sir.
Q. You were in court a part of the third day any how, during that term?
A. That was all.
Q. What business had yon in court during that term?

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A. At that term?
Q. At that term.
A. I returned some papers by the sheriff; I had just got home from some business out in the country.
Q. You were deputy sheriff at that time?
A. Yes.
Q. You have seen the Judge intoxicated frequently, haven't you?
A. Not frequently; I have seen him when I thought he had been drinking some.
Q. Is that as strong as you would put it, when you *thought* he had been drinking some?
A. Even when I have seen him drink some.
Q. Haven't you seen him when he has been drunk?
A. No, sir.
Q. You never did?
A. No, sir.
Q. You have simply seen him when he has been then a little under the influence of liquor.
A. Well, he must have been under the influence; I have seen him drink some.
Q. Did you see him drink anything during that term of court?
A. No, sir.

FRANCIS BAASEN

Recalled as a witness on behalf of the respondent, testified:

Mr. ARCTANDER. This is upon the same article, and specification. I will state, Mr. President, that I am not prepared to-night to proceed farther under this specification. I am willing to bring on to-night all the witnesses we have upon that, with the exception of one who has not yet arrived.
Q. Mr. Baasen, did you see Judge Cox during the general term of the district court in and for Brown county in May last?
A. Yes.
Q. State whether or not you were present and saw him when he came to court that morning?
A. Yes.
Q. State whether or not you talked with him when he came there that morning?
A. I talked with him when he came into court, into the bar.
Q. When he came into the bar?
A. Yes.
Q. Well, you were there during the preliminary call of the calendar in the afternoon?
A. Yes.
Q. And during part of the empanelling of the jury?
A. Yes; during part of the empanelling of the jury.
Q. Now, I will ask you to state what his condition was that forenoon as to sobriety or inebriety.
A. I believe he was sober.
Q. Had you any doubts about it?
A. I had no doubt about it.
Q. Now, in the afternoon of the day, were you in court at all?
A. No, sir; I was up one second or one minute.

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Q. During the time of the trial of the case of Howard against Manderfeldt?

A. In the case of Howard against Manderfeldt. I just looked into court and went out again.

Q. And did you see him on any of the other days of that term of court?

A. No, sir.

Q. Did you see him in court any of the other days? A. No.

Q. Now, I will ask you to state whether you saw him immediately after court had adjourned, coming down from the court house on the third day.

A. I believe so; that is, I believe it was; that is what I heard, that the court had adjourned; he told me so himself.

Q. Did you meet him there in the road?

A. I met him; I intended to go up to the court-room, and I met him on the road with Mr. Kuhlman, on Centre street near Minnesota street, about two blocks—

Q. Did you walk down with him?

A. I walked down a few steps; we had a little conversation between ourselves.

Q. Now, I will ask you to state whether or not the Judge was intoxicated at that time.

A. He didn't appear to me to be intoxicated.

Q. He didn't appear to be intoxicated?

A. No, sir.

Q. I will ask you to state, Mr. Baasen, whether or not you at that time took particular notice of the Judge, and what was the reason that you did so, if you did?

A. Well, if you want me to tell you the reason I will do so.

Q. Yes.

A. Well, I was in my office and one of my acquaintances, or somebody came up to me and made the remark that he heard that Mr. Cox was drunk in court, and that he fined Wildt—

Q. What was that?

A. That he was drunk in court, and that he had fined Wildt $1,250, for contempt of court.

Q. And when you heard that you started out?

A. And when I heard that I started right straight out to see if there was any truth in it.

Q. And that was the time you met Judge Cox there coming down from the court house?

A. Yes.

Q. I will ask you to state whether or not at that time you had any talk with Judge Cox with regard to the fining of Mr. Wildt?

A. I asked him that question direct.

Mr. Manager DUNN. We object to that. I do not know that it will do any good, but we will interpose the objection.

Mr. ARCTANDER. Well, I will admit that I have some doubt as to whether this is a strictly competent question. I do not suppose this respondent can manufacture testimony in his own favor. Yet it seems to me, that it would almost be part of the *res gestae*, if the Judge, on coming down from the court house there, and meeting his friend Col. Baasen, who asked him about what he had heard, explained to him what has been testified to by the witnesses here, that he did not fine him that amount, but that he simply told him he could fine him that amount.

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It seems to me it is at least doubtful whether or not it would not be competent under the circumstances as part of the *res gestæ*. I am not by any means certain about the competency of the question, and I would be glad to be informed by legal gentlemen upon this floor whether I am wrong in my understanding of it. I do not think I have urged any matter before this Senate that I have not been convinced I was right in and in which I don't still think I was right, but I admit that upon strict technical rules, there is a question as to whether this question is competent or not. It is a question I take it, that goes to this extent; is it a part of the *res gestæ*. If it was a part of the *res gestæ*, it would be admissible, if it is not, it certainly is not admissible. The only doubt I have in my mind is as to whether it is part of the *res gestæ* or not.

The WITNESS. I would like to make some explanation of the matter.

Mr. ARCTANDER. Well, you had better not answer the question; there has been an objection.

The PRESIDENT *pro tem.* I will submit to the Senate the question as to whether this interrogatory shall be answered or not; I do not think it would be admitted in a court of justice. This gentleman seems to have heard of something that had taken place in court and went out to see about it, and met another man coming down and had conversation with him upon the street; that would not be testimony.

Mr. ARCTANDER. Mr. President, I will state that I do not care to have this question submitted to the court, but I would ask for the opinion of Senator Hinds as to whether it is proper or not; and if he says it is not proper, I will withdraw it.

Senator HINDS. I do not think it is competent.

Mr. ARCTANDER. I had doubts of its competency in my own mind. Then I withdraw the question.

The PRESIDENT *pro tem.* It evidently was not a part of the same transaction.

Mr. ARCTANDER. It was so immediately after it, that I thought it would be admissible as part of the *res gestæ*.

Senator CASTLE. I think, Mr. Chairman, that while it might not be proper to enquire what he said, it might be competent to show that he talked with him. I think, so far, it would be competent, to show what his means of knowledge were.

Mr. ARCTANDER. He has already testified to that.

Senator CASTLE. Well, I didn't hear him; he talked rather low, and it is difficult to hear over here.

The PRESIDENT *pro tem.* He has already stated that he went up to see what was the matter, and that he met the Judge and talked with him.

Senator CASTLE, Well, if he has stated that, I do not think it would be competent to state what he said.

By Senator MEALY. Mr. Baasen, who was it that you said came to your office?

A. I do not recollect who it was; it was some acquaintance of mine; probably a mutual acquaintance of ours. He came to me and quoted it as a matter of news.

By Mr. Manager DUNN.

Q. The Judge was drunk in court, was he?

A. He told me that he heard the Judge was drunk, because——

Q. [Interrupting.] He fined Wildt $1,250?

A. Because he fined Wildt $1,250.

By Mr. ARCTANDER.

Q. That he *heard* it?

A. Yes, that he heard it.

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By Mr. Manager DUNN.
Q. That was brought to you as a matter of news? A. Yes.
By Mr. ALLIS.
Q. That is what caused you to go over and see?
A. That is what caused me to go over and see.
By Mr. Manager DUNN.
Q. You were not in court at all at the time?
A. No, I was not in the court except a half or three-quarters of an hour the first day.
By Mr. ALLIS.
Q. You found the Judge? A. I met him.
Mr. Manager DUNN. I have no questions to ask the Colonel.

H. A. SUBILIA,

Sworn on behalf of the respondent, testified.

Mr. Manager DUNN. Upon what article is this?
Mr. ARCTANDER. This is upon the same article. Perhaps we ought to make a formal application to the Senate for leave to introduce this witness.
Mr. Manager DUNN. The object to any further testimony on this specification. They have already had five witnesses. If the Senate is going to open the door to all the witnesses they desire to offer, of course the managers can stand it; I certainly can.
Mr. ARCTANDER. I will state to the Senate that I desire to make application for leave to introduce additional witnesses upon this specification. I have not, of course, had time to make any written application upon this matter, but I desire to make application to the Senate to call Mr. Subilia upon this specification for the purpose of showing by him that when he was in court on the third day of the term during the trial of the default foreclosure cases of Maderliner vs. Subilia, that the Judge was sober; it has been testified by Mr. Webber, that it came on immediately after the Wildt matter. I also ask leave to call Mr. Herman Seiter, the barber of New Ulm, for the purpose of showing by him that at noon on the first day of the term of court, he shaved Judge Cox; that Judge Cox was perfectly sober; that he could notice no smell of liquor on his breath; that he also shaved him again the third day of the term of court, in the morning, and that he was then sober.
I ask, further, leave of the Senate to call Mr. Blanchard, the clerk of court up there, with a calendar, to show the number of cases that really was on the calendar, the nature of each case, what cases were continued, and for what reasons, to rebut the testimony that has been introduced here that the whole calendar was disposed of by the attorneys continuing the cases on account of the condition of the Judge. I will state that I can call all of these three witnesses to-night, and ask leave of the Senate to introduce this testimony. It will not, I apprehend, take more than twenty minutes.
The PRESIDENT *pro tem.* What is the pleasure of the Senate?
Mr. Manager DUNN. It seems to me, Mr. President, to be a very unfair rule so far as its application to the management of this case is concerned. We were distinctly informed by this Senate, by a rule, that we were to be limited to five witnesses on each article, and we governed ourselves accordingly. Now, it is well understood that sometimes a case is won or lost by the mere weight of numbers, other circumstances being equal. The tactics of the defense seem to be to ignore that rule entire-

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ly. Already we have seen eight witnesses subpœnaed and brought here to one article without the leave or license of the Senate, and now we see eight more to another article, on both of which articles the State has been limited to five witnesses. It does not seem to me to be a fair method of treating the prosecution in this case, to allow eight witnesses to the respondent and to permit the State to prove their side of the case by only five witnesses upon the same facts.

Mr. ARCTANDER. I beg leave to call the attention of the Senate to the fact that when the State called their five witnesses upon this article they called witnesses to testify to the whole term, Mr. Webber, Mr. Lind, Mr. Thompson, Mr. Somerville and Mr. Blanchard. Now we have not been able to find witnesses who were present during the whole of that term of court. We have some witnesses, like Mr. Brownell, who were there the first day; we have other witnesses that were there a couple of days. I also omitted to ask leave of the Senate to introduce the testimony of John C. Wright, one of the jurors who were there. I omitted that; that would be four witness, I ask leave to introduce. Senators will have noticed already that our testimony is of that character, that we cannot have men who were around there the whole term. We have men like Col. Baason who came there in the beginning, and saw him at the closing; we have men like Mr. Sturgis who were there only on the last afternoon; we have other men like Mr. Brownell who was there on the first afternoon. Consequently, it is putting us to a disadvantage I claim, to confine us to the same number of witnesses as the prosecution, because they had their choice of witnesses, and brought here men with whom they could go through the whole term. Certainly to put us on an equal footing with them, so far as the number of witnesses is concerned, the nature and character of the witnesses we have being only as to a part of the term, it would be necessary for us, probably, to have more than five witnesses. We could not prove any one occasion by more than two witnesses, while they have five for the whole term all the way through. It seems to me that to equalize it is no injustice at all; it is a matter that follows itself. An accusation, gentlemen, is easily made, and it is easy to introduce proof in support of it; but it is far harder to disprove it. When the prosecution framed this case they knew what they could prove. They had the making of the case in their hand. They had the making of the proof in their hands, as to whether they would cover only one day or cover three. Now they found that they could find witnesses that could swear to all three, and they introduced them. We have not been able to find witnesses that were there during the whole term of court. There are none of these witnesses that have testified to being there during the whole term of court; Mr. Peterson being there only the first and third day, just a little while the first day, and a part of the third; Mr. Robinson, the foreman of the jury in that one case, only part of the second day and the evening of the first. We had to distribute them over in that way, and it seems to me it would be the most glaring act of injustice to tell the respondent now, because he has not been able to find witnesses that were present during the whole term of court, that he could not introduce more than five witnesses against the five witnesses of the State. I suppose it is the facts in this case that the Senate desire to get at, whether the accusations brought against the respondent are true or not.

The PRESIDENT *pro tem.* The rule restricts the number of witnesses to five, unless the Senate otherwise orders; what is the pleasure of the Senate?

Senator HINDS. I would like to inquire of the counsel for the re-

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spondent, if they have any other application to make except upon the admission of the additional witnesses that they have named.

Mr. ARCTANDER. On this article?

Senator HINDS. On any article.

Mr. ARCTANDER. Yes, I think we have two or three articles upon which we shall have more witnesses hereafter. I will state that the Senate has already seen this afternoon that there are articles upon which we have only from two to four witnesses, and there are articles upon which we shall call no witnesses at all, articles that the State claims to have proven its case upon; I do not mean any of those that were dismissed, but some of those that were sustained,—upon which we shall introduce no witnesses; and we shall ask leave to transpose our witnesses, and bring them forward to places where they will do us the most good.

Senator MEALY. Mr. President, I move that the respondent be allowed to introduce the four witnesses mentioned. It seems to me, upon the explanation that counsel has made, that it would be nothing more than fair to do so.

Senator SHALLEEN. I would like to ask the counsel for the defendant, how many witnesses have been summoned, and how many they expect to produce?

Mr. ARCTANDER. I figured them over this morning, Mr. Senator, and I think upon articles outside of the eighteenth article, that we have seventy witnesses subpœnaed.

Senator SHALLEEN. I have been informed that the State had only fifty-four in all.

Mr. ARCTANDER. I don't know how many the State has had, but we are entitled to as many as they.

Mr. Manager DUNN. You had eight on one article, and now you want nine on another.

Senator CASTLE. Mr. President, what is the motion?

The PRESIDENT *pro tem.* Senator Mealy moves that the respondent be permitted to introduce upon this article the four witnesses mentioned by Mr. Arctander.

Senator POWERS. Mr. President, I rise to second that motion; and I deem it proper just now, as I moved a similar one this forenoon or afternoon, to say that I anticipated just this position; and when I was reminded in the beginning of this investigation by Senator Hinds that the managers were satisfied with five witnesses, I made the enquiry, "But will they be satisfied, if the Senate chooses, when the defense comes on, to introduce more witnesses, and they are allowed to do so?" I anticipated the trouble. I think, as I said before, if we had in the beginning thrown the doors open, it would have been better even as a matter of economy. I should not, when these witnesses are here ready to testify, and we are present to listen, feel at all justified in throwing the evidence out. I second the motion.

The PRESIDENT *pro tem.* It is moved and seconded that the witnesses be heard; as many as favor the application say "aye," the contrary "no." It is carried.

Mr. ARCTANDER. I can proceed, Mr. President, I suppose?

The PRESIDENT *pro tem.* Yes, sir.

Q. Mr. Subelia, Where do you reside?

A. In New Ulm, Minnesota.

Q. What is your business? A. Milling business; merchant miller.

Q. When did you first get acquainted with Judge Cox?

A. It will be, next August, 22 years.

Q. Twenty-two years next August? A. Yes.

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Q. Have you known him intimately since that time?
A. Oh, I have met him very often; may be more than a hundred times.
Q. I will ask you to state whether or not you were present during anytime of the term of court held by Judge Cox in the month of May, 1881, in New Ulm, Brown county.
A. If it was in the case where I was a witness on the Maderliner foreclosure I was present, but not unless.
Q. You say you were present as a witness in the foreclosure case of Maderliner against your property?
A. Yes.
Q. You don't remember the time it was?
A. I don't remember the day or date.
Q. But you have never been a witness in more than one foreclosure case?
A. Only once.
Q. I will ask you to state what the condition of the Judge was the time you were there in court, as to sobriety or inebriety.
A. I was there probably 5 or 10 minutes and I did not see anything out of the way; I suppose your question has relation to his sobriety or drunkenness.
Q. How is that?
A. I expect your question is in regard to his sobriety.
Q. Yes; his sobriety at that time.
A. Well, I took him to be perfectly sober at that time, when I was in court.
Q. Was there anything peculiar or different in his appearance at that time from other times when you have been with him and known him to be perfectly sober?
A. He was sitting there erect.
Q. Was there anything in his appearance or face?
A. I didn't notice anything; no, sir,
Q. Nothing different from these other occasions?
A. No, sir.
Q. Was there anything in his manner or actions, if he did speak anything or do anything while you were there, that indicated anything different?
A. I don't remember that he did speak anything.
Q. You don't remember that he did say anything?
A. I am sure he did not question me.

CROSS-EXAMINATION.

By Mr. Manager DUNN.
Q. You simply looked at him, Mr. Subilia? A. Yes.
Q. You had no conversation with him?
A. Had no conversation with him.
Q. You were there five or ten minutes?
A. Yes, about ten minutes.
Q. And then passed out?
A. And then I went again to my office.
Q. And that is all you know about it?
A. That is all I know about him then.
Q. You have seen him at other times when he has been intoxicated?
A. Well, to answer that question I should like to state my definition of intoxication; it might differ from other people's.

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Q. Well, under the influence of liquor, so that it was manifested on him?

A. To answer that question intelligently and satisfactorily to myself, I must request the court to allow me to give some words of explanation. If I can go on, I will.

Q. Yes.

A. I have known Judge Cox some twenty-two years, and met him very often, certainly over 100 times during that period; and I found, very often, the temper and character of Judge Cox differing entirely. At one time I found him earnest, silent, cold, scarcely noticing; sometimes I found him talkative, jocose, generous, friendly, gentlemanly; and whether that was caused by the influence of liquor, I cannot tell; the court may decide, I cannot.

Q. Then you didn't know, for a fact, that you ever saw him under the influence of liquor?

A. I couldn't swear to it; I couldn't swear it was the influence of the liquor which caused that state of mind.

Q. You never saw him drink any liquor, have you?

A. Oh, yes; drank with him,

Q. Much or little?

A. Well, I never drink more than one glass when I drink.

Q. With him?

A. With him.

Q. Then you cannot say for a fact that you have ever seen him under the influence of liquor?

A. I cannot say that.

JOHN K. WRIGHT.

Sworn as a witness on behalf of the respondent, testified:

By Mr. ARCTANDER.

Q. Where do you reside?

A. Sleepy Eye, Brown county, Minnesota.

Q. What is your business?

A. Livery business.

Q. Are you acquainted with the respondent, E. St. Julien Cox?

A. Yes.

Q. For how long a time did you know him?

A. Well, I have known him for 16 years; have been intimately acquainted about 12 years.

Q. I will ask you whether or not you were present in attendance upon this term of court in Brown county, in the month of May, 1881.

A. Yes, sir.

Q. What was your business there?

A. I was subpœnaed as a juror.

Q. Summoned as a juror?

A. Yes.

Q. How much of the time were you in attendance during that term of court?

A. I was there from the first morning until just right away after dinner of the last day.

Q. Just a little after dinner of the last day?

A. Yes.

Q. Now, the first day in the morning, were you there before court opened?

A. Yes.

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Q. Did you see Judge Cox when he came in?
A. Yes.
Q. When he came driving up to the court you saw him then, did you?
A. Yes.
Q. I will ask you to state what his condition was at that time as to sobriety or inebriety?
A. I thought he was sober.
Q. You thought he was sober?
A. Just the same as I had always seen him.
Q. What is that?
A. Just the same as I had always seen him.
Q. Had you any doubt, at the time, that he was sober?
A. No, sir.
Q. Have you any now?
A. No, sir.
Q. During the trial of the case of Howard against Manderfeldt, were you present in court during that day?
A. Yes, that was the first afternoon.
Q. Yes, that was the afternoon of the first day. What was his condition that afternoon as to sobriety or inebriety?
A. He was sober.
Q. Any change from what there had been in the morning?
A. Yes, he looked a little better than he did in the morning; he looked cleaner.
Q. Then, in the morning when he came there, there was something the matter with him, so far as cleanliness is concerned?
A. Well, he had not shaved for a day or two, and he had rode that far and it mussed him up; he looked as though he was considerably mussed.
Q. Was there anything wild in his actions during that afternoon?
A. No, sir.
Q. No incoherency in his speech?
A. No, sir; nothing that I noticed.
Q. Were you in court in the evening, when the jury came in?
A. No, sir; I was not.
Q. Now, the next day what portion of the time did you spend in court?
A. All the time that court was sitting.
Q. All the time that court was sitting; what was his condition on that day as to sobriety or inebriety?
A. Sober.
Q. Did you hear his rulings in the case that was tried there that day as the case went along?
A. Yes.
Q. How did he talk, at the time he did talk?
A. Just the same as I had seen him before in court; I couldn't see any difference in that term of court from any other.
Q. You have seen him at other different terms of court, have you?
A. Yes; I have seen him at two or three different terms of court while he was practicing law, and since he became Judge.
Q. I believe you have virtually covered it; but I will ask whether there was anything in his manner, conduct or language in those two days peculiar or different from what you have seen at other days?
A. No, there was nothing different.

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Q. Did you see him the third day? A. That was the last day?
Q. Yes. A. Yes; I saw him in the morning.
Q. What was he doing that morning?
A. He called the court to order; I was there when he called the court, and was there after dinner; I just went up after the court was called.
Q. You went up after dinner, after the court was called? A. Yes.
Q. Were you in there any length of time in the afternoon?
A. No, sir.
Q. How long? A. Oh, a very few minutes.
Q. Are you acquainted with Mr. Wildt? A. No, not particularly.
Q. Are you acquainted with Joe Schneider? A. Yes, sir.
Q; Was he there in the court room during the time you were there?
A. I think he was; I wouldn't be positive.
Q. Well, in the forenoon, how long a time did you stay in the court room?
A. Pretty much the whole of the forenoon.
Q. Law questions coming up there to be argued before the Judge?
A. Yes.
Q. Now, I will ask you to state what his condition was during that day in the forenoon as to sobriety or inebriety?
A. He was just the same as he had been through the rest of the term of court; so far as I could see everything was all straight.
Q. Everything was all straight, so far as you could see?
A. Yes.
Q. Well, what would you say as to his condition as to sobriety then at that time?
A. He was sober.
Q. Was there anything peculiar, or anything different in his action, language, conduct or appearance that day from what you have seen him at other terms of court?
A. No, sir.

CROSS-EXAMINATION.

By Mr. Manager DUNN.
Q. Have you ever seen Judge Cox when he was not sober? A. Yes.
Q. You have; often?
A. Well, I wouldn't say often; I have seen him sometimes when I thought he was a little off.
Q. Simply "a little off;" haven't you seen him when you thought he was drunk?
A. No; I have not seen him when I would say he was really drunk.
Q. Well, how many times?
A. Well, I can't say as to the number of times.
Q. You think he was perfectly sober during all the times you saw him here in court?
A. So far as I could see.
Q. Did you pay particular attention to see whether he was sober or not?
A. Well, yes; I looked at him.
Q. Well, for the purpose of ascertaining whether or not he was sober?
A. Not for the purpose of ascertaining whether he was sober or not, because I supposed he was perfectly sober.
Q. You had no conversation with him in court?
A. I never saw the man drunk in court in my life, and I have no reason to think he was drunk then.

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Q. And you had no conversation with him in court then?
A. No, not in the court house; no, sir.
Q. Well, you answered the counsel here that there were law questions raised there on the first day; what were those questions?
A. Well, I don't know; I am no lawyer, and didn't give particular attention to the questions.
Q. Well, how do you know they were law questions?
A. Well, they cited law and the questions were raised.
Q. Well, who cited any law the third day?
A. Oh, they were just merely bringing up some cases; Mr. Webber, I think.
Q. What cases was he bringing up?
A. I do not remember what the cases were; I know there was one case, Mr. Lind and Mr. Webber,—that their cases were called.
Q. And they were continued, were they, put over?
A. Yes.
Q. And that is what you mean by law questions coming up?
A. Well, they were talking there very considerably, and questions were being discussed.
Q. You don't know what the questions were that were raised there?
A. No; I was not paying much attention.
Q. Did you take any interest in the court anyway?
A. Yes, I took considerable interest in the court.
Q. You were attending there simply as a juror?
A. Yes, I was summoned as a juror.
Q. Well, how many days did you serve as a juror?
A. All except the last day; I was discharged at half past nine o'clock, and I failed to catch the train, and so had to go back to the court house.
Q. You keep a livery stable at Sleepy Eye?
A. Yes.
Q. Was it your livery team that brought the Judge to New Ulm that morning?
A. No, sir.
By Senator MEALY.
Q. You say you were there the first, second and part of the third day of that term of court?
A. Yes.
Q. And you saw nothing indicating that Judge Cox was drunk?
A. No, sir; in court.
By Senator CAMPBELL.
Q. I would like to enquire of you, Mr. Wright, whether your partner has not testified in this case?
A. Sir?
Q. Have you a partner in the livery business?
A. I have a partner.
Q. Are you aware that he has been a witness on the other side of this case?
A. No, sir.
Mr. Manager DUNN. It is not the same party Senator.
Senator CAMPBELL. It was not one of your teams that brought Judge Cox over there?
The WITNESS. No, sir.
Mr. Manager DUNN. No, sir: I asked him that question. [To the witness]. Did you see Judge Cox intoxicated out of court during that term?

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A. Well, I saw him slightly under the influence of liquor; yes.
Q. Slightly?
A Yes, I don't think he was very tight.
Q. When was that?
A. Well, it was after court adjourned one evening.
Q. What evening?
A. I think it was the second evening.
Q. Where was it?
A. He was down at the Merchants Hotel.
Q. In the bar room?
A. No, I met him in the office.
Q. You met him in the office?
A. Yes.
Q. Did you go out with him that evening?
A. No, sir.
Q. What time of night was it?
A. This was before sundown.
Q. The evening of the second day, before sundown?
A. Yes.
Q. Wasn't court held that evening?
A. The second?
Q. Yes.
A. I think not; I wouldn't be positive, but I think not.
Q. Well, you saw him intoxicated or under the influence of liquor on the evening of the second day, about sundown?
A. Well, I think it was before sundown.
Q. It was before sundown?
A. I saw him in the office when I thought he was under the influence of liquor.
Q. Did you have any doubt about it, that he was under the influence of liquor?
A. No, sir; I had no doubt.
Q. You have no doubt now about his being under the influence of liquor?
A. I thought so at that time, and I still think so.
Q. Any other time during that term of court?
A. Not that I noticed; I didn't see him much when I was down town.
Q. You happened to run on him then, and he was under the influence of liquor?
A. I simply went down to the Merchants to see a person who had come from home, and I met Judge Cox there.
By Mr. ARCTANDER.
Q. You say that he was slightly under the influence of liquor at that time?
A. Yes, sir.

HERMANN SEITER,

Sworn as a witness on behalf of the respondent, testified.

Examined by Mr. ARCTANDER.
Q. Where do you reside?
A. New Ulm.
Q. What is your business?
A. Barber.
Q. Were you a barber there in New Ulm last May?

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A. Yes.
Q. Running the barber shop there?
A. Yes.
Q. Do you remember the occasion of the holding of the term of court there in May last, the general term of court?
A. Yes, sir; I do.
Q. I will ask you to state whether you saw Judge Cox in your barber shop the first day of that term of court?
A. Well, I don't know as it was the first day, but I know I saw him there twice during that time.
Q. During the term?
A. Yes.
Q. Well, how many days was there between the two times?
A. Well, probably I wouldn't want to say any definite time, but it was probably, I should say, two days or three days at the longest.
Q. Two or three days, or three days at the longest?
A. Yes.
Q. Have you any recollection as to the time of the week that you saw him the first time, whether or not it was in the early part of the week.
A. Well, I wouldn't want to say anything about that because I am not certain, but I should not wonder but that it was the first.
Mr. Manager DUNN. Well, never mind what you should not wonder; we don't want any guesses about it.
Q. Well, give us your best impression as to what time it was, and then the Senate will take it for what it is worth?
A. The first or second day, I should judge.
Q. The first or second day of the term?
A. Yes.
Mr. Manager DUNN. He says he has no recollection or remembrance of it. It is not proper to get a statement from a witness who says he has no inpression.
Mr. ARCTANDER. Why, you cannot expect a witness to swear absolutely to dates or hours; you must take his best impression.
Mr. Manager DUNN. If he has anything to found an impression upon.
Mr. ARCTANDER. Well, that is a subject for cross-examination, I suppose.
Q. Now, at this first time, about what time in the day was it when Judge Cox was in the shop.
A. Well, between twelve and one o'clock; a little while after dinner.
Q. I will ask you to state whether or not he was shaved when he came in; was he shaved or was he unshaved when he came in?
A. He was shaved in my shop.
Q. Was he shaved when he came in; did he have a couple of days growth of beard?
A. Well, two or three days growth I should think; that is more than I can recollect, because I only got a glimpse of him the first time; he was shaved by my brother, although I was within two or three feet of him, right at the next chair; as he was not quite a competent man I had to watch him very closely and that is why I come to speak about him being shaved by him.
Q. Now, the second time that you saw him there; what time of the day was that, during that term of court?
A. That was early in the morning,
Q. Early in the morning?
A. Yes, very early.

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Q. Now, that morning did you shave him yourself?
A. Yes, sir; I did.
Q. How long have you known Judge Cox?
A. As far back as I can remember.
Q. You were born in New Ulm, weren't you?
A. I was born there, yes, sir.
Q. I will ask you to state, if you can, what his condition was as to sobriety or inebriety at these two times that he was in your shop, during that term of court?
A. Well, in fact when I do work for a person I don't pay much attention to them, but I could observe, and I didn't see any signs of intoxication about him.
Q. Not about his face?
A. No, sir; not about his face.
Q. Nor anything about his actions?
A. No, sir.
Q. This second time, did you notice whether or not his breath smelled of liquor?
A. I did not; no, sir.

CROSS-EXAMINATION.

By Mr. Manager DUNN.
Q. You say it did not, or that you did not notice?
A. I did not notice it; it might have smelled of liquor, but I did not notice it. I can only speak of what I saw myself.
Q. You mean by that, Hermann, that you don't remember that it smelled of liquor or not?
A. I can't only state what I know.
Q. Do you remember whether it smelled of liquor at that time or not?
A. I do not remember; if he had smelled like liquor——
Q. Well, you simply don't remember whether it did or not. The first time you said you did not shave him yourself?
A. No, sir; he was shaved by a brother of mine,
Q. I suppose you paid but little attention to him.
A. Well, I paid as much attention to him as was necessary to perform my duty.
Q. Well, about his condition you paid but little attention to him.
A. Well, I paid that much attention to him; I knew who I was waiting on, and I paid that much attention to him that I knew whether he was sick or whether he was well; but I did not pay much attention to watch his actions.
Q. Can you tell whether he was sick or well?
A. No, I could only judge by his look.
Q. Well, you couldn't judge by his looks whether he was sick or well; what time in the morning was it you shaved him?
A. That was right after I opened the shop.
Q. How early would that be?
A. About seven o'clock in the morning.

By Mr. ARCTANDER.
Q. What was it you were going to say when you were interrupted "if he had smelled of liquor," what were you about to say?
Mr. Manager DUNN. I object to that; that question has been ruled upon once or twice.
Mr. ARCTANDER. It seems to me the witness has a right to explain.

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If it is incompetent the Senate can strike it out. The counsel cannot shut his mouth in any manner.

Mr. Manager DUNN. He simply stated that if he had smelled of liquor,——

The WITNESS. I merely wanted to say that if he had smelled of liquor——

Mr. Manager DUNN. Well, you needn't state that.

Mr. ARCTANDER. [To the witness.] You needn't let him bluff you in that way; he don't run this thing. [Laughter.]

The WITNESS. I merely wanted to say that if he smelled like liquor, I could not say that he was not intoxicated, because I swore to come up here and tell the truth, and if he smelled like liquor I could not sit here and say that it was the truth that the man appeared to me to be sober or was not intoxicated.

Q. Well, you don't remember now whether he smelled of liquor or not; you don't remember?

A. No, that is what I would say, that if he smelled of liquor I should think he had been drinking.

Q. Well, you don't know whether he smelled of liquor or not?

A. No; I didn't notice anything.

Q. Well, you don't know whether it was or not?

A. Well, he might have smelled like it but I did not detect anything.

Q. Well, do you remember whether he did smell like liquor or not?

A. I don't remember that I smelled anything.

Q. Well, do you remember that you didn't smell any liquor?

A. I remember that I didn't smell any liquor.

Q. What makes you remember that?

A. Because when I first heard of the impeachment case I thought of the matter right away and thought the matter over that he was in my business.

Q. That he was in your shop?

A. Yes. I thought it over and I recalled the time to my mind; that is the only reason.

Q. And then you remembered that he didn't smell of liquor at that time, did you?

A. Well, I simply say that I didn't smell any liquor.

Q. What did his breath smell like?

A. I didn't pay much attention to him. When I shave a man all I am after is my ten cents.

Q. Well you say it didn't smell of liquor; what did it smell like? Did you smell his breath?

A. No, sir.

Q. That is all I want; if you didn't smell his breath you don't know whether it smelled of liquor or not; if you didn't smell his breath you don't know what it smelled like.

Mr. ALLIS. If he didn't smell his breath, he knew he could not have been eating onions or drinking whisky.

A. BLANCHARD

Re-called as a witness on behalf of the respondent testified.

Examined by Mr. ARCTANDER.

Q. Mr. Blanchard, you are the clerk of the district court of Brown county, I believe?

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A. Yes.

Q. The book you have there is the calendar of court?

A. Yes, this is the court calendar. [Referring to book which witness held in his hand.]

Q. I wish you would turn to the calendar for the May term of 1881 and state to me, after refreshing your memory from the calendar, what cases there were on the calendar there at that term?

A. The first case was Howard vs. Manderfeldt.

Q. What disposition was made of that case at that term?

A. It was tried by a jury.

Q. What was the second case?

A. The second case was Charles Hughes and George McCarthy.

Q. Hughes vs. McCarthy; what disposition was made of that?

A. The final disposition of it was that the plaintiff moved to amend the complaint, provided he would pay the term costs, and then continue the suit to the next term.

Q. That was continued by order of the court? A. Yes.

Q. On account of the amendment?

A. Yes, and the attorney requested it too. The attorney for the defendant, Mr. Thompson, asked leave to amend the complaint, but Mr. Somerville opposed the motion.

Q. He asked leave to amend the complaint? A. Yes.

Q. And he opposed the motion, but it was granted?

A. The motion was granted by order of the court.

Q. And the other attorney asked leave to have it go over?

A. Because he had amended his complaint and wanted time to answer.

Q. He didn't have time to answer?

A. No, that was it.

Q. Now, the third case, what was that?

A, Augustus Hermann vs. John Lee and Charles Berg.

Q. Who were the attorneys in that case?

A. John Lind, plaintiff's attorney, and J. M. Thompson for the defendant.

Q. What disposition was made of that case?

A. That was continued by consent of counsel.

Q. Now what was number four?

A. John Youngman vs. Charles Lent.

Q. What was done in that case; who were attorneys in that case?

A. J. M. Thompson, attorney for plaintiff, and G. W. Somerville, attorney for defendant.

Q. What was done in that case?

A. Tried by a jury and a verdict for the plaintiff.

Q. What was the next case on the calendar?

A. Pfaender & Miller vs. German Friton.

Q, Who were the attorneys in that case?

A. George Kuhlman, plaintiff's attorney, and J. M. Thompson, attorney for the defendant.

Q. What was done with that case?

A. On the preliminary call Mr. Kuhlman made a proposition to amend the complaint, and afterwards it was continued by consent.

Q. The complaint was amended, was it?

A. No, there was nothing done with it; they continued it by consent afterwards.

Q. What is the next case?

A. Henry Meyer vs. the New Ulm Sugar Manufacturing Co.

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Q. What number is that? A. No. six.
Q. Who were the attorneys in that case?
A. John Lind, attorney for plaintiff; B. F. Webber, attorney for defendant.
Q. What was done with that case? A. That was continued.
Q. Well, what is the next?
A. The next is Bernard Blomke vs. John Michaud; that is case No. 7.
Q. What was done in that case? A. That was dismissed.
Q. After argument? A. Yes; after paying costs.
Mr. Manager DUNN. After argument? He didn't say so.
The WITNESS. No; did you say after argument? There was no argument. It was dismissed.
Q. What was the next case?
A. Fridoli Maderliner versus John Bellam, B. F. Webber, attorney for the plaintiff; no appearance for defendant.
Mr. Manager DUNN. That was the Maderliner case?
The WITNESS. Yes, a decree of foreclosure.
Q. That is the foreclosure case spoken of by Mr. Subilia?
A. Yes. Number 9 is the same, only different defendants; Max. Henschen and others, were defendants.
Q. And those cases were disposed of, proof taken?
A. Only one decree was made; the decree was signed afterwards and entered up. No. 10 is the Rosalia Wildt vs. John Wildt case.
Q. What was the nature of that case?
A. That was divorce.
Q. Is that the motion that was spoken of here; was it put on the calendar in that way?
A, It was put on the calendar in this way: Title of the case; Charles F. Webber, attorney for the plaintiff; no appearance for the defendant.
Q. Well, you know whether or not it was the motion that was mentioned here?
A. Yes; that is the same motion for contempt of court. The eleventh case is the State of Minnesota against Blasius Haale.
Q. What kind of case was that? A. A bastardy case.
Q. What was done with that? A. Stricken from the calendar.
Q. What is the next case?
A. State of Minnesota against Jacob Dhein.
Q. What was the nature of that case? A. Bastardy.
Q. Who were the attorneys in that case?
A. B. F. Webber, attorney for the plaintiff; and John Lind, attorney for the defendant.
Q. Were those the only cases and matters on the calendar at that term? A. They were.
Mr. Manager DUNN. What was done with that last case?
A. The WITNESS. It was continued.
Mr. ARCTANDER. Continued by consent?
A. It was not continued by consent, hardly; it was put off on account of giving the attorney for the county a chance to settle the matter The county commissioners gave him leave to settle, if he could, and I think that the defendant in the case,—not the defendant but the girl, did not appear there; the young man wanted to settle and it was put off on that account.
Q. And that is the reason? A. Yes.

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Q. Those were the only cases on that calendar? A. Yes.

Q. Twelve cases, motions and all? With the default cases and motions; there were twelve in all?

A. Just twelve cases on the calendar for that term.

Q. I did not ask you who were the attorneys in the first case—I asked you if Mr. Lind was attorney in any case that was not continued?

A. John Lind was not an attorney in any case that was tried that term.

Mr. Manager DUNN. We have no question.

The PRESIDENT *pro tem.* Will you have more witnesses to-night, Mr. Arctander?

Mr. ARCTANDER. That is all. There is only one matter that I want to bring up and I am not very particular about that. I suppose the Senate is aware that on Saturday, when the Senate adjourned, there was a gentleman present, a witness made this charge, whose evidence we took before the reporter to be read the same as if it were a deposition,—a juryman that was present, simply as to the first forenoon of the term of court. His name was John Q. A. Currant. If there is no objection to it I would like to offer it as a part of the evidence here so as to have it read by the reporter and go into the minutes as part of the evidence.

Mr. Manager DUNN. That would be only ten witnesses on that charge.

Mr. ARCTANDER. That is all.

Mr. Manager DUNN. That would be a small number.

Mr. ARCTANDER. Well, if you think so we are satisfied.

Mr. Manager DUNN. I object to any more, and I shall object to more than five upon any article, but this only makes ten upon this. I do not know how many more the Senate will allow them.

Mr. ARCTANDER. I suppose if you gentlemen want to have it stricken out the Senate will do what it thinks proper.

Mr. Manager DUNN. I object to it.

Mr. ARCTANDER. It will be only half a page of the journal. What is the pleasure of the Senators with reference to this? The managers consented here to take the testimony before the short-hand reporter, who has taken it down, because the witness had a wife at home that was sick.

Senator CAMPBELL. That was on Saturday?

Mr. ARCTANDER. Yes, sir.

Mr. Manager DUNN. It makes another witness for the defense. The State has been confined to five, and, with this one, they will now have ten on this article.

Senator CAMPBELL. I understand, Mr. President, that this testimony was taken?

Mr. Manager DUNN. It has not been introduced, and is not in the case. I supposed they abandoned it when they did not introduce it.

Senator CAMPBELL. We had a sort of a general understanding to some extent, I don't know how far it went, that we should not limit them; that at the present time we would grant them such extension as would be right and proper. I move that the testimony be admitted.

Senator MEALEY. I second that motion.

The PRESIDENT *pro tem.* It is moved and seconded that the deposition taken on Saturday be admitted. Those in favor of the motion will say aye.

Senator MILLER. As I understand, this is the ninth witness?

The PRESIDENT *pro tem.* This is the tenth.

Senator MILLER. I don't think it is fair that we decide this question now, for we have not a quorum here. I raise the question now, that we

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are not competent to decide that question. I have no objection to admitting another dozen of witnesses, if it is not intended to limit the other side. I am not going to object, but I claim that we have no right at this time to decide the question.

Senator CAMPBELL. I would ask what question the Senator raises. What question do you raise?

The PRESIDENT *pro tem.* He raises the question that there is not a quorum present.

Senator POWERS. I believe that admitting this testimony on our part is a mere form. I think the attorneys on the part of the management, and of the respondent, agreed mutually that this evidence should be taken. I think there was an understanding to that effect, and a tacit understanding with the Senators also. I think it is a mere form. It might as well be voted on here as to admit the evidence.

Senator CAMPBELL. If the Senator raises the question that there is no quorum, I would like to ask the chair if it is a fact that we have no quorum.

Senator MILLER. I raise that question, because I presume I could defeat it in no other way, but while I am willing to allow the respondent to have three or four witnesses on his side ——

Senator CAMPBELL. I object to any argument on either side.

The PRESIDENT *pro tem.* The gentleman is out of order.

Senator POWERS. I move, Mr. President, that the Senate do now adjourn.

The President *pro tem.* The Senate stands adjourned until eleven o'clock to-morrow morning.

THIRTY-FIRST DAY.

ST. PAUL, MINN., Feb. 15, 1882.

The Senate met at 11 o'clock A. M., and was called to order by Senator Wilson, acting as President *pro tem.*

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

Messrs. Adams, Buck, C. F., Case, Clement, Gilfillan, C. D., Hinds, Howard, Johnson, F. I., Johnson, R. B., Langdon, McCrea, McLaughlin, Mealey, Morrison, Officer, Peterson, Shaller, Simmons, Wheat, White and Wilson.

The Senate, sitting for the trial of E. St. Julien Cox, Judge of the Ninth 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. Henry G. Hicks, Hon. O. B. Gould, Hon. L. W. Collins, Hon. A. C. Dunn, Hon. G. W. Putnam and Hon. W. J. Ives, entered the Senate Chamber and took the seats assigned them.

E. St. Julien Cox, accompanied by his counsel, appeared at the bar of the Senate and took the seats assigned them.

The PRESIDENT *pro tem.* Is there any business to be transacted before proceeding to the examination of witnesses? If not, we are ready to proceed.

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Mr. ARCTANDER. Mr. President, there are three witnesses that have been subpœnaed for the respondent, and I think by mistake. I desire to have the witnesses sworn, so that they can get their per diem and mileage, if that is necessary.

Senator GILFILLAN, C. D. I will state, Mr. President, that so far as I am concerned I think, under the order of the court, I have no right to certify to the pay of a witness, unless he is put upon the stand. I will state that upon the part of the prosecution, there was one case of that kind, and I declined to certify to his account; and I do not feel myself authorized to certify to the account of these witnesses unless so ordered by the Senate. If these men are put upon the stand and sworn, I can then certify to their account.

The PRESIDENT *pro tem.* Will it obviate your objection if they are sworn?

Senator GILFILLAN, C. D. It certainly will. If the respondent is limited to five witnesses or any particular number, upon any article, why these witnesses will apply on that number.

Mr. ARCTANDER. Well, we are willing to have that done.

The following witnesses were then sworn: Charles Berg, M. Pritzner, and Joseph Koehler.

Mr. Manager DUNN. Upon what article are these witnesses sworn?

Mr. ARCTANDER. Two of them under specification seven of article seventeen, and one under article eleven.

Mr. Manager DUNN. You had nine last night under article seventeen.

Mr. ARCTANDER. Yes.

Mr. Manager DUNN. This makes eleven on that article.

Mr. ARCTANDER. Yes.

Mr. Manager DUNN. Have you got any more?

Mr. ARCTANDER. Well, when we get any more we will inform you.

Mr. President, before proceeding any farther I would like to ask leave to have introduced the testimony of the witness that was taken here on Saturday last upon this article seventeen. We ask to have the evidence read, and that it go into the record; I understand the reporter who took the testimony is here.

Senator MEALEY. Senator Campbell made a motion to that effect last night, and as he is not here now, I will renew that motion.

The PRESIDENT *pro tem.* I suppose there is no necessity of any motion if the counsel for the state consent.

Mr. Manager DUNN. We merely object to the introduction of this evidence upon the ground that it is in violation of the rule of the Senate limiting the number of the wiinesses to five. They have already sworn eleven witnesses upon this article, and this one that they now seek to introduce will make twelve. We simply object to it because the Senate have formerly, by a vote in secret session, refused the prosecution the privilege of calling a witness for the State, for the simple purpose of verifying the record of the clerk of the court, because we had exhausted our five witnesses. Now, under this article they have had eleven witnesses sworn and they now desire this one more, I suppose to make out the round dozen. I object to it on that ground.

The PRESIDENT *pro tem.* I did not hear any second to the motion.

Senator HOWARD. Mr. President, I think it is about time to bring this matter to a point in regard to witnesses. Under the first rule adopted by the Senate, five witnesses were allowed to each side; but this bringing in of witnesses here that do not amount to anything, and just

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simply take the oath and getting pay, it seems to me is going to make a good deal of expense to the State. The most important thing about the matter is that we have been here a long time and I for one, want to get through with this matter and go home; I presume other Senators have the same feeling, and that no unnecessary testimony should be introduced. The bringing of twelve or fifteen witnesses upon one article, is not going to answer the purpose we intended by the rule unless you leave out some of the articles, and do not intend to put in any testimony under them,—as we suggested here yesterday or day before. It was proposed to leave out some of the testimony, and not to produce any witnesses. We don't want to stay here all summer.

The PRESIDENT *pro tem.* Does the motion of Senator Mealey meet with a second?

Senator ADAMS. I second the motion.

Senator C. F. BUCK. What is the motion?

The President *pro tem.* The motion was that the deposition of a certain witness be read at this time.

Senator C. F. BUCK. I think there was not a quorum present at the time the testimony of this witness was taken and that it was taken by consent of counsel.

Mr. Manager DUNN. I suppose the motion would simply be that the defence be allowed another witness, naming him. His evidence has been taken, of course by consent, supposing at the time that he was one of the five witnesses.

The President, *pro tem.* Is the Senate ready for the question? As many as are in favor of the admission of the testimony will say aye; contrary, no. The chair is unable to decide; the ayes and nays will be called.

Senator C. F. BUCK. Mr. President, I did not understand the question.

The President, *pro tem.* I will inform the Senator that on Saturday morning the deposition of a man was taken on behalf of the defence with the intention of introducing it as evidence, and it was understood by some of the Senators that it was to be introduced as one of the five witnesses.

Senator C. F. BUCK. The deposition has been taken and is here?

Mr. ARCTANDER. Yes, sir.

Senator C. F. BUCK. I would like to hear the testimony; so far as I am concerned I don't care anything about the rules; I want to get at the facts in this matter. If there is any rule that is an obstacle to getting the facts and the truth in this matter, why I move to suspend the rule. I want to know all about this matter; and if this witness is here on any article, I cannot see any objection to hearing the testimony. It is not adding to the expense, and it does not make any difference if it does. A great many people are afraid of the expense; the matter of dollars and cents, when it comes to be put into the scales against character and life, almost; does not amount to much. If there is no motion I move that we hear the testimony.

The PRESIDENT *pro tem.* The ayes and nays are called for: the clerk will call the roll.

Senator MEALEY. As I understand this matter, there was a witness here whose wife was dangerously sick and he wanted to go home and by consent of the parties they took his testimony and the witness has gone home. As I understand, when this matter first came up in relation to

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the number of witnesses upon each side, it was largely a question of expense. Now there is no more expense to this. The testimony is here and I can see no reason why it should not be admitted.

The PRESIDENT *pro tem.* Those in favor of admitting the testimony will say aye.

Senator WHITE. Mr. President, that motion has been already put. I wish to amend the motion, that the rules be so far suspended that this evidence may be admitted. It can be admitted in no other way.

Senator C. F. BUCK. We can do it by a vote of the Senate.

The PRESIDENT *pro tem.* There is no necessity of suspending the rules.

Senator HINDS. Mr. President, I do not desire to discuss this, but as I voted in favor of allowing the additional witnesses and as I shall also vote for allowing this, perhaps I might state why. It is this: The respondent has had eleven witnesses sworn upon this article, yet no three of those witnesses have testified to the same scene or the same facts. Some two or three have testified to one probably; some two or three, perhaps, have testified to a different occurrence. So with the rest of them. Now, it seems that there is a difficulty there, and although they have multiplied the number of witnesses, yet they do not all relate to the same scene in court and out of court; and for that reason I thought it was proper to suspend that rule,—in order that we might have a history of the whole matter.

The PRESIDEMT *pro tem.* The clerk will call the roll.

The roll being called, there were yeas 16, and nays 5, as follows:

Those who voted in the affirmative were—

Messrs. Adams, Buck C. F., Case, Clement, Gilfillan C. D., Hinds, Johnson R. B., Langdon, McCrea, McLaughlin, Mealey, Morrison, Peterson, Shaller, Simmons and Wilson.

Those who voted in the negative were—

Messrs. Howard, Johnson F. I., Officer, Wheat and White,

Mr. ARCTANDER. Mr. Lyons, will please read the testimony as you took it.

Senator BUCK C. F. What is the name of this witness?

The REPORTER. John Quincy Adams Currant.

Examined on specification seven, article seventeen.

Sworn and examined by Mr. ARCTANDER.

Q. Where do you reside?

A. In Brown county.

Q. In Sleepy Eye?

A. In the town of Home.

Q. What is your business?

A. I am a farmer.

Q. Do you know the respondent, E. St. Julien Cox?

A. Yes, sir.

Q. How long have you known him?

A. Some 16 or 17 years.

Q. 16 or 17 years?

A. Yes, sir.

Q. Were you a juror on the regular panel at the last May term of court, in Brown county, in 1881.

A. Yes, sir; until I was excused,

Mr. Manager DUNN. In the taking of this testimony we will have to reserve all objections until it is formally offered.

Q. Were you in attendance upon the term, the first day of the term there as such juror?

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A. Until I was excused, just before the adjournment at noon.

Q. Until you were excused just before the adjournment at noon of the first day?

A. Yes.

Q. Did you see the Judge when he came there to the term?

A. Yes, sir.

Q. Did you see him presiding during that afternoon session?

A. Yes, sir.

Q. Were you present during whole of the afternoon session, during the empanelling of the jury in the case of Howard against Manderfeldt?

A. I was present until they adjourned for dinner.

Q. You remember being present and seeing the jury empanelled in the Howard against Manderfeldt case?

A. I do not know whether the jury were all empanelled before they adjourned for noon or not.

Q. But you were there part of the time while they were being empannelled?

A. A part of the time?

Q. Did you hear the Judge speak when he made the preliminary call of the calendar, when he called the cases there, etc,?

A. Yes.

Q. Did you hear him make rulings upon challenges to jurors and such things?

A. Yes, sir; I heard him rule upon the challenges.

Q. Now, I will ask you to state what the condition of Judge Cox was at that time as to sobriety or inebriety?

A. Why, he was sober.

Q. Was there anything in his looks or appearance or actions or conduct that was peculiar and different from what it had been at other times when you had seen him, when you knew he was perfectly sober?

A. Nothing different.

Q. Nothing different, nothing peculiar?

A. Nothing different.

Q. Had you any doubt about his perfect sobriety at the time?

A. I had not.

Q. How did his looks compare with what they do now, to-day?

A. He looked better really then than he does now.

Q. He looked better than he does now?

A. Yes.

Q. In what do you think he looked better than he does now; In what does he look worse now?

A. He looks paler now, and I don't think he is quite so full or fleshy.

Q. Is there any expression on his face now that was not there at that time?

A. Well, that I don't know anything about; I don't think there is much difference in his expression now and then.

Q. And you didn't stay there any more that term; you went home; you were excused as a juror and went home?

A. I was excused and went home after dinner.

Q. So of course you don't know about anything occurring after that time?

A. No, sir.

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CROSS-EXAMINATION.

By Mr. Manager DUNN.

Q. Had you any conversation with the Judge that morning?

A. No, sir.

Q. You were summoned as a juror regularly at that term?

A. Yes, I was summoned as a regular juror at that term.

Q. What time did court open?

A. I don't think it was quite 11 o'clock, it was somewhere near 11; I didn't have any time.

Q. Where were you when court opened?

A. I was up in the court-room when the court opened.

Q. Were you in the court-room when the Judge came into the court-room?

A. I followed the Judge up.

Q. Well, you were excused at noon?

A. I was excused before noon.

Q. And went off about your business, and didn't see any more of the court.

A. Oh, I stayed in the court-room until they adjourned, and then I went home.

Q. And then you went home.

A. Yes.

Q. So you didn't see any more of the court after that.

A. No, sir.

Mr. ARCTANDER. Mr. President, with the leave of the Senate we will now proceed to introduce testimony under article three, the Gezike case, at New Ulm. We will call as a witness Mr. Blanchard.

A. BLANCHARD.

Called as a witness on behalf of the respondent testified.

Examined by Mr. ARCTANDER.

Q. You have been sworn here before in the case?

A. Yes, sir.

Q. You are the clerk of the district court of Brown county?

A. Yes, sir.

Q. Were you such in the year 1879?

A. I was.

Q. I will ask you whether or not you were present at a trial had, nominally before Judge Cox, while sitting and presiding on the bench, and the testimony being taken by Mr. Goodnow, in the case of Wells and others against Gezike, Behnke and others?

A. Yes, sir; I was.

A. In the month of June, 1879?

A. Yes, sir; and the case of Evans, Peak & Co., at the same time.

Q. I will ask you to state—I believe it is admitted, though, that the court was adjourned before this matter was taken up.

Mr. Manager DUNN. Yes, sir.

Q. I will ask you to state whether or not you had any conversation with the Judge before he proceeded with the trial, as well as during the trial?

A. I did.

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Q. I will ask you to state whether or not, at that time, or during any part of that trial, Judge Cox, in your opinion, was intoxicated.

A. In my opinion he was not intoxicated.

Q. He was not intoxicated?

A. He was not intoxicated.

Q. The trial was interrupted by a recess for noon, was it not?

A. At one time, yes.

Q, With the exception of that recess for noon, state whether or not the Judge left the court room at any time?

A. He did not, to my recollection, leave it.

Q. State whether or not you observed any difference in the appearance, actions, or conduct of the Judge, during the latter part of that trial, from what it was during the former part.

A. I did not.

Q. I will ask you to state what the Judge did during that trial?

A. Well, he sat in his chair at the bench the most of the time.

Q. How did he behave himself?

A. Well, he behaved as well as he ever did. I did not see any difference.

Q. You couldn't see any difference? A. I did not.

Q. Mr. Pierce testified that upon this occasion the Judge was constantly talking; I desire to ask you whether or not that was true or false?

A. It was not true. It would be impossible for him to keep talking and I not know it. I was a witness there; I wasn't there as clerk of the court; I was merely there as a witness.

Q. Mr. Pierce fnrther testified that the Judge was making rules and orders all the time, which were entirely disregarded; state whether or not that was true or false, about his making orders.

A. He made no orders that I know of. I don't think he could have made them and I not hear them.

Q. Mr. Pierce further testified that Judge Severance on one occasion requested him to keep quiet; state whether or not that is true or false.

A. I didn't hear any such thiug, and I don't think it was said; I don't think he said any such thing.

Q. Mr. Pierce further testified that all of the lawyers engaged in the case talked to him about the same way as to an irresponsible person; was there anything of that kind?

A. I didn't hear, and didn't so understand it. I will explain. I went there as a witness, and I was sent for over to the court house,—where the officers held their offices is not in the court house where we have court. I was sent for, and they wanted me to bring over the papers in the Wells and Gezike case, and in the Evans, Peck & Co. and Behnke case; and the judgment record and the lien docket. I took them all and went over, and I met Judge Cox at the gate, passed the time of day and spoke to him before we went in; then I went in ano sat down at the table where the counsel sit. I took those papers and spread them out there, and opened these judgment records and my lien docket, and explained the whole transaction, and how the attorney came to me with that judgment and how I endorsed the settlement on the judgment, it was a confession; then I filed it, the judgment roll, and docketed it on the lien docket, and went through all of it; I did most all of the talking myself, the most at first. They were not talking to Judge Cox. He sat there; they were just asking me questions, and Mr. Goodenough was

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taking down the testimony. I didn't hear Judge Cox interrupt but once, and then I don't know as it was an interruption. He reached over, and asked them to show him an undertaking for a writ of attachment, and he took it, and looked at it, and then he handed it back with something like a remark that it didn't amount to anything. That is the way I understood it; that is the only interruption that I heard.

Q. State whether or not it is a fact that Judge Cox sitting there could not have been recognized "as a responsible person."

A. It is not a fact.

Q. State whether or not Judge Cox was at that time so under the influence of liquor that he seemed unconscious of the duties required to be performed?

A. He did not.

Q. State whether or not at that time Judge Cox acted like a fool.

A. He did not.

Q. State whether or not at that time he mumbled things, or at any time during the proceedings, did mumble things over on the bench that had no relation to the cause.

A. I heard no such thing.

Q. State whether or not he made any rulings or decisions of every kind conceivable, or any rulings or decisions at all?

A. I heard no such thing.

Q. State whether or not at the time he was all the time talking or attempting to talk, and hardly ever was still.

A. He was not.

Q. State whether or not at that time he talked as a person whose wits are away from him?

A. Well, I didn't hear him talk.

Q. Except what you have stated?

A. Yes, that is all I recollect hearing him talk; I talked with him once myself.

Q. When you talked with him how did he then talk; did he talk as a person of reason would talk?

A. Well, I didn't consider him a fool, not by a good deal; he talked to me as he always did.

Q. State whether or not any of the remarks he made were those of a man not knowing what he was talking about.

A. They were not; he made no remarks of the kind.

Q. State whether or not he acted or talked in a manner so as to indicate that he supposed he was trying the case then and there, and deciding the matter just as if the case were on trial before him.

A. He did not.

Q. Were these remarks, whatever he made in regard to the attachment papers, reiterated more than one time?

A. I didn't hear it but once; I have no recollection of hearing it but one time; he reached over and asked for it, it was an undertaking on an attachment.

Q. State whether or not at any time during the proceedings he complained very much, or complained at all because nobody heeded him.

A. I heard no such complaint.

Q. I will ask you to state whether or not at this proceeding the Judge's eyes looked red?

A. They did not; his eyes never looked red that I ever saw; I never saw his eyes look red in my life.

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Q. How long have you known the Judge?
A. Oh, I have known him twenty-two years.
Q. Have you seen him when he has been on sprees during that time?
A. I have; lots of times.
Q. And when he has been on sprees, you have never seen his eyes looking red?
A. I never have seen it. I suppose what you mean is the eye itself looking red, bloodshot. I never saw it.
Q. I will ask you to state whether or during those proceedings there was any erratic or incoherent talk upon the part of the Judge.
A. There was not that I heard.

Examined by Mr. Manager DUNN.
Q. You was there as a witness?
A. I was there as a witness and nothing else.
Q. Did you go there as soon as court opened?
A. I got there before it opened, I think. I know I did, because I met Judge Cox at the gate.
Q. Well, you went after your papers?
A. I went over to my office after the papers and got the docket and all the papers in the case.
Q. Did you say that you stayed there all the time?
A. I think I was there all the time, when they adjourned and when they came in after dinner.
Q. Are you positive you were there all the time?
A. I think I was there most all the time. My testimony was the main testimony. It took a long time before we got it all done; they asked a great many questions.
Q. Well, wasn't there a good deal of introduction of papers there that your testimony didn't have anything to do with?
A. Well, I had the papers under my charge and they asked me for them, and I found them.
Q. You were not interested in the case were you?
A. Not interested other than as a witness; I was not interested financially.

WILLIAM GEZIKE,

Sworn as a witness on behalf of the respondent, testified.

Examined by Mr. ARCTANDER.
Q. Where do you reside?
A. In New Ulm, Brown county.
Q. How long have you resided there?
A. Fourteen or fifteen years.
Q. What is your business?
A. In the cattle business now.
Q. Have you been the sheriff of that county?
A. Yes, sir.
Q. For how long a time?
A. Nine years.
Q. Do you know the respondent, E. St. Julien Cox.
A. Yes, sir.
Q. How long have you known him?

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A. Twenty-two or twenty-three years, something like that, at least twenty-two.

Q. Did you live in Nicollet county before you moved up to Brown county?

A. Yes, sir.

Q. Have you been intimately acquainted with the Judge during those twenty-two or twenty-three years.

A. Well, I know him.

Q. Have you known him intimately, been intimately acquainted with him?

A. Yes, sir.

Q. I will ask you to state whether or not you were present at the adjourned term of court held in Brown county in the month of June 1879, immediately preceding the trial of the case of Wells et. al., against Gezike and others?

A. I was.

Q. Present in court during the days that it was in progress?

A. Yes, sir.

Q. Did you see the Judge on the bench there?

A. Yes, sir.

Q. Were you present during the trial of the case of Wells and others against Gezike and others?

A. I was.

Q. Were you the Gezike, the defendant, that was the defendant in that case?

A. I was.

Q. Was there anything involved in that case of any consequence to you?

A. To be sure there was, $8,000.

Q. Eight thousand dollars of your money was involved there?

A. Yes, sir.

Q. State whether or not you attended the hearing of your case constantly during the whole of that day.

A. I did.

Q. Have you, during the 23 years you have known Judge Cox, seen him under the influence of liquor, and intoxicated more or less?

A. I have.

Q. Several times?

A. Yes.

Q. Now, I will ask you to state what was the Judge's condition during the trial of your case there, and the whole of it, as to sobriety or inebriety?

A. Perfectly sober, if I am any Judge at all; I considered him perfectly sober.

Q. Had you any doubts about it all at the time?

A. Not at all.

Q. Have none now, have you?

A. I have not.

Q. You believe you could tell when he is intoxicated, and when he is sober?

A. I think I could; I know I could.

Q. State whether there was anything peculiar or different either in the Judge's appearance or in his actions or conduct, language or manner during this trial from what there was during the two days of court pre-

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ceding, or different from what they have been at other times when you have met him and seen him in court, when you knew he was perfectly sober?

A. There was not; there was no difference.

Q. I will ask you to state, if the Judge was out of the court any time during the proceedings of your trial, except at the noon recess.

A. Not to my recollection.

Q. Was there any difference in his appearance, or his actions, or conduct, or in his condition as to sobriety, between the latter part of that proceeding, and the first part?

A. None at all.

Q. I will ask you to state if you have seen Judge Cox when he had been on sprees the night before, and seen him in the morning?

A. I have.

Q. I will ask you to state whether after such occasions you have observed whether he bears on his face, in his appearance, his conduct or his language, any traces of the spree of the evening before?

Mr. Manager DUNN. Well, now, I object. If that is not leading the witness, then I don't know what is.

Q. Well, I will ask you what, if anything, you have observed after having seen Judge Cox on a spree the evening before, on the following morning?

A. Well, you can't hardly see anything; I never seen anything differently the next morning.

Q. You never see any traces the next morning at all of any spree?

A. No, sir.

Q. It is somewhat remarkable in that respect, is it not?

Mr. Manager DUNN. I object to that; bring out the facts and let the court judge of them.

Q. I will ask you to state whether or not this morning there was anything in the appearance, conduct or manner of Judge Cox, that would in an ordinary person show that he had been on a spree the night before, or in other words had the "katzenjammen?"

Mr. Manager DUNN. I object.

The PRESIDENT *pro tem.* Why don't you ask him what his appearance was the next morning?

Mr. ARCTANDER. Well, I will ask you, what was his appearance the next morning?

A. Well, as common; I didn't notice anything uncommon.

Q. Nothing uncommon? A. No, sir.

Q. Just as usual? A. Yes, sir.

Q. I will ask yon to state whether Judge Cox at any time during this trial made interruptions right along; was talking constantly?

A. Not to my recollection.

Q. State whether or not he made any rulings or orders at that time?

A. Not to my recollection.

Q. State whether or not he acted foolishly; like a fool on that occasion?

A. No, sir.

Q. At all? A. He did not.

Q. What did he do when he sat there? Did he sit quietly, or talk?

A. I saw him just as any judge would, I didn't see anything different from what he ought to be.

Q. State whether or not he at that time "mumbled" things to himself on the bench while he was sitting there?

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A. No, sir.

Q. State whether or not it is a fact that he was hardly ever still; that he was all the time talking, or attempting to talk.

A. No, he was not.

Q. Did you have any talk with him yourself that morning or that day?

A. No, sir.

Q. I will ask you to state whether or not that morning his eyes looked red; were his eyelids swollen, anything of that kind there that morning?

A. No, sir; there was not.

Q. I will ask you to state whether or not his face was swollen or whether he had an infamed appearance that morning?

A. I don't recollect of anything like it.

Q. Do you recollect his face now when you think back?

A. Of course I do. I should have observed it, if he was anything different from what he was commonly.

Q. I will ask you to state whether the Judge talked erratic, do you understand that; whether he talked wild; or whether there was any incoherent talk upon his part that day?

A. Not to my recollection.

Q. Well, you say you don't recollect it; do you have that scene before your eyes, so that you know whether or not it was not the case?

A. Well, it was not the case.

Q. Now, state whether there was anything unsual, or eccentric or nervous in his movements; anything more than usual with him that morning?

A. No, there was not.

Mr. Manager DUNN. I think we could save time if you would read Mr. Pierce's testimony to the witness and let him say no to the whole of it.

Mr. ARCTANDER. I don't doubt it; I think all the other witnesses have said no.

Mr. Manager DUNN. We are willing to agree he would say no to it all.

Mr. ARCTANDER. Well, I would rather have the witness's than your admission.

Examined by Mr. Manager DUNN.

Q. You were the sheriff of the county?

A. No, sir; not at the time of the trial.

Q. Well, how did you get possession of those goods?

A. Through the sheriff.

Q. You had bought them of the sheriff, had you?

A. What goods are you speaking of?

Q. Wasn't this suit about some goods?

A. Yes, well, the sheriff had them, and he made an attachment and they were sold at public auction; I didn't have the goods myself.

Q. Who were they sold to?

A. Well, Mr. Webber got them.

Q. How did you come to be in the suit if you didn't have the goods yourself?

A. They were attached in my favor.

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Q. You attached the goods?
A. Yes, sir.
Q. Not as sheriff?
A. Not as sheriff.
Q. As an individual?
A. Yes.
Q. And they were taken on your attachment?
A. Yes, sir.
Q. What was the amount of your debt that Behnke owed you?
A. Eight thousand dollars.
Q. And the suit was as to whether your attachment was good or not?
A. Yes.
Q. Who was your attorney?
A. Mr. Cole and Mr. Kuhlman.
Q. Was Mr. Kuhlman there at that time?
A. Yes, sir.
Q. And Mr. Cole?
A. Mr. Cole was there.
Q. Well, now you have seen Judge Cox intoxicated a good many times, have you not?
A. Well, I have seen him; yes.
Q. Well, a good many times, haven't you?
A. Well, I don't know what you call a good many times; I have seen him.
Q. Well, how many times do you think?
A. Well, that I couldn't say,—in 23 years.
Q. Well, say during the last four years, since he has been Judge?
Mr. ARCTANDER. That is not proper.
Q. How many times during the last four years?
A. Well, sir, I could not swear to any number of times.
Q. It is so often you couldn't tell it?
A. I don't know anything about that.
Q. Is that it, or is it so rare you can't tell it?
A. Well, I don't know what to answer. I didn't keep no record of it. Perhaps the Judge was more drunk than I think he was; or, at least, perhaps if I had been sheriff I would have associated with him more, but since I have been out of office, the last five years, I have had no business with the Judge or court, and never was in court even, except this time.
Q. You never was in court except this time?
A. Well, I say never,—I would not say that, but not very often. I don't go much near the court.
Q. You havn't been sheriff since Judge Cox was elected Judge?
A. No.
Q. And you have not attended his court any since he has been Judge?
A. No.
Q. Probably you never have attended court as much since he has been Judge as you did during that trial?
A. No, if I went into court, I probably stayed half an hour and then went off again.
Q. So yon know very little about his actions as judge?
A. Yes. sir.
Q. Now, you have seen Judge Cox when he has been perfectly sober, have yon not?

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A. I have; yes, sir.

Q. Well, he was just as sober this time when he tried this case of yours, as you ever saw him in your life, was he not?

A. Yes, sir.

Q. Perfectly sober?

A. Perfectly sober.

Q. There was nothing that morning that would indicate to you that he had been under the influence of liquor on the night before, was there?

A. No, sir; not the slightest.

Mr. ARCTANDER. I will ask you to state whether your and Judge Cox's relations have been very friendly, or to the contrary?

Mr. Manager DUNN. Oh, I object to that. I don't think you can bolster up your witnesses by such testimony as that.

The PRESIDENT *pro tem.* What is the object of the question?

Mr. ARCTANDER. I simply want to show that he has not had peculiarly friendly relations with Judge Cox, and that he didn't even vote for him.

The PRESIDENT *pro tem.* I don't think that is material.

A. BEHNKE.

Sworn as a witness on behalf of the respondent, testified.

Q. Mr. Behnke, where do you reside?

A. New Ulm, Brown County, Minnesota.

Q. What is your business?

A. Well, I am in the mercantile business.

Q. Do you know the respondent, E. St. Julien Cox?

A. Yes, sir, I do.

Q. For how long a time have you known him?

A. For the last twenty-three or twenty-four years.

Q. Have you known him intimately during that time?

A. Yes, sir.

Q. I will ask you to state whether or not during those twenty-four years you have known him, you have seen him under the influence of liquor, and intoxicated on several occasions?

A. Yes, sir, I have.

Q. I will ask you to state whether you were present during the trial of Wells and others against Gezike, Behnke and others, on the 13th of June, 1879?

A. I was, sir; yes, I was there.

Q. Were you constantly in attendance there during that trial?

A. Yes, sir; all the time.

Q. You were one of the defendants in the case, were you?

A. Yes, I was.

Q. Now, I will ask you to state what the Judge's condition was during the whole of that trial or during any part of it as to sobriety or inebriety?

A. In my estimation he was straight and sober?

Q. Had you any doubt about it at the time?

A. Not a bit, sir.

Q. Have no doubt of it now?

A. No, sir; I have not.

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Q. I will ask you to state whether or not, in your opinion, he had been drinking at all; whether he had the appearance of having drank intoxicating liquors at all?

A. Well, he hadn't that day.

Q. He had not that day?

A. No, sir.

Q. You are positive of that?

A. I am positive of that.

Q. State, whether or not, you could see anything in the Judge's appearance that day, indicating that he had been on a spree the night before?

A. I did not.

Q. Have you seen him mornings when you have known that he was on a spree the night before?

A. Yes, sir; I have.

Q. Now I will ask you to describe to the Senate what his appearance would be under such circumstances?

Mr. Manager DUNN. I object to that.

Mr. ARCTANDER. I don't care about it.

Q. I will ask you to state, whether you have seen him at other times in court, and in private, when you knew he was perfectly sober?

A. Yes, sir.

Q. I will ask you to state, whether or not, there was anythiug in his appearance at this time, or in his actions, manner, conduct or language which was peculiar or in any way different from what his appearance and his actions, conduct, language and manner have been at other times when you have seen him in court, and in private, and when you knew he was perfectly sober?

A. There was not.

Q. None at all?

A. None at all.

Q. I will ask you to state, whether or not, the Judge during any of these proceedings in that case went out of the court room, except at the noon recess?

A. Not to my recollection.

Q. I will ask you to state, whether you saw any difference in his appearance or his actions at the latter part of that proceeding from what there was at the first?

A. None at all.

Q. State, whether or not, the Judge during this proceeding,—what did he do; how did he act?

A. He was sitting the most of the time on the chair; once in awhile he got up and walked to the stove and around the room a little.

Q. Did he say anything?

A. No; I don't recollect, except once he talked to the lawyers about some matters. That is all I know about.

Q. Do you remember what that was upon?

A. No; I don't.

Q. But it was only once that he spoke to them?

A. All I remember is only once.

Q. Now, I will ask you to state whether or not it is a fact that Judge Cox was constantly talking there during that proceeding?

A. No, he was not.

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Q. I will ask you to state whether he was all the time, or any of the times, making rules or orders?

A. I have not heard of any, except once, that he talked to the lawyers about some matters.

Q. Well, he made no rule or order at that time, did he?

A. No, not that I know of.

Q. You may state whether or not Judge Severance at any time there requested him to keep quiet, or used any such language.

A. I don't remember anything of that kind.

Q. State how the attorneys treated Judge Cox.

A. I think they treated him gentlemanly.

Q. And respectfully, did they?

A. Yes, of course they did.

Q. As usual?

A. Yes, sir.

Q. State whether or not it is a fact that Judge Cox could not at this time have been recognized as a responsible person?

A. I think everybody respected him *that day.*

Q. State whether or not there was anything out of the way in his actions—if he acted like a fool, or foolishly, or silly, in any way.

A. I have not seen anything like that.

Q. State whether or not he was sitting and mumbling over things, on the bench.

A. He did not. He was sitting just as I ever seen him on the bench.

Q. Just as you have always seen him on the bench?

A. Yes, sir.

Q. State whether or not it is the fact that he was hardly ever still—talking, or attempting to talk, all the time.

A. He did not; he was sitting still on his chair.

Q. Did you talk any with him yourself?

A. I did not that day.

Q. At this time he did talk, when he did talk to the lawyers, state whether he talked as a person whose wits were away from him; like a man that didn't know what he was talking about?

A. Well, he talked about some matters; he didn't talk much, but only said a few words to the lawyers.

Q. Was it sense, or nonsense?

A. Oh, it was sense that he talked.

Q. State whether or not he at any time there complained that nobody wanted to heed him or pay attention to him?

A. I have not heard anything like that.

Q. You mean when you say you have not heard it, that you did not hear anything of the kind; that there was nothing of the kind in your hearing?

A. No, there was no such language.

Q. I will ask you to state whether or not this morning his eyes looked red and blood-shot?

A. I didn't notice it.

Q. Were his eye-lids swollen? A. I have not seen it.

Q. Was his face swollen or inflamed? A. No, it was not.

Now, when you say you didn't see his eyes look red, or his eye-lids swollen, do you mean simply that you didn't notice it, or that they were not so?

A. They were not, because I was sitting right in front of Judge Cox as I am sitting now, and looked right in his face.

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Q. You are sure it was not a fact?
A. No, sir, he just looked as sober as to-day.
Q. I will ask you to state whether he made any erratic talk, or talked incoherently in any way?
A. He did not talk hardly any.
Q. What he talked was not erratic, or incoherent, was it?
A. No, sir.
Q. I will ask you to state whether there was anything unusual or eccentric in his movements, more than usual?
A. No, sir, there was not.

Examined by Mr. Manager DUNN.
Q. Mr. Behnke, you were a defendant in that suit, were you?
A. Yes, sir.
Q. And the Judge decided the case in your favor, did he?
A. He did.
Q. You say everybody respected him that day particularly?
A. Well, yes.
Q. Well, why? A. Why, because,——
Q. Wasn't it because he was so extremely sober?
A. Well, I don't know; but I know he was sober, and everybody respected him, and talked pleasantly to him.
Q. You said especially that day?
A. Yes; well, not especially; I didn't mean that.
Q. There was nothing particularly more respectful in the attention shown Judge Cox that day from any other day?
A. No, sir; not at all.
Q. All the lawyers respected him?
A. Yes, sir.
Q. Now, please tell me what Judge Cox said there?
A. Well, I couldn't remember.
Q. Can you tell me anything he said?
A. No, I couldn't, because I am not posted on these matters. I know the lawyers had a talk together, and Judge Cox,—he made some remarks, and then everything went off quietly and nicely.
Q. You can't tell whether it was erratic, or wild, or what?
A. Oh, I could see that by the way they talked, that everything was all nice.
Q. You can't tell whether it was sensible or lacked sense, can you?
A. Oh, I guess not.
Q. Well, what was it?
A. I couldn't tell the words, but I know they were talking kind of nice; and Judge Cox made some remarks, and the lawyers were satisfied with it.
Q. The lawyers were both satisfied? A. Yes, sir.
Q. General Cole and Judge Severance were both satisfied, were they?
A. Well, that is the way it looked; I don't know.
Q. Was Mr. Pierce satisfied with what he said?
A. I don't know.
Q. What do you mean then by saying they were all satisfied?
A. Well, Mr. Pierce was sitting there, and they all admitted what Judge Cox said.
Q. But you don't know whether they were satisfied with it or not, do you?

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A. No, I don't.
Q. Can you give us any statement of what was done at that trial; what was tried?
A. Well, it was a case, Wells against Gezike and others, and Behnke.
Q. How many cases were tried at that time?
A. There was only one case tried, I think,
Q. That was the case of Wells against Gezike? A. Yes.
Q. Now, who was your attorney?
A. Well, I didn't have any; I only was a witness there.
Q. Can you state what papers were introduced in the case?
A. No, I cannot.
Q. Who were your witnesses?
A. I was a witness; we had borrowed money of Gezike.
Q. Were you sworn in the case?
A. No, I was not.
Q. You had nothing to say in the case at all?
A. No, I only was sitting there all the time.
Q. You have seen Judge Cox when he has been on a spree, haven't you?
A. Yes, sir; I have.
Q. You have seen him the morning afterward?
A. Yes, sir; I have.
Q. And you say there was nothing particular to indicate that morning, that he had been on a spree the night before, do you?
Q. No; not at all.
Q. When was your attention first called to the fact that Judge Cox was claimed to have been intoxicated at that time?
A. Well, I couldn't tell that; I don't remember.
Q. Was your attention called to it at the time by anybody?
A. At the time the trial was?
Q. Yes.
A. Not at all, sir.
Q. How long after was it called to it, so that you began to think about it?
A. I don't remember, somebody told me, and I said it was not so.
Q. When was that?
A. Oh, about six or eight months ago.
Q. That was before the Legislature met here?
A. Yes.
Q. Some time last winter, was it?
A. Well, it was early in the fall.
Q. Do you know who told you?
A. No, I don't remember.
Q. It was early in the fall, somebody told you that Judge Cox was drunk when that case was tried?
A. Yes; there was a lot of people in the store. I don't remember who it was said something about it, and I said it was not so, that he was sober.
Q. There was quite a number of them there talking about it?
A. Yes.
Q. You can't remember who they were?
A. No.
Q. When was your attention called to it next?
A. At the time the Senate was meeting; somebody talked about it; and I said it was nonsense,—they couldn't prove that.

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Q. That was 6 or 8 months ago?
A. No, that was later, that was the second time the Senate was sitting. And they talked around the store there that they were going to say so and so, and I said that wasn't so; that they couldn't prove it.
Q. You have seen Judge Cox you say, intoxicated a good many times?
A. I didn't say a good many times,—I said, sometimes.
Q. Well, what do you mean by sometimes?
A. Oh, well, once in a while.
Q. How many?
A. Oh, I couldn't tell that.
Q. More than once?
A. Yes, oh, may be two or three times.
Q. More than three times?
A. I couldn't say.
Q. More than ten times?
A. No, sir; I couldn't say anything like it, because I have no recollection of how often I have seen him.
Q. Well, is it a frequent or infrequent occurrence?
A. Well, just as it happened; once in awhile I would see him that he got a little too much.
Q. Have you ever seen him when he has been on a real hard spree; right down drunk?
A. No, I never seen him that way, but I have seen him when he was pretty full, and he was walking on the street.
Q. Have you ever seen him when he was real drunk?
A. No.
Q. Then you have never seen him in the morning after he has had a real hard drunken spree, have you?
A. Well, what do you mean by that?
Q. Well, what do you mean by drunk?
A. Well, when a man is so full that he lays in the street.
Q. That is what you mean by drunk?
A. Yes, sir.
Q. If a man don't have to lie in the street you don't consider him drunk?
A. No, I don't.

The PRESIDENT *pro tem.* The Senate will take a recess until—

Senator ADAMS. One moment, Mr. President, I have a resolution to present.

Resolved, That the Secretary place the names of the officers and employers of the Senate sitting as a court of impeachment, upon the pay rolls for the same time as the members of the court.

The PRESIDENT *pro tem.* As many as favor the adoption of the resolution will say aye.

The ayes and noes were called for.

The roll being called, there were yeas 24, and nays 0, as follows:

Those who voted in the affirmative were—

Messrs. Adams, Bonniwell, Buck C. F., Case, Clement, Gilfillan C. D., Hinds, Howard, Johnson F. I., Johnson R. B., Langdon, Macdonald, McCrea, Miller, Morrison, Perkins, Peterson, Powers, Shaller, Simmons, Wheat, White, Wilkins and Wilson.

So the resolution was adopted.

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Mr. ARCTANDER. Mr. President, I would like to ask leave to have a witness sworn before the Senate adjourns. He is a witness on article 11, which we will take up this afternoon, and I discover he is in the same fix as another witness—he was not present in court at the particular time when the motion was argued; he was there at another time. I don't propose to examine him; I just want to have him sworn so that he can go home on the noon train.

The PRESIDENT *pro tem.* He will be sworn unless objection is made.

Mr. Manager DUNN. What is his name?

Mr. ARCTANDER. Charles Keyser.

The witness was then sworn.

The Senate then took a recess until 2:30 P. M.

AFTERNOON SESSION.

Senator WILSON in the chair.

The PRESIDENT *pro tem.* The Senate will please come to order. Are there any resolutions or motions to be offered by Senators? If not, we are ready to proceed with the evidence.

Mr. ARCTANDER. We will call a further witness upon the same article, article three.

PATRICK FITZGERALD,

Sworn as a witness on behalf of the respondent, testified.

Q. Where do you reside?

A. Sleepy Eye.

Q. Do you know the respondent, E. St. Julien Cox?

A. Yes.

Q. What is your business? A. Mason.

Q. And how long have you known the respondent, E. St. Julien Cox?

A. I think about 12 years.

Q. Have you known him intimately during that time?

A. Yes, sir.

Q. I will ask you to state whether, during that time, you have seen him under the influence of liquor, as well as sober?

A. I have, sometimes.

Q. And sometimes seen him under the influence of liquor?

A. Yes.

Q. I will ask you to state, whether you were present in court on the 13th of June, 1879, in the court house in New Ulm, during the proceedings of the trial of Wells and others against Gezike, that has been testified to here by Mr. Gezike and Mr. Behnke?

A. Yes, sir.

Q. Were you there during the whole of the proceedings?

A. No, sir; I was there during the forenoon.

Q. During the forenoon session of the proceedings?

A. Yes, sir.

Q. I will ask you to state, whether or not, you had attended the court of the respondent, held at New Ulm, for the two days previous to this date?

A. I was there.

Q. Were you in attendence upon the court?

A. Yes, sir. Do you mean had business there?

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Q. Yes. A. Yes, sir.
Q. Were you a prosecuting witness in a criminal case tried there at that term of court?
A. Yes, sir.
Q. Did you see the respondent before the commencement of the proceedings that day; I mean the day of the Gezike trial?
A. I did, sir.
Q. Met him and talked with him?
A. Yes, sir; I met him at the entrance going into the court room in the morning.
Q. Going into the court room?
A. Yes, in the morning.
Q. You went in after him, afterwards, did you?
A. Yes, sir.
Q. I will ask you to state what his condition was as to sobriety or inebriety during that forenoon?
A. I should think he was sober from all that I could see or judge from.
Q. Had you any doubt at the time about his being sober?
A. Not the least, in my mind.
Q. Not the least doubt?
A. No, sir.
Q. You have none now?
A. No, sir.
Q. I will ask you to state whether or not there was anything peculiar or different in his appearance, his language or manner, on that day, from what it had been during the two foregoing days in court?
A. No, sir.
Q. Was there anything different in either his appearance, conduct, manner, language or actions on that day, from what there had been at other times when you had met him before; either in court or privately, when you knew he was perfectly sober?
A. No, sir.
Q. I will ask you to state whether or not the eyes of the respondent were red that morning?
A. I think not.
Q. Were his eyes swollen and his face swollen, and inflamed?
A. Not that I have seen.
Q. State whether or not there was any incoherent or erratic talk upon his part during that forenoon?
A. No, sir.
Q. I asked you to state how he acted in there when he sat on the bench during that forenoon?
A. Oh, at times he moved a little in his chair; he would sometimes move a little in his chair when he had sat a long time in one posture.
Q. I mean particularly whether he was talkative or anything of that kind?
A. All I observed was this,—he spoke something about attachment papers.
Q. That is the only thing you heard him speak at all, was it?
A. That is all.
Q. I will ask you to state whether it is true or not, that he was interrupting counsel and speaking and talking all the time there or not?
A. No, sir.

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Q. Have you ever at any time during those twelve years you have been acquainted with him, seen him in the morning when you knew he had been on a spree the night before?

A. I don't know as I did; he might have been on a spree for all I know; I did not know it.

Q. I will ask you whether or not there was this morning anything in his appearance, manner, conduct or behavior that indicated that he had been under the influence of liquor, drunk or on a spree, the night before?

A. No, sir.

CROSS-EXAMINATION.

By Mr. Manager DUNN.

Q. What business, Mr. Fitzgerald, had you in court there?

A. I was prosecuting witness for the State.

Q. Were you in court all the time during those two days?

A. I was in court two days previous to this day of the Behnke suit.

Q. All the time?

A. Well, pretty much. I was a little bit interested in the matter. The forgery that the man was prosecuted for was committed on me.

Q. What case was it?

A. It was the case of the State against Trowbridge.

Q. How long did it take?

A. Well, I can't really tell; it was a jury trial.

Q. Well, did it take two days to try it?

A. No, sir.

Q. What day was it tried?

A. I think on the second day, if I remember right.

Q. Well, the second day of the term; what business had you there on the third day?

A. I had to stay over night, and went into court in the forenoon of the third day.

Q. What cases were they trying?

A. This Behnke case, against Gesike and others.

Q. Who were present?

A. I was.

Q. Who else?

A. Several others.

Q. Give me the names, please?

A. Judge Cox, the attorneys, Mr. Pierce, Mr. Severance, I think, of Mankato; they were present, and there were others.

Q. Well, those were two days; the last days of court and the next day were the days you were there; you were not there the second day?

A. I was.

Q. You said the case was tried the second day of the term?

Mr. ARCTANDER. He said the second day.

The WITNESS. That was the prosecution.

Q. Well, the term lasted three days?

A. I think it did.

Q. Then this was the fourth day?

A. No; the Behnke matter was the third day, if I remember right.

Q. Well, that is the day you were there—the third day of the term?

A. No, sir.

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Q. You weren't there the fourth day—after the third day you weren't there at all?
A. No, sir.
Q. Now, you said the Judge said something about some attachment papers; what was it he said?
A. I couldn't tell; I was sitting outside of the room where the attorneys and Judge were.
Q. Did you hear what he said?
A. I did not, to speak the words; he spoke something about attachment papers.
Q. Did you hear distinctly so that you then could speak the words?
A. No, sir; I don't know that I did.
Q. You didn't hear the words at all?
A. No, sir; not distinctly.
Q. Did you hear anything that the Judge said?
A. No, sir.
Q. Didn't hear a word that he said so you could repeat it either then or now?
A. No, sir.
Q. You say you saw the Judge intoxicated frequently?
A. I have seen him frequently intoxicated.
Q. Well, frequently or infrequently?
A. Well, not very often.
Q. How long previous to this time had you seen him intoxicated?
A. About six years ago this winter since I saw him intoxicated.
Q. Haven't seen him intoxicated since?
A. No, sir.
Q. Your business is a mason, is it?
A. Yes.
Q. Carrying on that business now in Sleepy Eye?
A. Yes, sir; when there is a season for it.
Q. Have you any other business than that?
A. Oh, I sell lime and fin lings for that purpose.
Q. Well, no business except that line of masonry?
A. No, sir.
Q. You weren't paying very particular attention that morning; you had no business there?
A. No business only as a looker-on.
Q. There were not many people there?
A. Oh, yes, there were quite a number.
Q. What time did you go into court there that morning?
A. I couldn't tell you; I was in the court-room before it convened; I met Judge Cox; I was coming out of the court room, and the Judge met me on the stairs as he was going in.
Q. Did you say you talked with him?
A. I did; I shook hands with him?
Q. What did you say to him?
A. I bid him good morning, and he asked me, How do you do?
Q. He simply said, "how do you do?" and he walked up into the court room and you walked in after him?
A. No, sir; I went down stairs.
Q. Can you give me the name of any other persons that were there besides Mr. Pierce and Mr. Severence.

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A. Mr. Gezeke and Mr. Behnke were there; I didn't charge my mind with how many or whom.

Q. And don't know who else was there?

A. No, sir.

Q. Were there any other persons there but those?

A. I think there were.

Q. You cannot give the names of them?

A. No, sir, not distinctly.

Q. How long did you stay there?

A. I stayed there until about half-past eleven o'clock.

Q. Court was still running when you left?

A. Yes, sir.

Q. You didn't stay all the forenoon, did you? A. No, sir.

Q. What time did the court open?

A. I should think between nine and ten o'clock.

Q. And you were there about an hour, were you not, Mr. Fitzgerald?

A. I should judge about an hour and a half.

Q. When you met him on the steps there, he looked very bright, didn't he; as sober as you ever saw him in your life?

A Yes, I think he did.

Q. And from what you saw of him in court, he was just as sober as ever you saw him?

A. Yes.

Q. Didn't look fatigued or tired, did he, at all—rather bright?

A. Yes.

Q. Nice looking, as usual?

A. Yes; his hair seemed to be all combed in the right place.

Q. He had his hat on, didn't he, when you met him?

A. Yes.

Q. And there was nothing to show but that he was as sober as ever a man was in the world?

A. No, sir; I didn't see anything that I should not say so.

Q. Well, perfectly sober?

A. Well, perfectly sober; he might have drank some, for all that I know, but he seemed to be sober.

Q. Would you say he was perfectly sober?

A. I would say so far as I saw or knew.

Q. But still he might have been under the influence of liquor for aught you know?

A. Not very bad; I have seen him under the influence of liquor.

Q. Not very bad, but he might have been under the influence of liquor, for all you knew.

A. He might.

Q. You have seen him under the influence of liquor?

A. Yes.

Q. What did he do then when you saw him?

A. He was talkative and chatty; more so than when I would consider him not under the influence.

Q. He was more talkative or chatty when you considered him under the influence of liquor?

A. Yes.

Q. That was not on the bench? A. Yes.

Q. Is it not true of every time when you have seen him under the influence of liquor, that a part of the time he would not be talkative and quiet and then break out and be talkative?

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A. He might.
Q. Well, isn't that the fact from your recollection of the Judge?
A. I have never seen him very often when I thought he was under the influence of liquor.
Q. Well, I am speaking of the times when you thought he was.
A. That was his mode in my presence, when I thought he was under the influence of liquor, that he was more talkative than common.
Q. And if he had been talkative at this time, you would have considered him under the influence of liquor, would you not?
A. I should think he would be.
Q. If he had been a little talkative at this time, you would have thought he was under the influence of liquor?
A. Well, if he was,—if going into court he was unusually pleasant and talkative, I should be inclined to say that he was.

By Mr. ARCTANDER.
Q. When you said that for all you saw he might have been under the influence of liquor, what did you mean by that,—that he might have drank a glass or so, that it might have shown itself?
Mr. Manager HICKS. Let the witness tell.
The WITNESS. He might have drank a glass of liquor for all I know, but I considered him sober from what I say that day; that is what I mean, that I considered him perfectly sober.
Q. And then you didn't mean to be understood that he might show signs of the influence of liquor there, and you not have noticed it there at the time?
A. No, I think I would have noticed it, if he was much under the influence of liquor.
Mr. Manager DUNN. If he was *much* under the influence of liquor?

By Mr. ARCTANDER.
Q. Is that what you say,—if he was *much* under the influence of liquor?
A. Yes, sir; that is what I said.
Q. What do you mean by influence of liquor?
A. When a man is drunk or staggering.
Q. Now, if a man had taken a glass of beer or liquor, would you call him under the influence of liquor?
A. No, sir.
Q. You say that he showed in no way the influence of liquor that morning?
A. No, sir.

By Mr. Manager DUNN.
Q. Do you consider a man must be drunk or staggering when he is under the influence of liquor?
A. Well, he must show it by some outward appearance.
Q. There must be some outward appearance or manifestation?
A. Take a man who is acquainted with another man for eight, ten, twelve or fifteen years, and has drank with him and is used to his habits, I think he can tell when he is under the influence of liquor.
Q. Have you done that with Judge Cox?
A. Yes.
Q. Drank with him? A. Yes.

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Q. Not for the last six years?
A. No; I think it is eight years last winter since I drank any.
Q. Then you have pretty much forgotten how he did act?
A. No, sir; I think not.

Mr. ARCTANDER. Mr. President I desire to call upon the eighteenth article, a witness who desires to leave the State.

The PRESIDENT *pro tem.* I suppose there will be no objection to the production of the witness at this time.

Mr. Manager DUNN. We do not care. If they have a witness here they can introduce him in any order they please.

M. E. POWELL.

Sworn as a witness on behalf of the respondent testified.

Examined by Mr. Arctander.
Q. Where do you reside?
A. Redwood Falls, in this State.
Q. What is your profession?
A. Lawyer.
Q. Do you know the respondent, E. St. Julien Cox, A. I do.
Q. And for how long a time have you known him?
A. About ten years.
Q. I will ask you to state whether you have been up before the respondent at every term of court in your county since he was elected Judge?
A. I have.
Q. Were you present and in attendance on the general term held in, I think, Redwood county against Tower; in what year was that tried?
A. In the June term, 1880.
Q. There has not been more than one trial of the case, has there?
A. I think not in the district court.
Q. Were you present during any part of the trial of that Tower case in Redwood Falls?
A. I was present when the case was concluded; I didn't hear the evidence given in court in that case.
Q. Were you there in the evening when it was submitted by the court to the jury?
A. I was.
Q. During the whole evening session?
A. I was there during the evening at the time the court charged the jury; I don't know whether there were any arguments made by counsel after tea, or not.
Q. You were there anyhow, when the Judge charged the jury, and submitted the case to the jury, after the charge?
A. I was.
Q. I will ask you to state what the condition of Judge Cox was as to sobriety or inebriety at that time?
A. I didn't notice any evidence of inebriety.
Q. Was there anything in his language, manner, conduct, or appearance, or talk, peculiar or different from what it had been on other occasions when you know he had been perfectly sober, at prior terms?
A. I discovered none.
Q. What would be your answer then as to his condition as to sobriety or inebriety?

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Mr. Manager DUNN. He has answered that.

Mr. ARCTANDER. I have a right to get my answer.

Mr. Manager DUNN. He said he did not notice any evidence of inebriety.

Q. I will ask you to state, whether or not, you at that time had any doubts about the sobriety of the Judge?

A. I had not.

Q. Have you any now?

A. Of his condition at that time?

Q. Yes.

A. No, sir; I have not.

Q. You were sitting in court there where you could observe him, and did observe him?

A. Yes, I was sitting, I should say, perhaps fifteen or twenty feet from him.

Q. Did you listen attentively to his charge to the jury at the time?

A. I listened as I ordinarily would in a case where I was not particularly interested.

Q. How long have you been county attorney of that county?

A. Since January 1st, 1872, with the exception of two years.

Q. Since January 1st, 1872? A. Yes.

Q. You are at the present time? A. Yes.

Q. And have been all the time with the exception of two years?

A. With the exception of the years 1880 and 1881.

Q. Was your attention at that time called to the question as to whether the Judge was inebriated or sober?

A. It was not.

Q. When was it first called to that fact; when was your attention first called to the fact that there was any question about it?

A. It was when I read these articles of impeachment, that was the first I knew, and the conversation that arose from reading the articles of impeachment right through.

Q. How did you discover that from these articles; from what article did you discover this?

A. I can't tell now, it was talked over among the people who reside in our place, and the question was brought up as to whether he was intoxicated or not, during the terms of court that he had held there, not this one in particular.

Q. I speak of this one in particular?

A. Nothing in particular was said about this one that I know of, more than other terms.

Q. Well, you said when you read these articles; do you know that there was anything in these articles charging him with being intoxicated at this term of court that you speak of?

A. I do not; but the articles charge him with intoxication generally.

Q. Then you didn't get it from these articles?

A. No, sir, not this specific case.

Q. Was your attention particularly called to the Judge that evening?

A. Nothing more than one part of the charge to the Jury in this case?

Q. Does that fact draw your attention to the condition of the Judge?

A. Not at all.

Q. Then there was nothing that drew your attention particularly to his condition that night, as to whether he was sober or otherwise?

A. No, sir.

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Q. Did you know of his having been drinking intoxicating liquors during that term of court in Redwood Falls?

A. I don't recollect whether I have seen him drink any at that term of court or not. I have seen him drink.

Q. Did you know whether he was intoxicated at that term of court?

A. Not to my knowledge.

Q. You have no recollection about it, one way or the other?

A. I have not.

Mr. ARCTANDER. I proceed now to produce evidence under article seven, the Dingler case.

CHARLES R. DAVIS,

Sworn as a witness on behalf of the respondent, testified.

Examined by Mr. ARCTANDER.

Q. Where do you reside?

A. In St. Peter, in this State.

Q. What is your profession?

A. I am a practising lawyer.

Q. Do you know the respondent E. St. Julien Cox? A. I do.

Q. How long have you known him?

A. I know him about twenty years; I have known of him longer than that; but I have been intimately acquainted with him about twenty years.

Q. Have you been intimately acquainted during that time, during the last thirteen, fourteen or fifteen years; have you been his law partner before he went on the bench?

A. I have been.

Q. For how long a time?

A. For two or three years, possibly longer.

Q. I will call your attention, Mr. Davis, to a term of court held in Nicollet county, in December, 1879, at which several road appeal cases were tried; do you remember the occasion?

A. I do, sir.

Q. I asked you if you recollect a case that came up at that time entitled The Board of County Commissioners of that county against one Dingle, or Dingler against the County Commissioners?

A. I do.

Q. Do you remember what time in the day that case was first taken up?

A. I think the jury was empanneled either late in the afternoon or early in the evening; I think late in the afternoon of the second, I think the second day of the term.

Q. Was there any time during the trial of that case, during the empanneling of the jury, or during any of the proceedings in it in the day time, before the evening, in which you can tell us what the condition of the Judge was?

A. I noticed nothing particular or peculiar about his condition; his condition was as ordinary, so far as I am able to judge.

Q. I mean particularly as to sobriety or inebriety during the trial of that case?

A. That is to what I allude.

Q. Do you remember the fact of that case—some matter being brought up in that case in the evening of that day?

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A. I do.
Q. What was the nature of that business?
A. A motion on the part of appellants to vacate a certain order made by the commissioners of Nicollet county establishing a county road?
Q. Was that question argued that evening?
A. It was; Mr. Lind and myself argued it.
A. You were the attorney for the county; you were county attorney at that time were you not?
A. I was.
Q. I will ask you whether this motion was made before or subsequent to the empanneling of the jury?
A. I think I received notice that a motion would be made, sometime during the afternoon, a little before—about the time of the empanelling of the jury.
Q. About the time of the empanelling of the jury?
A. About the time of the empanelling of the jury in the Dingler case. We had just concluded, or a short time before that, concluded the trial of the case of Christopher Veierling against the County Commissioners.
Q. An appeal on the same subject matter?
A. An appeal in relation to the same road; the jury was then out on that case.
Q. During that evening, Mr. Davis, what was the Judge's condition as to sobriety or inebriety?
A. I noticed nothing wrong with his condition.
Q. Had you any doubt as to his sobriety at that time?
A. I had not at that time, neither have I now. I would like to state that at that time I did not particularly notice anything, but I will give as a reason for saying that he was not drunk, that had he been intoxicated, or under the influence of liquor, I should have remembered it.
Q. I will ask you to state whether or not there was anything in his appearance, conduct, manner or language that evening peculiar or different from what it had been previously in the day, or the day before, or at other occasions when you have been before him in court?
A. Nothing that I can recollect, sir.
Q, I will ask you to state whether or not the Judge interrupted the attorneys on that motion that evening, more than was usual in court?
A. Nothing that I now remember of.
Q. Did he talk any more or differently from what he would usually do?
A. I don't think he did.
Q. Was there any effort on the part of the Judge that evening to brace up his appearance or actions or his expressions?
A. I noticed nothing of the kind.
Q. Now, I wish you to go on and testify just what took place that evening, what was done,—the whole matter in this case,—the whole transaction there?
A. Simply an argument upon this motion, to vacate the order of the commissioners laying out and establishing a certain county road in Nicollet county.
Q. What was the point in the argument?
A. The point was made by the appellants that the commissioners had no jurisdiction to entertain the matter at all, for the reason that the starting point was within what was known as the village of Redstone,

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and an old special act of 1856 or 1857 seemed to incorporate that as village, and we have a peculiar statute, or have a statute, rather, tha does not allow a street opened or any portion of a road to run through a incorporated city. Mr. Lind made the point that this village of Red stone came within that section of the statute. It was argued at consid erable length.

Q. An elaborate argument on both sides?

A. Well, about as elaborate as he and I were capable of making.

Q. Rather dfficult questions?

Q. Rather interesting questions, and a rather interesting road, too and one of considerable notoriety.

Q. What was done in the case after you had argued it?

A. Nothing done that evening; the Judge announced that he would render his decision in the morning, one way or the other.

Q. In the morning did he render the decision?

A. He did.

Q. You stated, Mr. Davis, in this statement here, that this road was started in the villlage of Redstone; the starting point was there?

A. That was the starting point; yes, sir.

Q. I will ask you to state whether or not the Judge, in the evening often or otherwise, or at all, made suggestions to Mr. Lind or yourself or both of you, that had no relevancy in the case, but appeared foreign or absurd;—matters that had no relevancy in the case?

A. I don't remember of any such suggestion; I remember of his asking some questions about matters that were puzzling and perplexing to his mind and our mind, in regard to the motion.

Q. Puzzling and perplexing to his and your minds upon that motion?

A. Yes; we all desired to get as much light as possible on that road question.

Q. I will ask you to state whether or not those remarks, or those questions that he put, were relevant to the matter?

A. They were.

Q. And were such as to show that he could grasp the points?

A. They were relevant; at least so far as I am able to comprehend.

Q. I will ask you whether the Judge made any flighty remarks during that forenoon or afternoon, or during the trial at all?

A. No; none that seemed to me so. Possibly, however, his decision was erroneous; I am not able to determine in my own mind yet as to that.

Q. He did not make any decision that evening, did he?

A. Nothing that evening; I have always had grave doubts as to the correctness of his final rulings, because it was adverse to me.

Q. I will ask you whether it is a fact that during the argument by Mr. Lind in the evening, the Judge stopped him and told him he would hold the road void as to the portion running through Redstone, section thirty-five, and valid as to the balance,—whether he made use of any such expression?

A. I heard nothing of the kind.

Q. It has been stated here, Mr. Davis, that the Judge made an order in the evening that the road should stand, and the road should be valid, except as to that part in section thirty-five. I will ask you to state whether there was any such order made by the Judge?

A. The record does not disclose such a state of facts, neither does my memory. I do not remember anything of the kind.

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Q. Are you positive, whether he did so or not?
A. Quite positive.
Q. Quite positive that he did not?
A. Quite positive that he did not; should he have done so, I certainly should have combatted any such idea.
Q. I will ask you to state, whether or not, Mr. Lind begged the court then for a recess during the evening, after your arguments were through, and the court refused it at first?
A. I remember nothing of the kind.
Q. And whether or not you told him that you would not oppose it, that you realized the condition of the Judge, in any way?
A. I remember nothing of the kind, sir.
Q. I will ask you, whether the Judge made any order in the morning reversing any order he had made before in the case?
A. No, sir; he did not.
Q. Do you remember distinctly that the Judge in the evening said he would take the matter under advisement and render his decision in the morning?
A. He said he would render his decision or make an order in relation to this matter in the morning; I remember that.
Q. What was the condition of the Judge in the morning, Mr. Davis?
A. Sober, so far as I know.
Q. State whether or not he showed in the morning any signs or evidence of intoxication or of a debauch the night before?
A. I noticed nothing.
Q. Were you up there when he walked the floor; leaving the bench?
A. I don't remember of his walking the floor; he might possibly have done so, but I don't remember of anything of the kind.
Q. It has been stated here that he was straining every nerve that evening to walk straight; state whether or not his condition was such that that would have been impossible.
Mr. Manager DUNN. I object to that, unless he describes his condition.
Mr. Manager HICKS. It is for the Senate to say whether it is possible or not.
Mr. ARCTANDER. I don't want to argue it; that is perfectly proper. The witness was there and saw him, and the Senate was not there to see him.
Mr. Manager HICKS. No, but the witness can state what he saw and the Senate can then infer from what he saw, whether it was possible for the Judge to do that in his condition.
Q. Did you see any thing of the kind there?
A. Nothing of the kind.
Q. Did you observe anything in his condition or in his appearance that night to indicate any such condition?
A. Nothing more than ordinary.
Q. I will ask if there was in the Judge's condition that evening any effort on his part to appear sober?
A. I don't remember of any such attempt.
Q. You don't think he needed it?
A. Not that I know of; I noticed nothing.
Q. I will ask you to state whether or not it was a fact that the Judge showed any confusion of mind when the points were raised in regard to the road?

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A. I do not remember anything different from the ordinary condition of the Judge that evening.

Q. Was there anything in his actions or anything in what he said in regard to the matter, in any degree showing that he had slight control of his mental faculties in relation to the matter coming before him that night?

A. Nothing that I now remember of.

Q. Did you observe any peculiar gleam in his eye that night anything more than ordinary?

A. No, sir, I did not.

Q. It has been stated here that his talk and what he said upon the matter was incoherent; was there anything of that kind, Mr. Davis?

A. I understood it very well.

Q. Well, was he incoherent in his talk?

A. Not that I observed.

Q. I will ask you to state whether or not you observed anything different in any way, form, shape or manner in the Judge that evening from what you have observed upon other occasions in court, knowing him to be perfectly sober?

A. I don't think there was, sir.

CROSS-EXAMINATION.

By Mr. Manager DUNN.

Q. You have seen the Judge intoxicated, frequently?

A. I think, sir, I can admit that I have.

Q. Both in and out of court; havn't you?

A. I wouldn't answer that frequently; no, sir.

Q. You think you have seen him under the influence of liquor but not frequently?

A. I think I have; but I couldn't state positively, it is my impression that I have, but I will not state positively that I have ever.

Q. Did you see him under the influence of liquor in December in '79, in court.

A. Not that I remember of now.

Q. Are you positive that you did not.

Mr. ARCTANDER. We object to that testimony. I understand that does not come within the rule laid down by the Senate.

Mr. Manager DUNN. It is the very term of court you have asked him about.

The WITNESS. [After consulting memorandum] I am prepared to answer that question.

Q. You have refreshed you memory from that book; what do you now say?

A. I think I did.

Q. In court?

A. He was not acting as judge at the time.

Q. He was in court?

A. He was sitting within the railing; Judge Dickinson was on the bench.

Q. Well, in August, 1881—

Mr. ARCTANDER. We object to that.

The PRESIDENT *pro tem.* What is the question?

Mr. Manager DUNN. He says he has seen him under the influence of

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liquor in court. Now, I ask him, if he saw him under the influence of liquor in August, 1881.

Mr. ARCTANDER. I object to that under the ruling of the Senate. They can show that he saw him intoxicated, and show how many times, but they cannot show when or where.

The PRESIDENT *pro tem.* That was in accordance with the decision of the Senate yesterday afternoon.

Mr. Manager DUNN. This comes under an entirely different state of facts. This witness has testified that he has seen him frequently under the influence of liquor, and they are comparing his appearance at this time with his appearance and conduct at other times when he had seen him. Now, I call the attention of the witness, on cross-examination to other times when he has seen him in court intoxicated.

The PRESIDENT *pro tem.* Under the ruling of the Senate you have the right to ask him if he saw him frequently in court intoxicated, but not when or where.

Mr. Manager DUNN. This is simply a matter of comparison; they have asked the witness in effect—I won't give the exact words—how his conduct at this term of court compared with other terms of court that he has been presiding over as Judge, when this witness has been present. Now, I am getting him down, upon cross-examination on that very matter of comparison, to certain terms of court. He has testified already that at one time. a term of court in December, 1879, he was under the influence of liquor, but at the same time says that he was sitting within the railing and not upon the bench. That is one comparison. The witness testifies that he acted at that time, as he ordinarily does. Perhaps that is his way usually. Now, I call his attention to another term of court, and want to institute a comparison between these two terms of court. I think that is legitimate cross-examination.

Mr. ALLIS. Mr. President, the persistence of these gentlemen is amazing. This is precisely the same question that was presented yesterday.

The PRESIDENT *pro tem.* I didn't so understand it.

Mr. Manager DUNN. I would like to submit the question.

The PRESIDENT *pro tem.* You can vary the question so as not to violate the rule that has been established by the Senate.

Q. Now, at any other time than these times you have mentioned, the Judge has been in court in the discharge of his duties, have you seen him under the influence of intoxicating liquor?

Mr. ARCTANDER. That is objected to as immaterial and irrelevant

Mr. Manager DUNN. You answered no to the question, have you?

The WITNESS. I have not answered the question.

The PRESIDENT *pro tem.* The objection will have to be sustained under the ruling of the Senate yesterday.

Mr. Manager DUNN. I am not asking him where or when.

Mr. Manager HICKS. Not where or when, but simply at what other time. The question now is asked for the purpose of bringing out the fact that Judge Cox was under the influence of liquor at other times than the one mentioned. The witness mentions a time, but excuses the Judge then by saying that he was merely within the bar, and Judge Dickinson was on the bench. This not for the purpose of bringing out the specific time or place, when or where he was drunk on the bench; but the question whether at any other time than the one mentioned, he was drunk on the bench, or was in any way under the influence of liquor, while in the discharge of his duties as Judge.

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The PRESIDENT *pro tem.* He has already testified that he saw him drink frequently.

Mr. Manager HICKS. That is very true, he has seen him drink frequently, but we are asking now with regard to his being drunk, or rather in a state of intoxication, while he was on the bench in the discharge of his official duty as Judge.

Mr. ARCTANDER. How would that be proper cross-examination?

Mr. Manager HICKS. It would be proper cross-examination for this purpose. The judge on the bench may act in one way and the judge off the bench may act in another. Now, he said that the Judge upon the bench, at a certain time when he was in the discharge of his duty, was sober; or, rather, he does not go quite so far as that, but he said he acted as he ordinarily did. Now, we want to find out from this witness whether, in his opinion, this respondent has ever—we don't say when or where—but has ever, upon the bench of the district court of the ninth judicial district, been in a condition from which he inferred that he was under the influence of intoxicating liquors; and that we think we have a right to know, to ascertain the judgment of the witness upon this matter.

The PRESIDENT *pro tem.* You can ask him if he saw him frequently intoxicated on the bench, or more than once, but not when or where.

Mr. Manager HICKS. We do not want to ask him if he saw him frequently, but whether he has ever seen him aside from this one time, upon the bench, while in the discharge of his duty, in a condition that impressed him that the Judge was under the influence of intoxicating liquors.

The PRESIDENT *pro tem.* I think he may ask him that question; that does not ask him when or where.

Mr. Manager HICKS. No, sir; we do not.

Mr. ARCTANDER. I do not desire to argue the question, Mr. President, with the court, but I think the premises stated to the court here are false. It has been stated that we asked this witness, whether the expression of the respondent was different from what it was at a particular time, but our question was limited to occasions when he saw him on the bench when he knew he was perfectly sober. That is how our question was limited. How then can it be proper or right for them to bring by this witness, matters that have not been charged against this respondent, or to bring in, by this witness, upon cross-examination, proof upon the question, whether or not, he was drunk or sober at this particular time, in order to show that he was drunk at some other time? That question is right is it. It does not make any difference whether they ask when or where. If they ask if he saw him on the bench anywhere, the question is included within the decision made by the Senate, because it is necessary if they ask when or where it was; but of course the Senate meant by that decision, that they could ask witnesses if they had seen him intoxicated without specifying instances, without specifying whether it was on or off the bench, without specifying, whether it was before he was elected to the judgeship or afterwards.

That is, I take it, the spirit as well as the letter of the ruling of the Senate; and that this is really only a back door through which to sneak in and get just the evidence before the Senate that it has said it does not wish the managers to bring out before the Senate,—which they have no right upon a proper and legitimate cross-examination to bring in to bolster their case, by evidence that they can get here under exam-

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ination upon an article that has nothing to do with the article that they attempt to bolster up. It seems to me it must be clear to every lawyer, and I have no fear of submitting that matter to any sound lawyer upon this floor, whether or not this question does not come within the spirit of the ruling of the Senate, and that it is the same thing and merely a back door through which to get the same thing in a manner that it seems to me ought not to be allowed.

Mr. Manager HICKS. We do not ask for times or places.

Mr. ARCTANDER. It does not make any difference; the times and places do not establish the fact; the fact that they ask it upon the bench shows it to have been while he was Judge, and that is what the Senate did not want the State to bring in. The time and place is immaterial under such circumstances, and it was ruled by the Senate that the question when or where was not proper, because the State could not be allowed to drag in here, under pretense of cross-examination, evidence to bolster up article eighteen.

The PRESIDENT *pro tem.* I will submit the question to the Senate, whether the objection shall be sustained or not, without debate. The Secretary will call the roll; those in favor of sustaining the objection will say aye; the contrary minded, no.

Senator MACDONALD. Will the chair please state the substance of the ruling yesterday; I was not present.

The PRESIDENT *pro tem.* It was that the question as to the frequency of intoxication, or being under the influence of liquor, might be asked, but not the question as to when or where it occurred.

Mr. Manager DUNN. That ruling was made without a quorum being present.

The CLERK. No, sir: there has been no rulings made in this Senate at any time unless a quorum was present.

Mr. Manager DUNN. Was there one last night?

The CLERK. No, sir; never at any time.

The PRESIDENT *pro tem.* When the ruling was made there was a quorum present, and the vote was 16 to 5.

Mr. Manager DUNN. I think it was upon Senator Castle's motion last night.

The CLERK. No, that was carried over last night because there was no quorum.

Mr. ALLIS. Before submitting the question I would like to state the objections that were stated yesterday, as I understand that some of the Senators were absent. The principal objection is that the question is not cross-examination. Now, if this body will adhere to one of the simplest and plainest rules of cross-examination, they would not get into any difficulty or any snarl on this subject. As I stated before, yesterday, the plaintiff, the prosecution in this case, have presented certain evidence here to sustain allegations in these articles of impeachment. The respondent is now introducing evidence to rebut or to contradict that, and the prosecution is now proposing to cross-examine this witness. Now, the cross-examination must be confined to matters that the respondent has elicited in chief. It is a very plain matter. This question has no reference to the direct examination, and the object of it is to prove instances of intoxication on the bench on other occasions, on different occasions, from the one being investigated here; in other words, the effect of the testimony,—if it has any effect, if it is what they expect to elicit,—is to establish the allegations contained in other articles of impeachment here of which we have had no notice.

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Certainly it requires very little intelligence, it seems to me, to perceive that such a course of examination cannot in the nature of things be proper. This is not only not cross-examination, but it is a direct attempt to introduce under the pretense of cross-examination of this witness, evidence-in-chief, not upon this article but upon other articles. Not only that, but this question does state where it is on the bench.

Mr. Manager HICKS. It is a good deal like on a prairie.

Mr. ALLIS. Very well; it does not make any difference what. It seems to me that it ought to require very little discussion to show that after we have examined this witness in regard to a particular term of court the State cannot, under the pretense of cross-examining this witness, either to show his knowledge or under any other pretence, go on and introduce independent evidence here, not for the purpose of testing his knowledge or anything of the kind, but for the purpose of bolstering up or sustaining other articles, entirely independent articles. In other words, the management are trying to introduce evidence-in-chief. They know that very well; they can not be ignorant of it. Every lawyer knows it at once, and it seems to me every member of the Senate can see it. It is entirely improper. There can be no question about it. The same discussion was gone over yesterday; it has been gone over since, and the same objection was taken by some of the lawyers on this floor, and I did not suppose there was any doubt about what the ruling was, which was to exclude the prosecution here from introducing evidence-in-chief under the pretence of cross-examining the witnesses for the respondent.

Mr. BRISBIN. Will the court permit me just a moment, Mr. President, supplementary to what has been stated. The question proposed is so revolting to my notion of the correct principles of the rules of evidence, that I desire simply to be heard one moment. Now the general question upon which the order was made yesterday came up in this way, if my recollection is right. The counsel for the respondent asked the witness if he had seen the Judge drunk. The object of that interrogatory was to ascertain whether he was capable of ascertaining or determining the condition of the Judge at the time when he had testified that he was sober. That was the object of the general question. Then came up the decision of the court upon the motion of Senator Castle, and the Senate finally made its order, that is, that they might, for the purpose of ascertaining the sufficiency and competency of the witness, ask him if he had seen the respondent frequently or how often in a condition of intoxication, for the purpose of testing the competency of the witness, but that they could not ask him when or where; and the question had arisen so many times during the progress of this case, that the court deemed it of sufficient importance to pass an order for the purpose of terminating these constant discussions upon a subject which had been presumed to be settled.

Now the object of this interrogatory is directly in the teeth of that order of the court, and directly opposite to the principle on which it was made. Whether or not the Judge has been intoxicated on the bench it is not proved nor intimated that the Judge upon the bench intoxicated is in a different condition from what he is intoxicated other places, so the question could have no other object, except as was suggested by my associate who is leading in the examination of the witnesses here, than surreptitiously to introduce testimony irrelevant to any substantive issue in this case, and that for the purpose of biasing the minds of the Sena-

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tors. It is hardly to be presumed that a court selected as this is will be affected by testimony of this character which may be elicited, which must be known by all to be irrelevant to any substantial issue in this case, and known to be such by the intelligence, certainly of the lawyers composing the court.

Mr. Manager HICKS. 'Mr. President, just one word. I think I can make myself understood by the laymen, if not the lawyers of the Senate. The honorable counsel have told us that this is not cross-examination. What are they trying to prove by the witness on the stand? They are trying to prove by the witness upon the stand that the respondent was not intoxicated upon the bench. That is the charge.

The question is, have you ever seen the respondent at any other time intoxicated upon the bench, and if it is not the most pertinent cross-examination that can possibly be put a man, I certainly am at a loss to know what is proper cross-examination, with all due deference to the learned gentleman who has just spoken. Have you ever seen the man intoxicated or under the influence of intoxicating liquors while upon the bench, and therefore are you capable of judging as to the time when you say he was not intoxicated on the bench? It is the very clearest and best that we could have, if the witness happens to answer that he has seen it.

The PRESIDENT *pro tem.* I decided that the questions in that form might be answered unless otherwise ordered by the court.

Senator CAMPBELL. Then there will be no dispute about the questions asked by the Colonel?

Mr. Manager DUNN. That is the question we asked.

Mr. Manager HICKS. The question was this: We are not requiring him to say when or at what place, but simply have you ever seen the Judge under the influence of liquor on the bench, while attempting to discharge his duty.

Mr. BRISBIN. Where is the bench?

Mr. Manager HICKS. If the counsel has lived as long as he has, without learning the meaning of the word, I will not attempt to instruct him. The word has a well received meaning.

Senator GILFILLAN C. D. I would like to hear the testimony of this witness upon that point. I was not here at the time it was delivered.

The PRESIDENT *pro tem.* The Senator from Ramsey desires to have the testimony in chief read. The reporter can read it.

Senator GILFILLAN C. D. I care only for the testimony that relates to this point and to which this cross-examination is claimed to be directed; that is all I want.

The PRESIDENT *pro tem.* The reporter will please read the evidence.

Senator MILLER. Mr. President, I think under our rule that any Senator has a right to call for a secret session. This I think is the third time that this question has been discussed by the learned counsel of the managers as well as for the respondent, and I ask now that this Senate go into secret session.

The PRESIDENT *pro tem.* I certainly hope this will not be done.

Senator MILLER. I suggest that in order to afford an opportunity to discuss this question.

The PRESIDENT *pro tem.* I do not understand that the question in the form that it was stated by Mr. Manager Hicks is in violation of the order of the court yesterday, and I so decide it.

Senator CAMPBELL. That you did not so consider it?

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The PRESIDENT *pro tem.* I say that I do not consider that it is a violation of that rule, and I said that the witness might answer unless objection was made, and I felt like referring it to the Senate. State that question again, Mr. Dunn, just in the form you did.

Mr. Manager DUNN. The reporter has it down and will read the question.

The PRESIDENT *pro tem.* That does not ask him what time.

Mr. Manager HICKS. No, sir; except the time he mentioned, because I meant to ask him aside from the time that he mentioned when he was not in the discharge of his duty, but was simply a looker-on in court.

The PRESIDENT *pro tem.* He does not say whether it was the 4th of April or the 10th of December.

Mr. ALLIS. We shall object to its having reference to his appearance on the bench.

Mr. Manager HICKS. We frame our questions in our own way.

Mr. ALLIS. And we intend to frame our objection in the same manner.

Mr. Manager HICKS. We will submit it to the Senate.

Mr. ALLIS. We object to the interrogatories being submitted to this Senate in regard to whether he has seen the respondent intoxicated on the bench at other times than the session of court under examination in this article, article seven, or whatever it is.

Mr. Manager DUNN. That is our question, and the objection I suppose will be decided by the President.

Senator ADAMS. I would like to ask one question for my own information, whether the objection to the question put to this witness, is not upon the ground that if the question is answered as put, it will bring out new matters not contained in any of the questions asked on the examination-in-chief. Now, is that the position?

Mr. ARCTANDER. That it will bring out new matter, yes sir.

Senator ADAMS. Is that not the position, that the answer will bring out new matter, not contained in any question put to the witness on direct examination?

Mr. ALLIS. That is it.

Mr. Manager HICKS. The respondent may know that; we do not know what it will bring out.

Mr. ALLIS. We are assuming that it will be in your favor.

Mr. Manager HICKS. We simply know that it will test the knowledge of the witness.

Senator MACDONALD. Question.

Senator GILFILLAN C. D. I called for the reading of that part of the testimony drawn out by the examination in chief upon this point.

Mr. ALLIS. Allow me to say, Mr. President, that the testimony elicited in chief has reference to a particular term of court or to two particular terms, is it not, Mr. Arctander?

Mr. ARCTANDER. No, one particular term of court.

Mr. ALLIS. That has been all.

Senator GILFILLAN C. D. Was there any particular question put to the witness that drew out this testimony?

Mr ARCTANDER. The question put to him was; whether his appearance or conduct was any different at this time from what it was at other times, when you have seen him acting as a judge, when you knew that he was perfectly sober? That was the question I put to him.

Mr. Manager DUNN. That was one question, but there were a dozen

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questions which did not contain the word sober, or any word approximating it; there were half a dozen questions of the same character, without the word sober in them.

Mr. ARCTANDER. Well, you had better have the testimony read over then; I have heard so many misstatements of the evidence that I am anxious to hear just what it was.

The reporter having been requested, read to the Senate the examination in chief of the witness Charles R. Davis.

The PRESIDENT *pro tem.* (To the Reporter.) Will you now read the question that was objected to?

Q. Now at any other time than these times that you have mentioned when the Judge has been in court in the discharge of his duties, have you seen him under the influence of intoxicating liquor?

The PRESIDENT *pro tem.* The roll will now be called; those who are in favor of sustaining the objection will vote aye, and those opposed no.

The Clerk then proceeded to call the roll.

When the name of Senator Powers was called, he arose and said:

Senator POWERS. I don't feel clear on the question, Mr. President, on the matter; I think I shall vote no.

The roll being called, there were yeas 2, and nays 23, as follows:

Those who voted in the affirmative were—

Messrs. Adams and Perkins.

Those who voted in the negative were—

Messrs. Campbell, Case, Gilfillan C. D., Hinds, Howard, Johnson A. M., Johnson F. I., Johnson R. B., Macdonald, McCrea, McLaughlin, Miller, Morrison, Officer, Peterson, Powers, Rice, Shaller, Shalleen, Wheat, White, Wilkins and Wilson.

The reporter then read the question to the witness.

The WITNESS. I do not know of any time; I do not remember of any.

Q. You won't swear that you haven't?

A. No, as I stated before, it was my impression that I had seen him in court intoxicated, but I don't know of any time.

Senator HINDS. Here took the chair to act as President *pro tem.*

Examined by Mr. ARCTANDER.

Q. I will ask you, Mr. Davis, whether or not at this time when you said that you saw Judge Cox in court when Judge Dickinson was presiding and he was sitting inside of the railing, you thought he was under the influence of liquor, whether that was during the proceedings in the trial of the Loomis case?

A. Just at the beginning I believe.

Q. I simply wanted to know whether it was on that occasion?

A. That was the occasion.

By Mr. Manager DUNN.

Q. Was that at the beginning of that term of court?

A. Oh, no sir; the second or third day.

Q. Who had been holding court prior to that time?

A. Judge Cox; it was about 11 o'clock in the morning.

Q. Had Judge Cox been on the bench that morning?

A. I could tell by refreshing my memory. (Witness produces a memorandum which he examines.)

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Q. Judge Dickinson came down and relieved him didn't he?
A. I think it was that day about 11 or 12 o'clock. I wouldn't be certain about that; possibly it might have been at the sentencing of the defendant.
Q. You think the Judge had been on the bench that morning?
A. I think he had been on the bench that morning and rendered a decision. I wouldn't be positive; it might have been the next day. My recollection is that when Judge Dickinson was there on a certain forenoon, in the trial of the Loomis case, he requested Judge Cox to came in and sit down inside of the railing and I observed at that time that I thought he was under the influence of liquor.
Q. Did he ask him any questions?
A. I think he did and he answered them. Possibly it might have been the day following, or possibly it might have been a day later than that day.

Examined by Mr. ARCTANDER.
Q. What conclusion did you come to after he had answered those questions as to his state and his condition?
A. Well, that he was far from being beastly intoxicated.
Q. Well, what do you mean; that he showed certain evidence of having drank some liquor?
A. I might say as Tom. Downs said that possible his hair was sticking up a little on one side; and that was an indication that he was not just right.
Q. I mean from the answering of the questions that were put to him by Judge Dickinson?
A. I heard them but I don't remember what the questions were.

By Mr. Manager DUNN.
Q. You think he was intoxicated but not beastly intoxicated?
A. No, sir; I do not.
Q. Well, what did you mean by saying "far" from beastly intoxicated?
A. Well, a good ways. Perhaps that is more expressive than "far."

By Senator POWERS.
Q. Now Mr. Witness, do you mean that his answers indicated that he was intoxicated or that his mind was not in a normal condition?
A. Nothing from his answers that would indicate it, that I now remember.

By Mr. ARCTANDER.
Q. That would indicate that he was intoxicated?
A. Nothing what would indicate it from his answers; that I remember of.
By Senator MILLER.
Q. Do you remember that, at one time, when Judge Cox was presiding you went to a certain man and asked him "hasn't the Judge been taking something?"
A. I do, yes, sir; very well. At least I have a remembrance of that kind.

By Mr. Manager HICKS.
Q. What was the occasion of your asking that question?

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A. Because of his peculiar actions.
Q. What did you think of him at that time?
A. At that time I did not know. I thought he had been drinking.
By Mr. Manager DUNN.
Q. He was on the bench then? A. He was.
By Mr. ARCTANDER.
Q. You found out differently afterwards didn't you?
A. To my satisfaction, yes, sir.
By Mr. Manager DUNN.
Q. You found out that he hadn't been drinking, did you?
A. No, sir; I didn't find out that he had not been drinking. I found out that he was not intoxicated, to my satisfaction.
By Mr. Manager HICKS.
Q. Did you find out that he was not under the influence of liquor?
A. To my satisfaction, yes, sir.
By Senator CAMPBELL.
Q. That he was or was not?
A. That he was not. Possibly he had taken a drink; but his strange actions were easily accounted for to my mind.

BENJAMIN ROGERS.

Sworn as a witness on behalf of the respondend, testified.

Mr. ARCTANDER. I desire to state, Mr. President, that this witness is not called as a witness upon this article. We simply desire to do the same as the managers did with reference to the Renville county term,—to identify a record by the clerk of the court. So this witness should not be counted, I think.
Q. You are the clerk of the district court of Nicollet county are you?
A. I am at the present time.
Mr. Manager DUNN. What article is the witness directed to?
Mr. ARCTANDER. Article seven.
Q. Have you got the court minutes of the year 1879 here?
A. Yes.
Q. Will you please turn to the December term, 1879?
[The witness then produced his record.]
Q. I will ask you if these are the court minutes kept by the clerk of court of Nicollet county?
A. Yes, sir.
Mr. ARCTANDER. Mr. President, I will offer in evidence from this book, the last half of page 288, to and including the first half of page 291. With the permission of the court I will read it.

Daniel Dingler, Appellant,
vs.
The Board of County Commissioners, Respondent.
} Case called. Jury called, which resulted as follows;

The following jurors sworn.

1. Christian Anderson.
2. Isaac Landeen.
3. Andrew Webster.
4. W. R. McMaster.

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5. Wm. Lehr.
6. B. R. Damren.
7. Upton Meyers.
8. C. C. Lester.
9. Johannes Holinstad.
10. Ed. Hatcher.
11. Henry Kiefgen.
12. P. G. Harff.

Court *ordered* recess till 1:30 o'clock P. M.

Afternoon second day continued. Court convened pursuant to adjourament.

Hon. E. St. Julien Cox, Judge presiding.

Ordered, That petit jury not on any case be excused till 8:20 P. M.

Peter O'Heried, a person of foreign birth, having in open court made application to be admitted as full citizen of the United States, and having made the required proof, and subscribed to the oaths prescribed by law, it was *ordered* by the court that there be issued to him a certificate under the seal of the court of full citizenship.

Daniel Dingler, Appellant,
vs.
The Board of County Commissioners, Respondent.

Respondent's attorney, C. R. Davis, Esq., asked the court for time to look up records in auditor's and clerk's office pertaining to the road in question, whereupon court *ordered* recess for fifteen minutes, after which time court convened again, but further time being required, court *ordered* a recess till 7:30 P. M., subject, however, to the call of the jury in the case of Vierling vs. the Board of County Commissioners, should they agree on their verdict before that time.

Christopher Veierling, Appellant,
vs.
The Board of County Commissioners, Respondent.

Court convened at 5 o'clock P. M. to receive verdict of jury, who, having agreed thereon, jury answered to their names, and through their foreman delivered to the court their verdict.

Verdict entered as follows:

"STATE OF MINNESOTA, COUNTY OF NICOLLET.

"Christopher Veierling
vs.
"The Board of County Commissioners of Nicollet County.

"We, the jury in the above-entitled cause, find for Christopher Veierling, the appellant, and assess his damages at two hundred dollars ($200.)

Court ordered recess till 7 1-2 P. M. "JAMES HUGHES, Foreman."

EVENING SESSION.

Court convened pursuant to adjournment.

Hon. E. St. Julien Cox, Judge, presiding.

Daniel Dingler, Appellant,
vs.
The Board of County Commisssioners, Respondent.

The appellant here moved the court to reverse entirely the order and decision made herein by the coummissioners of said Nicollet county, on the —— day of July, 1879, on the ground that it appears from the face of the said order, and the survey made part thereof, that said county commissioners had no jurisdiction to enter or make any order in the premises, and said appellant offers said pretended order and plat in evidence, together with an act of the Legislature of the said State of Minnesota, entitled "An act to incorporate the town of Redstone," approved August 2d, 1858.

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Motion argued by the respective counsel. *Motion taken under advisement.*
Court ordered recess till 8 1-2 A. M. to-morrow morning.

THIRD DAY.

THURSDAY, December 11th.

Court convened pursuant to adjournment.
Hon. E. ST. JULIEN COX, Judge Presiding.

Daniel Dingler, Appellant.
vs.
The Board of County Commissioners, Respondent.

In regard to appellant's motion the court made the following order:
"The order of the court is *that the appellant's motion in this action is sustained* and the order of the Board of County Commissioners laying out the road so far as relates to the south-half of Sec. 35 is concerned *is reversed*, and the court further orders that the laying out this road is reversed for the reason that the County Commissioners had no jurisdiction of laying out said road." Case dismissed and jurors of the regular panel *ordered* excused from any further attendance on this case and the talesmen discharged from any further attention on this term of court.

KEITH HATCHER,

Sworn as a witness for the respondent, testified:

Examined by Mr. ARCTANDER.
Q. Where do you reside?
A. St. Peter, Minnesota.
Q. What is your business?
A. A farmer.
Q. How long have you known the respondent, E. St. Julien Cox?
A. About twenty-three years.
Q. State whether or not you are one of his next neighbors there?
A. I am.
Q. Right adjoining to his place?
A. Right across the street; yes, sir.
Q. Have you known him intimately during this time?
A. I have.
Q. State whether or not during this time you have known him, you have seen him under the influence of liquor?
A. I have.
Mr. ARCTANDER. This witness is called under article seven.
Q. State if you can tell when you see the Judge whether he is sober or intoxicated?
A. I think I can.
Q. What business did you have besides your farming, in the year 1879?
A. Not anything, only I acted as bailiff of the court.
Q. State whether or not you acted as such bailiff at the December court of 1879, in Nicollet county?
A. I did.
Q. I will ask you to state whether or not you remember a case coming up at that term of court between one Dingler and the board of county commissioners of that county, about a road?
A. I do.
Q. Were you bailiff at that time?
A. Yes, sir; I was.

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Q. I will ask you to state whether or not you were present in the court during that day, at an evening session when the court was in session?

A. Yes, sir; I was.

Q. Do you remember of the fact of an evening session that night?

A. I do.

Q. At which that case came up for argument? A. Yes.

Q. I will ask you to state what was the condition of the Judge as to sobriety or inebriety during the evening session?

A. Sober.

Q. I will ask you to state what was his condition during the day?

A. Sober to the best of my knowledge.

Q. I will ask you to state whether or not there was anything in his appearance or his actions at that time, during that day, or during that evening, peculiar or different from what there had been at other times when you have seen him and knew him to be perfectly sober?

A. I saw nothing.

Q. You saw no difference? A. No difference.

Q. Had you any doubt about his sobriety at that time?

A. I had not.

Q. Have you any now? A. I have not.

Q. I will ask you to state whether or not the Judge that evening talked more than usual in court?

A. I think not. Not to my knowledge.

Q. I will ask you to state whether or not he interrupted the counsel there when they were arguing before him?

A. I think not; not any more than usual.

Q. I will ask you to state whether or not you saw the Judge after court adjourned that evening?

A. I did.

Q. Where and under what circumstances?

A. I went home with the Judge that evening. I walked home with him, that is, as far as my place. I live just a little east of the Judge's house.

Q. You walked up together? A. Yes, sir.

Q. Did you talk and converse with him up there? A. Yes. sir.

Q. In what condition was he then as to sobriety or inebriety?

A. Sober.

Q. I will ask you to state whether or not the jury were sitting there in the jury-box during the argument at the session of the court that evening?

A. Yes, sir.

Q. I will ask you to state how you sat with reference to the Judge,—whether you sat so you could and did observe him during the evening?

A. I sat a little to his right, and in front.

Q. Facing him? A. Yes, sir.

Q. So that you faced and looked towards him? A. Yes, sir.

Examined by Mr. Manager DUNN.

Q. What is your business? A. I am a farmer.

Q. You may state what you mean by the word sober.

A. What I mean by sober?

Q. Yes, sir.

A. Well, when a man is sober he is not under the influence of liquor; not under its influence at all.

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Q. Not under its influence at all?
A. No; he is capable of attending to his business.
Q. Well, do you mean by the word sober, a man that is not under the influence of liquor at all?
A. Well, he might have taken a drink of whisky, or something of the kind, and still not show it in any respect.
Q. What is your idea of the word intoxicated?
A. When a man is slightly drunk.
Q. Slightly under the influence of liquor?
A. Yes, sir.
Q. Now when you say that Judge Cox was sober do you wish to be understood that he was not at all under the influence of liquor?
A. I wouldn't pretend to say that he had not drank anything; I wouldn't say that he had not; but I will say that the Judge was sober.
Q. Do you wish to be understood as testifying that in your opinion Judge Cox, that evening, was not at all under the influence of liquor?
A. I wont say that he was not at all under the influence of liquor, I say that he was sober.
Q. Don't you think he was under the influence of liquor to some extent?
A. I do not.
Q. You do not; then you will testify that he was not at all under the influence of liquor?
A. No, I will not.
Q. Well, what?
A. He may have taken a drink or two.
Q. Or three?
A. Yes.
Q. Or half a dozen, may he not?
A. Well, that I could not say whether he had or not, I do not know as he had taken any; I think I know the Judge well enough to know when he is under the influence of whiskv, and when he is not.
Q. You have seen him many times when he has been under the influence of whisky, havn't you?
A. I have seen him a number of times; yes, sir.
Q. Well, a good many times, or just a few times?
A. Well, a good many times in the last 23 years.
Q. Have you ever been in his court before this?
A. Yes, sir.
Q. How many terms?
A. I have acted as bailiff every term since he was elected in 1877, except last spring, May term, I was not baliff of the court.
Q. Did you notice at any time during this term of court, May, 1879, that he was under the influence of liquor in court?
A. I did not.
Q. At no time at all?
A. No, sir.
Q. Could you say that he was perfectly sober during that term of court?
A. I could.
Mr. ARCTANDER, Well, we object to that, Mr. President; this witness was only directed to a single day; the defence is limited to that, and the prosecution is limited to that.
Mr. Manager DUNN. I don't suppose we are limited on cross-examination to a single day.

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The PRESIDENT *pro tem.* They have a right to prove whether the witness is mistaken as to the particular day.

Q. Could you say he was perfectly sober during that term of court all the time in court?

A. To the best of my knowledge.

Q. Do you know of his drinking any intoxicating liquor during that term of court?

A. I do not.

Q. Do you know whether he kept intoxicating liquors in his room in the court house?

Mr. ARCTANDER. That is objected to as improper cross-examination.

The PRESIDENT *pro tem.* I think it is admissible.

Mr. ARCTANDER. I suppose we have got some private rights if we are a Judge.

Mr. Manager DUNN. Not during any term of court.

Mr. ARCTANDER. Did the President overrule the objection?

The PRESIDENT *pro tem.* Yes.

Q. Do you know whether he kept intoxicating liquors in his private room in the court house?

A. Not during court.

Q. Do you know of his keeping them at other times than in court?

Mr. ARCTANDER. We object to that.

The PRESIDENT *pro tem.* The objection will be sustained.

Q. How do you know he didn't keep them during the term of court?

A. Not that I know of, I say. I don't know that he did or did not.

Q. You knew of his keeping them at other times than in court?

Mr. ARCTANDER. We object to that.

Mr. Manager DUNN. I think that question upon cross-examination ought to be allowed.

The PRESIDENT *pro tem.* I think not.

Q. Well, how long before the term of court did you know of his having intoxicating liquor there?

A. I don't know as he had any at all.

Q. You don't know as he had any at all?

A. No, sir.

Q. Why did you answer then, not in court?

A. Well, I say, not in court; I don't know as he had any before that.

Q. You don't know as he ever had any there, do you?

Mr. ARCTANDER. Well. that is objected to.

Mr. Manager DUNN. Well, the witness certainly is prevaricating and I ought to have the privilege of getting at what he knows about the Judge having intoxicating liquors in that court house.

The PRESIDENT. It looks a little like prevarication. I think, he may answer the question.

The question was then repeated by the reporter.

Mr. Manager DUNN. Is that what you want to be understood,—that you don't know as he ever had any intoxicating liquors there in what is called the Judge's room, in that court house?

A. I have seen beer in his room.

Q. How long before this term of court did you see beer there?

A. I never saw it in there before. It was since that term of court.

Q. How soon after the term of court did you see it there?

A. That I couldn't say; I don't remember.

Q. Well, was it the next day?

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A. Oh, no; it was longer than that. I don't remember just what time.
Q. Within a few days?
A. I couldn't tell what time; I don't remember.
Q. And up to that time you never had seen any in there?
A. No, sir.
Q. You said you didn't know whether the Judge drank any intoxicating liquor during that term of court?
A. No, I did not.
Q. You are not a drinking man yourself?
A. I take a glass of beer sometimes.
Q. Were you in court when Judge Dickinson was on the bench there in the trial of that Loomis case?
A. I was.
Q. Did you see Judge Cox there? A. Yes, sir.
Q. Was he not under the influence of liquor there, sir?
A. I think not.
Q. Will you swear that he was not?
A. No, I won't swear that he was not; but I say to the best of my knowledge.
Q. Were you there when he came in, and when Judge Dickinson asked him some questions?
A. I don't remember whether I was or not.
Q. Weren't you there all the time as bailiff?
A. Not all the time; I was out of town part of the time subpœnaing witnesses, but not all the time.
Q. Were you in court all the time that evening when the Dingler case was tried?
A. I might have been in all the time, but I think I was in the most of the time. I think I might have been in and out.
Q. Now, were you not subpœnaing witnesses a considerable part of the time during that term of court?
A. Well, I think I was.
Q. Weren't you subpœnaing witnesses in the Loomis case just while the Dingler case was being tried? It was the next case tried?
A. That I wouldn't say, whether it was the next or not.
Q. If it was the next case tried, weren't you out subpœnaing witnesses for that case?
A. I might have been subpœnaing some.
Q. If that was the next case tried, the probabilities are that you were not in court?
A. Well, I was in court a good part of the time; the most of the witnesses were right there in town.
Q. What makes you think you were there in the evening? Have you anything to fix the time with certainty that you were there that evening?
A. I know I was there that evening.
Q. Have you anything that causes it to be impressed upon your mind?
A. I am satisfied I walked home with the Judge that evening and was there when court adjourned?
Q. Well, I mean as to the Dingler case. Have you anything particularly to impress it upon your mind that you were there that evening, any more than any other evening?

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A. Yes, I remember circumstances that occurred there that evening.
Q. What do you remember? A. I remember about the road case.
Q. Well, there were half a dozen road cases.
A. Well, I mean between Dingler and the county commissioners.
Q. Well, there was half a dozen of the same kind of road cases weren't there?
A. Not between Dingler.
Q. Well, upon the same road? A. The same road, yes.
Q. Who were the other parties? A. I don't remember.
Q. Why do you remember that case?
A. It is a familiar name, and I remember it.
Q. Do you know Dingler personally? A. No, I do not.
Q. Now there were half a dozen,—I think half a dozen from the record here,—road cases, about that same road. Now was there any reason why you should remember the Dingler case any more than either of the other cases, sir?
A. Well, I don't know as there is.
Q. Can you give me the names of a single other plaintiff who was having cases over the Redstone road?
A. No, I don't know as I can.
Q. Do you know what time either of the other cases were tried?
A. In the forenoon of the same day.
Q. Was there any of them tried after that?
A. I think not.
Q. Were you in court the next day? A. I was.
Q. Were there any motions in the road cases the next day?
A. I don't remember whether there was or not.
Q. Do you know whether there was any orders made in any of the other road cases the next day?
A. I do not.
Q. The only case you remember then in that whole road matter was the Dingler case, is it not?
A. I remember that case.
Q. And that case you tell this court you have no reason to remember it more than any other case?
A. No.
Q. And you don't know Dingler personally.
A. Not personally.
Q. And you never saw him before that court, did you?
A. Yes; I have seen him before, and I have seen him since.
Q. But that is all you know about that Dingler case?
A. Yes.

Examined by Mr. ARCTANDER.
Q. I will ask you whether or not there was any argument in this Dingler case about anything, on that night, if so, what was it?
A. Well, there was argument.
Q. Well, what was the argument about?
A. Well, Mr. Lind stated that the county commissioners hadn't the right to lay out the road in Redstone, being an incorporated city, as a starting point; and he made a motion to have it dismissed.
Q. You recollect of that fact taking place there in the evening, do you?
A. Yes.

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Q. I will ask you to state whether or not, as a matter of fact, the order of the Judge in that case caused quite a commotion at the time, and some talk about what had been saved the county in the matter?
A. I think it did.
Q. Now, I will ask you to state whether or not you are positive that you were in court during the whole of that night, during the night when that argument went on and heard the arguments?
A. No, I am not positive that I was.
Q. That you was there during the whole of that night?
A. No, I am not positive that I was.
Q. Do you know you was there at all during a portion of that night?
A. Yes, I was.
Q. You stated, I believe, that you could not say that the Judge was not under the influence of liquor at all, for the reason that he might have taken a drink or two?
A. Yes.
Q. I will ask you to state whether or not the Judge was under the influence of liquor at all, so that it could be perceived, seen and noticed?
A. I think not.
Q. You are positive of that?
A. Yes, sir.

Examined by Mr. Manager DUNN.
Q. Now, Mr. Hatcher, what was the argument that was made there by Mr. Lind?
A. He argued that the County Commissioners had not the right to lay out this road.
Q. Why not?
A. Because it was in an incorporated city.
Q. Are you sure he said incorporated city?
A. Or village.
Q. Which was it, city or village?
A. I would not be positive which.
Q. When did you first hear that story?
A. I heard it that night.
Q. Haven't you talked it over with Counselor Arctander and Judge Cox, since that, a good deal?
A. No, sir; not with Judge Cox.
Q. Haven't you talked it over with Counselor Arctander.
A. We were speaking of it to-day.
Q. Haven't you talked it over before to-day?
A. No, sir.
Q. Didn't you see him when he was up to St. Peter?
A. I simply saw him.
Q. Didn't he ask you about it then?
A. He asked me if I remembered something about this road case.
Q. Didn't he tell you anything about it?
A. He did not.
Q. Did you go to the records to look up anything about it?
A. No, sir.
Q. Yesterday you were talking this over, and you told him about it?
A. No, sir.
Q. Did you tell him first, or did he tell you, what that argument was about?

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A. I told him first.

Q. Then how did you remember that argument any more than any other argument that occurred there in any other case? Can you give me any argument that occurred in any other case?

A. I don't know as I can.

Q. Then you can't give me anything that was done in any other case can you?

A. There was some motions made to about the same effect, in some of the road cases.

Q. Well, what road cases?

A. Starting there at the village of Red Stone.

Q. Well, what arguments were those?

A. I don't just remember.

Q. And you say that the decision of the case caused some commotion, do you?

A. Certainly.

Q. That decision was made that evening, wasn't it?

A. I think not.

Q. Well, then it didn't cause any commotion that evening did it?

A. Well, the Judge told them he would decide it the next morning.

Q. Well, was the commotion that evening?

A. Well, no; I don't know as it was particularly.

Q. Then if the commotion was not caused that evening the commotion didn't fix it in your mind, did it, that you were there that evening?

A. Well, the Judge and I were speaking about the road after we left the house.

Q. Well, what did you and the Judge say about the road?

A. He made the remarks about this man Dingler being so foolish about the road, that he could get a road through his place and that the county commissioners would pay him for it. That he had no way of getting out through his place, and he could get a road there and the commisioners would pay him, and now if he got a road he would have to pay for it himself, or something of the kind.

Q. Judge Cox was explaining that to you when walking down home?

A. Yes.

Q. That was before he had made any decision in the matter?

A. Yes.

Q, Did he tell you what his decision was going to be?

A. No, he did not.

Q. He said Dingler was foolish in fighting it?

A. Yes.

Q. Because he could get a road now and be paid for it?

A. Yes.

Q. That is one thing that makes it fresh in your mind, isn't it?

A. Something to that effect.

Q. Now, was there anything else than that?

A. Not that I remember.

UPTON MEYERS,

Sworn as a witness on behalf of the respondent, testified.

Examined by Mr. ARCTANEER.

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Q. Where do you reside?
A. St. Peter, Minnesota.
Q. What is your business?
A. Nothing at present.
Q. What is your occupation?
A. Well, I generally farm some. Some years, and some I don't.
Q. Do you know the respondent E. St. Julien Cox?
A. Yes, sir.
Q. How long have you known him?
A. Fifteen years.
Q. How long have you lived there in St. Peter during these fifteen years?
A. Well, the most of the time.
Q. At the time when you have not lived there you have lived near by there on a farm, have you?
A. Yes.
Q. Have you known Judge Cox intimately during those fifteen years?
A. Well, yes.
Q. I will ask you to state whether or not you have, during the 15 years, occasionally seen Judge Cox intoxicated or under the influence of liquor?
A. I have.
Q. You have heard this talk about the Dingler case against the county?
A. Well, I knew there was a road case there; but I don't recollect any names.
Q. You were one of the jurymen that tried a case that term; one of the road cases?
A. That was all.
Q. You remember of being on the jury in one of those road cases, but you can't tell the name?
A. Yes; I remember being on the jury in one of the road cases, but I forget the name.
Q. I will ask you to state whether or not you remember an evening session during the time you were on the jury there?
A. Yes, sir.
Q. What was done during the evening session?
A. I don't know as I can recollect hardly what was done.
Q. Well, do you remember anything about whether any witnesses were examined, or whether there were some arguments going on?
A. I know there were some arguments, but I don't recollect now what they were. There were no witnesses examined.
Q. You sat in the jury-box during that evening in sight of the Judge there, and had him in full view, did you?
A. Yes, sir.
Q. I will ask you to state what condition the Judge was in as to sobriety or inebriety that evening?
A. Sober.
Q. Was there anything in his appearance, conduct, manner or language, there while on the bench, peculiar or different from what you had seen it on other occasions, when you knew he was perfectly sober?
A. Not any that I noticed.
Q. Had you any doubts at the time about his being sober?

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A. No, sir.
Q. Have you any doubts at all now? A. No, sir.

Examined by Mr. Manager DUNN.
Q. You have seen the Judge you say, frequently intoxicated?
A. Yes, sir.
Q. Very much intoxicated, or only slightly?
A. Well, slightly.
Q. Have you seen him much intoxicated ever?
A. I said slightly.
Q. Well, I now ask you if you have seen him much intoxicated?
A. No, sir.
Q. Only slightly? A. Yes, sir.
Q. He hardly ever gets much intoxicated, does he?
A. I don't know.
Q. You don't associate much with him, do you?
A. Well, I know him when I meet him and he speaks to me when I meet him.
Q. I mean you are not in his company much, socially?
A. Not a great deal.
Q. Your judgment simply is that this evening the Judge was perfectly sober, is it?
A. I think he was.
Q. Are you positive of that? A. Yes, sir.
Q. Are you perfectly so? A. Yes, sir.
Q. You would not think he had drank a drop of liquor that day at all, would you?
A. I don't know,—men might have a drink of liquor down them and still be sober.
Q. Now, what do you mean by sober?
A. I mean that he was not drunk.
Q. Well, do you recognize any degrees of intoxication or drunkenness?
A. Well, a man looks like a drunken man when he is drunk.
Q. I say, do you recognize any degrees between a man that is intoxicated, and a man slightly under the influence of liquor—do you make any difference, or do you call the men drunk that have drank any liquor at all?
A. No, sir; don't call them drunk until they are drunk.
Q. How far do they have to get along before you call them drunk?
A. So that I can notice it.
Q. Notice it in their talk or in their movements?
A. Movements.
Q. And in their talk also? A. Yes.
Q. You noticed nothing of that kind in the Judge this night?
A. No, sir, not then; not that evening.
Q. Did you notice it during the day any?
A. No, sir.
Q. Have you noticed it at other times?
A. On the bench?
Q. Yes? A. No, sir.
Q. Have you been around his court much?
A. Not a great deal.
Q. Have you been a juryman in his court other than this time?
A. No, sir.

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Q. Have you ever had a case in his court?
A. No, sir.
Q. Have you ever been a witness in his court?
A. No, sir.
Q. This is the only time you ever was in his court up to that time, was it?
A. Well, I have been in but not very frequently.
Q. You have not been there on any business there?
A. No, sir.

P. G. HARFF.

Sworn as a witness on behalf of the respondent testified.

Mr. Manager DUNN. I believe you have had your five witnesses on this article.
Mr. ARCTANDER. Aren't you a little hasty?
Mr. Manager DUNN. No.
Mr. ARCTANDER. I probably am mistaken then; some of them are under article eleven. Two of them were charged under article eleven.

Examined by Mr. ARCTANDER.
Q. Where do you live? A. Minneapolis.
Q. What is your business? A. Hotel-keeper.
Q. Where did you reside before you moved to Minneapolis?
A. St. Peter.
Q. When did you remove from St. Peter to Minneapolis?
A. Two years ago next May.
Q. How long had you lived in St. Peter before that time?
A. Since 1857.
Q. Do you know the respondent, E. St. Julien Cox? A. Yes, sir.
Q. How long have you known him? A. Since 1857.
Q. Between 1857 and 1880 were you intimately acquainted with him?
A. Yes, sir.
Q. Had you, during those fifteen years you had known him, seen him under the influence of liquor?
A. Not to my recollection, that is, I seen him drink a glass of beer, but never saw him drunk; that is, what I call drunk.
Q. Well, you have seen him under the influence of liquor, where he had had a little?
A. Well, I have seen him feeling good.
Q. Do you remember of acting as a juror in a case in the December term of court in 1879,—a road case that was up there?
A. Yes, sir; I do remember something about it.
Q. Were you acting as a juror in more than one road appeal case there at the time?
A. Well, it was only one case, I think.
Q. Do you remember what the case was? A. It was the case of Dingler and somebody else.
Q. Against the county commissioners?
A. I guess that was the case.
Q. Do you remember of being present at an evening session while you sat as juror on that case?
A. I do, sir.

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Q. Where were you during the evening when you was there in court, —did the jury sit in the jury box during the evening?

A. Well, we were in the court house, yes sir; in the jury-box.

Q. Did you have a full view of the Judge there? A. Yes, sir.

Q. See him plainly?

A. I think I did; I saw him plain, yes, sir.

Q. Do you remember what was going on there that night?

A. I do not exactly remember the transaction that went on. I think that the Judge postponed the case or gave a decision in the case the next morning.

Q. Were there any witnesses sworn that evening in the case?

A. Well, that I do not remember.

Q. Do you remember who were the attorneys in the case?

A. It was a one-armed fellow from New Ulm; Lind I guess his name was, and I believe Charlie Davis.

Q. Do you remember of their talking there any that night, making any speeches?

A. Well, they were talking something, but I could not say one single word of what they did say.

Q. You heard it at the time, did you?

A. Oh, yes; I heard and seen what they talked together, but I didn't take any notice of what they talked.

Q. Now, I will ask you to state the condition of the Judge was that evening, as to sobriety—as to being sober or intoxicated?

A. I called him perfectly sober.

Q. You would call him perfectly sober?

A. Yes, sir.

Q. Had you any doubt of it at the time?

A. None whatever.

Q. You have none now?

A. No, sir.

Q. Was there anything in the Judge's appearance, or his conduct, or language that he used, or anything that struck you as being peculiar or different from what you had seen it at other occasions when you knew he was perfectly sober?

A. There was not, sir.

Q. If he had looked any different from what he did usually, would you have observed it?

A. I would have observed him if he did.

Examined by Mr. Manager DUNN.

Q. Why would you have observed if he did look any different?

A. Because I know him personally; I have known him so long that I would have observed it if he was drunk.

Q. He didn't ask you if he was drunk.

A. Well, I think I could have observed him whether he was drunk or sober.

Q. Well, the question was not put to you whether you observed that he was drunk. You say you would have observed if he looked any different from what he did at other times?

A. He did not.

Q. Why would you have observed it?

A. Because he looked as natural as he ever did.

Q. Why would you have observed it; was there any reason why you should observe it at that time any more than any other time?

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A. Well, I don't see any particular reason, but, if I remember right, I went home with the Judge that night. I don't live very far from his house, didn't then. We went up together; if I remember right, we did.
Q. Who went with you, besides?
A. Me and him went home alone together.
Q. Anybody else with you?
A. No, sir.
Q. You are sure of that?
A. Yes, sir; I am sure of that.
Q. Now, you don't know much of what went on there that night, do you?
A. I do not, until after 9 o'clock, very likely.
Q. Wasn't your jury excused before court adjourned that night?
A. It may be that the jury was excused; that I don't know anything about, but I was there in the court house.
Q. Were you in the jury box?
A. I was in the court house.
Q. Will you testify that you was in the jury box that evening session?
A. I think we were sitting in the jury box and talking together. That is my impression.
Q. Well, was the jury called that evening at all?
A. The jury was called in the afternoon.
Q. Were you called in the evening, so as to take your seats in the jury box?
A. That I don't remember.
Q. You don't know what this argument was about at all, do you?
A. I do not sir.
Q. What was that case you was a juryman in?
A. That was the Dingler case against the County commissioners.
Q. Why do you remember it was the Dingler case?
A. Because I am very well acquainted with Dingler himself; I know him personally.
Q. You are living now in Minneapolis?
A. Yes sir.
Q. What is your business?
A. Keeping hotel.
Q. What is the name of the hotel?
A. Mississippi house.
Q. What did you do in St. Peter?
A. Making pop.
Q. Now you are keeping hotel?
A. Yes.
Q. Do you have a bar in your hotel?.
A. No sir, I have got a sample room there.
Q. What is that?
A. Well, that it is a gent's furnishing room, where you can take a glass of beer once in a while.
Q. What do you sell in that?
A. I sell to the support of the United States, whiskey, beer, cigars, tobacco, and everything else of the kind.
Q. You do it to the support of the United States?
A. Yes sir.
Q. Do it purely on the grounds of a public benefactor?

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A. Yes sir.
Q. That is all.
Mr. ARCTANDER. You say you are sure that at the time you walked with him,—I will ask you to state whether you are sure it was this night or some other night?
A. It was that very same night.

CHARLES O. WARE.

Sworn as a witness on behalf of the respondent testified:
Mr. ARCTANDER. I do not call this witness to more than this article. [To Witness] What is your business?
A. Short-hand reporting.
Q. Are you the short-hand reporter for Judge Cox?
A. I am.
Q. Of his district?
A. Yes, sir.
Q. Was you such short-hand reporter for Judge Cox in the year 1879?
A. I was.
Q. Do you remember the occasion of the December term. 1879, at St. Peter?
A. I do.
Q. I will call your attention to the fact that several road cases were brought up there?
A. Yes, sir.
Q. Were you present, Mr. Ware, at the time the argument was made in the case of Dingler against the county commissioners of that county?
A. I was.
Q. One evening during that term?
A. Yes, sir.
Q. You was present?
A. Yes, sir.
Q. Do you remember what the argument was about?
A. It was in regard to a town plat, or something, about a town site that had been laid out formerly. Mr. Lind discovered it in some way and brought it up and the argument was on that.
Q. Now I would ask you to state what the condition of Judge Cox was as to sobriety or inebriety, that evening?
A. I considered Judge Cox sober.
Q. Had you any doubt about it?
A. I had not.
Q. You have none now?
A. No, sir.
Q. During the day was there any difference in his—was he in any different condition during the day than in the evening?
A. Not that I noticed.
Q. You have no doubts about his sobriety during the day either?
A. No, sir.
Q. Were you sitting where you could observe him, and did you observe him?
A. I did.
Q. Was there anything different,—anything peculiar or different in his appearance, or his language, manner or conduct, that night, from

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what it had been at other times when you had known him to be perfectly sober?

A. No, sir.

Examined by Mr. Manager DUNN.

Q. You had no opportunity,—

Senator POWERS. Mr. President, I don't think it is hardly fair as long as we are keeping this hall by a sort of sufferance or courtesy to keep others waiting when they want to use it, and I move that this court now adjourn.

Senator MACDONALD. I second the motion.

Senator POWERS. This witness is on several other articles?

Mr. ARCTANDER. Well, he isn't going to be called on those now.

The PRESIDENT. Is the motion withdrawn?

Mr. Manager DUNN. He won't be excused, will he?

Mr. ARCTANDER. No, sir.

Mr. Manager DUNN. He will be kept here, will he?

Mr. ARCTANDER. Yes, sir.

Senator POWERS. I insist upon the motion that we adjourn.

The PRESIDENT *pro tem.* It is moved and seconded that the Senate do now adjourn; are you ready for the question? Those in favor of the adjournment will say aye; contrary minded nay. The ayes have it.

The Senate adjourned.

THIRTY-SECOND DAY.

ST. PAUL, MINN., Feb. 16, 1882.

The Senate met at 10 o'clock A. M., and was called to order by Senator Wilson, acting as President *pro tem.*

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

Messrs. Adams, Campbell, Case, Clement, Hinds, Howard, Johnson, A. M., Johnson F. I., Johnson, R. B., Langdon, Macdonald, McCrea, McLaughlin, Mealey, Miller, Morrison, Officer, Perkins, Powers, Rice, Shaller, Shalleen, Tiffany, Wheat, Wilkins and Wilson.

The Senate, sitting for the trial of E. St. Julien Cox, Judge of the Ninth 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. Henry G. Hicks, Hon. O. B. Gould, Hon. L. W. Collins, Hon. A. C. Dunn, Hon. G. W. Putnam and Hon. W. J. Ives, entered the Senate Chamber and took the seats assigned them.

E. St. Julien Cox, accompanied by his counsel, appeared at the bar of the Senate and took the seats assigned them.

The PRESIDENT *pro tem.* Are there any motions or resolutions to be introduced before proceeding with the regular order of business? If not, counsel will proceed with the testimony.

CHARLES O. WARE,

Examination resumed.

Mr. ARCTANDER. We turned the witness over last night.

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Mr. Manager DUNN. Shall I proceed, Mr. President, with the cross-examination?

The PRESIDENT *pro tem.* Yes, sir.

CROSS-EXAMINATION,

By Mr. Manager DUNN.

Q. Mr. Ware, you say you are the shorthand reporter of Judge Cox. What do you mean to be understood by that?

A. I mean that I am the official shorthand reporter of the Ninth Judicial District.

Q. Appointed by Judge Cox. A. Yes.

Q. Well, you don't mean to say that you are paid by him?

A. No, sir.

Q. Please state, Mr. Ware, whether you were present as shorthand reporter at a term of court in December, 1879, when the Dingler case was tried,—whether you were there in that capacity at that term of court?

A. Yes, sir.

Q. Did you take minutes of the proceedings of that court?

A. I did.

Q. Did you take minutes of the proceedings of the Dingler case?

A. I did.

Q. Have you got those minutes?

A. I have not, with me.

Q. Did you take minutes of the proceedings of that evening session?

A. I did, if there was an evening session; I am not so positive about that.

Q. You don't know whether you were present at an evening session, Mr. Ware?

A. I was, if there was one.

Q. You are not positive there was one?

A. I am not positive.

Q. Did you take minutes of what the Judge said? Is that your business as short-hand reporter?

A. No, sir; I don't think I did.

Q. Do you usually, do that?

A. Not usually.

Q. You have no remembrance then, that is, from minutes, of what occurred that evening?

A. I have not looked at my minutes to refresh my memory.

Q. Have you looked at your minutes as to anything that occurred in that case?

A. No, sir.

Q. Then you are not testifying from any memorandum that you made at the time?

A. No, sir.

Q. You are simply testifying from your remembrance as if you were not the short-hand reporter?

A. Yes; I presume though, I would be a little more apt to remember if——

Q. Well, that is a matter of argument. I don't care anything about that; you say you considered the Judge sober at the time?

A. Yes.

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Q. Did you have any reason to suppose that he was sober?
A. Yes.
Q. What reasons were there to suppose that he was sober?
A. Because he acted just like a sober man.
Q. Did he act any different from at any other time that you had seen him in court?
A. He acted no different than he did at other times when he was sober.
Q. Have you seen him in court when he was not sober?
A. I have seen him in court when I thought he was under the influence of liquor.
Q. On the bench?
A. Yes.
Q. And he acted a little different this time from what he did those times?
A. Yes.
Q. So that you compared his actions at that time with times when you knew, in your judgment, he was under the influence of liquor on the bench?
A. I suppose I formed my opinion in that way.
Q. Now, how did he act when he was under the influence of liquor on the bench, when you knew it?
A. All I noticed was that he looked a little tired and weary.
Q. When he was under the influence of liquor you thought he appeared tired and weary?
A. Yes, sir; that is when I thought he was; I don't say he was.
Q. Well, you had reason to believe that he was, didn't you?
A. Well, I thought from what I saw, that he was.
Q. Well, not only from what you saw, but from what you knew of his drinking?
A. I don't know anything about his drinking; I never saw Judge Cox drink but very little.
Q. But you had no doubt at those times that he was under the influence of liquor, had you?
A. No, sir.
Q. Well, now, how do you say he acted at those times?
A. A little wearied and sleepy.
Q. Anything else?
A. That is all I noticed.
Q. No facial expression?
A. No, sir; nothing more than I have stated.
Q. No grimaces or grotesque actions?
A. No, sir.
Q. Nothing but simply tired and wearied?
A. That is all I noticed.
Q. And this time you say he did not act tired and weary?
A. No, sir.
Q. How did he act?
A. Just as he always did when he was sober.
Q. Didn't you notice particularly his rulings?
A. I noticed what his rulings were; I can't give you the words or the language used.
Q. So you know what his rulings were upon other occasions when you were not officially reporting him?

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A. I don't know about that; I don't attend court generally, unless I am there on business.

Q. Well, you were there on business this time, but I say when you were not officially reporting; you think you were not officially reporting the Judge that evening?

A. I was reporting what was going on.

Q. You were reporting the testimony, I suppose?

A. Yes, sir; and the objections, exceptions and rulings.

Q. Well, why was it that you made no minutes; this was a proceeding right in the trial of a case, was it not; when the motion was made, the jury was empanelled and they were trying the case, were they not?

A. Yes.

Q. Why was it you made no report of the proceedings?

A. What I mean is, I did not take down what the Judge said; I presume my minutes show an objection there or a motion.

Q. Now, what was that motion?

A. The motion was to set aside an order of the county commissioners locating a road in the county there somewhere.

Q. Wouldn't that appear in your minutes?

A. I say the motion would and the ruling on it would appear, but what he said about it would not. I would say "motion made by Defendants counsel—"

Q. Do you remember the motion to have been made that night?

A. I remember the motion being made.

Q. Do you remember the ruling?

A. I remember the ruling.

Q. What was the ruling?

A. The way I remember it was that the order locating the road was set aside, and the road vacated.

Q. That is the way you remember it that evening?

A. Yes.

CROSS EXAMINATION.

By Mr. ARCTANDER.

Q. Did I understand you to mean, Mr. Ware, that you remembered that that order was made that evening on that hearing?

A. It was made at that time, as I say, I am not positive about that evening session; I was there when the order was made.

Q. Do you know whether it was made the next day or that evening or the afternoon?

A. I am not positive about that.

Mr. Manager DUNN. Well, your impression is it was made that evening, is it not, Mr. Ware?

The WITNESS. I am not sure, but my impression is it was made in the day time; that is my impression about it.

Q. Well, do you know when the motion was made?

A. I am not positive about that.

Q. Well, wasn't the decision and the motion made at the same time?

A. It is my impression that it was, but I am not sure; it is so long ago.

Mr. ARCTANDER. Mr. President, I would state that I have two more witnesses on this article, two of the jurymen that were present on this occasion. When I subpœnaed the witnesses I relied upon the promise

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of Senators individually that we should not be restricted to a certain number of witnesses if it were only within reasonable bounds, and I would ask leave to call these two witnesses now. Their name are William Lehr and Mr. Henry Koelfgan.

Mr. Manager DUNN. Have you already exhausted your five witnesses?

Mr. ARCTANDER. I have exhausted my five witnesses.

The PRESIDENT *pro tem.* What is the pleasure of the Senate?

Mr. ARCTANDER. They will be very short, of course.

Senator MILLER. I move, Mr. President, that the motion be granted.

Senator MACDONALD. I object, Mr. President; I think if this thing continues that there will be an increased number of witnesses asked for on every article, and I think the thing ought to be stopped.

Mr. ARCTANDER. Mr. President, I will say to the Senate that we offer to prove by the two witnesses I have mentioned, William Lehr and Henry Koelfgan, that they were jurymen in the case on this particular occasion and were present there and heard the arguments in the evening, and will testify as to the respondent's condition, as to sobriety or inebriety, that he was sober, and that there was nothing in his actions different from what they had been at any other time; and I desire to prove by the same witnesses that they have known him, one for twenty-five years, the other for fifteen years, and have been intimate with him, and lived near neighbors to him.

The PRESIDENT *pro tem.* The 16th rule reads: "The number of witnesses permitted by the court shall be five on the part of the prosecution, and a like number on the part of the defense, to each article of the impeachment, unless otherwise ordered by the court, and that question shall be submitted to the Senate without debate."

Senator MEALEY. Upon what article is this increased number of witnesses asked?

Mr. ARCTANDER. Upon article seven.

Senator CAMPBELL. How many witnesses have been examined upon that?

Mr. ARCTANDER. Five.

Senator MACDONALD. Before voting I would like to ask the counsel for the respondent whether he is going to make that request upon each other article?

Mr. ARCTANDER. Not upon all; I think there are three.

Senator MACDONALD. You have already had an increased number on two articles.

Mr. Manager DUNN. They have had eleven upon one article.

Senator MACDONALD. I have no doubt that the prosecution will come in and claim the same privilege in rebuttal.

The PRESIDENT *pro tem.* The roll will be called; those in favor of sustaining the motion will vote aye, and those opposed will say "no."

Senator CAMPBELL. I would like to ask whether the defense will call any more witnesses than has been called by the prosecution, regardless of the article to which they are applied? I understand that they desire to limit themselves to the number used by the prosecution, but that they desire to use them as they see fit themselves; is that the fact?

Mr. ARCTANDER. No, the Senator is mistaken in that; we desire to limit ourselves to the rule laid down by the Senate as to five witnesses to each article, taking each specification as an article, as it was determined by the Senate they should he considered, which would give us eighty-five witnesses outside of the eighteen the article, upon which I think we will have about twenty witnesses, the same number as the prosecution.

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Senator MACDONALD. I understand that the number of witnesses for the prosecution was only fifty-four.

Mr. ARCTANDER. That is true, but it was stated, I believe, Mr. President, that we would be entitled to five witnesses to each article and each specification. Counting the specifications and articles that now stand, that have not been dropped, it would give us eighty-five witnesses, and we would be entitled to that many outside of article eighteen, upon which the prosecution was not limited, and it was understood we should not be limited. That is the number. We have not exceeded that number; we have not quite reached the number of eighty, outside of article eighteen, and we do not desire to call any more than that, or to subpœna any more. In fact we have subpœnaed all the witnesses that we expect to have here.

Senator CAMPBELL. I desire to say just this, that I am in favor of allowing the respondent all the latitude that he requires—

Senator J. B. GILFILLAN. Mr. President, I rise to a point of order.

The PRESIDENT *pro tem.* The rule requires that this shall be done without debate.

Senator J. B. GILFILLAN. I desire to say this: That if any Senator desires to say anything, we should go into secret session, suspend the rule and discuss it then as long as any Senator desires.

Senator CAMPBELL. I have a word to say.

Senator GILFILLAN, J. B. Then I rise to a point of order.

The PRESIDENT *pro tem.* The whole thing is out of order, and the secretary will call the roll.

Senator MEALEY. I desire, Mr. President, to ask one question.

The PRESIDENT *pro tem.* It is out of order.

Senator MEALEY. I desire, Mr. President, to ask Mr. Arctander, one question.

The PRESIDENT *pro tem.* Proceed, sir.

Senator MEALEY. Whether the five witnesses they have already called cover the whole term of that court.

Mr. ARCTANDER. I will state that the prosecution in this particular case that we are on, have only proved one single occasion during that term of court, and of course all of our witnesses covered that same evening.

The PRESIDENT *pro tem.* Call the roll.

Senator POWERS. I would like to ask, Mr. President, the counsel for the respondent, if the witnesses that he wants to call, are in attendance?

Mr. ARCTANDER. They are here, Mr. Senator, and have been since yesterday.

Senator GILFILLAN, J. B. I desire to be understood distinctly as not objecting to the thing at all, but as suggesting that if we are to have debate that we go into secret session. I do not desire to cut off any Senator from an opportunity to express anything he may desire to say. I do not wish to cut off any Senator.

Senator CASE. I desire to ask, Mr. President, if we can go into secret session unless the motion of the Senator is seconded.

The PRESIDENT *pro tem.* We can dispose of this thing in half a minute, by calling the roll.

Senator CASE. Perhaps we can; I would like to inquire—

Senator CAMPBELL. I would like to inquire if Senator Case desires to debate the question?

Senator CASE. I would like to know what is going to be done in re-

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gard to this question, and would like to debate the question to a certain extent, for my own satisfaction.

Senator CAMPBELL. If you want to debate I will vote with you to go into secret session; but if you do not, and no other Senator does, there is no use of closing the doors.

Senator CASE. The chair cuts off debate, and I would like to hear from some of the lawyers in regard to that matter.

The PRESIDENT *pro tem.* The clerk will call the roll.

Senator HINDS. Mr. President, I rise to a point of order. The point is that a motion is pending that the doors be closed and the Senate go into secret session.

The PRESIDENT, *pro tem.* I have not heard that motion seconded.

Senator MEALEY. I seconded the motion; yes, sir.

Senator HINDS. It was moved and seconded.

The PRESIDENT, *pro tem.* As many as are in favor of going into secret session will say aye; as many as are opposed, no. The noes have it; the roll will be called on the previous question.

Senator WHEAT. I move, Mr. President, that we go into secret session. [Laughter.].

The PRESIDENT, *pro tem.* We have just taken a vote on that, Senator; the secretary will call the roll.

Senator OFFICER. I don't understand the question, Mr. President.

The PRESIDENT, *pro tem.* The question is as to the admission of these two additional witnesses on the article there already has been five upon. Those in favor of admitting those witnesses will say aye; and those opposed will say no; as their names are called. The Secretary will proceed with the roll call.

The roll being called, there were yeas 10, and nays 18, as follows:

Those who voted in the affirmative were:

Messrs. Adams, Campbell, Johnson, A. M., Mealey, Miller, Morrison, Peterson, Powers, Rice, Wilkins.

Those who voted in the negative were:

Messrs. Clement, Gilfillan, J. B., Hinds, Howard, Johnson, F. I., Johnson, R. B., Langdon, Macdonald, McCrea, McLaughlin, Officer, Perkins, Shaller, Shalleen, Tiffany, Wheat, Wilson.

Mr. ARCTANDER. Mr. President, I ask leave to call these witnesses and swear them, so that they may draw their certificates.

Senator SHALLEEN. I would like to ask the counsel what object he can have in calling these witnesses; will they be counted against him?

Mr. ARCTANDER. Of course, they can be; I cannot have any more.

Mr. Manager DUNN. Mr. President, I object very much to having these witnesses called. Then the record will show that he offered to prove certain things by them; and that he was not allowed. It is a very anomalous proceeding in a court to have evidence rejected and then have a witness called to prove it.

Mr. ARCTANDER. The proper way would be to have them sworn first, and then have the evidence rejected. It does not make any difference, I presume.

Mr. Manager DUNN. It makes a great deal of difference as to the form of the proceedings.

Mr. ARCTANDER. I guess the reporter can make it appear in the record that they were first sworn.

Mr. Manager HICKS. No, sir; we shall object to that.

Senator MILLER. I think, Mr. President, it is very necessary for the

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Senate to have a secret session, and I move now that the Senate go into secret session.

The PRESIDENT *pro tem.* I will state what I understand to be the difference between this case and that of yesterday. The witnesses offered yesterday were sworn and credited to a certain article. These are not to be credited to any.

Mr. ARCTANDER. They are credited certainly to our whole number.

Senator MILLER. I insist, Mr. President, upon my motion being put.

The PRESIDENT *pro tem.* Is there a second to your motion?

Senator MILLER. It has been seconded.

The PRESIDENT *pro tem.* It is moved and seconded that the Senate go into secret session. As many as favor the motion will say "aye," the contrary-minded "nay."

Senator GILFILLAN J. B. What is the motion, Mr. President?

The PRESIDENT *pro tem.* To go into secret session.

Senator CAMPBELL. Upon what question?

Mr. Manager DUNN. The question of the admission of these witnesses.

The PRESIDENT *pro tem.* I cannot answer the question as to what the object is.

The CLERK. The object is to determine as to the swearing of witnesses whose testimony has been refused.

The PRESIDENT *pro tem.* I could not decide how the motion was decided. The ayes and noes will be called, upon the motion to go into secret session.

Senator MACDONALD. To consider what question, Mr. President?

The PRESIDENT *pro tem.* As to whether the witnesses that have been rejected shall be sworn.

Senator MACDONALD. I would like to ask the counsel for the respondent if those two witnesses were subpœnaed to testify to this article?

Mr. ARCTANDER. They were.

Senator MACDONALD. Then there were seven subpœnaed to testify to this article?

The PRESIDENT *pro tem.* The clerk will call the roll.

When the name of Senator Powers was reached upon the roll he arose and said:

Mr. President, I am, and have been opposed to secret sessions unless where our hands and our tongues are tied; but in this particular case, I think we are in a muddle, and are transacting business that we shall hate to see in print. I will not vote to convict a man upon any article if he is shut out from giving evidence upon it. I want a secret session. Some discussion and consideration of this question ought to be had.

The PRESIDENT *pro tem.* How do you vote then?

Senator POWERS. I vote for it.

The roll being called, there were yeas 16, and nays 12, as follows:

Those who voted in the affirmative were—

Messrs. Campbell, Case, Howard, Johnson A. M., Johnson F. I., Johnson R. B., Mealey, Miller, Officer, Perkins, Powers, Rice, Shaller, Shalleen, Tiffany and Wilkins.

Those who voted in the negative were—

Messrs. Adams, Clement, Gilfillan J. B., Hinds, Langdon, Macdonald, McCrea, McLaughlin, Morrison, Peterson, Wheat and Wilson.

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The PRESIDENT *pro tem.* The Senate chamber will be cleared of all except those who are members or officers of the court.

Upon resuming business in open session, the result of the business transacted in secret session was announced by the presiding officer.

The PRESIDENT *pro tem.* The Senators have instructed the chair to announce that the Senate has reconsidered the vote taken this morning, and has decided that the two witnesses offered to article seven may be sworn and heard; also that the Senate has adopted the following order:

Ordered, That the number of witnesses allowed the State or the respondent shall be as prescribed in the rules,

Provided, That, when additional witnesses are desired, application shall be made to the Senate prior to their being subpœnaed.

The Senate then took a recess till 2:30 o'clock P. M.

AFTERNOON SESSION.

The Senate convened at 2:30, P. M., and was called to order by Senator Wilson, acting as President *pro tem.*

The PRESIDENT *pro tem.* Are you ready Mr. Arctander to go on?

Mr. ARCTANDER. Yes, we call William Lehr.

WILLIAM LEHR,

Sworn as a witness on behalf of the respondent, testified:

Examined by Mr. ARCTANDER.

Q. Where do you reside?

A. St. Peter.

The PRESIDENT *pro tem.* This is on the seventh article, is it?

Mr. ARCTANDER. The seventh article;—one of the two witnesses which were allowed us by the Senate.

Q. What is your business?

A. Stone-cutter.

Q. Do you know the respondent, E. St. Julien Cox?

A. I do.

Q. How long a time have you known him?

A. I have known him ever since 1857.

Q. Have you been intimately acquainted with him, since that time?

A. Yes, sir.

Q. Did you serve under him in the army?

A. I did.

Q. How far do you live from him in St. Peter?

A. Well, I used to live nearer him than what I do now, the first place what he had, he sold that; I was living near to him then.

Q. Were you living next neighbor to him at that time?

A. No.

Q. How far between you?

A. About two blocks at that time.

Q. I will ask you to state whether or not you live now near by the road that he walked down town and up to his house?

A. Yes, I do, providing he goes that street, what we call Broadway.

Q. Have you noticed what road he generally takes when he goes down town, and when he goes up town?

Mr. Manager DUNN. Well, we object to that.

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The PRESIDENT *pro tem.* I don't suppose that is material.

Mr. ARCTANDER. It is just simply to show the occasion for observation on the part of the witness.

Mr. Manager DUNN. We object to his showing he takes any general road. I think it is incompetent for this witness to testify to that.

The PRESIDENT *pro tem.* I don't think it is material, what road this man goes to his work, or goes away from it.

Mr. ARCTANDER. I will state Mr. President, that I have an object in this. It was testified to by a prior witness, who claims he had seen Judge Cox on several occasions under the influence of liquor, that Judge Cox when he walked to his house walked so that he could see him from the jail; I have reference to the sheriff Downs. I intend to prove by the witness, beside what there is under this article and in connection with it, the fact that the road that Judge Cox generally takes carries him near by the house of this witness. so that he can see and observe him,—that that road is such a distance from the jail that a man cannot be seen. I intend to show the actual distance to be three or four hundred feet from the jail to the road at the nearest point, and in that way impeach the testimony of that witness.

Mr. Manager DUNN. There is no evidence on the part of anybody that Judge Cox always went one way.

Mr. ARCTANDER. The testimony was the way he generally walks.

Mr. Manager DUNN. There is no testimony about his always going one way.

Mr. Manager HICKS. Well, it is immaterial, you can't contradict a witness upon an immaterial point.

Mr. ARCTANDER. I suppose it is material if that same witness swore that most all the time he saw him Judge Cox was under the influence of liquor.

The PRESIDENT *pro tem.* If the object is to impeach the evidence already given by Mr. Downs, I think it is proper to answer the question.

Mr. Manager DUNN. The question asked Mr. President, is what road does Judge Cox generally take.

Mr. ARCTANDER. If he knows what road he generally takes; that is what I asked.

The PRESIDENT *pro tem.* I don't think that would be material.

Mr. Manager DUNN. That is the one he asked and the one I objected to. I am not objecting to his showing that a certain road is not visible at a certain point.

The PRESIDENT *pro tem.* You can ask him if he knows what road Judge Cox generally takes.

Q. Do you know what street Judge Cox walks up and down on from his home towards town?

A. Yes, it depends altogether on the season of the year, whether it is wet or dry.

Q. In the wet season; do you know on what street he walks?

A. Yes sir.

Q. Now I will ask you what is the distance of the nearest point on that road to the jail where Mr. Downs resides,—that is where he resided when he was sheriff, was it not?

A. I don't know where he resided or where he had reference to; but I will tell you the difference,—

Q. I ask you, do you know where the sheriff lives at St. Peter.

A. Yes.

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Q. Does he live at the jail?
A. Yes.
Q. What is the distance between the nearest point of that street that Judge Cox walks on, and the jail?
A. Do you mean in the dry season?
Q. No, in the wet season.
A. Well that is quite a ways; I couldn't tell you that exactly: You can figure that yourself by the blocks and streets.
Q. Well, how many blocks?
A. Well, I think that is in the fourth block the jail is in.
Q. Now, in dry weather, how far is the road that he walks on, the nearest point from the jail?
A. Well, that is the nearest block that I live in.
Q. One block away from it?
A. No, not quite a block; I live in the block.
Q. But the road that he walks, is that one block from the jail?
A. Yes; just exactly a block; the jail is on Washington avenue.
Q. Now, I will ask you whether or not you were a juror at the term of court in the year 1879, at which there were some road appeals?
A. I was.
Q. Were you a juror in the case of Dingler vs. the county commissioners there?
A. I was.
Q. I will ask you to state whether or not you remember an evening session during that trial at which certain matters came up?
A. I think that there was some attorney made a motion; I believe his name was Lind; and the case kind o' got busted up, you know.
Q. You remember that motion being made and argued in the evening, do you?
A. I do; I do now.
Q. During that argument, where did you sit in court?
A. I was sitting on the right hand side of where the Judge sits, in the jury box.
Q. Now, from where you sat, could you see Judge Cox?
A. Oh, yes, I could.
Q. I will ask you whether or not during the time since 1857, since you have been acquainted with Judge Cox, you have seen him under the influence of liquor at any time?
A. Well, I did sometimes.
Q. I will ask you to state what the Judge's condition was at this evening session when you were with him in that case, as to sobriety or inebriety; that is, I meau as to being sober or drunk?
A. I think he was perfectly sober, to my knowledge.
Q. You had no doubt about it had you?
A. No, sir; not at all.
Q. Have none now?
A. No, sir; no sir.

Examined by Mr. Manager DUNN.
Q. Mr. Lehr, what street is this you say is four blocks from the jail?
A. That is on Fourth street.
Q. Which way does that street run?
A. That runs north and south.
Q. What street do you live on?

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A. I live on Broadway.
Q. Which way does Broadway run?
A. That runs east and west.
Q. What street is the jail on?
A. The jail is on Washington avenue, as near as I can recollect.
Q. What direction does that run?
A. That runs the same as Fourth street does, north and south.
Q. What street does Judge Cox live on?
A. Well, he lives on Washington avenue, I think.
Q. The jail is on Washington avenue, and Judge Cox lives on Washington avenue?
A. Yes.
Q. The court house and jail are all together aren't they?
A. No, sir.
Q. Was the court house and jail at that time all together?
A. No, sir; never was.
Q. The jail is on Washington avenue, and Judge Cox lives on Washington avenue?
A. Yes, sir.
Q. Washington avenue runs north and south?
A. Yes, sir.
Q. Well, if the Judge was going down to the court house, what street would he take from his house?
A. It depends altogether on the season, as I told you before.
Q. Well, we will suppose it was a dry season.
A. Well, then, he goes from his house right down.
Q. What street does he generally go on from his house down to the court house?
A. He goes right straight across these streets that run north and south; mind you, he crosses them.
Q. You mean he goes across-lots?
A. Yes, sir.
Q. He goes across the blocks?
A. That is the way he goes.
Q. Are these blocks fenced up, and buildings on those lots?
A. No.
Q. All open. A. All open.
Q. Now, can these blocks be seen from the jail?
A. Yes, they can, by standing there the whole day, and watching particularly.
Q. But I am not asking about seeing Judge Cox,—the blocks, I say?
A. Well, some of them you can, and some of them you can not.
Q. Well, when it is a wet season what street does he generally go on?
A. On Broadway, where I live.
Q. If he was going along there to any other part of town he would not necessarily go across lots, would he?
A. He does that sometimes too.
Q. Would he go across these same lots if he was going to a point further north?
A. Yes, he would sometimes.
Q. He could not get to Front Street any other way except to go across this block, could he?
A. He could go by my house to Front Street.
Q. How far is this jail from Front Street.

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A. That is the sixth street, the jail is, from Minnesota Avenue.
Q. You can see Front Street from the jail, can't you?
A. The jail is on Broadway, right on the end of it.
Q. Which way does Front Street run?
A. It runs north and south.
Q. That runs parallel with Broadway? A. No, sir.
Q. Or with Washington Avenue?
A. Yes, that is right.
Q. You have seen Judge Cox go down on Front street more than one way, haven't you?
A. Yes; that depends altogether on which part of Front street he wants to go to.
Q. And it depends on the season of the year? A. Yes, sir.
Q. He goes various ways, doesn't he?
A. Yes, sometimes he goes this and sometimes that way.
Q. Now, you were a juror in the Dingler case, were you?
A. I don't know what the man's name was. It was about a road they were going to lay out.
Q. Were you one of the regular panel? A. Yes.
Q. How many road cases were there?
A. I think there was only this one; that is the only one I know anything about.
Q. What did you say the name of the man was in that case?
A. What; that busted it, do you mean?
Q. No, no; the man's name in that case which you were a juror in; what was his name?
A. I don't know who that was.
Q. The plaintiff in the case?
A. Well, I don't know the man's name.
Q. You don't know the case at all, do you?
A. Well, I do; it was about a road I know.
Q. Yes, but you don't know the man's name that had the case?
A. No, I only know this lawyer that attended to it, with one arm.
Q. But you don't know what case he was talking about?
A. Yes, he was talking about the road case.
Q. What was he talking about?
A. They were going to lay a road out through some land, and some how and another they were going to bust it up in the end.
Q. Did you hear any evidence in that case—any witnesses sworn in that case?
A. No, sir; not to my knowledge I did not.
Q. You are sure of that?
A. Yes, sir.
Q. What time did you get on to the jury?
A. I think that was in the morning.
Q. Well, you were on the jury all day, were you not?
A. No, I think we was off and on there a couple of times. There was something else came up.
Q. Well, you were empanelled on the jury in the morning?
A. We were, as near as I can recollect now.
Q. Did anybody make any argument or speech to you that morning?
A. Yes, I think; but whoever it was I can't say.
Q. Well, you adjourned for dinner, didn't you?
A. I think we did.

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Q. Did you get on the jury again after dinner?
A. I think we did.
Q. Do you know that you did?
A. I would not be positive about it, but I think we did.
Q. No witnesses were examined, were there, and you didn't have any evidence in the case?
A. Not to my knowledge.
Q. How long did you stay on the jury in the afternoon, after dinner?
A. Well, I couldn't recollect that now, positively.
Q. About how long?
A. Well, I couldn't state that now.
Q. An hour?
A. It might have been an hour, and it might have been longer, for all I know.
Q. Were you on the jury when they adjourned for supper?
A. Well, I don't remember now.
Q. When you came back from supper were you on the jury?
A. That was the time I think this case was—
Q. Don't answer that; when you came back from supper do you recollect going back into the jury box.
A. Yes, sir.
Q. You recollect that distinctly?
A. Yes, sir, I do.
Q. And then you recollect there was some kind of a motion made?
A. Yes, by some lawyer.
Q. Now, what was that motion?
A. I think that there was something about the papers and these county commissioners, and somehow or other he busted it up,—this man.
Q. Busted it up that night, didn't he?
A. Yes, sir, altogether.
Q. The Judge decided that it was all busted up that night?
A. Yes, that the case was dismissed.
Q. That night?
A. Yes, to my nearest recollection.
Q. You are sure it was done that night, that the whole thing was busted up?
A. I think it was,—I think.
Q. And you noticed the Judge very particularly that night, didn't you?
A. Why, of course.
Q. You noticed him very particularly, did you?
A. Yes.
Q. You noticed him very particularly that night?
A. Yes, I noticed him just the same as I did through the day.
Q. Now, did you notice whether he was sober or intoxicated.
A. Well, I think he was sober.
Q. No, but did you notice at the time whether he was or not?
A. Yes, of course, I think I could tell a drunken man from a—
Q. I mean at the time.
A. I mean at that time.
Q. Well, what made you notice him at that time as to whether he was intoxicated or not?

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A. Well, I can't tell whether he is drunk or sober; I can't tell you that.

Q. Were you taking notice of it; what led you to take particular notice of the Judge at that time?

A. Well, I could tell well enough if you are drunk or sober, if I knew you before.

Q. That is all you mean by that is it?

A. Yes.

Q. Well, when did you have your attention first called to the fact that it was questionable whether he was drunk or sober that night?

A. Why nobody never called my attention to that particularly.

Q. Hasn't anybody called your attention to it since you were subpœnaed as a witness?

A. No, sir.

Q. Nobody?

A. No, sir; nobody did.

Q. Nobody spoke to you about it?

A. Not a word, whether he was sober that night or drunk; never said a word to me.

Q. You never talked it over with your neighbors?

A. Never.

Q. That you are positive of?

A. Yes, that I am positive of; yes, sir.

Q. You have not had any talk, have you, with the lawyers in this case?

A. No, sir; I don't need to talk with them about it.

Q. Nor with Judge Cox?

A. No, sir.

Q. Nor with anybody in St. Peter?

A. I never knew the first thing about it until I was subpœnaed; that was the first I ever knew about it; and then told the man that subpœnaed me that I thought I would not come; they could not make me; I was under treatment of a doctor, and I would not come.

Q. Well, now, what did you do that night after you got through there?

A. I don't recollect that now, it is so long ago.

Q. You don't remember?

A. No, I don't remember.

HENRY KŒLFGAN.

Sworn as a witness on behalf of the respondent, testified.

Examined by Mr. ARCTANDER.

Q. Mr. Kœlfgan, where do you reside?

A. St. Peter.

Q. What is your business?

A. I keep saloon now.

Q. Do you know the respondent, E. St. Julien Cox?

A. Yes.

Q. How long have you known him?

A. I know him personally about 15 years.

Q. Have you lived there at St. Peter during the past 15 years?

A. Well, off and on; I didn't live there all the 15 years; on and off.

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Q. Seen him often during that time?
A. Yes, more or less.
Q. Do you remember being summoned as a talesman on a jury at a term of court in 1879?
A. Yes.
Q. Where there was a road case up?
A. Yes.
Senator GILFILLAN, J. B. What article does this go to?
Mr. ARCTANDER. Article seven.
Q. Do you recollect the occasion of an evening session while you sat on that case while some proceedings were discussed?
A. I do.
Q. Was that the only jury you were on at that term of court?
A. That was all.
Q. I will ask you to state what the condition of Judge Cox was as to sobriety or inebriety on that evening session when you were sitting there on that jury?
A. I think he was perfectly sober.
Q. State if you saw anything peculiar, or different, in his appearance, language, manner or conduct that time from other times when you had seen him, when you knew him to be perfectly sober?
A. Not any different at all.

CROSS-EXAMINATION.

By Mr. Manager DUNN.
Q. You keep a saloon, do you, Mr. Koelfgan, in St. Peter?
A. Yes.
Q. What kind of a saloon do you keep?
A. I keep a saloon like all others; I keep a respectable place.
Q. Ginger ale, lemon pop or whisky, and such things?
A. I keep all kinds.
Q. You keep all kinds?
A. Yes.
Q. You keep all kinds of drinks?
A. Yes.
Q. How long have you been in the business, Mr. Koelfgan?
A. I have been in it about nine years.
Q. Were you in business when you were on that jury?
A. No, I had rented a saloon at that time for a few months,—about eight months—since May.
Q. What day did you come up to the court?
A. I couldn't certainly recollect the day.
Q. You can't recollect the day?
A. No, sir.
Q. Who subpœnaed you to go there?
A. I cannot recollect that.
Q. What time of day did you get there?
A. I got there in the forenoon.
Q. What time in the forenoon?
A. I couldn't exactly tell the hour.
Q. Were you immediately sworn on the jury as soon as you got there?
A. Well, I can't recollect.

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Q. What was the case that you were trying?
A. It was a road case.
Q. Well, what road case; who were the parties in the suit?
A. I have no recollection any more of the name at all.
Q. You have no recollection of the names of the parties?
A. It was something about the commissioners.
Q. What was the name of the plaintiff?
Mr. ARCTANDER. He says he cannot recollect it; is that not enough?
The WITNESS. I do not know.
Q. You were on the jury in the morning?
A. In the morning and in the evening.
Q. What were you doing in the afternoon?
A. Well,—we had a recess a little—I don't know exactly.
Q. Well, weren't you on the jury in the afternoon?
A. No, sir;—yes, we were on towards evening and some after supper.
Q. Yes; I say in the afternoon; how many witnesses were examined?
A. I don't know.
Q. What do you say? A. I could not tell.
Q. More than one?
A. I couldn't tell you how many.
Q. Were there any witnesses examined?
A. Not as I know of.
Q. You don't know if there were any witnesses examined?
A. No sir.
Q. Now, what time did you take a recess that afternoon or evening?
A. I couldn't tell you exactly.
Q. What time did you commence court in the evening?
A. After supper.
Q. What time?
A. Well I guess it was 8 o'clock or something,—half past seven or something.
Q. I was about eight o'clock when you came into court; was your name called in the evening?
A. No, I don't think it was.
Q. Did you go in the jury box in the evening?
A. Yes.
Q. Where you had been in the afternoon?
A. Yes.
Q. Well, what was done there about your case; any witnesses examined that evening?
A. No sir.
Q. What was done?
A. Well, the case was dismissed after we were there a while.
Q. It was dismissed after you were there a little while?
A. Not at little while; we stayed quite a while; I guess it was about ten o'clock.
Q. Well how did it come to be dismissed?
A. Well I couldn't tell you any more.
Q. You couldn't tell anything about it?
A. No sir.
Q. You don't know what was said, or who said it?
A. No sir.
Q. You don't know what the Judge said?
A. No I couldn't tell now.

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Q. Or what any of the lawyers said?
A. No, I don't recollect it.
Q. Who told you that it was dismissed, the Judge or the clerk?
A. It was the clerk of the court, I believe.
Q. The clerk of the court told you it was dismissed?
A. Yes.
Q. You didn't go back the next morning?
A. I was glad to get out.
Q. You went back to get your pay the next morning; you didn't go in the jury box any more?
A. Yes, sir.
Q. The Judge dismissed the case that evening, did he?
A. Yes, I think he did.
Q. You said there was no difference between Judge Cox at that time and other times when you had seen him and he was perfectly sober?
A. No, there was no difference.
Q. You say that. Now, have you ever seen him when he was perfectly sober?
A. I did.
Q. How many times?
A. I believe more than one hundred times.
Q. More than one hundred times you have seen him when he was perfectly sober?
A. Yes, I have seen him most of the time sober.
Q. Have you ever seen him when he was perfectly sober?
A. Well, no, I can't tell.
Q. Have you ever seen him when he was not perfectly sober?
A. I have seen him when he might have took something, but I couldn't swear to it; I couldn't swear that he was under the influence.
Q. Well, in the last nine years that you have known him, or the last fifteen years, have you seen him when he was not, in your opinion, perfectly sober?
A. I think he was always.
Q. You have never seen him intoxicated at all?
A. No, sir.

Mr. ARCTANDER. I wish to ask one question of the witness who was last on the stand, Mr. Lehr.

WILLIAM LEHR,

Again took the stand.

By Mr. ARCTANDER.

Q. Mr. Lehr, were you a juror in more than one case that term of court; did you sit on the jury in more than one case?
A. I don't recollect now; I think it was only one; I think it was, but I would not be positive about it, it is long ago.

By Mr. Manager DUNN.

Q. You don't remember how many juries you were on, do you, Mr. Lehr: you were a regular juror, were you not?
A. No, I don't recollet how many juries I was on.
Q. You were a regular juror, regularly summoned?
A. Yes, the same as Mr. Koelfgan was.

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By Mr. ARCTANDER.

Q. Were you summoned sometime before the court, or was it during the court that the sheriff came after you and summoned you?

A. I couldn't tell that; I don't remember, it is too long ago.

Q. Have you any recollection of being on more than one case as a juror?

A. Oh, yes.

Q. I mean at this term of court?

A. No, I couldn't tell.

By Senator GILFILLAN J. B.

Q. Who were the attorneys in that case?

A. A man that they called Lind, with one arm, a stranger to me; that was the one that busted that case up, that road case.

Q. Who else; what other attorneys were engaged in the case upon the trial?

A. I don't recollect that now, but I know this particular one by that one arm.

Q. How many were there?

A. What is that?

Q. How many attorneys were there engaged upon the trial?

A. I couldn't tell that; I don't remember now; I don't remember how many there were.

C. R. DAVIS

Recalled as a witness on behalf of the respondent.

Mr. ARCTANDER. I simply desire to recall this witness upon this article, upon a question that has come up since he was last on the stand.

Q. I will ask you to state whether or not there were any motions argued in any other of the other road cases at the time, except in the Dingler case?

A. No, sir; there was not.

Mr. Manager DUNN. At what time? What was that?

Q. In regard to setting aside the order of the county commissioners.

A. None, except in the Dingler case.

By Mr. Manager DUNN.

Q. Mr. Davis, wasn't there a motion made in every one of those cases?

A. Yes, sir; but no argument.

Q. There was a motion made?

A. That is the next day.

Q. In every one of those road cases, and all decided alike?

A. Yes.

Q. And when you said there was no argument, [to Mr. Arctander] he said there was no motion.

Mr. ARCTANDER: No; I said argument.

The WITNESS. Mr. Lind simply said on the rendition of that decision, to have it apply to all the cases, and it was done so; there was no set motion in all the cases.

Q. You mean there was a motion, but no argument?

A. No argument; the motion was extended to all of them, and it was done so.

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Q. Have you looked at the record on that point? A. I have.
Q. Doesn't the record show a motion in every case?
A. I think not; I do not know.
Q. Well, you had better look at it, and see if it is not so.
Mr. ARCTANDER. Well, that would be proper, would it not, to make the entry in each particular case that way; not to put down the motions by wholesale.
Mr. ALLIS. Why that is proper; the motion applies to each case and followed a single argument; that was all right.
Mr. Manager DUNN. Well, the record does not show it, that is all.
Mr. ARCTANDER. I desire now to call a witness who was subpœnaed on the eighteenth article whom we expected to introduce at a day later than this, but whose business connections are such that he desires to be examined now, if possible.

REV. ALEXANDER BERGHOLTZ,

sworn as a witness on behalf of the respondent, testified:

By Mr. ARCTANDER.
Q. Where do you reside? A. New Ulm, Brown county.
Q. What is your profession or calling?
A. A catholic priest.
Q. Are you acquainted with Judge Cox, the respondent in this case?
A. Yes.
Q. I will ask you to state Father, if you met Judge Cox at New Ulm about a couple of years ago on the street, in company with Mr. Webber, on any occasion?
A. Yes, sir; I did.
Q. I will ask you to state what the conversation was between Judge Cox and Mr. Weber while you were there; what it was in regard to?
A. What day it was, I do not know, but it happened that the Judge asked me what were the meaning of certain words and he quoted an important divorce case.
Q. An important divorce case?
A. An important case, and it is not the first time; frequently, for the sake of information, that we have talked about this. I remember I said once that the Judge would have to decide against his conscience some times, because we thought it was wrong and in that case—what case it was particularly, I don't know, and he quoted a few words and I was surprised that he picked them up.
Q. What were the words!
A. He quoted *non adulterabilis*, *non moechaberis*, and he asked me what the meaning of those words were, because they have reference to adultery, and he asked me—I was surprised that he picked the words up.
Q. You remember that occasion?
A. Yes.
Q. Have you on more than one occasion had any talk with him about such words.
A. Yes, I have. Oh, not about these words, but about the point our church makes, the position that it takes in divorce cases.
Q. Now, at this time, Father Bergholtz, after you had met him in company with Mr. Webber, did you walk away with Judge Cox down the street?

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A. Yes, I walked off perhaps a couple of steps, not very far.
Q. Did you have quite a talk with him; he talked with you and you talked with him?
A. We did not talk very long.
Q. Can you state what Judge Cox's condition was as to drunkenness or sobriety at that time?
A. Yes, I can.
Q. What was it?
A. I think he must have been perfectly sober, because I was surprised when he picked these Latin words up.
Q. You had seen him before.
A. Yes; I did.
Q. Was there anything different in his appearance, or language, or conduct at this time than it was at other times when you knew that he was perfectly sober?
A. His condition was such that he was sober?
Q. Sober?
A. Perfectly sober.
Q. You are positive that he was not drunk at that time?
A. Positive, sir.

CROSS-EXAMINATION,

By Mr. Manager DUNN.
Q. What was it that surprised you in his picking up some Latin words.
A. Because I did not know that he was a Latin scholar.
Q. How long have you known Judge Cox?
A. I have known him since 1869.
Q. You never had much acquaintance with him?
A. After that?
Q. After 1869? A. Yes, I had; he had a case for me once.
Q. Well, did you ever see him when he was intoxicated?
A. Well, I could never positively state that he was intoxicated,
Q. You don't know that you ever saw him intoxicated?
A. No, I could not; of course—
Q. But he was just as sober at that time as he was whenever you have seen him?
A. Just as sober as any other sober man was in the street.
Q. As sober as you ever saw him?
A. Just as sober as any man that we take to be sober.
Q. Well, I ask the question; he was as sober that time as at any other time you have met him?
A. Yes.

By Mr. ARCTANDER.
Q. You stated you have not seen him at any time when he was intoxicated, Father Bergholtz?
A. I never saw him intoxicated.
Q. I will ask you to state whether you have seen him at any time when you thought he was under the influence of liquor, that he had been drinking any?
A. I could never state I saw him.

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SUMNER LADD.

Recalled as a witness on behalf of the respondent, testified.

Mr. ARCTANDER. This witness is not called to any particular article but for the purpose of impeachment of the testimony of John Lind.

Q. Are you acquainted Mr. Ladd, with John Lind, a witness in this case?

A. I am.

Q. Do you remember of the occasion that you testified to before the Senate, for the prosecution, of the motion for a new trial, in the case of Young vs. Davis?

A. I do.

Q. I will ask you to state whether or not John Lind, at St. Peter, immediately or shortly after the order for granting a new trial in the Young vs. Davis case, speaking of this suspended Judge Cox, stated in your presence and hearing, "I would like to cut his damned drunken guts out" or words to that effect?

A. The case you speak of had been on trial and in the afternoon of the day I had made a motion for a new trial; Mr. Davis, who was just a witness on the stand, was my client; he was the defendant in the case. I made a motion for a new trial before Judge Cox; Mr. Davis was there, Mr. Lind was there, and myself; Judge Cox was in a decided state of intoxication.

Q. Well, I didn't ask you about that; you have testified to that before. I am just asking you whether he made any such remark about that time?

A. Am I to state all the circumstances?

Q. No; I simply asked you whether he made any such statement, or words to that effect. You can answer it yes or no.

Mr. Manager DUNN. The witness has a right to state the circumstances.

Mr. ARCTANDER. Nothing of the kind; he is simply to have the question put to him whether certain things were said, and he is to answer yes or no.

Mr. Manager DUNN. It is always the privilege of the witness to explain, I believe.

The PRESIDENT *pro tem.* He has stated, when on the stand for the prosecution, that the Judge was intoxicated.

Mr. ARCTANDER. Yes, sir; and we don't want that over again; he understands the ruling very well.

The WITNESS. The Judge had granted a new trial—

Q. Well, I don't want that; answer the question.

A. Well, I am coming at it. We stepped out of the court room together, Mr. Lind and myself—and as soon as we struck the sidewalk—Lind had suppressed his wrath up to that time—and upon my making a remark as to the Judge's condition, the cover flew off and he made that statement.

Q. He made that statement?

A. He did, sir. And—

Q. That is all I wanted to know, whether he made that statement, Mr. Ladd.

A. I might do him an injustice; it is possible, I will say it is possible, that instead of making that remark that he said that "he *ought* to have his damned old drunken guts cut out."

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Mr. ARCTANDER. Well, that would be the same thing, or words to that effect.

CROSS-EXAMINATION.

By Mr. Manager DUNN.

Q. Mr. Lind was under a high state of excitement at this time, Mr. Ladd?

A. He was; he said a great many other things; he was very angry; he said many things, but that was the only thing that clung to my memory, on account of the unique character of the remark.

Q. He said a great many things and made a great many other excited remarks?

A. He did make a great many other, or a good many other remarks, exhibiting his anger.

Q. He didn't make those remarks then in a cool method of expressing hostility to the Judge?

A. He was very much excited, very angry. I repeated the remark, I think the very day, to my client, Mr. Davis, and I suppose that is the way the thing has got out.

Mr. ARCTANDER. That is the way it has got out, Mr. Ladd.

Q. Did he manifest any feeling against the Judge personally or against his drunken habits.

Mr. ARCTANDER. That we object to as not proper cross-examination, and as incompetent.

Mr. BRISBIN. That is for the court to say from the remark itself.

Mr. ARCTANDER. It for the court to say what the remark meant.

Mr. Manager DUNN. I insist that in a matter of that kind we have a right to the whole transaction that occurred there between the witness and Mr. Lind, to know in just what spirit the remark was made. If it was made in one spirit, it has some effect; if it was made in another spirit it would probably have but little effect.

Mr. ARCTANDER. Mr. President,—

Mr. Manager DUNN. He is your witness; do not be afraid of him, he will probably tell the truth.

Mr. ARCTANDER. That is all right, Mr. Dunn; but we are trying this case upon legal principles, and not upon justice court practices. I apprehend, Mr. President, that it is clear to all, and particularly to every lawyer that the single answer which has been had to this question, and the single purpose for which the question and the answer could be had, is simply to ascertain the fact whether or not the person whose testimony is sought to be impeached made such a statement, the statement that he upon the stand, denied that he had made, and claimed that it was malicious upon my part to ask it, because it was utterly false and that he never said such a thing in his life. Now the simple object of this is to show that he made the statement and nothing else should have come in here, because nothing else was proper. We object to Mr. Ladd giving circumstances or anything else, because it was not proper and it is not proper. If the other side did not know that Mr. Ladd would be very desirous of stating all that he could, and stating the circumstances there to make that thing as lenient as possible, they would have objected and would have had a right to object instead of me objecting now; and could have insisted that he should not state the circumstances I claim it is a well established principle of law, whenever you ask a witness a question for the purpose of impeachment, that you must lay the foun-

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dation, show the time and place, and ask him whether he did not state so and so, or words to that effect. You can not then call a witness and ask what he did state even, that would not be a proper question to ask, but you must put the exact language to him and ask him to state whether or not he said so and so. That is the rule laid down by law, and the simple and single answer that would come to that, would be yes or no.

Now upon that subject there can be no cross-examination as to whether he did say so, as to whether he is sure that he said so, as to whether he is not mistaken; that is the only subject of legitimate cross-examination. I apprehend that it is not for this Senate to examine into the motive with which Mr. Lind spoke those words at the time, or with what motives the witness thought he spoke them; the words show for themselves what they import. If there was anything in them showing a feeling against the respondent this Senate must construe it. If they can construe it in any other way than by the plain import of the language they are then to do it, but no witness can be called upon to offer his construction of the words. It is incompetent and improper cross-examination upon a single question, whether or not the statement was made. That is all that is sought to be established here; that is all that properly and legitimately could be established here. I do not care particularly about this, except that it seems to me that it is to drag in testimony or to take away, in an improper manner the effect of a statement, of testimony that goes to show that Mr. Lind upon the stand made a statement that was not true.

Mr Manager DUNN. Just a word, Mr. President. My understanding of this class of testimony is that the only manner in which this class of testimony could properly be introduced here, is on the ground that the witness Lind had expressed feelings of hostility towards the respondent, which were denied by him under oath, and that that gave them the privilege and the right to contradict him. Now, the only materiality of this evidence is whether Mr. Lind has expressed hostility towards the prisoner, if you so speak,—towards the defendant in a civil action; in a criminal case towards the prisoner; calling this a civil action towards the defendant. Now, the hostile feeling must have been exhibited and manifested as and of the defendant himself personally, and not as to the vicious and vile habits that the defendant had. Now, my question to the witness is to eliminate, if possible, that feeling that Mr. Lind exhibited here, according to the witness' testimony, so as to show by the witness we have, that the feeling of hostility was not directed towards the defendant personally,—that there was no personal grievance towards the Judge personally, but that that was an honest statement of his wrath or rage against the vicious habit which the Judge had contracted, and which had been manifested then and there, in his presence in the court. I think I am borne out in that, and I read from Greenleaf on Evidence, volume 1, section 450:

> So also it has been held not irrelevent to the guilt or innocence of one charged with crime to inquire of the witness for the prosecution, on cross-examination, whether he has not expressed feelings of hostility towards the prisoner. The like inquiry may be made in a civil action and if a witness denies the fact he may be contradicted by other witnesses.

Now I claim that that hostility must be existent in the mind of the witness towards the defendant himself, for the purpose of showing, and the only object for which it could be shown would be to show that his

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judgment would be warped and his testimony colored by the bad feelings that he had towards the defendant himself. I think there is the clear case of distinction; when a man rails against the bad habits that a man has, he does not necessarily rail against the individual. We may sympathize with and have feelings of kind sympathy and friendship toward the defendant personally, and yet we may abhor and execrate the habits which we think are vile and unseemly. I think that distinction is properly and fairly to be drawn in this case. Therefore I ask the witness whether the exhibition of feeling was directed against the respondent himself, judging from the language used, or whether it was directed against the habit which the respondent formed, and which had then and there been manifested in court. I think it is a proper question.

The PRESIDENT *pro tem.* I will decide the question is immaterial, unless otherwise determined by the court.

Senator CAMPBELL. What is the ruling of the chair?

The PRESDENT *pro tem.* That the question is immaterial.

Senator CAMPBELL. It does not mean any difference, I suppose, whether it is immaterial or incompetent, if the question is excluded.

Mr. ALLIS. The question then is excluded, Mr. President.

The PRESIDENT *pro tem.* Yes, sir.

By Mr. Manager DUNN.

Q. State the excitement that Mr. Lind was under, please describe it to the Senate, as to the degree of excitement,—as to whether it was a mere momentary thing or whether it was a high state of excitement or otherwise?

A. Mr. Lind was in a high state of excitement. We walked perhaps a block or a block and a half, and I should say that during the entire progress of that walk, he was in a high state of excitement, and I could say, in one word, what his testimony is directed against, if I am permitted.

Mr. ARCTANDER. No, sir.

Mr. Manager DUNN. Well, I insist that we have a right to that, so as to know what his excitement is directed against.

Mr. ARCTANDER. We object to that; it is just what the chair excluded a moment ago; the witness seems very anxious to state.

The PRESIDENT *pro tem.* I think the court can judge after hearing the testimony what the excitement of Mr. Lind was about.

Q. Well, was he railing against the Judge himself or against his habits?

Mr. ARCTANDER. We object to that; that is the very thing that has been ruled out.

Mr. Manager DUNN. Now, the witness has testified that he made this remark; whether it is of and concerning the Judge personally is one thing; whether it was against his habits is another thing. The witness has not testified that he made the remark of and concerning the Judge, as I understand it. He said something to the effect that the Judge ought to have his damned drunken guts cut out, or something of that kind. The word drunken came in there to qualify it.

The PRESIDENT *pro tem.* Do you wish the question submitted to the Senate?

Mr. Manager DUNN. Yes, sir; I would like to have it submitted to the Senate, so as to see if they want to exclude that question.

The PRESIDENT *pro tem.* The roll will be called.

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Senator MACDONALD. Does the managers mean to argue that it was not directed against Judge Cox personally?

Mr. Manager DUNN. Yes, that he was railing against the habits of the Judge.

Senator MACDONALD. That he wanted to cut the guts out of the habits, is that it? [laughter.]

Mr. Manager DUNN. That is just the distinction I draw.

Senator GILFILLIAN J. B. I would like to hear that question read so as to know what it is before voting on it.

The PRELIDENT *pro tem.* The Senator from Hennepin would like to hear the question read, if the reporter will read it.

Mr. Manager DUNN. No; we had submitted to the decision of the chair upon that question, and the witness was about to state what he was railing against.

Mr. ARCTANDER. The question was, what was he railing against, his habits or himself, the respondent or his habits?

The PRESIDENT *pro tem.* Yes, that was the question.

Senator GILFILLAN, J. B. I would like to hear it read; the reporter has got it there exactly.

The question was read by the reporter, as follows:

"Was he railing against the Judge himself, or his habits?"

Mr. ARCTANDER. And the objection is that it is incompetent and irrelevant.

The PRESIDENT *pro tem.* The clerk will call the roll.

Senator CAMPBELL. Those voting aye will vote to sustain the objection. as I understand it.

The PRESIDENT *pro tem.* Yes.

Senator CASTLE. Mr. President, is this upon sustaining the question?

The PRESIDENT *pro tem.* Yes.

Senator CASTLE. Then I will vote aye.

The roll being called, there were yeas, 18; and nays, 8, as follows:

Those who voted in the affirmative were—

Messrs. Adams, Campbell, Castle, Gilfillan, C. D.; Gilfillan, J. B.; Johnson, A. M.; Johnson, R. B.; Langdon, Macdonald, McCrea, Miller, Morrison, Perkins, Peterson, Powers, Simmons, Wilkins and Wilson.

Those who voted in the negative were—

Messrs. Hinds, Howard, Johnson, F. I.; McLaughlin, Shaller, Shalleen, Tiffany and Wheat.

The PRESIDENT *pro tem.* There were ayes 18, and nays 8. The objection is sustained.

Mr. ARCTANDER. Mr. Ladd, the motion had been decided against Mr. Lind, had it?

A. It had.

By Mr. Manager DUNN.

Q. Mr. Ladd, do you know what had given rise to this outburst of excitement by Mr. Lind?

Mr. ARCTANDER. We object to that, as another way to circumvent the ruling just had.

Mr. Manager DUNN. My question is, if he knows what had given rise to this outburst of indignation on the part of Mr. Lind?

Mr. ARCTANDER. We object to it as incompetent, immaterial, irrelevant and not proper cross-examination.

The PRESIDENT *pro tem.* I think the Senate can judge of that matter after hearing what it has heard.

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Mr. Manager DUNN. They have heard nothing as to what gave rise to it. They have simply heard it as a mere statement made.

The PRESIDENT *pro tem.* He gave an explanation.

Mr. Manager DUNN. Well, yes; I think the witness did state that the Judge had been intoxicated. [To the witness.] Was there anything else said?

Mr. ARCTANDER. Well, we object to that for the same reason.

The PRESIDENT *pro tem.* The witness in his testimony gave an explanation of how that happened; there can be but one solution as to the cause of the indignation it appears to me, in the mind of any Senator.

Q. How long have you known Mr. Lind?

A. I have known him I think perhaps six years; five or six or six or seven years.

Q. How intimately have you been acquainted with him?

A. For the past three or four years I have been quite intimate with him. When he was in town I saw him generally.

Q. Have you ever seen him before or since in such a rage as he was that day?

A. Never that I recall now.

Q. Have you seen him in anything approaching such a state of feeling as he was in that day?

Mr. ARCTANDER. We object to that.

Mr. Manager HICKS. There is no doubt that the parties do object; the facts are simply these, Mr. Lind at the close of his cross-examination was asked the question whether he had, at a certain time, made a certain statement, or words to that effect. Mr Lind testifies he did not. This witness is brought for the purpose of contradicting Mr. Lind, showing that he may be mistaken in these matters. Now, it is very proper to show that these remarks which this witness says were made by Mr. Lind were made in a state of mind which Mr. Lind is not usually in the habit of being in—a state of mind he might have been in and forgotten those remarks, and that he may have testified honestly. They are simply, on their part, showing the fact that he did make them, with the idea of making this Senate infer that he may heve testified dishonestly when he said he did not make them. Now, we have a right, in the cross-examination of this witness, because it is the point to bring out, to show that John Lind, while he may have made the statement, may have been in such a state of mind as to have forgotten it. We are entitled to all the facts for that purpose.

The PRESIDENT *pro tem.* The Senate have already ruled upon that.

Mr. Manager HICKS. Upon this question I would certainly ask that the Senate take a vote upon it. I do, Mr. President, certainly believe it is a different point from that which was submitted before. I do not think the Senate desire to wipe out a proper cross-examination. Perchance it may be that the question before asked was improper, but we do maintain that the point of this witness's testimony is to show that John Lind testified to something which he believed was not true, thereby to create the inference that he testified to something that he *knew* was not true. We have a right, upon cross-examination, to show that this was said under circumstances in which a man might have forgotten; that he was in a state of excitement that this witness, who has known him for six years, has never seen him under before or since.

Senator GILFILLAN, J. B. What was the question?

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The PRESIDENT *pro tem.* There is not any question.

Mr. Manager HICKS. Yes, there is. Mr. Reporter, read the question.

The reporter read the question as follows :

Q. Have you ever seen him anything approaching such a state of feeling as he was in that day?

Mr. Manager HICKS. Now we propose to show that he was in an unusual and unprecedented state of excitement, so far as the knowledge of this witness is concerned.

Mr. ARCTANDER. We will withdraw the objection.

Mr. Manager HICKS. The witness will answer the question.

The WITNESS. I don't recollect now that I ever saw him angry before that time or since; I may have seen him angry but I am satisfied I never saw him in a state of angcr like that, or approaching to it.

CHARLES O. WARE.

Recalled as a witness on behalf of the respondent testified.

Mr. ARCTANDER. This witness will be called, Mr. President, under article eleven.

Q. Mr. Ware, you have been sworn before in the case?

A. Yes, sir.

Q. You stated before that you were the official shorthand reporter of the Ninth Judicial District?

A. Yes, sir.

Q. I will ask you to state whether or not you were present at the last May term for Nicollet county?

A. I was.

Q. Were you present and in attendance upon court during the argument of a motion for a new trial in the case of Young against Davis?

A. I was.

Q. The same motion that has been referred to by Mr. Ladd?

A. I believe so.

Q. I will ask you to state what was the condition of Judge Cox at that time as to sobriety and inebriety.

A. I thought Judge Cox was sober ta that time.

Examined by Mr. Manager DUNN.

Q. What time of the day was this argument of the motion for a new trial?

A. I think it was in the afternoon, but I am not positive.

Q. Are you sure yon heard that argument?

A. I am sure I heard that argument.

Q. Positive?

A. Yes, sir; I am positive I heard the argument.

Q. You couldn't get it mixed up with the trial of the case, could you?

A. I don't think I could, sir.

Q. When was the argument made with reference to the trial of the case—how long afterwards? When was the case tried?

A. I could not state the day of the term; I remember the case very well.

Q. Well, would you have any necessary business there in the court on an argument of a motion for a new trial?

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A. Well, it is my opinion that the motion for a new trial came up very soon after the jury rendered their verdict; and I was present in court.

Q. Have you got any memoranda to show?

A. Not with me; my minutes would not show.

Q. Well, Mr. Ware, did you pay particular attention to the Judge that day?

A. Nothing more than usual.

Q. And you think he was sober at that time?

A. I think he was sober; I have no doubt of it.

Examined by Mr. ARCTANDER.

Q. This motion was made upon your minutes, was it not?

A. Yes, sir.

Q. You would necessarily have to be there with your minutes, as nobody else could read them?

A. Yes, sir; I remember the remark the Judge made at the time.

Examined by Mr. Manager DUNN.

Q. Weren't your minutes extended?

A. Do you mean written out?

Q. Yes?

A. No, sir.

Mr. ARCTANDER. I would ask leave now, unless the managers object to allow the witness to make an explanation. When the witness was upon the stand before, a question was put, or rather matter was put into the mouth of the witness by the manager, which I understood the witness desired to correct and explain. The manager put into his mouth, "at these occasions that you saw Judge Cox when you thought he was under the influence of liquor in court;" the witness has stated to me that he desired to explain that that was not his language; and he did not want to be understood that it was more than one occasion; and I ask that he may have leave to explain it.

Mr. Manager HICKS. If he has made a misstatement we will certainly give him an opportunity to explain.

Mr. ARCTANDER [to the witness]. You may explain.

The WITNESS. Well, I am not sure as to the way the question was propounded by Mr. Manager Dunn, but I think he said, on those occasions, that is, when I had seen him intoxicated on the bench. I never saw him intoxicated on the bench but upon one occasion.

Q. You only meant upon one occasion?

A. That was all. That was at the Waseca term.

Q. That morning that has been testified to? A. Yes, sir.

Q. That you thought he was under the influence of liquor?

A. I thought he was under the influence of liquor at that time.

Senator GILFILLAN, J. B. There is one question I would like to ask the witness. Is that the same term referred to in article two?

A. I believe so.

CHARLES R. DAVIS,

Recalled as a witness on behalf of the respondent, testified.

Examined by Mr. ARCTANDER.

Q. Do you recollect the occasion of the motion for a new trial in the

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case of Young against Davis at the last May term of court for Nicollet county?

A. Yes, sir; I do.

Q. Were you present when that motion was made, and the arguments were had upon it?

A. I was.

Q. Did you observe the Judge at the time? A. I did.

Q. I will ask you to state what was his condition as to sobriety or inebriety on that occasion?

A. State my conclusions now of what I thought at the time?

Q. You may state the whole circumstances of the matter.

A. During the argument of the motion which was made either by myself or Mr. Ladd, I don't know which, to set aside the verdict and for a new trial,—I think after Mr. Ladd had spoken but a very few moments on the question, perhaps I said something myself. And Mr. Lind arose and began talking on the evidence in the case. Judge Cox interrupted him. I thought at that time that Judge Cox acted very peculiar and very strange for him. I turned to the clerk of the court, Mr. Rogers, and asked: said I, "Ben, has the Judge been drinking?" or "what is the matter with him?"

Q. Let me ask you right here whether that was the same remark that was drawn out of you by the Senator from Nicollet county when you were upon the stand yesterday?

A. The same one; yes, sir.

Q. Now, you may go on.

A. His answer, as near as I can remember, was he thought not.

Mr. Manager DUNN. Well, you needn't state that.

The WITNESS. As I say, I asked him if the Judge had been drinking.

Mr. Manager DUNN. Well, I object to what you asked him.

Mr. ARCTANDER. Well, now, you may go right along and state, except you don't want to give any conversation between you and Mr. Rogers, of course, any farther than it has gone.

The WITNESS. At that time I did not find out what his condition was, afterwards learned from himself.

Q. Now, how did you do that? Explain to the Senate what you did.

A. I went into his room after the motion was decided.

Q. Into his room in the court house?

A. In the court house.

Q. State whether or not you had a lengthy conversation with him there?

A. I did; shall I state the substance of it?

Q. You may.

Mr. Manager DUNN. No, we don't care anything about it.

Mr. ARCTANDER. No, I don't suppose you do.

The PRESIDENT *pro tem.* That was a conversation—

Mr. ARCTANDER. That was a conversation with the respondent.

The WITNESS. In relation to his actions.

Mr. Manager DUNN. The objection is that they can't make out a case between their client and themselves. We would have no earthly way to rebut or refute it.

Senator POWERS. We would like, if it is proper, for the witness to state how he learned that he was not drunk.

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Mr. Manager DUNN. Well, we don't care; let him tell; I will withdraw the objection.

Q. How did you learn that he was not drunk at that time or intoxicated?

A. From his actions and from what he said.

Q. From his action, in there when you talked with him and what he said.

A. And from what he said, yes, sir. From his actions on the bench and what he said after he retired from the bench.

Q. You may state whether or not you found out what was the cause of his singular actions on the bench there.

A. I think I did; at least I believe that to be the cause now and did then.

Mr. Manager HICKS.

Q. That is you believed it after he had told you?

A. I didn't believe him to be drunk at that time.

Q. Well, at what time?

A. When I made the remark to Mr. Rogers, and asking him if he had been drinking.

By Mr. ARCTANDER.

Q. You did not believe at that time that he was drunk?

A. I was not positive that he had been drinking. I thought he possible might have. I desired to have somebody else if possible explain his peculiar actions, which were not the customary actions of Judge Cox when intoxicated.

Q. Now I will ask you to state whether or not you found out the cause of these peculiar actions there in the conversation with the Judge?

A. I think I did; I did to my satisfactory, yes, sir.

Q. Now, what did you discover as to what was the matter with him that forenoon?

A. His mind was apparently—I would like to describe his actions on the bench.

Q. Well, describe them.

A. He was absent minded apparently as far as this particular case was concerned, and apparently quite anxious that the matter should be disposed of and over. Apparently he was thinking of other matters than this particular case, as his talk with John Lind would seem to indicate. He made the remark to Lind when he began talking about the evidence in the case, said he "If you have any matters of law that you desire to submit to me I will listen to them. If you desire to take up the time of the court by arguing the facts, I do not desire to hear it for the reason that I am conversant with the facts, the case having just been tried, and my mind is settled and determined as to the determination of this case;" he then qutoed some evidence and commented upon it and as Mr. Lad stated Mr. Lind became considerally excited and mad at that time.

Q. You may state what it was he quoted at the time if you remember it?

A. One remark was, that a verdict could not stand when a motion was made to set it aside in his court based upon evidence like this, where the principal witness testified that she was present at the gift of a horse eight years ago, and on cross-examination testified that the horse

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was only five years old, and that such testimony amounted to but very little in sustaining a verdict.

Q. Was it a fact that such testimony had been introduced?

A. I think it was. That was about the testimony. The fact of his cutting Mr. Lind so short, when he desired to make an argument upon the facts, was the reason of my asking the clerk of the court what was the matter with him, because he usually likes to listen to arguments. I then went from there to his own room,—after the verdict was set aside,—and asked him what the matter was. He began a tirade in connection with the Boardman matter, in which he had fined one of the grand jurymen for contempt and said that he had been up pretty near all the night before and showed me a large lot of affidavits and authorities that he had looked up for the purpose of prosecutiug Boardman for contempt, and he further stated that on his way to the court house that morning he had heard this same grand juryman talking with other parties in which he was reviling the Judge to a great extent, and he was apparently a good deal distracted and put out as to what to do with Boardman.

Q. You came to the conclusion that that was what worried his mind and was the cause of his appearance on the bench.

A. Yes, sir; principally at least. I will not state that he had not taken a drink of liquor that morning, but his actions were not the kind of actions that are usually Judge Cox's actions when under the influence of liquor.

Q. Now, I will ask you to state after having discovered the cause of his actions, and after you talked with him in that room, what do you consider his condition was at that time as to sobriety or inebriety?

A. I think he was comparatively, at least, sober.

Q. You mean by that that he was—

Mr. Manager DUNN. Not very drunk.

Mr. ARCTANDER. What do you mean to be understood by that?

A. That he was not in a condition of intoxication, that would interfere with his business in any way, and I do not think that any person that was well acquainted with him would consider him intoxicated in the least.

By Senator CAMPBELL.

Q. Was he under the influence of liquor, Mr. Davis?

A. I do not think he was; but as I say, I do not know.

Mr. Manager DUNN. He says he was comparatively sober.

The WITNESS. My opinion is he was not, but I can't say whether he had drank anything that morning or not.

Senator CAMPBELL. The question was suggested by the fact that you stated he was comparatively sober?

A. I presume I used that word injudiciously perhaps.

By Mr. ARCTANDER.

Q. I will ask, Mr. Davis, whether or not you have observed Judge Cox's appearance at times when he has been intoxicated?

A. I have, yes sir.

Q. State whether or not you have ever seen any inflamation, redness or bloodshotness about his eyes when in a state of intoxication at any other time?

A. That is not one of his peculiarites.

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Q. I will ask you to state whether or not when he is intoxicated he is ever sleepy and drowsy?
A. Very seldom, I don't know as I ever saw him in that condition.
Q. You don't know as you ever saw him in the condition of being sleepy or drowsy when he was intoxicated?
A. I don't know as I ever did, he is usually just the reverse.

Examined by Senator POWERS.
Q. Have you ever seen him when in the secondary or when the narcotic effects of liquor were operating upon him?
A. I think I have, yes sir.
Q. When as was said, the liquor was dying, and he had the "katzenjammen?"
A. Yes sir, I think I have.
Q. Did he show signs at such times of sleepiness or drowsiness?
A. I don't think he ever did, he usually keeps feeling pretty well while on the street, in sight; if he shows the drowsiness it must be while he is at home.

Examined by Mr. Manager DUNN.
Q. Well, your acquaintance, then, as to the secondary effects of liquor is not very intimate, is it?
A. Not very much.
Q. You have never seen him under the influence of liquor only when he was in the first stages?
A. I have, but not when he had been perhaps three or four hours without taking a drink.
Q. You never would see him, then, when he would be enjoying what the Germans call the katzenjammen?
A. Not later than possibly two or three hours. I have seen him the next morning after having been drunk or intoxicated.
Q. You say you have never seen the Judge when he has been intoxicated, when his eyes would be at all red or inflamed?
A. I have never noticed anything of the kind. The most noticeble feature about Judge Cox, when he is either intoxicated or immediately afterwards, his eyes sink very far back into his head, and he loeks quite black under the eyes. Usually gives him a haggard expression, rather than a flushed and florid one.
Q. Well, is that always the case?
A. I think that is generally the case.
Q. Well, is it a fact that when Judge Cox gets worried that he goes and takes a drink?
A. Well, sir, I don't know how to answer that, exactly. I think I have seen him drink when I knew that he was worried.
Q And in trouble?
A Yes; my knowledge of his private affairs—I know he has been feeling very badly sometimes, and has gone and taken a drink.
Q. Isn't that rather a habit of his?
A. Not universal, that I know of; I don't know as it was.
Q. Well, you have seen him intoxicated a great many times, haven't you, Mr. Davis?
A. Well, I think I might say yes a great many times; but perhaps what would be to me, a great many times would be to other parties not so many, I would like to perhaps state—

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Q. You think you used the word comparatively sober a little injudiciously, do you?
A. Well, rather hastily perhaps.
Q. In what sense was that injudiciously?
A. That it didn't express my meaning.
Q. Didn't express your meaning?
A. No, sir.
Q. Would you want to testify that Judge Cox was perfectly sober that morning when the case of Young against Davis was tried?
A. As far as I was able to judge after learning of the facts.
Q. Well, at the time you were there you thought he was under the influence of liquor, didn't you?
A. I thought possibly he was, but was not certain in my own mind, therefore I asked someboby that knew him as well as I did to see what their idea was.
Q. You asked Mr. Ladd what his idea was?
A. I did not.
Q. He knew him pretty well, didn't he?
A. I don't think he does.
Q. He was your counsel, wasn't he?
A. He was in that case.
Q. You don't think Mr. Ladd knows him very well, do you?
A. I don't really think he does very well.
Q. Not so well as you do?
A. I don't think he does.
Q. Hasn't he known him as long as you have?
A. No, sir, he has not.
Q. Well, Mr. Ladd has known him for 15 years, hasn't he?
A. I presume he has, I think Mr. Ladd has lived in St. Peter about 15 years.
Q. You have lived there longer than that?
A. There and in the vicinity about 27 or 28 years.

By Senator POWERS.
Q. When you speak of his eyes being sunken, do you mean that his eyes are sunken or is there a swollen appearance that makes them appear sunken?
A. Just the reverse. The hollow of the eye seems to recede. There is nothing flushed about the eyes or face at all.
Q. Is there anything of a similar appearance when he is harassed or disturbed with business, or anything of that sort?
A. There is to a certain extent.
Q. An appearance somewhat similar?
A. Somewhat similar. I have seen Judge Cox when he was in his office pacing up and down the floor, perhaps worrying over financial matters, and a man standing off perhaps 10 or 15 feet would think he was intoxicated, he would not exactly tear his hair but act peculiar. I remember one or two instances of the kind.
Q. By Mr. Manager DUNN. Would you suspect him of being intoxicated at those times with your knowledge of him?
A. No, sir. I don't think I would.
Q. But you did suspect him that morning?
A. Not very strong or I shouldn't have asked about him. His actions were so peculiar that I was undetermined in my own mind what they were.

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Q. But your first impulse was that the Judge was drunk so you asked Ben Rogers if he hadn't been drinking?

A. I could think of nothing else, so I asked that question.

The PRESIDENT *pro tem.* I would like to ask the witness a question: Do you consider a man under the influence of liquor who has taken one drink?

A. I do, yes, sir.

Q. You used that term—"under the influence of liquor",—I want to get your idea.

A. It may not be perceptible; but I think a man that drinks a gill of liquor is under the influence of it to a certain extent, not perceptible perhaps to other parties—outside parties—

The PRESIDENT *pro tem.* If I should take a gill I would be on my back.

Mr. Manager HICKS. Whisky or beer?

The PRESIDENT *pro tem.* Yes, sir; either.

By Mr. ARCTANDER.

Q. You stated something about your being Mr. Ladd's client; was this case one you was personally interested in?

A. I was sued as administrator of an estate.

Q. You had no personal interest in it?

A. No personal interest.

By Mr. Manager DUNN.

Q. It would have been a personal interest if you had got beaten, wouldn't it?

A. I don't know but it would, as it turned out.

Q. You were interested?

A. Well, I am generally interested in a case I am trying.

By Mr. ARCTANDER.

Q. You stated that Mr. Ladd was not very well acquainted with Judge Cox; he did not know him very well?

A. I don't think he is, compared with other parties.

Q. Do you have reference to the other party you spoke to in the court room?

A. Yes, sir.

Q. And yourself? A. Yes, sir.

By Mr. Manager DUNN.

Q. Do you think Jack Lamberton is well acquainted with him?

A. In some respects he is.

Mr. ARCTANDER. I desire to call Mr. Davis now upon no article but in regard to the impeachment matter.

Examined by Senator POWERS.

Q. I understand you to testify you were a partner of Judge Cox.

A. I was his partner just before he was elected Judge for two or three years.

Q. And before this circumstance you refer to occurred when you thought he was drunk, or under the influence of liquor, was it before that that you was his partner?

A. Before he was elected Judge, yes, sir.

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Q. And do you mean to leave the impression now that you at times find it difficult to tell the difference between the Judge when he is excited or harrassed upon any matter and when he is under the influence of liquor?

A. I don't know as I do. I say there are times when other parties might think Judge Cox was drunk when he was not.

Q. And at this time you thought—?

A. I was puzzled at that time to know or what to think of these peculiar actions.

Q. You became fully satisfied afterwards that at that time he was sober?

A. That liquor was not the matter that was troubling him at that time,—although, as I say. he might have taken a drink without my knowing it.

Examined by Mr. ARCTANDER.

Q. Mr. Davis, you know Mr. Lind?

A. I do: yes sir.

Senator GILFILLAN J. B. What article is this under?

Mr. ARCTANDER. It is no article, but a matter in relation to impeachment.

A. I will ask you to state whether or not you had any conversation with Mr. Lind in the village of St. Peter soon after the motion had been granted in the Young against Davis case?

A. I did; yes, sir.

Q. I will ask you to state whether or not Mr. Lind at that time stated to you: "I am going to play a trick on Judge Cox, that if, when he comes to New Ulm, he shows the least signs of intoxication at the next coming term, or shows the least sign of liquor, that I am going to get the attorneys there to stipulate to continue cases on him and to get him in a fix," or words to that effect?

Mr. Manager DUNN. I object to that, as an entirely immaterial matter. It cuts no figure and has no bearing on this case. It does not even express hostile feelings towards the Judge.

Senator Hinds here took the chair to act as President *pro tem.*

Mr. ARCTANDER. No, Mr. President, it is not offered for that purpose, and was not asked at the time for that purpose. Mr. Lind stated that when Judge Cox came to New Ulm, all the cases, or a great majority of the cases at that term of court, were continued on account of the condition of the Judge, and that the attorneys did not consider it safe for them to proceed before him at that term of court. That was one of the articles, as the Senators will remember, viz: specification seven. Now, he stated that at the time. It has appeared in testimony already that the only cases which were continued without cause, without proper cause, were cases in which Mr. Lind was interested. After that was brought out, I asked Mr. Lind the question whether or not it was not a fact that he had made this statement to Mr. Davis. He said that he had not. Now, I claim that it is material to impeach him upon that, to show a preconcerted plan upon his part, that if he should see that Judge Cox showed the least signs of liquor, to have the cases continued upon him, to create a scandal upon the Judge at that time.

It goes to show a feeling so far upon his part, and goes further to

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show that when he claims the cases were continued for the reason Judge Cox was in a condition that he could not try them, that it is not true, that it was a scheme he had concocted, and that he had made up his mind to get it through, whether Judge Cox should be intoxicated or not, if he should only show signs of liquor, and for the purpose of hurting him. It is certainly material and proper, if that was said by Mr. Lind, to show that when Mr. Lind denied it, he stated what was not true. It was in connection with that same subject matter, that was asked at the time. It was material to determine at that time, whether or not, Mr. Lind got those cases continued for the reason that Judge Cox's condition was so that he was not fit to sit in them, or whether it was done in furtherance of, or in fulfillment of a plan that he had concocted in his mind to do, before he knew about the condition of the Judge;—before he knew whether the Judge would be fit to sit in the cases or not. There certainly could not be any doubt about its materiality at the time when it was asked. It would have shown the witness's spirit; it would characterize his testimony. If it was immaterial it would have been immaterial to ask it in the first place; but there was no objection raised to it; it was considered perfectly proper by both parties at the time, and the managers went so far that they asked the leave of the Senate and the courtesy of the Senate to have Mr. Lind say what it was he claimed he did say afterwards, in cross-examination, instead of bringing him back here in rebuttal, expecting it should be proven against him.

Mr. Manager DUNN. I suppose the rule of law is familiar to the President that a witness must not be contradicted upon immaterial matters. I submit that it is an immaterial matter in any event.

The PRESIDENT *pro iem.* I think it would be material under the testimony of Mr. Lind in that respect.

Mr. Manager DUNN. As to what he had told this witness?

The PRESIDENT *pro tem.* As to the fact as to whether any such arrangement had been made by him, concocted before the term commenced, with a view of postponing the cases. Mr. Lind's attention was called particularly to this.

Mr. Manager DUNN. Where is that evidence?

Mr. ARCTANDER. It is page 59, fifteenth day.

The reporter then read the question to the witness.

The WITNESS. With the exception of the "trick" part, and possibly that about getting him in a "fix"; the other is substantially as he stated. I don't remember his saying anything about a trick. He was considerably excited and mad.

Q. With that exception he did state it to you?

A. He did in substance. The substance of it is as there, with the exception of the trick part.

Mr. Manager DUNN. That is the important part of the whole thing, the "trick" and the "fix."

Mr. ARCTANDER. I understand that is simply the question I can ask under the rules of evidence,—whether he stated so, or words to that effect.

Mr. Manager DUNN. I understood that is the only question they can ask, and that they must take the answer, yes, or no, to that question.

The PRESIDENT *pro tem.* I think so.

Mr. Manager DUNN. Now his answer will be, yes, or no, to that ques-

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tion in its entirety, and not by piecemeal. Now, I insist upon an answer to the question, yes or no.

Mr. ALLIS. The question has been answered.

Mr. ARCTANDER. Well, I suppose we are allowed to vary it by "or words to that effect."

The PRESIDENT *pro tem.* The question put to Mr. Lind was qualified by "or words to that effect."

Mr. Manager DUNN. I insist that they must ask the question, just as it was put there, without the words "to that effect," and then his answer must be, yes or no, and then they have a right to ask him what he did say under "words to that effect."

Mr. ARCTANDER. There is no such rule, Mr. Dunn.

Examined by Mr. Manager DUNN.

Q. Mr. Davis, please give me an answer to this question: Did Mr. Lind tell you immediately after the motion for a new trial had been granted in the Davis and Young case, in St. Peter, that he was going to play a trick on Judge Cox, that if, when he came to New Ulm, he showed the least signs of intoxication at the next coming term, or showed the least sign of liquor, that he was going to get the attorneys there to stipulate to continue cases on him, or to get him in a fix? Now, I want an answer, yes or no, to that question, in its entirety.

Mr. ARCTANDER. We object to that.

The WITNESS. I will answer that the same as before.

Mr. Manager DUNN. No, I want an answer, yes or no, to that question; if you can't answer it say you don't know.

A. I can't answer that question yes or no.

Q. Then you don't know whether he said that or not, do you?

A. I know that he said the substance of it.

Q. In those words?

A. In those words, no, sir.

Q. Now, you may state what he did say.

A. He stated that he was going to New Ulm, I think it was the evening after the Young and Davis trial, that he was going to New Ulm; that Judge Cox would have to hold a term of court there very soon—shortly; and that he was going to New Ulm himself, and that he would see the other attorneys; that there was quite a calendar of cases there to be tried, and have it arranged or agreed with them that if Judge Cox came to that term of court and showed the slightest signs of intoxication, that they would have their cases all postponed,—put over.

Mr. ARCTANDER. I will state that we are through with this witness. I would ask, Mr. President, if we could have 15 minutes recess. I do not find my witnesses here.

Senator POWERS. Mr. President, I move that we take a recess for 10 minutes.

The PRESIDENT *pro tem.* Those in favor of a recess will say aye, contrary-minded no.

The ayes have it.

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AETER RECESS.

BENJAMIN ROGERS

Recalled on behalf of the respondent testified.

Examined by Mr. ARCTANDER.

Q. Mr. Rogers you have been sworn before in this case?
A. I have.
Q. You are the clerk of the district court of Nicollet county?
A. I am at the present time.
Q. Were you such clerk at the last May term?
A. I was.
Q. State whether or not you were present at the May term as such clerk of court?
A. I was.
Q. Were you present during the argument for a new trial in the case of Young against Davis at that term?
A. I was present.
Q. What was the condition of Judge Cox as to sobriety, or inebriety during that trial?
A. I didn't notice anything unusual in his appearance.
Q. Well what was his condition as to sobriety or inebriety.
A. Oh, he was sober.
Q. You have heard the testimony of Mr. Davis who was upon the stand just now?
A. I did.
Q. Do you remember of his coming up to you and calling your attention to something about the Judge?
A. I do.
Q. What was it?
A. I was sitting at the right of the Judge at the desk and he came up to the desk and leaned over the desk and said he, 'hasn't the Judge been taking something? or drinking something" and I remarked I guess not.
Q. Well immediately after the proceedings were through, and after Mr. Davis had gone into his private office did you go in there?
A. I went in with the Judge myself.
Q. Before Mr. Davis was there?
A. Before Mr. Davis went in.
Q. Did you have any talk with the Judge there?
A. I did for a moment or two; only a short conversation.
Q. After Mr. Davis had called your attention to the possible condition of the Judge, did you observe him closely?
A. I did.
Q. In court?
A. And that is what caused me to go right into his room with him.
Q. Before he went into the room did you observe him closely upon the bench?
A. I did not, I was paying attention to the records.
Q. The court took a recess in a few moments after he had made the order in regard to the case, when the court took a recess you were there?
A. I was.
Q. I will ask you to state whether or not after having observed him

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in the room and having talked with him what if anything was you convinced of as to the condition of the Judge.

A. Well, I came to the conclusion, after hearing his remarks that he had to make, that he was a little excited. I didn't think he was under the influence of liquor.

Q. You didn't think he was under the influence of liquor?

A. No, I didn't.

Q. Had you any doubt about his being entirely sober?

A. I did not.

Q. After you had this conversation?

A. I did not.

Q. You have none now?

A. I have not.

Examined by Mr. Manager DUNN.

Q. Did you ask the Judge whether he was under the influence of liquor?

A. No, I asked him what was the trouble.

Q. You didn't ask him whether he was under the influence of liquor?

A. Not at that time I think.

Q. You didn't ask him whether he had drank any liquor did you?

A. Not at that time.

Q. Well, I am speaking of that time. You have been a former partner of Judge Cox's, haven't you?

A. No, sir.

Q. Are you in anywise related to the Judge?

A. I am not.

Q. Eh?

A. No, sir.

Q. Had you noticed any peculiarities in the Judge that day?

A. In the morning I might say that I had, because some articles had been published in the St. Peter Tribune, the day before, or the evening before.

Q. Well I mean at that time when the motion was made.

A. I had not.

Q. All you know was what Mr. Davis spoke to you?

A. That was all. My attention was called to the Judge at that time he granted the motion for a new trial.

Q. What time a day was that?

A. I think it was about 2 o'clock.

Q. It was right after the coming in of the court in the afternoon?

A. Yes, sir.

Q. You don't know whether the Judge had been taking a drink or not, do you?

A. I do not.

Q. You don't know anything about it?

A. He might have taken a drink.

Q. It would not be at all uncommon?

A. I suppose he generally takes one when he wants it.

Q. You have seen the Judge under the influence of liquor, have you not?

A. I have.

Q. In court?

A. Not in court.

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Q. Out of court?
A. Out of court.
Q. Did you notice, when he was under the influence of liquor, that he acted about as he did that morning or that afternoon?
A. No, I did not, because my attention was not called to him that afternoon. He acted just about the same as he generally does when he is on the bench.
Q. Your attention was not called to him, was it, to see how he acted?
A. Except at the time that Mr. Davis spoke to me.
Q. You say you did not observe him after that?
A. I did not, because he had just made his order, and I was taking it down.
Q. Then you did not observe him at all that afternoon, did you, to see whether he was under the influence of liquor?
A. I went right with him into his office.
Q. I mean while he was on the bench?
A. I did not.
Q. Then you didn't notice whether he was under the influence of liquor or not?
A. Not any more than usual when I am sitting there.
Q. In other words, you made no observation on it at all?
A. No, I did not; not to look to see whether he was under the influence of liquor.
Q. By Mr. ARCTANDER. That is while he was on the bench?
A. While he was on the bench.
Mr. ARCTANDER. I desire to ask this witness a question under article 7.
Mr. Manager DUNN. That will only be another witness making eight. I won't object to having eight on it. You have got seven; I would just as soon have eight as seven.
Mr. ARCTANDER. It is not on that article to which you have reference. I thought I had asked that question under another article.
Q. How long have you known Judge Cox?
A. About 24 years, or 24½; since July, 1857.
Q. During that time have you known him intimately?
A. I have.
Q. Been intimately associated with him?
A. I have.
Q. I will ask you to state whether or not you have met him since he has been Judge every day when he has been in St. Peter?
A. Well, I would say that almost every day that he is there at the court-house or at his office. His office is right up stairs and I see him when he passes my door as he goes down.
Q. He comes down and chats with you?
A. Oh, frequently and I frequently go up into his office.
Q. And your relations, during all these years with him have been very intimate have they?
A. They have.
Mr. Manager DUNN. We are willing to admit as a fact that Mr. Rogers and the Judge are on excellantly good terms. You needed not to prove it; we would have admitted it.
Mr. ARCTANDER. I will now call a farther witness under the second specification of the 17th article.

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CHARLES MEYER,

Sworn as a witness on behalf of the respondent, testified.

Examined by Mr. ARCTANDER.

Q. Where do you live? A. New Ulm.
Q. Do you know the respondent, E. St. Julien Cox?
A. Yes, sir.
Q. How long have you known him? A. Four years.
Q. Do you know a man in New Ulm, a butcher by the name of Steube?
A. Yes, sir.
Q. Charles Steube? A. Yes, sir.
Q. State whether or not you worked for him in the years 1879 and 1880.
A. Yes, sir; I did.
Q. What was your work there?
A. I been driving a slop-wagon then.
Q. Do you mean the cart to haul the offal in?
A. To haul manure.
Q. And offal. A. Yes.
Q. Did anybody else working for him have that job,—I mean at the same time you were working there?
A. Yes, my brother was working there, but he didn't have that job.
Q. He didn't do that; it was you that did all that all the time, driving that cart, was it?
A. Yes, sir.
Q. Now, I will ask you to state whether or not Judge Cox has ever rode with you in that cart?
A. No, sir; never.
Q. Up to the court house in New Ulm? A. No, sir.
Q. Or anywhere else? A. No, sir.
Q. Around New Ulm? A. No, sir.
Q. You are sure that he hasn't? A. Yes, sir.

Examined by Mr. Manager DUNN.

Q. What time did you commence to work for Mr. Steube?
A. 1879 to 1881.
Q. What month in 1879?
A. Well, I don't know in what month. The first of the year, but I don't know just the day.
Q. The first of the year? A. Yes, sir.
Q. In January 1879? A. Yes, sir.
Q. And when did you quit?
A. Oh, I quit last year the 4th of September.
Q. Did you hire out on purpose to drive that slop-wagon?
A. No, I didn't hire out on purpose to do that.
Q. What did you hire out for?
A. To feed his cattle and attend to that business.
Q. Did anyone else ever drive that slop-wagon but you?
A. No, sir.
Q. Did Mr. Steube ever drive it himself? A. No, sir; never.
Q. Did you drive it every day of your life? A. Yes, sir.
Q. No one else ever touched it? A. No, sir.

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Q. Were you ever away a day?
A. I was all the time there.
Q. Never was away a day? A. No, sir.
Q. Anybody else drive it? A. No, sir.
Q. Never was sick a day? A. No, sir.
Q. Did you drive it Sundays and every day?
A. No, not on Sundays; yes, on Sunday mornings; early though.
Q. You drove it every morning yourself? A. Yes, sir.
Q. What was your brother doing there?
A. He been tending the butcher-shop at that time.

By Mr. ARCTANDER.
Q. When you say nobody ever drove it but you, do you mean during the time that you were there, or at any time?
A. During the time I was there.
Q. That was what you had reference to, was it? A. Yes, sir.

WILLIAM M'GOWAN,

Recalled as a witness on behalf of the respondent, testified.
Mr. ARCTANDER. This testimony is under article 18.
Q. Mr. McGowan, you testified before. I believe, that you had known Judge Cox 20 years?
A. Nearly 20 years.
Q. Were you with him in the army?
A. Yes, sir.
Q. And intimately acquainted with him during the last 20 years?
A. Yes, sir.
Q. I will ask you to state Mr. McGowan, if you were over at Redwood Falls at a term of court held there in the month of June, 1880, at which the case of the board of county commissioners of Redwood county against Amasa Tower was tried?
A. I was.
Q. Were you present during any part of the trial of that case?
A. I was present.
Q. In the court room, I mean?
A. Yes, sir; I was present early in the evening, the evening that the jury went out; and I came in just as the Judge finished charging the jury.
Q. After the Judge finished charging the jury, what did you and he do?
A. We went out and walked up and down in front of the court house on a board walk there was there, and the Judge said he thought the jury wouldn't be out only a few minutes.
Q. Did you have a conversation with the Judge at that time?
A. I did, sir.
Q. How long about, did you have a conversation with him?
A. Perhaps 10 or 15 minutes.
Q. You saw him in the court room before he came out?
A. Yes, sir; came out with him.
Q. Observed him and his appearance at that time?
A. We came out together.
Q. Now, state what the Judge's condition was; as to whether he was drunk or sober at that time?

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A. I think he was perfectly sober, sir; I never had any other thought occur to me but what he was perfectly sober.

Q. I will ask you to state whether or not you were present at the same term of court and recollect an evening when the bell-ringers were there at Redwood Falls?

A. I was, sir.

Q. Did you see the Judge in the court-room there?

A. I didn't see him in the court-room. I walked with him from the hotel to the court-room door, when he went over to open court in the evening.

Q. Did you see him afterwards in the evening?

A. Yes, sir.

Q. Where did you see him?

A. In the church, where the bell-ringers were giving their entertainment. I talked to him all the way up to the court-room. We walked up together.

Q. You did not go into the court-room with him?

A. I only went up to the door.

Q. How long a time after that was it when you saw him come into the concert?

A. About half or three-quarters of an hour.

Q. Did you then have any conversation with him later in the evening?

A. I spoke to him, but I was with my wife, and just passed him there.

Q. Now, at that occasion, when you walked up there with him that evening, and afterwards later in the evening, what was his condition; was he drunk, or sober?

A. I considered him perfectly sober, sir; I had no other idea.

Q. You had no idea that he was drunk?

A. The question never arose in my mind, sir, but what he was perfectly sober.

Q. I will ask you to state now, whether or not you recollect of going over and meeting the Judge at Redwood Falls the day before, the last May term of court in your county, Renville county?

A. Yes, sir; I met him there.

Q. Did you meet him at the depot?

A. No, sir.

Q. Where did you meet him?

A. I met him at the Exchange hotel.

Q. Were you together with him in the evening?

A. For a few minutes, yes, sir. We went down the street two or three blocks and spoke to some gentlemen, and the Judge said he was not feeling very well, and he thought he would go to the hotel. He went up to the hotel and went to his room, and later in the evening I was with him an hour or two, or two or three hours, perhaps; I sat and talked with him.

Q. Now I will ask you to state whether or not the Judge was drunk or sober at that time?

A. I considered him perfectly sober sir; I didn't see any signs.

Q. This was the time Mr. Pierce came up on the train with him?

A. I didn't see Mr. Pierce but I understood Mr. Pierce came; Mr. Pierce told me afterwards that he came up with him on the train.

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Q. Did you drive Mr. Pierce and the Judge over the next morning to Renville County?
A. I did sir, I did.
Q. Now state whether or not at this time you in any manner had the Judge in charge or had any custody either moral or forcible over him?
A. No sir, I did not, in any way.
Q. You had nothing of the kind?
A. Nothing of the kind.
Q. State whether or not you saw any signs of intoxication at all upon the Judge at that time?
A. Nothing, sir, there were no signs whatever.

Examined by Mr. Manager DUNN.
Q. Were you in a restaurant, you and Mr. Miller, the county attorney of Redwood County, at Beaver Falls during this term of 1880; do you recollect of being in there with him?
A. Yes, sir.
Q. Do you remember the Judge going in there?
A. I didn't see him, sir, but I remember his coming in.
Q. Don't you recollect you heard him in the other room?
A. Yes, sir, I heard him, but I didn't see him; there was just a curtain between us.
Q. Well, didn't you and Mr. Miller go to that restaurant there to get away from the Judge that evening?
A. No sir, we did not, we went there to get our supper.
Q. Didn't you go there for the purpose of avoiding the Judge?
A. No, sir, when we left the Judge he was at the Exchange hotel in a room with his friends.
Q. Well what was he doing in that room?
A. He was sitting at a table with three other gentlemen.
Q. Weren't they drinking liquor there?
A. I didn't see the Judge drink there.
Q. Answer the question; wasn't there liquor being drank in that room?
A. Yes sir.
Q. Wasn't you asked to drink?
A. Yes sir.
Q. Didn't you excuse yourself?
A. Yes, sir.
Q. Didn't you both leave that party?
A. Yes, sir.
Q. Wasn't the Judge one of that party?
A. Yes, he was in the room.
Q. Wasn't he one of that party?
A. Yes, sir, he was in the room.
Q. And from there you went up to the restaurant?
A. Yes.
Q. Wasn't that the Judge's room?
A. I couldn't state positively, I don't know.
Q. Hadn't you been there to find out?
A. No, sir, that was the first time I had been there.
Q. Now you went up to this restaurant, you and Mr. Miller?
A. Yes, sir.

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Q. And while you were there the Judge and that party came in there, didn't they?

A. The Judge and three other gentlemen came of that party, not the whole party that was present in the hotel.

Q. You didn't see them?

A. I didn't see them because there was a curtain between us.

Q. Did you see any drinking going on in the restaurant?

A. No, sir; there is no bar there at all.

Q. You went and followed them right up to the court room, did you?

A. No, sir: I didn't go, Mr. Miller did; I didn't go to the court room at all that night, I went to the hotel; Mr. Miller and his brother went to the court room.

Q. Was the Judge at the hotel when you went there?

A. No, sir; I didn't see the Judge until the next day, after I saw him in his room I didn't see him until Sunday, I was with him Sunday pretty near all day.

Q. That was the time when you remember him charging that jury, wasn't it?

A. No, sir; that was in the June term that I was with him.

Q. You went over to Redwood Falls to meet him, didn't you, at that time you went over there?

A. When he came up?

Q. Yes.

A. Yes, sir; I went over there to meet him.

Q. You didn't meet him at the depot?

A. No, sir; the first I saw him was at the Exchange hotel.

Q. He was complaining of feeling sick?

A. No, sir; we went down the street three blocks, walked down from the hotel right down street.

Q. Where did you go?

A. We did not go anywhere, we stopped in front of McMillan's store, and then walked right back to the hotel. The Judge made some remark he was not feeling well, was suffering from a headache, or something.

Q. What was his appearance did he look sick?

A. No, sir.

Q. He looked badly didn't he?

A. No, sir; he looked the same as usual, he went up to his room, he took a room on the ground floor.

Q. You didn't go there again that night?

A. Yes, sir; I did.

Q. What time did you go there?

A. About 11 o'clock.

Q. How did you find him then?

A. He was in bed then, sir.

Q. Did you go out and get him something?

A. I went out and got him lemonade and cracked ice, and nothing else.

Q. What did you do with the cracked ice?

A. I brought it to the Judge.

Q. To drink or eat?

A. No, to eat.

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Q. He needed cracked ice?
A. That is what he asked for, and I got it for him.
Q. Did you get anything else but lemonade?
A. No, sir.
Q. Was there anything else in the room?
A. No, sir; not that I saw.
Q. You didn't discover anything else?
A. No, sir.
Q. How long did you stay with him?
A. I stayed with him perhaps two or three hours.
Q. Did you put any of this cracked ice on his head?
A. No, sir; I didn't do anything for him at all.
Q. You stayed with him two or three hours?
A. Yes, sir; he got up and dressed himself and took a chair and talked with me about the business of the term of court.
Q. Did you get anything to drink yourself?
A. No, sir.
Q. Did you have the lemonade made?
A. I think I had it made for him.
Q. At the hotel?
A. No, sir.
Q. Where did you get it?
A. I wont state positively I think it was at a saloon.
Q. That was about 11 o'clock at night.
A. I think it was about that time.
Q. You stayed with him until about one or two o'clock in the morning?
A. Yes, sir.
Q. He sat up there?
A. He sat up in a chair. He drank the lemonade as soon as I brought it, and then he got up and dressed himself and sat down in his chair and talked with me generally about the term of court.
Q. You discovered nothing wrong about him?
A. He was perfectly sober so far as I know,—perfectly.
Q. You never saw him any other way than perfectly sober?
A. Yes, sir.
Q. You have? A. Yes.

Mr. ARCTANDER. I will ask you to state in relation to this matter that was brought out by the managers this evening concerning the Hawk trial at the time Mr. Miller was there, did the Judge drink anything in that room in your presence?
A. I didn't see him drink a thing.

Mr. Manager DUNN. Did you see anybody drink?
A. Yes, sir.
Q. You didn't see the Judge drink?
A. No, sir.
Q. Did you see it offered to him?
A. No, sir.
Q. You didn't see him refuse to drink?
A. No, sir.

Mr. ARCTANDER. Mr. President, I have a request to the Senate,—

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or rather an application. I desire to make an application to the Senate; if the Senate would favor me in adjourning now instead of at six o'clock and meet at nine o'clock in the morning. I would state to the President and the Senate that I suffer from a severe nervous headache and have been all the afternoon and am so that I don't remember anything and can't think of anything; I came very near, about twenty minutes ago, forgetting entirely to bring a witness on an article that I had right here in court, and my mind is so confused that I really feel I can't do justice to the matter. I have a cold sweat over my whole body. If the Senate could do this so that there would be no time lost by it, by meeting an hour earlier in the morning, it would be a favor to me. I have had hardly any sleep at all since we met here the last time, and I suppose the thing is wearing on me to a certain degree and this is the consequence of it, and I would like to be able to nurse myself.

The PRESIDENT *pro tem.* How many witnesses have you in attendance?

Mr. ARCTANDER. I think, Mr. President, I have,—I couldn't say for certain,—but I think there are about 15 witnesses something like that. There is no question but that we can get through with them to-morrow, if we commence at 9 o'clock, so they wont need to stay here, because the most of them are very short.

Senator ADAMS. Mr. President I move that the request of the attorney for the respondent be granted and that the senate adjuorn to meet at 9 o'clock to-morrow morning.

Senator RICE. Mr. President, it seems to me that we ought to have an evening session; this thing drags on, so that I am getting sick of it. If the respondent's counsel is not able to go on it seems to me that he has associate counsel who can attend to the matter in his place. I don't think the court should adjourn just because one of the counsel is sick.

Mr. ARCTANDER. I beg leave to state that I am the only one of the respondent's counsel who has had cognizance of this matter, and you might as well bring up some attorney from the street and put him in here to try this case, as to put any of the other counsel in here, because they have not examined into the matter at all.

Senator MILLER. I second the motion.

Senator MACDONALD. I have no objection to adjourning now.

Senator CAMPBELL. I think the request is a very reasonable one.

Senator WILSON. I am opposed to having an evening session unless we can have the senators pledged beforehand to attend so that we can have a quorum. I noticed several of the senators the other evening, when we did attempt to have an evening session, come in here and go right out again, leaving us with only sixteen or seventeen members. There is no use at all to appoint an evening session with that state of feeling existing.

Senator MACDONALD. Well, as long as the counsel is not able to go on there is no use talking about it.

Senator WILSON. Only about forty minutes are left now before the regular hour to adjourn, and if we meet at 9 o'clock in the morning we shall fully make up for what we lose now.

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The PRESIDENT *pro tem.* The question is not whether we shall have an evening session, but whether we shall adjourn now until to-morrow morning at 9 o'clock. Senators will bear in mind that if we adjourn now it will be until 9 o'clock to-morrow morning, and not until 10.

Senator WILSON, It don't mean three minutes after 9 either; it means 9 o'clock.

The PRESIDENT *pro tem.* Are you ready for the question? This question is debateable if any senator desires to be heard. Those in favor of an adjournment now to meet at 9 o'clock in the morning will say aye; contrary-minded no. The ayes have it. The senate stands adjourned until to-morrow morning at 9 o'clock.

THIRTY-THIRD DAY.

ST. PAUL, MINN., Feb. 17, 1882.

The Senate met at 10 o'clock A. M., and was called to order by Senator Wilson, acting as President *pro tem.*

The roll being called, the following Senators answered to their names: Messrs. Aaker, Adams, Buck C. F., Campbell, Hinds, Howard, Johnson, A. M., Johnson F. I., Johnson, R. B., Macdonald, McLaughlin, Morrison, Officer, Perkins, Powers, Rice, Shaller, Shalleen, Tiffany, Wilkins and Wilson.

The Senate, sitting for the trial of E. St. Julien Cox, Judge of the Ninth 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. Henry G. Hicks, Hon. O. B. Gould, Hon. L. W. Collins, Hon. A. C. Dunn, Hon. G. W. Putnam and Hon. W. J. Ives, entered the Senate Chamber and took the seats assigned them.

E. St. Julien Cox, accompanied by his counsel, appeared at the bar of the Senate and took the seats assigned them.

The PRESIDENT *pro tem.* Perhaps it would be as well for the Senate at this time to decide whether we will have a session to-morrow.

Senator RICE. I think we had better arrange that matter after the noon recess. There are so few present this morning, that I think it would be impossible to ascertain whether we will be able to have a session or not. We will have a full attendance in the afternoon, and the motion can then be disposed of.

The PRESIDENT *pro tem.* Very well; call the next witness.

Mr. ARCTANDER. Before calling the witness I am about to call, I desire to make an application to the Senate upon the article under which he is called, namely article fourteen. That article, as the Senate will remember, stretches over some period of time. It commences with the term of court at Marshfield on one day, and then court is removed to Tyler, where it is held for a whole week. Then witnesses are brought in here to show the intoxication of the Judge, in some instances, in the night, to which we will have to have witnesses other than those who can testify as to the events during the day. There was also brought in an

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instance as to a certain person who claimed to have had a conversation with the Judge in court, after he had been convicted of a simple assault, when the Judge told him that if he didn't come in and plead guilty he would fine him fifty dollars, etc. That was brought in as an incident to show that the Judge was intoxicated. Of course, we desire to rebut that and we must rebut that by witnesses that we can call upon the other part of the article. In fact, this article is one of the most complicated ones that we have so far, because it stretches over a whole term of court, and even over a term of court that was held in two different places, and it takes in and covers instances of intoxication in the evening, and, as I have said, alleged private conversation with other parties, outside of court; and I would therefore ask the Senate besides the five regular witnesses allowed me, permission to examine Capt. Strong, E. Hodgman, F. Apfeld, J. N. Cass, Frank Nash, C. H. Griffith, G. I. Larson and Alexander Graham. Most of them will be very short.

The PRESIDENT *pro tem.* That makes twelve witnesses in all.

Mr. Manager DUNN. That makes thirteen in all, eight new ones; thirteen witnesses in all.

Mr. ARCTANDER. They are right here all of them. I will state for instance that one of these witnesses, Mr. Apfeld, is the saloon keeper in that town, and the only one as has been testified to here, by whom I desire to prove only that Judge Cox was not at all in his saloon until the termination of that term of court. It has been testified here he went there and drank, and I cannot prove what I have stated satisfactorily by any other witness. Mr. Hodgman is a hotel keeper, and I desire to prove by him the impossibility of Mr. Chapman's story, that he saw the Judge carried into bed and that he saw it from his room through the window. I desire to show by Mr. Hodgman that the buildings were not so situated that you could see from one room to another, particularly from the room which Mr. Chapman occupied to the one the Judge occupied. These little things do not amount to much in themselves, but as a whole we are entitled to them, and we ought to be allowed to call the witnesses. Besides the five main witnesses, the other witnesses will be very short, only as to immaterial points.

The PRESIDENT *pro tem.* The Senate has heard the motion of the counsel. What is its pleasure in the matter?

Senator BUCK, C. F. I move, Mr. President, that the application of the respondent's counsel, be granted.

Senator MACDONALD. I second the motion.

The PRESIDENT *pro tem.* You have heard the motion. As many as are in favor of it will say aye. The ayes have it.

Senator AAKER. I call for the ayes and nays.

Senator CAMPBELL. I would like to ask if we are not unanimous. If we are, then what necessity for calling the roll.

The PRESIDENT *pro tem.* As long as the ayes and noes have not been called for, it shows that the Senate is not unanimous on that point. [To Senator Aaker.] Do you withdraw your motion.

Senator AAKER. I am opposed, Mr. President, to granting the increased number of witnesses. We restricted the prosecution to five witnesses, and unless this thing is stopped we shall see no end to it.

The PRESIDENT *pro tem.* We had considerable discussion on that subject yesterday, in a secret session, when you were not here, Senator; and the Senate has made a decision on the question.

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Senator MACDONALD. The order of the court made at that time showed just what the Senate wanted to do.

Senator AAKER. Very well; I will withdraw my motion to have the ayes and noes called.

SAMUEL M'PHAIL,

Sworn as a witness on behalf of the respondent, testified.

Mr. ARCTANDER. This is under article fourteen.

Q. Where do you reside?

A. I reside at Alta Vista, Lincoln County, Minnesota.

Q. What is your profession?

A. Well, I am a farmer by occupation.

Q. Well, have you got any profession?

A. Well, I have been an attorney heretofore, and practice some little now, and I am county attorney of Lincoln county at the present time.

Q. And have been for how long a time?

A. Well, three or going on four years.

Q. Do you know the respondent, E. St. Julien Cox?

A. Yes, sir; I do.

Q. How long have you known him?

A. It will be twenty years next October since I first became personally acquainted with him.

Q. I will ask you to state whether or not the respondent served as captain in your regiment during the war, Colonel?

A. Well, he did; he served something over a year as captain in a regiment that I commanded from 1862 to 1863; I think it was about thirteen months after we were mustered in before we were mustered out. I wouldn't say positively, but it was about that time; it was something over a year.

Q. Have you met him frequently since that time?

A. I have, frequently.

Q. Been intimately acquinted with him during those twenty years?

A. Well, I have seen him frequently; I don't think there has been a year at any one time but what I have met him; I don't think there has been a year, but it might have been a year.

Q. When you have met him you have associated with him?

A. Yes, every time I have met him we have associated together; for instance, once or twice I have met him occasionally as we would be traveling on the train, and I would sit down and have some conversation.

Q. During those twenty years have you ever seen Judge Cox intoxicated or under the influence of liquor?

A. Yes, sir; I have.

Q. I will ask you to state whether or not you attended the general term of court for Lincoln county in the month of June last year?

A. I did; yes, sir.

Q. Now, at what point, and at what time did you first meet Judge Cox on that occasion?

A. It was on Wednesday afternoon; I think it was the 15th; I am pretty sure that it was the 15th of June. I met him on the train coming up to Tyler; that is where I first met him.

Q. He was on the train, was he?

A. I didn't meet him on the train; we were in a buggy, and I saw him get off the train, and he came and got into the buggy with us.

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Q. He didn't stop at all at Tyler?
A. No, sir.
Q. Where did you drive?
A. We drove from there to Marshfield.
Q. State what the Judge's condition was as to sobriety or inebriety, when he came there to the buggy to you and drove over to Mansfield?
A. Well, I considered him perfectly sober; if there was anything to the contrary—
Q. Have you any doubts about it?
A. Why, no; not at that time, not the least doubt.
Q. Now, you drove over with him there?
A. Yes, sir.
Q. Who was it that drove you?
A. Why, Mr. Hodgman, the landlord.
Q. The landlord of the hotel at Tyler?
A. Yes.
Q. And did you sit in the seat with Judge Cox during the ride there?
A. Yes.
Q. And talked with the landlord there?
A. Yes; talked with him right along; I hadn't met him for some time.
Q. State whether there was any liquor along in the buggy?
A. There was none drank, and I saw no signs of any. I am sure there was none drank on the way up.
Q. Now, when you arrived at Marshfield Wednesday afternoon, that was the time that he came there and opened court, was it?
A. Yes.
Q. Now, when he got to Marshfield, what was his condition as to sobriety, any different from what it was when you met him on the train?
A. I think not; I think it was just the same.
Q. Now, when he came over to Marshfield, and the buggy stopped, how did he get out of the buggy?
A. Well, about as most any other man will; I only remember that I got out on the same side he did; and he got out of the buggy and took his gripsack, and we went up stairs to the court room.
Q. Did he jump out of the buggy?
A. I don't know whether you would call it jumping out or dismounting.
Q. Well, what I want to know is whether anybody helped him out, steered him out or gently lowered him, or anything of that kind?
A. No, sir; they did not.
Q. After he got out of the buggy, what did he do?
A. We went immediately into the room, and turned and went up stairs; it was a school house.
Q. What is that?
A. We went into the front door of the school house; it is a school house, and turned.
Q. Both of you?
A. Yes, sir; I went in with the Judge.
Q. I will ask you to state whether or not the Judge, when he went in there, when he got out of the buggy, or when he went into the school house, or up the steps, or anywhere else, staggered?

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A. Well, if he did I did not notice it.
Q. Well, did you know whether he did or not?
A. I think he did not; I think he did not; I am pretty positive he did not stagger.
Q. Well, was he in a condition to stagger?
A. He might have been in a condition to stagger—I don't fully understand your question.
Q. Well, was he, in your judgment the least under the influence of liquor?
A. I think I can answer that he was not under the influence of liquor.
Q. Are you positive whether or not he staggered?
A. Well, I am not because I did not see; I could explain that I had got such a notice of him—I know that I asked him if I should carry his sack and he said no; and I didn't know whether the court was to be held up stairs or down, and as we went in I looked into the school room below and I says, Judge it is up stairs, and he carried his satchel up himself.
Q. Then you say when you wont swear positively that he did not stagger it is because you didn't pay any attention?
A. I didn't pay any attention whether he staggered, because I hadn't any thought of such a thing.
Q. I will ask you to state whether, when he came up to the Judge's seat, his voice was thick; whether there was then anything unusual about it?
A. There was nothing unusual about it; it was about his natural voice as I had generally heard him; just about natural.
Q. Now, when he came up there, what did he say or do first?
A. He went to the seat that was fixed up in the school room for the Judge's seat, and he turned to the clerk and he says to the clerk, "Mr. Clerk, is there likely to be any amount of business at this term?" and the clerk answered him that he thought there would be considerable jury room?" and he says,—the clerk answered,—"I have the room under business. And he says, "What arrangements have been made for the here for a grand jury room, and the bar room of the hotel for a petit jury room." The Judge kind of hesitated a little. "I don't think that will do," he says. I understood him to be speaking of that bar room. He says to him, "Mr. Clerk, how far is it from here to Lake Benton?" "It is about eight miles." "How far is it to Tyler?" "It is about four miles." "Well," he says, "you will make an order transferring the court to Tyler, together with all the records, and issue a special venire for a grand jury and make all papers returnable at Tyler;" and he spoke then to the deputy sheriff and told him that he could adjourn the court to Tyler.
Q. In the morning?
A. I don't remember whether he told him when the court would be called; I don't remember that myself, whether he told him what time court would open at Tyler, but I do remember that he told him that he could adjourn the court to Tyler. The deputy sheriff cried the adjournment, and we went right down stairs, the Judge and myself.
Q. Got into the buggy and drove back?
A. Got into the buggy and drove back to Tyler.
Q. Now, let me ask you to cover the point what the Judge's condition was during the time he was at Tyler, as to sobriety or inebriety?
A. It was about the same condition as when we went up.

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Q. There was no drinking going on in Marshfield?

A. There may have been some in Marshfield, but there was none in the crowd where the Judge was. I am sure there was none there, because I was with him all the time and there was none in that crowd.

Q. I will ask you to state whether or not you were with the Judge in the evening after you got back from Marshfield?

A. Yes, sir, I was with him in the evening.

Q. State whether or not there was any drinking or intoxication upon the part of the Judge that evening?

A. There was some drinking that evening.

Q. He drank some?

A. Yes, sir.

Q. What was it?

A. I think it was—it was bottled beer anyway, but I beleive they called it Milwaukee bottled beer.

Q. How much of it?

A. I think he drinked about a third of the bottle,—myself, him and another man, drinked what was in a bottle; the Judge partly eats his'n and drinked his'n, for the landlord brought up a lunch; I had a room adjoining his; my room opened into his; it was a kind of private parlor and a small bed room but they put the bed in the parlor and the Judge had the large room and I had the small bed room, and the landlord fetched up a tray of lunch, and during that time, while I drinked mine down—I had eat my dinner and drinked mine down, and the Judge drinked and ate together, that is, taking some luncheon.

Q. Now I will ask you to state whether you were in court, colonel, during the following day, Thursday, Friday and Saturday, during the session of the court?

A. Well, I was in the court room most the time; I was in the court room Thursday until after the grand jury was empaneled and I was most of the time in the grand jury room, a greater part of the time. No,—Thursday I was not hardly in the grand jury room at all, but on Friday I was more in the grand jury room than I was in the court room.

Q. But how often were you in the grand jury room; you would stay there half a day, and then be in the court room half a day, or in and out?

A. I would be sometimes called into the grand jury room not be there more then five minutes and get back, and sometimes be in there two hours, I don't think I was in there to exceed two hours at any one time.

Q. When you were not in the grand jury room you were in the court room?

A. I was down in the court room, whenever it was in session.

Q. I will ask you to state what was the Judge's condition during those three days as to sobriety or inebriety.

A. Well, taking Wednesday—

Q. No, Thursday, Friday and Saturday?

A. Well his condition was straight and sober I considered it.

Q. Any difference in the afternoon from what it was in the evening?

A. No, sir.

Q. Or in the evening more than it was in the afternoon?

A. No, sir; not that I could see, no difference in his action or looks.

Q. You had no doubt during any of those days about his perfect sobriety?

A. I had none; at least until the court was over, or heard anything about it, then and I have not now.

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Q. There has been testimony here with reference to a time down in the parlor where a hat was sent around with liquor in it. I will ask you to state whether you were present there on that occasion?

A. Yes, sir; I was.

Q. I will ask you to state, whether or not, the Judge drank any liquor there out of that bottle?

A. Well, he didn't drink any out of that bottle that was passed around and, as the fellow says, I will look into that hat, and the Judge didn't—I am sure that he didn't drink any whiskey out of the bottle.

Q. Why are you sure of it?

A. Why. because it came in like here, [indicating] and it came around in this way, [indicating] and I sat here, [indicating] and the Judge sat on my left hand and when it came around to me there wasn't any whisky in it. [Laughter.]

Q. That was before it reached the Judge? A. Yes.

Q. It hadn't been around that way?

A. No, sir; it came around this way.

Q. And came to you first and to the Judge afterwards? A. Yes.

The PRESIDENT *pro tem.* That is the reason that the Judge didn't get any?

The WITNESS. That is the reason I know he didn't drink any.

Q. There wasn't anything then to drink?

A. There wasn't anything in it, because there wasn't before it came to me. I thought if I had been sold the rest had, and I didn't say nothing, and looked just as happy as could be. I said nothing; I just took the hat and said nothing; but there was nothing in it when it came to me that night.

Q. Do you know Robert W. Coleman?

A. There was a man by the name of Coleman up there.

Q. A big, portly fellow, who claims to be a lawyer?

A. There was a big, portly fellow there; a red complexioned fellow.

Q. I will ask you whether he had his room with you or the Judge there in either of the two rooms that opened with each other?

A. He had a room with me, that is, he claimed he had; I came in there and found him in bed and I wouldn't turn him out.

Q. Was that every night?

A. No, sir; he was in there two nights; in the room there that I was.

Q. Two nights in the room that you were in?

A. Yes.

Q. That was all during the term?

A. That was all. The first night that the Judge came there he did not sleep in this front room, the first night that he came there, why he said he had been up to Redwood and the jury was out, and he said he was going to take rest; then I said Judge, you take this private room, and I will take the front room, so that if there is any running in and out it won't disturb you; so the Judge went into that room and I staid in there.

Q. But after the first night he always slept in the parlor?

A. Yes.

Q. And you in the other room?

A. Yes, after that he slept in the parlor, and I in the other room.

Q. Now, I will ask you, Mr. McPhail, which of you rose up first in the morning you or the Judge?

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A. I did every morning.
Q. You were the first to rise every morning?
A. I was the first to get up.
Q. Now, I will ask you to state in what condition you found the Judge as to being undressed in the morning when you got up?
A. Well, one morning he was partly undressed; he had his coat off; he had his vest and pants on and was laying on top.
Q. Did he have his boots off?
A. Yes.
Q. What morning was that?
A. That was Sunday morning.
Q. How was it every morning, Col.?
A. He was undressed every other morning.
Q. He was undressed and under the cover every other morning?
Mr. Manager HICKS. He didn't say that; you put that in there; let him testify.
Q. Very well, answer?
A. He was undressed and partially covered.
Q. So I understand you then, that it is not a fact that he was in bed with his boots on any of these nights?
A. Well, he was not any morning; he might have been in bed with his boots on when I did not see him, but he was not when I got up in the morning. He was in bed one Sunday morning with his pants and vest on; that was Sunday morning; he was in bed with his pants and vest on.
Q. Now, I will ask you to state whether you went out that Sunday morning before he got up?
A. Yes.
Q. And when you came back did you see the Judge?
A. Yes, I went out before he got up; he was asleep, I think, or at least he appeared to be; he was lying as though he was sound asleep when I came through his room.
Q. When you came through his room?
A. Yes, I went out, perhaps ten minutes, not to exceed that, and when I came back——
Q. As I understand you, you had to go through his room, when you left yours; you couldn't go out any other way?
A. No, sir, not unless I jumped out of the window. There was no other way to get out of my room except by going through his room.
Q. When you got back that Sunday morning did you find the Judge up.
A. Yes.
Q. What was he doing?
A. He was standing up in front of the glass shaving himself.
Q. Did he cut himself? A. I don't know; I saw no signs of it.
Q. Were his hands or nerves steady?
Mr. Manager DUNN. Well, I object to that; he can give his condition; don't lead him.
Mr. ARCTANDER. I don't wish to lead him.
Mr. Manager DUNN. Well, you certainly do.
Q. Well, give his condition? A. I can explain what I thought.
Mr. Manager DUNN. You need not explain what you thought; explain what you saw.
The WITNESS. Well, I saw him shaving.

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Mr. Manager DUNN. I thought that would be all.

The WITNESS. Shaving himself with a razor; he was standing up, and was shaving when I came back.

Q. What was the Judge's condition as to sobriety or inebriety that morning?

A. He seemed to be sober; he stood as a sober man.

Q. Could you see any evidence in him, at that time, as to whether or not he had been on a spree the night before?

A. I could not.

Q. You couldn't see any evidence of his being on a spree the night before?

A. No, sir, I could not.

Q. I will ask you to state whether you saw him go through the same performance as to shaving on Tuesday morning?

A. I saw him shave himself Tuesday morning after the Sunday—that was the morning before we left there?

Q. Yes.

A. Yes; I saw him shave himself Tuesday morning.

Q. Did you know where Mr. Chapman's room was?

A. I did not know where Mr. Chapman's room was.

Q. This was Thursday then, the first day the court was held at Tyler; can you say whether or not the Judges's eyes were red and his face had a red look at that time?

A. I didn't perceive any such symptoms; I didn't see any such symptoms.

Q. I will ask you to state whether there was anything in his actions, his way or his manner that was different from what it usually had been?

A. Not from what it usually had been when I had been with him.

Q. Natural, was it?

A. Yes.

Q. It was testified here that on Friday in court the Judge's eyes looked squinty, and that he couldn't look straight?

Mr. Manager DUNN. I object to you telling here what has been testified to; I insist that you examine the witness in a lawyer-like manner. You have no right to tell him what has been testified to here; you are too much of a lawyer not to know that.

Mr. ARCTANDER. If he had been here and heard the testimony, would I not have the right to ask him if he had heard it, and whether it was true?

Mr. Manager DUNN. Yes, but you have no right to tell him what has been testified here.

Mr. ARCTANDER. Very well; I will not insist on it, although I think I am right.

Mr. Manager DUNN. You are not, and I think you should know it.

Q. I will ask you whether on Thursday, Friday or Saturday the Judge's eyes looked squinty?

A. Well, not that I know of; if they did I did not discover it.

Q. You may state whether or not he was cock-eyed that day, or any of those days?

A. Well, if he was I didn't discover it; Friday and Saturday I was there some considerable time, and if there was I did not discover it.

Q. Well, you were in court part of those days?

A. Yes, I was; I was part of the time in the grand jury room up stairs, and part of the time in the court room.

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Q. Were you in the court room when court adjourned for supper the first night?
A. Thursday night?
Q. Yes, at Tyler?
A. Yes.
Q. State whether the Judge was drunk or half drunk at that time?
A. Well, I don't think he was, any part drunk.
Q. Was not at all drunk?
A. No, sir; I did not think so.
Q. I will ask you to state whether or not the recesses during this term were more frequent than they usually are in Judge Cox's court?
A. Well, I have not been before Judge Cox but three terms since he was up there, and there was not—well, I can't remember the recess; I think in the forenoon there was a recess; I think there was a recess in the forenoon; I am very positive there was a recess in the forenoon, for after it was called the grand jury didn't—I mean there was a recess taken and I am not sure whether there was a recess in the afternoon or not; it was a matter I hadn't thought of, and I don't remember of it; in fact I don't remember of but one recess, although there may have been three in the afternoon; I don't remember; I don't remember anything about it; there may have been three, but I don't remember about that.

CROSS-EXAMINATION,

By Mr. Manager DUNN.
Q. Colonel, you are an old friend of Judge Cox?
A. Yes, sir; a personal friend.
Q. Well, you feel very friendly, don't you?
A. Well, I do feel very friendly, just as I do with any other friend with whom I have been acquainted that long.
Q. Don't you feel more than ordinary friendship?
A. No, sir; I do not.
Q. Don't feel very friendly to him?
A. I don't feel any more friendly to Judge Cox—I think I feel the same kind of a feeling towards a thousand people with whom I am acquainted.
Q. What time did you get to Tyler?
A. I got there the day before he did; I went over on Tuesday.
Q. What time did you get there on Tuesday?
A. I got there Tuesday, on the west-bound train that gets there, I think, at 2:40 or 2:45.
Q. You were the county attorney?
A. Yes, sir.
Q. And you were going to court?
A. Yes, I went over there for that purpose.
Q. Why did you go to Tyler, instead of Marshfield?
A. Because I would have to get off at Tyler; I can go within four miles there, and if I went the other way I would have twenty-five to foot it. I went to Tyler because that was the nearest station to get off, going to Marshfield.
Q. Is Alta Vista west of Lake Benton?
A. Alta Vista is twenty-eight miles north and four miles east.
Q. Perhaps I mis-understand the geography; on what road is Alta Vista; any railroad?

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A. Yes.
Q. On what branch is it?
A. On that we call the Winona & St. Peter; the Watertown branch.
Q. It is west; you would come down to Tracy to go to Tyler?
A. I came down to Tracy and then to Tyler.
Q. You come down on the main line to Tracy, and then up on the branch to Tyler?
A. Yes, sir.
Q. You met Judge Cox on the train?
A. Well, it was perhaps five or six rods; we drove up as close as we do with a team.
Q. What time of day was that?
A. I think the train was a little later than it was at noon; the train arrives there a little after two; it was sometime between two and three.
Q. Have you any saloons in Tyler?
A. Yes.
Q. Had you taken a drink or two that morning?
A. Yes.
Q. Before you met the Judge?
A. Yes.
Q. Didn't you have a bottle in your pocket that night?
A. No, sir.
Q. Positive about that?
A. Yes, sir.
Q. As perfectly sober as ever?
A. About as I usually am when I am near where I can get some; I was sober as I am this morning.
Q. You were? A. Yes.
Q. Do you know whether Mr. Hodgman had taken a drink or two that morning?
A. I do not.
Q. He hadn't drank any with you?
A. No, sir.
Q. How many drinks had you that morning?
A. I had two; I had one before breakfast and one just before dinner: that is all I had.
Q. What did you drink? A. We call it bug-juice; I don't know what it is. (Laughter.)
Q. Bug-juice?
A. That is what the bar-room keeper, the saloon keeper calls it; he called it bug-juice.
Q. Pretty powerful?
A. I don't know as I can explain the taste of it, if you aint a man that drinks it.
Q. Well, is it powerful in its effects?
A. Well, it doesn't have a very serious effect.
Q. It does not.
A. It did not on me at any rate. (Laughter.)
Q. How long previous to your meeting the Judge had you taken the bug-juice?
A. Well, it was three hours before that.
Q. That was just before dinner you took the last bug-juice?
A. Yes.
Q. And you met the Judge about what time of day?

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A. Well, it was between two and three o'clock.
Q. You hadn't had any after dinner?
A. No, sir; I hadn't any.
Q. You recollect that distinctly?
A. I do.
Q. Who went with you besides Mr. Hodgman?
A. Why, there was Mr. Seward, Mr. Hodgman, the Judge, and a young man by the name of Whitney that rode over with me.
Q. Five of you?
A. Yes, there were five of us.
Q. Did you talk on the probabilities of the court at Marshfield or Tyler that you were going over to, with the Judge?
A. Yes, sir; we did.
Q. You did?
A. Not the probability of holding court at Tyler, but the probability of a boarding house at Tyler.
Q. You had no talk at all about accommodations going over there?
A. Not accommodations for court, but accommodations for lunching.
Q. No, I mean for court?
A. No, sir; we had no conversation.
Q. No conversations?
A. None whatever; as to whether the court would be held at Marshfield or not, we had no conversation whatever.
Q. Well, you didn't understand me. Had you any conversation with the Judge going over as to what accommodations there were for holding court at Tyler?
A. No, sir; I had none whatever. I didn't know myself what the accommdations were.
Q. You sat in the seat with the Judge?
A. Yes.
Q. And you heard all that was said in the buggy, I suppose?
A. I think I did.
Q. How many seats were there in the buggy?
A. Two.
Q. Three of you on one seat and two on the other?
A. Yes, sir.
Q. Was there three on the seat you sat on?
A. Yes.
Q. Who sat in the seat with you and the Judge?
A. I think it was Mr. Whitney; I am pretty sure it was Mr. Whitney, and I think Mr. Seward and the driver; I am pretty sure it was but I don't say positively, I know that I sat with the Judge and either Mr. Seward or Mr. Whitney; but I think it was Mr. Whitney.
Q. You didn't notice Mr. Whitney have any bottle with him?
A. I think not; I didn't notice any bottle; I didn't see any bottle.
Q. Didn't notice any liquor at all in the buggy?
A. No sir, I didn't see any.
Q. There was nothing passed around?
A. No, sir, nothing in it or on top of it.
Q. What did you talk about with the Judge going there?
A. We talked some about Indian fighting, and we talked something about what I was doing, how many calves I had and what I was doing with farming and how I got along, and then he said he would like to see

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me at Redwood about an old case that had been in court before I left, and he told me that that case had just got shut off the calander down there, and he said he met Judge Baldwin, and spoke of a good many acquaintances that I had at Redwood.

Q. You hadn't seen the Judge for some time.

A. I hadn't seen him,—it had been I think,—it was in December or January before that that I saw him once before in Redwood; it was December or January; I don't remember; I hadn't seen him—it was before the blockade, as we call it; I hadn't seen him that season at all.

Q. Well, you got up to Marshfield, you say?

A. Yes.

Q. And went up into the court room?

A. Yes.

Q. And the first thing the Judge asked the clerk was what amount of business there was?

A. What amount of business, or is there likely to be any amount? It was something he asked the clerk about the amount of business.

Q. You couldn't pretend to remember what the clerk said about that?

A. Not the precise words.

Q. Something about the business of the court?

A. Yes, but the exact words I don't pretend to.

Q. Well, do you recollect anything else that was said in court at that time?

A. Yes, I do recollect positively of his asking him then about the distance to Lake Benton, and also the distance to Tyler.

Q. Do you recollect anything else that was said?

A. I recollect his asking him that the first thing; he asked him then what was the accommodation for jury rooms.

Q. Do you recollect anything else that was said?

A. I recollect of his telling the clerk to make an order transferring the court, together with all the records; to make out a special venire for a grand jury, and to make the papers returnable to Tyler; I recollect his directing the deputy-sheriff to cry the adjournment.

Q. Do you recollect anything else that was done or said?

A. Then I recollect a good deal, pretty soon after that, that was done and said.

Q. That was by other parties than the Judge?

A. Yes, sir.

Q. In court?

A. Well, it was in the room, in the same room.

Q. After the court adjourned?

A. Well, there was some considerable talking and noise before the sheriff cried the adjournment.

Q. What was that?

A. Well, there was some swearing, and some damning one thing and some damning another, and there was a kind of a triangular jaw fight.

Q. Between whom?

A. There was three localities there; there was Marshfield,—they swore a little; Lake Benton swore a good deal more; the Tyler folks kind of laughed, and swore a little too. (Laughter.) It would be impossible—

Q. What, did the Tyler folks swear to?

A. I heard some of them swearing back at the other fellows. Yes

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have had your share,—you have had yours,—and I didn't do it,—and I didn't do it,—everyone said ; you didn't do it,—and I didn't do it;—that adjournment seemed to be a kind of an argument; they wanted to find who was father of that movement; they were trying to lay it on to somebody; I am not speaking of the Judge, but it was the general mass,—a pow-wow,—it was a kind of an argument.

Q. The Judge didn't say a word during all this melee ?

A. What is that ?

Q. When they were trying to find the parentage of this orphan ?

A. No, sir; he didn't say a word.

Q. But he was willing to father it ?

A. I didn't ask him whether he was or not; and I couldn't tell from his expression. Well, he was kind of fatherly, too; he looked as though he might take an adjournment on himself [laughter;] I suppose he would have to do it because I don't think it was suggested to him by anybody.

Q. Then there was considerable talk about it, and the next thing you went over to Tyler, did you ?

A. I went right back in the same conveyance, and the same crowd, the same five of us, rode back in the same conveyance back to Tyler that night.

Q. Did the Judge ask the sheriff or clerk then what accomodations there were at Tyler for court?

A. I don't think he did.

Q. Nor what there was at Lake Benton ?

A. No, sir; I don't think so.

Q. There never had been court held at Lake Benton ?

A. Never that I heard of.

Q. Marshfield was the county seat of your county, wasn't it ?

A. Supposed to be at that time.

Q. Where the court ought to have been held and the jury summoned, at Marshfield ?

A. There had been no venire made for a jury at this time.

Q. Neither grand nor petit jury ?

A. No jury drawn; it was the first regular term of court that had ever been held in our county.

Q. You say there was no jury drawn at all, either grand or petit jury ?

A. There was neither grand or petit jury, only by special venire.

Q. Neither jury had been summoned ?

A. Neither jury had been summoned at that time.

Q. Well, you got down to Tyler and he was perfectly sober ?

A. Just as sober as he was when he started.

Q. And that night you and he drank a little bottle of beer ?

A. No; it was not a little bottle; it was an ordinary sized bottle. We didn't send for a little bottle. [Laughter.] I sent an order for the beer myself.

Q. Does the landlord keep beer to sell there ?

A. Not that I know of; I never knew him to have beer to sell there; never heard of it.

Q. He brought it to you ?

A. Yes.

Q. And the Judge kind of ate his beer ?

A. Yes.

Q. And you drank yours ?

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A. I drinked mine.
Q. And that was all you drank that night?
A. That was all the Judge had drank.
Q. You drank outside, did you?
A. No; I drank inside of the saloon. I was inside of the saloon that night.
Q. Well, you got pretty happy that night?
A. About as usual.
Q. Yes; I mean pretty happy for you when you are in court?
A. Well, I am as happy when I am on my ranch as when I am in court. I am a man that does not borrow much grief anyhow.
Q. Well, the next morning,—how was the Judge the next morning?
A. Perfectly sober.
Q. Perfectly sober?
A. He was; I am pretty positive he was, because he did not have anything after he went to bed.
Q. How do you know that?
A. Because he went to the room, next to the room selected for me, and nobody went in there unless they went about fifteen minutes after he went to bed.
Q. Well, you went out to the saloon?
A. Yes, sir.
Q. How long were you out?
A. Well, I was not out more than twenty minutes at the farthest.
Q. And then you went back again?
A. Yes, sir.
Q. And then how long were you out that time?
A. No; I went back to the room; I did not go out of the room myself any more that night.
Q. What time of night was this?
A. It was not 10 o'clock that night.
Q. Then you retired?
A. I stayed there; the sheriff came in, and he talked with me about business, about the business of the court. I took the Judge's room that night, and I sat and talked with men about the business of the court; I made that my room, and sat there and talked of the business of the court.
Q. Until what time?
A. Well, until, perhaps, it was pretty near midnight.
Q. Nobody but you and the sheriff?
A. No, there was half a dozen that came in there before that time; some that came into the room.
Q. Had nothing to drink that night?
A. No, sir; we did not there that night.
Q. Now, the next morning the court opened in Tyler?
A. Yes.
Q. What time did it open?
A. Well, it opened between nine and ten o'clock.
Q. Do you know whether the Judge had anything to drink that morning?
A. Yes.
Q. Did he? A. Yes.
Q. He drank with you that morning?
A. Yes.

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Q. Where did you drink?
A. Up in my room.
Q. What did you drink that morning?
A. It was just the same as I got over to the saloon.
Q. It was bug-juice?
A. Bung-juice.
Q. The Judge and you had some bug-juice?
A. The Judge and I had some that morning, and Mr. Whitney.
Q. About how much bug-juice did you take that morning?
A. Well, the three of us, we didn't take the third of a pint.
Q. That was all you had?
A. Yes.
Q. Was that enough?
A. Well, we made it do [laughter.]
Q. What time in the morning was it, Colonel, that you had the third of a pint?
A. Well, it was a little after sun-up.
Q. And then what became of the Judge?
A. Well, he shaved himself that morning and we stayed up there in the room, and he was talking to me about the business until we went down to breakfast.
Q. Any more bug-juice?
A. Not another bit [laughter.]
Q. No more? A. Not a partile.
Q. After breakfast did you have any more bug-juice?
A. Not a bit.
Q. And you were with the Judge all the time?
A. I was with him until the court opened.
Q. So you were right with him and knew whether he had or not?
A. I went down with him to breakfast.
Q. Well, you say you didn't have any more of this bug-juice to drink that morning?
A. No, sir; we did not.
Q. Did you have anything else to drink that was not bug.juice?
A. We had coffee at breakfast.
Q. I mean intoxicating?
A. We had no spiritous or fermented liquors; we had nothing except what we got at the breakfast table.
Q. That wasn't spiritous liquors, was it?
A. Well, we called it coffee; the landlord there makes a fair article for as far west as that. [Laughter.]
Q. I mean spiritous liquors?
A. I said we had no kind of drink at all; only what was set at the table for breakfast.
Q. And you were with the Judge after that; he didn't escape your sight after that?
A. No, sir.
Q. You stuck right close to him?
A. No, I didn't stick to him, but I was close to him; we were talking about the business of the court some.
Q. I mean after breakfast?
A. Well, it was a little time after breakfast, and we went down to the court-room.
Q. Did you stop on the way going to the court-room?

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A. I think we did two or three times.
Q. Where did you stop?
A. Right on the street.
Q. Stop in any saloon?
A. No; we went on the other side from where the saloon was. We went on the side from where the hotel was. [Laughter.]
Q. Kept away from the saloon?
A. It was the nearest way without going over to the saloon; the saloon is opposite; the court-room was on the same side of the street as the hotel; and the saloon was on the other side.
Q. You took a recess that morning?
A. I am pretty sure there was a recess after the court was called; I am pretty positive there was a recess.
Q. The Judge was reasonably sober that morning, was he?
A. He was reasonably sober; I think he was.
Q. Well, you didn't go into the saloon at recess, with the Judge?
A. No, sir.
Q. Nor yourself either? A. No, sir.
Q. Nor at the noon recess? A. I did, at noon.
Q. You took something more to drink?
A. Yes.
Q. Did the Judge go with you?
A. No, sir.
Q. You didn't see him in the saloon?
A. No, sir; I didn't see him in the saloon.
Q. Nor during the term of court?
A. I never saw him in the saloon during that whole term.
Q. Didn't you go in there when the Judge and the grand jury went in and took a drink?
A. I did not.
Q. Don't you recollect that fact, how the grand jury complimented the Judge, and he invited them all over to take a drink?
A. I did not hear him invite them to go over. I was going up town and I heard two of the grand jury say that there was some lemonade over there.
Q. At the Judge's expense?
A. He said there was some lemonade over there, that "the Judge has ordered you some lemonade."
Q. Did you go over and get some of it?
A. I didn't go over then; I was engaged at something else. I went up to the hotel, and after awhile I came to the saloon; there was a few of the grand jury there, but the grand jury didn't come up there in a body; they had dispersed then and were scattered around; I went up to the hotel, and then I came over; went across from the hotel to the saloon, but the Judge was not in there.
Q. He had been in there, you understand?
A. No, sir; I never heard that he had been in there until I come here to St. Paul.
Q. You never heard he had been in there?
A. I never heard it till I came to St. Paul; that is positive; I never heard it until I came here to St. Paul; I don't say that he didn't go, but I say I didn't see him, and I uever heard of it until I came here to St. Paul; I never did.
Q. Now, that night, Colonel, what was the performance at the hotel that night?

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A. Thursday night?
Q. Yes.
A. Well, Thursday night there was some playing on an organ, some singing done in a kind of a parlor below, until I think it must have been 10 or 11 o'clock until I left, and several of them were in there, some playing on the organ and some singing; that was in the parlor of the hotel.
Q. That was when the hat went round?
A. No, that was not the time when the hat went around.
Q. That was down below?
A. This was down below, and I was down below when the hat went around; it was the same room, but not the same time.
Q. There was nothing to drink in there when they were playing or singing?
A. I didn't see anything to drink in there.
Q. The Judge was perfectly sober at that time?
A. I think he was; I didn't see any indications of drink.
Q. No indication at that time? A. I saw none.
Q. Now, which room did the Judge sleep in that night?
A. That night the Judge slept in his own room.
Q. Who slept with him?
A. A young man by the name of Whitney.
Q. What was going on in the meantime that night?
A. Well, I didn't stop any Thursday night; I went through to my room when I first went up, and I don't know what was going on Thursday night.
Q. In the parlor? A. No, sir.
Q. You didn't come out of your room to get there?
A. I didn't go in there; I saw there were people in there.
Q. You had nothing to drink that night?
A. I didn't, either in my room or in the saloon there; I went to my room and was examining the statute and a copy of Wharton's Precedents of Indictments that I was looking over, and getting prepared for some business; I went into my room and that is what I was doing that night.
Q. How was it the next morning; you got up and found the Judge in bed all right didn't you?
A. Yes.
Q. What time did you get up?
A. Just about sun-up; sun-up on Thursday morning or Friday morning.
Q. The Judge was in bed that time? A. Yes.
Q. And seemed to be all right? A. Yes.
Q. You examined to see.
A. I didn't examine, except to see there were two of them in bed.
Q. You went out, and when you came back was the Judge up?
A. No, sir; he was not up when I came back Friday morning.
Q. Do you know whether he had anything to drink that morning?
A. Yes.
Q. You went and took a drink with him that morning?
A. No, sir; he took a drink with me that morning.
Q. What do you mean, that you paid for it?
A. Yes, I paid for it.
Q. Where did you get that?
A. I went over to the saloon, and brought it in in the same little flask that I had the other morning.

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Q. You went and brought the flask over?
A. It was the same one that I had brought in the first morning.
Q. Well, you had got it filled again?
A. Oh, yes; I wouldn't have brought it without it.
Q. The same flask?
A. Yes; it had been re-filled.
Q. Another allowance of juice in it?
A. It was re-loaded as we call it.
Q. And there was only about the third of a pint?
A. That was all.
Q. Who drank it?
A. Well, there was Mr. Whitney, and the Judge, and myself, and Mr. Hodgman; we had one more on us that morning.
Q. And you finished and drank it all up?
A. Finished the contents. We saved the flask.
Q. You are sure you saved the flask; you didn't take that down?
A. Yes; I am sure of that.
Q. That was before breakfast, was it, Colonel?
A. Yes.
Q. That was before breakfast? A. Yes.
Q. After breakfast, how much did you drink?
A. I didn't drink any after breakfast that Friday.
Q. Didn't the Judge drink any?
A. Not that I saw.
Q. You were right with him?
A. No, sir; I was not.
Q. You left him then?
A. I went back and that was Friday—Friday I was busiest of any day with the grand jury and other business.
Q. And you weren't in court very much Friday?
A. I was in there over half the time.
Q. You weren't in there when court opened?
A. Yes, I was in there when court opened.
Q. And stayed there a little while and then went down to the grand jury room.
A. I stayed in there a little while and the deputy sheriff notified me that they wanted me in the grand jury room and then I went up to the grand jury room.
Q. And you don't know what the Judge did at the recess or any of the recesses?
A. No, sir.
Q. How was it about Friday night?
A. Well, Friday night we had another jubilee; folks down stairs had quite a sing; and a lot of them gathered down stairs and sang and played on an organ down there until I think it must have been about eleven o'clock perhaps and then I went up, first Thursday or Friday night, and after I went up, there was quite a crowd came up into the Judge's room; they were up there until I went up to bed again; I went and laid down, and then I got up and came out into the Judge's room, and there was quite a crowd there that night.
Q. Did you dress yourself when you went out?
A. Not when I first went out, but when I saw it was company then I went back and put on my pants.

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Q. They were having quite a hilarous time, were they not, in the Judge's room that night?
A. Yes, sir; they were having quite a little time.
Q. Did you see anybody drink there?
A. Friday night?
Q. Yes.
A. Yes, I did; I think I did, I am pretty sure I did.
Q. What was it that night?
A. That was beer that night.
Q. Bottled beer; how many bottles did you see that night?
A. Two.
Q. For how many of you?
A. They didn't fetch in the beer when the great crowd was in there; the principal ones had dispersed; I think there were six or seven in there when the beer was opened.
Q. The Judge was there?
A. Yes sir.
Q. Do you know whether he drank any or not?
A. I do not know; I couldn't swear whether he did or did not drink any.
Q. What is your best impression?
A. I took it as a natural consequence that he would, [laughter] but I don't remember of having noticed it; I don't know whether he did or not; I couldn't swear whether he did or not; but he was there.
Q. Your best impression is that he did?
A. I take it as a natural consequence; well, it is not from any impression on me, only I thought it would be a natural consequence as he was with the crowd.
Q. Well how long did you keep up that hilarity?
A. I don't know as I understand the term exactly; what do you mean by keeping up the hilarity?
Q. The festivities of the occasion?
A. Well, we called it a jubilee.
Q. Well some of the witnesses called it a pic-nic.
A. Well, I don't know what they called it; we have different names for the same subjects.
Q. You called it a jubilee?
A. That is what they called it; I just let it alone as near as I could and I was more of a looker on, [laughter.]
Q. Why did you let it alone?
A. Because they said they were going to crucify me. [laughter.]
Q. Who was going to do that?
A. Why the whole crowd I think, was going to crucify me; they said they would.
Q. They were tight, weren't they? They weren't in their right mind?
A. I can't tell whether they were or not.
Q. Did they act perfectly sober?
A. They acted somewhat like you see this body here acting [laughter] that was something of the actions of the crowd.
Q. Well, you are not so afraid of the gentlemen here, that you are going to run away from them and leave them?
A. No, I didn't run away from them.
Q. Well, you said you did; you said you left them and left it alone.
A. I said I let them alone; I didn't say that I left the room, or

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didn't intend to be so understood; you asked me what I done, and I said I just let them alone. I meant to be understood that I let the crowd alone; I didn't go away from them at all.

Q. Well, they acted something like this crowd?

A. Well, they laughed.

Q. Do you think they were as sober as these gentlemen here, these Senators?

A. Well, I do not know—I don't see any here that I could say looked like they were under the influence of liquor.

Q. How about those gentlemen there?

A. Well, I should think the great majority at that time was not much more under influence than the majority here to-day; the majority of that crowd or the majority of this.

Q. How was it later on?

A. Well, later on there was two bottles of beer drinked before I went to bed.

Q. That was all that was drank?

A. That was all I seen them have that night; you understand that was Friday night.

Q. Well, up to the time when they got the two bottles of beer they appeared perfectly sober?

A. Well, I had left the crowd below, and they were singing and playing on the organ and some singing, and there was a crowd down there and I went up.

Q. Well, had they been drinking any?

A. I hadn't seen any; none in there at all.

Q. Well, when they got up stairs you say——

A. I didn't see them drink any up stairs.

Q. You don't think there was anything drank there at at all?

A. Not when they came up there was not, but afterwards there was.

Q. The two bottles of beer?

A. I know there was that much?

Q. That is all you know?

A. Yes, but I didn't stay up that night with them.

Q. Well, you slept right in the next room?

A. Yes.

Q. Well, did you hear any sounds of revelry in that room?

A. Once in a while I would hear them and laugh; when I went into the room that night, why there was—I left a party up—

Q. In the Judge's room?

A. Yes, in the Judge's room; that was Friday night.

Q. What were they doing; playing cards?

A. Yes.

Q. What were they playing?

A. Well, they were playing cards.

Q. What kind of a game?

A. I couldn't tell you to save my life, for I don't know one game of cards from another. I don't know what they were playing.

Q. They wern't playing for money?

A. I didn't see any money, but I understand that they played for these two bottles of beer; I had that impression, they played for two bottles of beer.

Q. That was simply an impression?

A. That is the impression; my impression was they played for them,

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because when they quit there, they played awhile and they quit and then they opened the beer, and after that was drank I thought I had got about all I could get out of them, so I left.

Q. Was the beer brought up when you were there?

A. I don't know who bought the beer.

Q. You don't know how much beer there was?

A. No, sir.

Q. And all you saw was two bottles?

A. That is all I saw.

Q. You don't know how much beer was there? A. No, sir.

Q. Where was the beer produced from when you got through?

A. There was a table setting somewhat like that, [indicating] and it was brought out from the corner, and after they had played,—they had two bottles sitting there.

Q. And you saw them before they opened them?

A. I saw them before they opened them, but I didn't see them until after the game was out.

Q. Who opened the bottles?

A. I think it was Mr. Apfeld who opened the bottle?

Q. The saloon-keeper? A. He was in there.

Q. Playing cards?

A. Yes, sir; he was playing.

Q. Was the Judge playing? A. Yes, sir.

Q. Well, how late did you hear that performance, Col.; you were in the next room; how late in the night do you think it was?

A. Oh, it was after, quite a while after midnight. Well, it was after midnight before I——

Q. Before you left?

A. Before I left that room.

Q. And you don't know how late they kept it up?

A. No, sir; I don't know how late they kept it up.

Q. Well, you got up the first next morning, Saturday morning?

A. Yes

Q. And they were all slumbering in the other room?

A. No, they weren't all; there was none in the other room that morning, but the Judge and Mr. Whitney; they were in there the next morning.

Q. Who slept with you that night, Mr. Coleman?

A. Mr. Coleman slept with me. I think it was Thursday night and and Saturday night,—No, I don't think Mr. Coleman slept with me Saturday night.

Q. Who else slept with you the other nights?

A. One night Mr. Charles Butts slept with me.

Q. And who else?

A. That was all.

Q. Was there at no time but two of you in that bed?

A. Well, one time, when I invited Chas. Butts to stay with me, when we went in there Mr. Coleman was in the bed; we found him in the other room; it was too late and then all three of us slept in that bed.

Q. Well, Coleman had no right there?

A. He had no permission from me, and the landlord said he hadn't any from him; I asked the landlord and he said he hadn't given him any, and he hadn't any from me.

Q. Well, did you know where Coleman's bed was?

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A. I never knew he had a bed. (laughter.)
Q. Well, he roomed with you?
A. Yes.
Q. And he occupied the bed with you?
A. Yes, a good big share of it then. (laughter.)
Q. This Saturday morning; did you drink that morning?
A. No, sir; Saturday morning the Judge and I didn't drink together.
Q. Didn't have a drink?
A. No sir, not Saturday morning.
Q. You didn't have a flask loaded and brought in Saturday morning?
A. No, sir; I didn't do that Saturday morning.
Q. Did the Judge drink any time with you during Saturday morning?
A. No sir, he didn't drink any time with me Saturday.
Q. You don't know whether he drank with anybody?
A. I didn't see him drink with anybody.
Q. Well, Saturday night was the night when they passed around the hat, was it not?
A. Saturday night they passed around the hat; that was down stairs.
Q. That was down stairs?
A. Yes sir.
Q. And you say that before it got to the Judge it was always empty?
A. It was empty.
Q. They passed it more than once, didn't they?
A. Not that I saw; I did'nt see it but once.
Q. It was empty when it got to you?
A. No, sir.
Q. You didn't make any move of that kind?
A. No, I thought some fellow might have took it the same way I did. [Laughter.]
Q. Everybody thought by your actions that you took a drink?
A. I don't know what they thought.
Q. Did the Judge put it up to his mouth?
A. He took and looked at the hat the same as the others.
Q. The same as all of you?
A. About the same as we all did; I noticed that they looked higher the more they came toward us, they could see higher; I noticed that of some of them, just after passing me—I looked at one particular man and noticed that he didn't turn the hat up; that look satisfied him.
Q. Maybe he was a temperance man.
A. He might have been; I couldn't say whether he was or not.
Q. You didn't suggest to the Judge that it was empty, did you?
A. No, sir; I did not; I didn't even wink toward him; I was watching to see what he would do and made no suggestions at all.
Q. Well, the next morning afier that, Sunday morning, you got up and found the Judge was not undressed?
A. Yes.
Q. He was on top of the bed?
A. Yes.
Q. Without any clothes on him?
A. Well, he had his pants and vest on.
Q. I mean bed clothes?
A. Yes, he was on top of the bed.
Q. Who was on top of the bed with him?
A. There was no one on top of the bed with him.

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Q. That was about sun-up that you got up?
A. Yes.
Q. And you were gone about ten minutes?
A. Well, I don't think I was gone to exceed ten minutes.
Q. You came back? A. Yes.
Q. And found the Judge shaving himself?
A. Well, he was standing up shaving himself when I came back.
Q. Did he have the razor in his hand when he came back, or the lather brush?
A. Well, he had the razor; his face was lathered, and he had one hand up this way [indicating] and the razor up; the glass stood right opposite the door as you came in; he was with his back towards me as you come in.
Q. And was shaving? A. Yes.
Q. Now, what was the condition of the Judge that day Saturday in court, Colonel?
A. Saturday in court; well, when I was in there it was just the same as it had been Thursday and Friday.
Q. How was his condition on Monday?
A. Well, on Monday; I say, I don't believe I could answer as to the condition of the court on Monday, and do justice to myself or this court here.
Q. Well, were you in court, Monday? A. Yes.
Q. You can't tell, then, what his condition was on Monday?
A. I want it distinctly understood that I don't believe that I could answer that question, and do myself and this honorable court justice.
Q. Then you don't know his condition on Monday?
A. I want to say—
Q. I want to know whether you know what his condition was on Monday?
A. I saw him on Monday.
Q. Are you able to testify as to his condition on Monday?
A. Well, I want to say the reasons why I don't.
Q. No; you may answer this question: Are you able to testify as to the condition of the Judge that morning in court as to sobriety?
A. No, sir; I could not.
Q. We will now go back a moment to this passing around of the hat at the hotel on Saturday night; they went up stairs and continued the "jubilee?"
A. Yes, sir.
Q. Played some cards up there, didn't they?
A. Well, I think they played some cards up there Saturday night.
Q. You didn't play?
A. No, sir, I didn't play no night; never have played cards.
Q. Did they have anything to drink up there Saturday night?
A. Yes, sir.
Q. What did they drink up there Saturday night?
A. Well, there was a bottle of whisky there.
Q. Who brought that up?
A. I don't remember who did bring it up to a certainty. I remember there was a bottle brought up there; I don't think I saw who brought it up.
Q. You drank some of it?
A. Yes, sir.

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Q. Did the Judge drink some of it?
A. I don't know whether he did or not; it is about like the other time; I don't know whether he did or not, for I was not watching to see.
Q. But they drank generally in the room?
A. Yes, sir; yes sir; it was a general drink there.
Q. How long did they keep that up, Colonel?
A. Well the Judge didn't keep it up very long then; there was a party playing cards and my impression is the Judge sat down on the bed and pulled the pillows up under him; I was sitting behind Mr. Butts. Mr. Butts was playing cards I think that night. I think it was Saturday night.
Q. Was Mr Coleman playing that night?
A. I don't think I did see Mr. Coleman playing cards in there.
Q. Was Mr. Whitney playing?
A. Mr. Whitney was playing there one night; I didn't pay much attention to the card game; I saw him playing cards in there one night, but I think *that* night Mr. Whitney was not playing; I couldn't say what night I saw him playing in there; whether it was Friday or Saturday night I saw Mr. Whitney playing I couldn't tell.
Q. Well you don't know how late that was kept up?
A. Well, I think it must have been two o'clock when Charlie Butts and I went to bed; I can't answer now about Mr. Coleman, whether he was not playing that night, because I didn't know him. I don't remember seeing Coleman playing that night; I don't remember of seeing any cards played but twice.
Q. You weren't there all the time when they played cards there?
A. Oh, no; I was in my room.
Q. Do you know what the condition of the court was Tuesday morning?
A. Well, Tuesday morning, I think he was sober.
Q. You think he was?
A. Yes, sir.
Q. You don't know whether he had anything to drink that morning?
A. No, sir; I don't know whether he had or not. I noticed him Tuesday morning, too; that was the morning before we left.
Q. You don't know whether he had anything to drink that day?
A. No, sir; he didn't drink with me. I don't know whether he drank with anybody or not.
Q. Then you left on Wednesday?
A. No; we left on Tuesday.
Q. Which way did you go?
A. I came down on the same train with the Judge; we came up to Marshall, and I went on up the line.
Q. You didn't stop at Marshall?
A. No, sir; I didn't stop at the term of court.
Q. Did you go over to Benton with the Judge on Sunday?
A. Yes, sir.
Q. Did you have anything to drink that day?
A. We had some as we came back.
Q. Didn't you have some with you when you went over?
A. No, sir; I don't think we did.
Q. Did you have anything over there?
A. I didn't, nor I don't know whether the Judge did or not.

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Q. You don't know whether the Judge drank on the way over?
A. I am pretty sure he didn't while going over.
Q. Didn't you get your flask loaded before you went over?
A. No, sir.
Q. Didn't you generally keep it loaded?
A. Not always; sometimes I am out where I can't get it.
Q. You generally buy it at drug stores, I suppose?
A. No, sir; I buy it where ever I happen to be when I get out.
Q. You don't know what the condition of the Judge was on Sunday?
A. On Sunday I know what the condition of the crowd was, going down; and pretty well the condition of myself coming back.
Q. Well, how was that?
A. Well, I was considerably "fuddled."
Q. With too much bug-juice?
A. No, we didn't call that bug-juice. I think somebody from Lake Benton put it into the buggy, and we called it "sweating the cat."
Q. That is what you had coming back? A. Yes, sir.
Q. You had a bottle coming back? A. Yes, sir.
Q. But you don't know whether the Judge took any of that, do you?
A. I think he did.
Q. How was he as to being fuddled?
A. Well he rode in the back seat, and me and the driver gave it "fits" before he got it. They kept telling us to pass it back, and we told them that if they couldn't board at the same hotel with us, they couldn't drink with us; that if they had got to go to a different hotel at Benton, they must furnish their own liquor. It was a bad day; it was raining going down and raining coming back, and raining while we were there, and after me and the driver began to think that we could spare a little, why we passed it back to him.
Q. And they finished it?
A. Not entirely, but they give it a pretty good "pull." [Loud laughter.]
Q. And you think, summing it all up, that the Judge was perfectly sober during all that term of court, do you?
A. I say that I think he was sober on Wednesday, when he went there, and Thursday, Friday and Saturday; and I think he was pretty sober,—*entirely* sober when we got there Tuesday morning.
Q. Those are the only days you can verify?
A. I said Monday I couldn't.
Q. That was on account of your own condition, was it?
A. Well, that is just the truth of it. [Laughter.]
Q. Now, Col., you said you had seen the Judge intoxicated a good many times?
A. You misunderstood me. You asked me if I had *ever* seen him intoxicated during this time, and I said I had.
Q. You have seen him frequently intoxicated?
A. I have seen him more than once.
Q. Well, have you ever seen him intoxicated in court?
A. I have not, that I thought he was.
Q. You couldn't tell whether his actions at this time were different from any other time when you have seen him intoxicated, could you?
A. Well, his actions this time in court were not actions at all like what they were when I thought he was drunk. I have seen him when I was pretty sure he was drunk.

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Q. What terms of court have you attended?

A. I attended a term of court held at Marshall, December, 1879. I had two cases to try. Our county was attached to that for judicial purposes. I attended that term in 1879, at Marshall, and the general term at Lincoln county in June, and I was only present one day in the afternoon and evening, while he was holding court at Redwood. I had no business at that term. That was two years ago.

Q. Well, you simply wish to be understood that you have been in his court very little?

A. I have only been in his court three times.

Q. And those only a short portion of the time?

A. Well, I was in the entire term at Marsfield, and was there Tuesday, Wednesday and Thursday at Marshall. I am pretty sure that was December, 1879.

The PRESIDENT *pro tem.* Colonel, I want to ask you one question: Do you know whether at that time at Marshfield, from where the court was adjourned to Tyler, there were any saloons or facilities for obtaining whiskey there?

A. I never seen any there. I don't think there was any facility. I don't think there was any whisky up there at Marshfield at all. I have been in the habit of attending court up there and I have never seen any liquor at Marshfield. I never knew that any body did sell any liquor in Marshfield. I have never seen any at all at Marshfield. I don't remember seeing any spirituous liquors only once in my life at Marshfield. Judge Cox was not there then. I saw some men come up to Lake Benton to the commissioners court and they had a bottle with them. That was a year or so before that; that was all the spirituous liquors I ever saw at Marshfield.

Examined by Mr. ARCTANDER.

Q. You stated, Colonel, that on the morning of Thursday the Judge was reasonably sober. I will ask you to state whether you mean to infer by that that he was not sober.

A. I meant he was sober.

Q. Now, you stated that while going over to Tyler from Marshfield, there was no talk about court at Tyler, but there was about lodging facilities?

A. Yes, sir.

Q. What arrangement, if any was made by the Judge while going over there, in regard to its lodging facilities?

A. As we were riding over from Tyler to Marshfield, that day, before the court was opened at all, the Judge, myself, Mr. Seward and Mr. Whitney, agreed with the landlord at Tyler that he should take us over to Marshfield from Tyler every morning, and that he would bring us back, and that we would have supper and lodging and breakfast at Tyler and take our dinners up at Marshfield. We made that agreement with Mr. Hodgman, the landlord, and he was also the same man that drove the team. He agreed to take us up in the morning and bring us back at night.

Q. Now, you spoke of that evening when these parties were going to crucify you. I don't remember what evening it was. I will ask you whether Judge Cox was in that party and took part in their fun or what he did?

A. Well, Judge Cox did not take any part in this crucifixion at all.

Q. What was he doing?

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A. My recollection was that Judge Cox was sitting on the bed when I came out into the room.

Q. And enjoying the scene?

A. I am sure that the first my attention was called to Judge Cox, he was sitting on the bed and he was laughing, and they were all laughing, and they were having a general good time. They said they had found "Innocents Abroad," because I went to bed early every night, and they wanted me to *show cause* why I went to bed early.

Q. What was the Judge's condition that night; was he intoxicated?

A. He didn't have any appearance of being intoxicated that night.

Q. Now, Saturday night, as long as you were in the room, what was the Judge's condition as to being intoxicated?

A. Well, he was not intoxicated, I am very sure as long as I was in the room there that night.

Examined by Mr. Manager DUNN.

Q. Well, Colonel, you say going over to Marshfield, you had arranged with Mr. Hodgman to board you and the Judge, and company?

A. Yes, sir.

Q. Had you been at Marshfield that day?

A. No, sir.

Q. Or the day before?

A. No, sir.

Q. Did you know, any of you, what arrangements had been made at Marshfield for boarding?

A. I knew in this way: because the clerk of the court had been down and told me what arrangements, and told me it would be better for me to make arrangements.

Q. What clerk of court was that?

A. That was Charles Marsh.

Q. It was not Mr. Matthews?

A. No, sir; the clerk of the court told me we had better make arrangements, because there would not be accommodations; for it was a small place, and there was really no hotel there.

Q. Did you know that there was no place there where you could get accommodations?

A. I knew that there was no place.

Q. Didn't you know that they had gone to considerable expense and rigged up a place?

A. I did not.

Q. You found that out afterwards?

A. I didn't, except by hearsay.

Q. This man was not acting as clerk of court, was he?

A. Well, I didn't know who was acting. I thought at the time he was going to act as clerk of the court. I didn't know anything about Mr. Matthews at that time. I didn't know that he was deputy-clerk, at least; but it was the clerk of the court and another man, a farmer, that fixed up this room.

And I spoke to Mr. Marsh, and, said I, "Can you give me and the Judge some good rooms up there?" He says "I don't think we can:" he said "you'd better make arrangements to get rooms here and get your dinners up there because it will be crowded, for you know as well as I it is a little place and it will be crowded." And then I spoke to Mr. Hodgman, before the Judge came, about those rooms; but not until the

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clerk of the court had told me we couldn't get accomodations up there at Marshfield.

CHARLES W. ANDREWS.

Sworn on behalf of respondent, testified.

Examined by Mr. ARCTANDER.

Q. Where do you reside ?
A. At Tyler, in Lincoln Co., Minnesota.
Q. What is your profession and business ?
A. An attorney at law.
Q. Do you know the respondent, E. St. Julien Cox ?
A. I do.
Q. How long a time have you known him ?
A. I have known him about 20 years.
Q. Have you known him intimately during that time ?
A. I have known him quite intimately.
Q. Have you had quite intimate relations with him so as to see him every day during a part of that time ?
A. Yes sir; I studied law with Judge Cox and Mr. C. R. Davis when they were at St. Peter, before the Judge's election.
Q. I will ask you to state whether or not you were present at Marshfield at the holding of the term of court there in and for Lincoln County in the month of June, 1881 ?
A. I was.
Q. Did you see the Judge there ?
A. I did.
Q. I will ask you to state what the Judge's condition was as to sobriety or inebriety at that occasion ?
A. He was sober.
Q. The court lasted but a very short time there didn't it ?
A. But a very few minutes.
Q. It adjourned over to Tyler ?
A. Yes, sir.
Q. Were you in court, in Tyler the next morning, Thursday morning ?
A. Yes, sir.
Q. I will ask you to state whether you were in attendance at that court during the whole of the session of court ?
A. I was.
Q. I mean Thursday, Friday, Saturday, Monday and Tuesday forenoon?
A. Yes, sir.
Q. You were in there during all the sessions of the court ?
A. I was.
Q. You were practicing in that court ?
A. Yes, sir.
Q. Having matters and business before the court ?
A. Yes, sir, I had some cases at that term of court.
Q. Now I will ask you to state what the Judge's condition was during those days as to sobriety or inebriety ?
A. I considered him sober.
Q. You had no doubt about it ?

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A. I had no doubts about the matter.
Q. During any part of that term of court?
A. During any part of that term of court, at Tyler.
Q. I will ask you to state how business was transacted during that term of court by the Judge?
A. Promptly and with as much expedition as was possible under the circumstances.
Q. What do you mean by "under the circumstances?"
A. There were many of the lawyers who were not prepared for their cases; clients were absent when the cases were called, and there were a number of recesses granted, at the instance of the attorneys, to enable them to get ready.
Q. I will ask you to state whether or not, there were portions of that term that the court had to adjourn, or take recesses, for quite a length of time, on account of no business, and waiting for the grand jury to come in?
A. There was.
Q. I will ask you to state whether Mr. Coleman was in attendance upon that term of court?
A. Mr. Coleman was at Tyler during that term of court.
Q. Was he in the court room?
A. He was in the court room a very little.
Q. What portion of the time do you think?
A. Well, that is a difficult question for me to answer. He was in the court room but a very small portion of the time, he was at the hotel a greater portion of the time.
Q. What is that?
A. He was at Mr. Hodgman's a greater portion of the time, and in bed.
Q. During the session of the court?
A. So he told me,—that he was in bed.
Q. I will ask you to state whether or not during any of these recesses you were in the company of Judge Cox?
A. I was a great deal of the time.
Q. State whether or not you ever saw him go into the saloon during any of these recesses?
A. I did not.
Q. There was only one saloon at Tyler?
A. But one.
Q. I will ask you to state whether or not you invited him to drink there, during court and during recess?
A. I did several times.
Q. Did he drink with you?
A. He did not.
Q. Why?
A. He said he didn't want to go to the saloon.
Q. Do you know this fellow Chapman, from Lake Benton?
A. A. G. Chapman?
Q. Yes.
A. Yes sir.
Q. Were you present there in the court room after the Judge had made the order adjourning the court to Tyler?
A. I was.

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Q. Did you hear Chapman state anything to the clerk of the court there?

A. I did.

Q. What was it?

Mr. Manager DUNN. I object. What is the object of that?

Mr. ARCTANDER. To show his feeling and animus in the matter.

Mr. Manager DUNN. Well you should have interrogated Mr. Chapman.

Mr. ARCTANDER. I did interrogate him.

Mr. Manager DUNN. As to this particular matter?

Mr. ARCTANDER. Yes, sir.

Senator J. B. GILFILLAN here took the chair to act as President *pro tem.*

Mr. Manager DUNN. Well it is immaterial, because the witness, Chapman, don't deny it. I suppose what they want to get at here is to contradict the witness Chapman. After asking the question and upon objection interposed on my part the chair held the question pertinent, and then the question was asked again and the witness said I don't think I said anything of the kind, but said he wouldn't swear he didn't; that he was somewhat angry at the time. It is an immaterial statement anyway.

Mr. ARCTANDER. I suppose you know the rule, that it is not necessary for the witness to deny it if he does not admit it.

Mr. Manager DUNN. He don't deny that he made the statement.

Mr. Manager HICKS. It is an immaterial matter, Mr. Arctander.

Mr. Manager DUNN. The question as asked was this: "I ask you, whether or not, you did not immediately after the order of adjournment, step up to Charley Marsh, the clerk of the court, and direct and advise him not to obey the order and direction of the court to remove said books or records, nor any of them, but to keep the same, at all events, at Marshfield, or words to that effect?" The answer of the witness was: "I don't think I said anything of the kind."

Now they propose to prove this by this witness Andrews. In the first place the foundation would not be properly laid, because they did not call the attention of that witness to the fact, that this statement was made in the presence of this witness, or in the presence of any particular person. They did not give the witness Chapman the necessary information to refresh his memory upon the point that they propose to contradict him. In the next place, I claim it is a matter entirely immaterial to any issue being tried here. Taking the testimony of the witness together I understand it stands virtually admitted by him.

The PRESIDENT *pro tem.* I think so.

Mr. ARCTANDER. The court does not hold that it must be a denial in order to admit proof?

The PRESIDENT *pro tem.* Substantially that; if he does not deny it, it stands substantially as admitted.

Mr. ALLIS. Mr. President, this is a mere question of grammar and rhetoric. The witness Chapman states affirmatively that he did not think he said anything of the kind; it is simply saying that to the best of his recolliction he did not say anything of the kind, then when put in the other form and asked whether he would swear positively that he did not say anything of the kind he said he wouldn't swear positively, but he swears that he thinks, that is, to the best of his recollection, that he did not.

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Mr. Manager DUNN. The effect of his testimony is that he might have said it and he might not.

Mr. ALLIS. The effect of it is that he gives it as the best of his recollection that he did not say that; but that he is unable to swear positively that he did not.

Mr. Manager HICKS. He admits further along that there was quite a feeling upon the county seat question, at that time. The whole tenor of the evidence is to show that there was quite a feeling there and that he might have said it.

The PRESIDENT *pro tem.* The impression of the chair is that the answer taken altogether is not a denial, but virtually an admission that he might have said it. I will submit the question to the Senate, if the counsel desire.

Mr. ALLIS. I would like to have it submitted.

Senator CASTLE. Mr. President, I would enquire if the President does not understand the rule to be this: In all matters where questions are asked in the the way of impeachment, that if the witness denies absolutely, or denies being able to recollect, that you can ask the question by way of impeachment; in other words, unless he admits it, under all other cases you can ask the question.

Mr. Manager HICKS. I call the attention of the Senator to the fact that he does not deny that he did not recollect. He simply says, "I don't think I did. I wouldn't swear I didn't.

Senator CASTLE. The question I asked the chair was this: If it is not the rule in all cases where there is not an admission absolutely that you can show whether or not it was true?

The PRESIDENT *pro tem.* No, I think the rule is that the witness must deny having said so and so; that is, if he says I don't remember, one way or the other, the foundation is not laid to impeach him. I will submit the question to the Senate.

Mr. ALLIS. You will understand the position I more particularly assume and of course the question upon which the Senate will have to pass in regard to the construction of that language. I insist that the witness swore that, to the best of his recollection, he did not say it, though possibly he might have said it.

Mr. ARCTANDER. It seems to me, Mr. President, that the evidence certainly has a tendency to show a spirit of hostility towards the respondent. Any such action on the part of an attorney as advising the officers of the court to disobey the orders made by the Judge—to break the commands made by him—an attorney, who is an officer of the court, stepping up to another officer and telling him to disobey the Judge, and show contempt towards the court, when he has made an absolute order, —certainly, no lawyer would do it unless he was actuated by hostile motives. I suppose as far as the matter goes that you can prove it, notwithstanding he did not deny that he made the statement. I apprehend that the Presideut is so fully aware of what the rule of law is, upon that point, that it is not necessary even for me to mention, much less to cite authorities upon it. It is not necessary for him to deny it, but if he does not admit it then it is proper to show it. There may be a question as to whether my question is proper. I admit that, but that point was not raised by the managers. I asked this witness what the party said, instead of asking, as I should have done, if he used such and such language, repeating what I asked the other witness. If that were the objection it would be good in law, but the managers have not made that objection.

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The PRESIDENT *pro tem.* This evidence is intended purely as impeaching the credibility of the other witness, is it not?

Mr. ARCTANDER. That is all.

The PRESIDENT *pro tem.* Mr. Reporter, please read the question.

The reporter then read the question last objected to.

Mr. ARCTANDER. I will withdraw that question for the present.

Q. I will ask you whether or not, at that time, Mr. Chapman, in your hearing and presence, stepped up to Charlie Marsh, the clerk of the court, and directed and advised him not to obey the direction and order of the court, and not move the books and records, or any of them, but to keep them at all events, at Marshfield?

Mr. Manager DUNN. That is objected to, in addition to the objections I have stated, on the ground that the attention of the witness Chapman was not directed to the fact that this witness was present when he made that statement, and that it is not material in any event.

The PRESIDENT *pro tem.* The chair is of the impression that the foundation is not sufficiently laid, if that is the point of the objection of the learned manager.

Mr. ARCTANDER. On the ground that we did not call his attention to the fact that this witness was present?

The PRESIDENT *pro tem.* No, I would not confine it to that. My impression is that the witness on the stand did not deny it. It really stands as admitted by him. I do not understand from what I have heard read that the witness denied it.

Mr. ALLIS. He says he thinks he didn't.

The PRESIDENT *pro tem.* As it is desired that the question be submitted to the Senate, I will now submit the question. Those in favor of sustaining the objection will vote aye, and those opposed, no.

The clerk will call the roll.

The roll being called, there were yeas 10, and nays 14, as follows:

Those who voted in the affirmative were:

Messrs. Gilfillan, J. B., Hinds, Johnson, F. I., Johnson, R. B., Rice, Shaller, Shalleen, Tiffany, Wheat, Wilkins.

Those who voted in the negative were:

Messrs. Aaker, Adams, Buck, C. F., Campbell, Castle, Crooks, Gilfillan, C. D., Howard, Johnson, A. M., Miller, Morrison, Perkins, Peterson, Powers.

The PRESIDENT *pro tem.* Upon the question as to whether the objection shall be sustained, there were ayes 10 and nays 14, so the objection is overruled. The question will be put to the witness.

The WITNESS. The question is did I hear him?

Q. Yes. A. I did.

Q. Did you see the Judge when he alighted?

A. I think not; I saw him just before he alighted from the buggy and soon afterwards.

Q. Did you see him walk there at any time while he was at Marshfield?

A. Oh, yes.

Q. Saw him move around? A. Yes, sir.

Q. State whether or not he staggered?

A. He did not.

Q. Did you hear him speak, talk with him?

A. I did; talked with him myself.

Q. State whether or not his voice was thick at that time?

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A. It was not.

Q. I would ask you to state whether or not he first day at Tyler, in court there, the Judge's eyes were red ?

A. They were not red.

Q. I will ask you to state whether his face had a ruddy look, flushed?

A. I noticed nothing of the kind.

Q. I will ask you to state whether his manners in court there were different from what they usually are ?

A. I did not observe any difference.

Q. Whether they were natural or unnatural in any way ?

A. Nothing that I observed.

Q. Do you remember of the occasion on the first day of the term at Tyler when Mr. Graham made a motion, or handed a motion up to the court to have court adjourned back to Marshfield ?

A. I was in court that morning but I don't recollect of hearing him make any motion.

Q. Were you there in court during the whole of the forenoon ?

A. I was.

Q. I will ask you to state whether or not in your hearing the Judge made any remarks like this : "You can't come that on me by a damned sight" or words to that effect ?

A. I heard nothing of the kind.

Q. You were there in the afternoon session until adjournment were you ?

A. Yes, sir.

Q. You may state whether or not the Judge was drunk, or intoxicated in the least in court that afternoon ?

A. Well he was not intoxicated as I discovered.

Q. He was not intoxicated as you could discover ?

A. As I could discover.

Q. Were you in the parlor, and up in his room that night ?

A. Yes sir.

Q. How late did you stay up in his room ?

A. I think perhaps as late as midnight. You refer to Thursday night ?

Q. To Thursday night ?

A. Yes sir; I think perhaps it was as late as midnight. I am not quite certain; I know it was quite late.

Q. State whether or not the Judge was intoxicated when you left at midnight ?

A. Not that I could discover.

Q. Were you up in his room the next night—Friday night ?

A. I think I was in his room every night during that term of court, but not to remain on any one evening a great length of time.

Q. Do you remember that Friday night, when it is claimed there was a general spree there ?

A. Well I remember of there being a pretty jolly time.

Q. And you were up in his room that night?

A. Yes sir.

Q. How late, about ?

A. Well, really, I can't say certain; my impression is I was there as late as midnight or after.

Q. Now, during that night, was the Judge intoxicated as long as you were there ?

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A. Not that I could discover.
Q. Did he do anything then while you were in the room?
A. Well, I didn't notice.
Q. Well I mean whether he played cards or anything that night while you were there?
A. I am not certain; I recollect of his playing cards one evening and perhaps two, when I was in the room.
Q. Were you in the room with them every evening while he was there?
A. I think I was; I went in and out two or three times during the evening. I boarded at the hotel and roomed in the building.
Q. And this room that the Judge had was kind of an upstairs sitting room?
A. Yes sir, it was a room I had formerly occupied, and I gave it up at the request of the landlord, for the Judge.
Q, Now, during Friday in the afternoon there did you discover any signs of intoxication on the part of the Judge?
A. No, sir; not on Friday.
Q. I will ask you to state, whether or not, the Judge's eyes were "squinty" there in court that day or any other day?
A. Well, if I understand what is meant, I didn't discover anything that approximated to squint-eyes at all.
Q. Nor "cock-eyed?"
A. Nor cock-eyed either. I am not an expert as to squint-eyes or cock-eyes; but I didn't see anything that struck me as being in that direction.
Q. State, whether or not, his eyes were red.
A. I didn't discover that they were.
Q. Have you ever seen him when his eyes have been red?
A. I think not.
Q. State whether or not, his hair was smooth, or whether it looked as if it stood the wrong way, that night?
A. Well, in regard to that matter, it never occurred to my mind that Judge Cox was drunk or under the influence of liquor that night, and I didn't pay any attention to his hair, or anything of the kind, but I am satisfied that had there been anything unusual about his appearance, I would have noticed it. I don't recollect in regard to the minutia as to how his hair lay or anything of the kind.
Q. Well, did you notice anything on Saturday as to his looking tired or haggard?
A. I don't recall to recollection anything unusual about his appearance.
Q. Now I will ask you to state, whether there was any difference in the Judge's appearence in the forenoon and in the afternoon, and toward evening?
A. There was not that I could, or did observe.
Q. At none of those days? A No, sir.
Q I will call you attention now to the case of the State against Chapman, that was tried, I believe, on Monday morning, during that term of court; were you the attorney for the defendant in that case?
A. Yes, I was associated with Mr. M. E. Matthews.
Q. You were the one that took the leading part in the trial, were you not?
A. Well, I did a part of the time; a part of the time Mr. Matthews took the leading part.

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Q. Now, I will ask you to state whether or not when the prosecuting witness was turned over to you, or your partner, to cross-examine, the Judge made the remark that there was no need of cross-examining her?

A. I don't think he made any such remark.

Q. Do you remember of any such remark?

A. I do not.

Q. You may state whether or not you did cross-examine.

A. Well, my best recollection is that we did not cross-examine her; however, Mr. Matthews was attending to that part of the case, and it was assigned to me to argue the case; and the case was finally turned over to me, when he was appointed as one of the examining committee to examine an applicant who had made application for admission to the bar.

Q. So that you had the sole charge of the case after that?

A. I had the sole charge of the case after that.

Q. You were present and sat and listened during the trial of the case in the forenoon?

A. Yes, sir.

Q. Were there any objections, arguments and rulings on objections there during the forenoon?

A. There was to the admissability of evidence and I think Mr. Matthews argued a demurrer, interposed to the indictment.

Q. What was the nature of the Judge's rulings as to being rational, reasonable and clear or otherwise?

A. I considered them at the time, correct. He did not always sustain our objections or grant our motions.

Q. But you thought he was correct?

A. I thought they were correct.

Q. Whether he sustained you or not?

A. Yes, sir.

Q. When was the man arraigned, if you remember?

A. Do you mean—

Q. I mean when the indictment was first read to him?

A. When the indictment was first read we requested time to plead.

Q. Was that Saturday that the indictment was first read?

A. Yes, sir.

Q. You got time until Monday morning to plead?

A. We did; we then interposed our demurrer and it was overruled, and we proceeded with the trial of the action.

Q. After the demurrer had been overruled and before you proceeded to the trial, you may state what the Judge was doing or in what manner he was occupied if at all?

A. He was occupied at the clerk's table, as I understood, or inferred, from the proceeding they were having; that he was instructing him something in regard to his records.

Q. This was after the demurrer was argued and decided and before you proceeded to empannel the jury?

A. Yes, sir.

Q. Now, during this morning what was the Judge's condition as to sobriety or inebriety.

A. I considered him at the time perfectly sober.

Q. Now, after you had tried it and submitted it to the jury what occurred during the forenoon?

A. After it was submitted to the jury concerning this case in question?

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Q. Yes.
A. Well, the jury retired.
Q. Did they come back again during the forenoon?
A. Yes, sir; they brought in a verdict of guilty of, I think, simple assault.
Q. When that verdict was returned and recorded, what was the next step, and what was the next thing done in the case?
A. I gave notice of a motion in arrest of judgment.
Q. At that time?
A. Yes, sir.
Q. Immediately after the verdict came in?
A. Immediately after, yes, sir, as soon as the verdict was announced and recorded.
Q. State whether or not the Judge sentenced the prisoner before this motion in arrest of judgment?
A. I think not.
Q. Well, are you clear upon that?
A. Well, I am very clear for I don't think he had time.
Q. You gave your reasons for your motion in arrest of judgment did you?
A. I asked a little time, and I think the Judge insisted, or rather requested, or asked me if I could state my grounds then.
Q. You stated your grounds then, did you?
A. I stated my grounds then.
Q. What were they?
A. That the prisoner had not been required to plead.
Q. Or, in other words, he had not plead?
A. He had not plead.
Q. Well, what happened then?
A. I stated to the Judge that our ground for motion in arrest of judgment was that the prisoner had not plead. He asked Col. McPhail, the county attorney, if that was correct; the Colonel stood very near me, and said he did not know. And then I made the statement that Mr. Matthews had called my attention to that fact at the time of the omission.
Q. Your partner?
A. My partner, or associate rather; and that before leaving the court room he requested me to be particular and recollect that point and make a motion in arrest of judgment, if a verdict of guilty was rendered by the jury. And I also stated that I discovered the Judge was being occupied at the desk of the clerk at the time.
Mr. Manager DUNN. Is this what you stated to the Judge?
A. I stated this to the Judge in court. And I also stated that I deemed it perhaps a negligence or oversight of Col. McPhail, and did not deem that it was necessary for me to call his attention to it at the time. I think that is in substance what I said and very nearly the remark I made.
Q. The Judge examined the records then to see, did he?
A. Yes, sir.
Q. After he had examined the records, what was then done?
A. The verdict of the jury was set aside.
Q. This was all done before the adjournment for dinner?
A. Yes, sir, it was done within a very few minutes too.
Q. I will ask you to state whether at that time or at any time before the Judge fined the prisoner the following, or words to this effect, took

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place between you and the Judge: That you stated you objected to any further proceedings and wanted to make a motion in arrest of judgment, and that the Judge told you that he would pass judgment upon the prisoner and that you could have all the advantages afterwards that you would have had before if your motion had been heard before sentence?

A. My recollection of that is that there was nothing of that kind said; but at recess I think, the Judge stated to me in substance that perhaps it might have been better for my client or fully as well had I let him pronounce the sentence as to stand a new trial.

Q. You have stated already that the Judge had not fined him when you made that motion?

A. I don't think he did. I am almost positive; in fact, I feel so certain that there is not a shadow of doubt in my mind as regards that.

Q. I desire to call your attention to what they call the record up in that county and ask you whether or not that is a correct transcript of the proceedings there?

Mr. Manager DUNN. Well, we shall object to that. He is not the custodian of the record.

Mr. ARCTANDER. I desire to call the attention of the witness to a part of the record that has been introduced here. I suppose that the clerk's minutes are not a record like a judgment that cannot be attacked or shown to be incorrect, or anything of the kind, but that you may show that the record that has been introduced is not a true statement of the facts as they occurred at the time. It is perhaps proper for me to go through this record and ask the witness if these things occurred as shown there.

The PRESIDENT *pro tem.* What does counsel expect to show? Something in addition to what appears of record?

Mr ARCTANDER. No, sir; I intend to show there was no such order by the court as that this motion would be heard in the afternoon in arrest of judgment. Nor that there was in the forenoon, and before the hearing of that motion, any order by the court that this defendant should pay a fine of a certain sum and stand committed to the Hennepin County jail for a certain time; nor that, after any fine had been imposed, that any motion was made to set aside the judgment on any ground whatsoever; but that the same was made before the fine was imposed and that the motion was sustained by the court.

Mr. Manager DUNN. I presume the counsel is endeavoring to show by this witness that those things did not take place. I presume the only controversy between he and I would be as to the method of showing it. I have no doubt as to the propriety of asking this witness what did take place and let that compare with what the record shows; the senate can then judge which tells the truth;—the record of the clerk of court or this witness.

The PRESIDENT *pro tem.* You say you want to ask the witness whether that record is correct or not?

Mr. ARCTANDER. No I want to ask him whether the matter stated in the record is correctly stated or not.

The PRESIDENT *pro tem.* I do not remember the force of the evidence well enough to know what effect these minutes have.

Mr. Manager DUNN. I suppose the minutes of the clerk have no greater force than the testimony of any other witness. The clerk does not seem, by any law that I can discover, obliged to keep minutes at all but he does it under his oath of office.

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Mr. Manager HICKS. The clerk swore that he made these minutes each day before he left the court room. The only point about this is that the witness has already testified that he did not recollect certain facts to have occurred which the record describes to have occurred. Now they want to make the testimony of this witness stronger by putting this record up and letting him swear a hole through it. Let this witness tell what did take place and if it contradicts the record let it stand against the record.

The PRESIDENT *pro tem.* I think the counsel calling the witness may exhaust his recollection as to what occurred, and then if he does not cover the ground they desire to have covered by his testimony, they may perhaps direct his attention to any part of this record and ask his recollection with reference to that.

Mr. ARCTANDER. [to the witness.]

Q. I will ask you to state whether or not there was any order by the court at the time you gave your notice of motion in arrest of judgment that that motion should be heard at 1:30 p. m. that day?

A. There was not.

Q. I believe you have already stated that there was no sentence and no order made by the Judge before your motion had been heard and decided?

A. My best recollection is there was nothing of the kind. I never would have neglected a matter that far.

Q. I will ask you to state whether when your motion was sustained by the court there was any order made by the court that the judgment should be set aside; whether there was any judgment there at the time?

A. There was none. The verdict of the jury was—

Q. Was there any order of the court that the judgment should be set aside?

A. Well, not that I heard.

Q. Did you hear his order?

A. I heard the order.

Q. Well, what was the order?

A. To the best of my recollection, it was that the verdict of the jury was set aside and a new trial ordered.

Q. Now, was there any further proceedings had in the case in the forenoon?

A. There was not.

Q. When was the next proceeding had in the case?

A. In the afternoon of the same day.

Q. In the afternoon upon the coming in of court?

A. Yes, sir.

Q. What then took place?

A. He was called upon to plead and pursuant to an arrangement between the county attorney and I,—an understanding that we had,—he plead guilty of a simple assault.

Q. That is what the jury had found him guilty of in the former trial?

A. Yes, sir; in the former trial.

Q. That plea was accepted by the county attorney, was it?

A. Yes, sir.

Q. And by the court?

A. Yes, sir.

Q. After that was done, what then took place?

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A. Sentence was pronounced.

Q. What was the sentence?

A. A fine of ten dollars, and in default thereof to be committed to the Hennepin county jail for the period of sixty days.

Q. This record then, in regard to six months, is incorrect, is it?

A. Quite so.

Q. Did you ever, during any of the proceeding, hear any order or sentence that he should be committed for six months?

A. I heard no "six months" in the whole case.

Q. At the time that the Judge pronounced the sentence upon him, was there anything said by the court in regard to the costs?

A. Well, Mr. Matthews made some remark in regard to the costs. I recollect the Judge telling him that the costs would follow the fine.

Q. But the Judge did not pronounce that in his sentence,—anything more than just the fine?

A. Not that I understood.

Q. I will ask you to state, whether or not, you were present from the time that the court first met there, after the noon recess?

A. I was.

Q. I will ask you to state, whether or not, the Judge, before Mr. Chapman had pleaded, called the defendant up before him?

A. I didn't notice anything of the kind.

Q. I will ask you to state, whether or not, you heard any question upon the part of the court towards Mr. Chapman to the effect of "how are you healed?"

Mr. Manager DUNN. Well, I object to that.

Q. I will ask you to state, whether or not, the Judge made any statement or put any question to the respondent as to his financial circumstances?

A. I didn't hear him.

Q. You were sitting right there with your client, were you not?

A. Yes, sir.

Examined by Mr. Manager DUNN.

Q. You say you were a law student of Judge Cox?

A. Yes, sir.

Q. How long have you lived at Tyler?

A. I have lived at Tyler since about the 1st of last May, or about the middle of May I think, since I went there myself. I did not remove my household furniture and my family to that place from Marshall, where I formerly lived, until after the Marshall term of court in June.

Q. You were a partner of M. E. Matthews?

A. I was until about the middle of May when we dissolved partnership and I formed a co-partnership with Mr. W. E. Dean, of Tyler.

Q. You have seen Judge Cox under the influence of liquor, have you not, intoxicated?

A. I have.

Q. Frequently or infrequently?

A. Well, I think it would be safe for me to say that I have seen him under the influence of liquor, frequently during my twenty years acquaintance with him.

Q. You may state whether you knew of the Judge drinking any intoxicating liquors during this term of court at Tyler, spirituous or fermented liquors of any kind?

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A. I think I know of his drinking one glass, on Monday evening, I think it was and yet I am not certain as to what he drank.
Q. You heard Col. McPhail's testimony?
A. Yes, sir.
Q. Were you one of the parties that he describes there in those rooms that passed the hat around?
A. I was in the room usually. I was there the night of the hat arrangement.
Q. Well were you one of the fortunate or unfortunate ones that he testified to about the bottle being empty before it reached him. How was the bottle when it got to you?
A. Well it didn't get to me; I think I was sitting at the organ and if my recollection is correct Mr. Matthews passed the bottle or started it around and he knew that I didn't use it and I don't think it was offered to me at all.
Q. You didn't use liquor at all?
A. I didn't at that time.
Q. Well how was it when you invited the Judge to drink with you?
A. Well I didn't use it then. I didn't invite him to drink with *me* I asked him if he would have something to drink.
Q. And he told you no; he didn't want to go to the saloon?
A. Yes, sir.
Q. You was willing to go with him to the soloon to take a drink?
A. I was; not to take it myself.
Q. But simply to buy it for him?
A. I was, if he wanted it I was, perfectly willing.
Q. Did you think he needed it?
A. In regard to that I am not able to state as to whether he did or not.
Q. What was the occasion of your inviting him to drink if you were not going to drink yourself? Was there any necessity for it?
A. Well it was perhaps suggested by a liberal disposition.
Q. That was all?
A. That was all. I invite a great many men to drink when I don't stop to discuss the question in my mind as to whether they need it or don't need it.
Q. Well, during this time that Col. Mc Phail speaks about up in the Judge's room were you one of the party?
A. I was in the Judge's room frequently. Perhaps as often as from one to three or four times every evening.
Q. Were you up there at the time that they were drinking liquor pretty freely one evening?
A. I think not; I don't recollect seeing them drink liquor in that room at all.
Q. You had your family there at the hotel did you?
A. No, sir; my family were at Marshall.
Q. In the trial of this Chapman case did you put the defendant on the stand to testify?
A. I think not.
Q. Was there any reason why you did not?
A. Yes, sir.
Q. Was that reason anything that came from the Judge's lips?
A. No, sir.
Q. You made no defense?
A. No, sir.

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Q. To the action at all did you?
A. No, sir; well, I don't think we introduced any evidence.
Q. Well, that is what I mean? You didn't even cross-examine the prosecuting witness?
A. I am not positive as to that. That matter Mr. Mathews was attending to and he may have asked the prosecuting witness some questions and I may have forgotten it.
Q. After Mr. Mathews left, you took charge of the case did you?
A. Yes, sir.
Q. You argued the case to the jury?
A. I think Mr. Mathews, at my request argued the case, if it was argued at all; and it was very briefly, if argued at all. And then he was called out to act as one of the examining committee, as I have before stated.
Q. Do you know who that committee was?
A. I think that committee was Mr. M. E. Mathews, and this man Coleman.
Q. Who else?
A. It strikes me that it was Mr. Whitney.
Q. Was Mr. Whitney a resident member of the bar there at Tyler?
A. He was not a resident there, no, sir.
Q. Was he a resident of your county?
A. No, sir; not at the time.
Q. Was he a resident of the district that you know of?
A. I think not; I think he was from one of the districts farther east.
Q. Do you know what district?
A. I do not.
Q. Mr. Coleman was not a resident member of the bar there was he?
A. No, sir.
Q. Nor of your county. A. No, sir.
Q. He was appointed on the examining committee, however, was he?
A. Yes, sir; I think so.
Q. You stated I believe that you did not see the Judge drink any intoxicating liquor during the whole term?
A. But one evening; I think along on Monday afternoon he drank something, but I can't say what it was.

CHARLES BUTTS

Sworn as a witness on behalf of the respondent testified.

Examined by Mr. ARCTANDER.
Q. Where do you reside?
A. In Lake Benton.
Q. What is your profession?
A. Lawyer.
Q. Do you know the respondent, E. St. Julien Cox?
A. Yes, sir.
Q. How long have you known him?
A. About two years that I have known him well.
Q. Were you present at the term of court held in Tyler in and for the county of Lincoln, in the month of June last year?

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A. Yes, sir.
Q. Were you there during the whole of the court?
A. Yes, sir.
Q. Were you present during all of the sessions of the court?
A. The most of the time.
Q. Do you know of any sessions that you missed, that you were not in court?
A. I do not, no, sir; I may have been out and in but then I was there all the time regularly from the beginning until it closed up Tuesday morning.
Q. I will ask you to state what the condition of Judge Cox was as to sobriety, or inebriety during the whole of that term in court.
A. I thought he was sober.
Q. Had you any doubt about it?
A. No, sir.
Q. You have none now?
A. No, sir.
Q. Were you present also during the term held at Marshfield the day before the Tyler term commenced?
A. Well, I was present a part of the time. I entered the room just as Judge Cox was asking the clerk what the accommodations were there.
Q. You heard him speak there?
A. Yes, sir.
Q. Did you also see him move around afterwards?
A. After the court adjourned he walked around the office and spoke to me. I had a conversation with him myself.
Q. I will ask you to state what was his condition as to sobriety or inebriety on that occasion?
A. Well, I considered him perfectly sober. He was very clear in his enunciation I thought.
Q. No thickness in his voice?
A. I couldn't see any. It went right off rapidly.
Q. Was there any staggering in his walk? A. No.
Q. I will ask you to state, whether or not, on the first day at Tyler the Judge's eyes were red?
A. No, sir.
Q. Was his face flushed?
A. I don't think so.
Q. I will ask you to state, whether or not, his manners were any different from other times, when you have seen him, knowing him to be perfectly sober?
A. Just the same, perfectly natural.
Q. I will ask you to state, whether or not, there was any difference in the Judge's condition, behavior, manner, conduct or language, in the evening or afternoon session I mean of course during the term of court, from what they were during the forenoon?
A. Why, I didn't notice anything of that kind different.
Q. You didn't notiee anything different in his condition, language, conduct or manner?
A. No, sir.
Q. You were present in court Friday forenoon, were you?
A. Yes, sir; I was present in court every day.
Q. You noticed nothing out of the way at that time,—nothing different?

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A. No, sir.

Q. I will ask you to state whether or not you were up in Judge Cox's room Friday night at this jamboree, as they call it?

A. I was. I roomed in the next room and had to go through his room to get into mine.

Q. I will ask you to state whether you were up and spent any portion of the time that evening up in the room?

A. Yes, sir; Friday night.

Q. I will ask you to state what the Judge did that night?

A. Well, I think it was Friday night as I remember it. We were down stairs awhile in the evening, and about 11 o'clock the crowd came up stairs. I think that the Judge came up with them, and they staid there, I should think, two or three hours. When they came up, probably the room was full. It was quite a large room, and there was probably 15 or 20 in the room.

Q. Was that at the "crucifixion" of the Colonel?

A. Yes, sir.

Q. How long did you stay there,—did you stay as long as any of them there in the room, that evening?

A. Well, I think I did; I know I went to bed in the next room; I think the Colonel and I went to bed together.

Q. I will ask you to state what was the Judge's condition when you went to bed, or at any other time during the evening, as to whether he was intoxicated.

A. I should not consider him intoxicated.

Q. You did not consider him intoxicated?

A. I did not.

Q. I will ask you to state if the Judge was carried on the bed there, by anybody, that night, or rolled on to the bed?

A. No, sir; he was not.

Q. How did he come to be on the bed?

A. I suppose he went to bed.

Q. Well, did you see him?

A. I never saw him put on the bed at any time.

Q. Well, do you remember whether on this night the Judge laid down on top of the bed while you were there?

A. He did.

Q. He did it himself, did he?

A. Yes, sir.

Q. What did he do?

A. Why, he merely took two pillows at the end of the bed and kind o' propped them up at the head of the bed and leaned down there a part of the time when he was talking; a part of the time he was around the room, and a part of the time he was sitting down on the bed, and, at last, while we were talking there, he lay down on the bed.

Q. He talked with you awhile?

A. Yes, sir.

Q. State whether after talking with you he went to sleep there in that position?

A. Yes, sir.

Q. He had not undressed there or taken his clothes off?

A. No, sir.

Q. When you left the room he was lying there sleeping?

A. Yes.

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Q. Do you know the position of that room—as to whether or not anybody stopping in any other room of that house could look in there?

A. They could not. There is only one room in the house where you could see in if the door was open. That was the room directly opposite the hall; there you could see through the doors.

Q. You could not see through the windows anywhere?

A. No, sir.

Q. This Friday in court were the Judge's eyes "squinty" at any time there?

A. I didn't notice them.

Q. "Cock-eyed?"

A. I didn't notice anything in his appearance different from what there is now.

Q. You noticed nothing in his appearance out of the way that day?

A. No.

Q. Did you notice anything in his appearance Saturday different from the other days?

A. My recollection is that on Friday and Saturday I had a case before him. It was either Friday or Saturday that I had a case before him; it was a jury case and took most all day. I couldn't state which day it was, but my recollection is that it was Friday.

Q. Did you notice any difference the next day from what it had been before—any haggardness about him?

A. No, sir; the Judge kept very straight.

Q. I will ask you to state whether the Judge was intoxicated any night there at Tyler.

A. I didn't see him intoxicated.

Q. Were you present there in the court room in the forenoon of Monday when that Chapman matter came up?

A. Yes. I couldn't say that I paid strict attention throughout, but I was in and out several times, and I was there a good share of the time.

Q. You probably could not state definitely as to just the order in which business took place there?

A. No.

Q. Did you see the Judge on Tuesday morning when he left on the train for Marshall?

A. Yes, sir.

Q. What was his condition then, as to sobriety or inebriety?

A. I thought he was pretty sober.

Q. You thought he was what?

A. I thought he was pretty sober, I say.

Q. Well, did you notice anything out of the way?

A. No, sir.

Q. Had you any doubt about his sobriety at the time?

A. I couldn't have, under the circumstances, because the train came in late, and we were all standing there together, and all had to run to the train; and I noticed that he ran as fast as anybody; he and the rest of the party got aboard; I was not going up until the next day.

Senator ADAMS. I would like to ask the witness one question: as to what the witness desires to be understood by this court by being "pretty sober?"

A. So sober that I would not notice anything out of the way. Of course a man may be under the influence of liquor to a certain extent, and no one could be able to detect it except the man that drinks it.

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Every man that drinks liquor, I presume, feels it, but the persons around him may not know anything about it. That person may be intoxicated, as I understand, and still be, in my opinion, pretty sober.

Q. Your understanding then, is, that every man is under the influence of liquor who drinks anything?

A. Yes, sir, I think so. I think he certainly is if he drinks a drop, somewhat under the influence of liquor.

Q. I want to get at the idea of the witness when he says he was pretty sober.

A. Well, you understand me exactly. That is just what I mean.

By Mr. ARCTANER.

Q. You meant that he might have drank a glass, but that it was not noticeable?

A. Certainly, certainly. We see men every day that we know drink liquor that might have drank, still we don't pretend to say they are intoxicated.

By Senator ADAMS.

Q. What you mean to convey to the senate is that Judge Cox was not drunk?

A. No, sir, he was not; I didn't see him drunk during that term of court.

By Mr. Manager DUNN.

Q. What do you mean by drunk?

A. I mean that state in which a person is incapable of attending to his business or partially incapable of attending to his business; that is, perceptibly so.

Q. You knew Judge Cox was drinking at that term of court didn't you?

A. Yes, sir.

Q. More or less every day?

A. Yes, sir, I saw him drink.

Q. Where did you see him drink?

A. I saw him drink in his room.

Q. Where else? A. No other place.

Q. You saw him drink in his room?

A. Yes, sir.

Q. Upon how many different occasions?

A. Oh, I couldn't swear to that.

Q. Every day?

A. I couldn't swear to that.

Q. Every other day?

A. I couldn't swear to that.

Q. Every night?

A. I couldn't swear to that. I saw him drink perhaps in the course of the term of court, which lasted nearly a week or about that, perhaps eight or ten times in that many days. I wouldn't swear exactly.

Q. Did you see him drink any at any of the recesses?

A. No, sir; I did not.

Q. At no time except at night?

A. I couldn't swear exactly when he took a drink or when he didn't.

Q. I am asking you when you saw him drink.

A. I couldn't swear to that. We see things every day in our life we couldn't swear as to the exact time of the day. I don't know anything about it only that I saw him drink perhaps seven or eight, or eight or ten

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times; perhaps at the outside, eight or ten times at that term of court. I would swear that probably it did not exceed ten times.

Q. I am trying to get at your knowledge as to whether all of his drinking was confined to the night or not: Now can you testify you didn't see him drink at any of the recesses of court?

A. No, my impression is I saw him and Col. McPhail drink in a room one morning when I was there. I wouldn't swear that I saw him drink twice I know; I saw him drink once but I wouldn't swear that I saw him drink twice.

Q. You drank with him sometimes?

A. No, sir, I didn't drink at all.

Q. You don't know how late the party was kept up in Judge Cox's room, do you?

A. Well, I know they were up there in the house nearly every night until one or two o'clock.

Q. What were they doing?

A. They were doing everything and having a good time.

Q. Well, how did you get a good time out of it?

A. They had fun in many ways. We had singing most every night. We had an organ and a violin there; had singing and music most every night,—I think every night.

Q. And some drinking? A. Yes, sir.

Q. And some people got drunk, didn't they,—even according to your definition of drunk,—some of the party got drunk, didn't they?

A. Well, I thought I saw one or two a little under the influence, perhaps.

Q. But you don't think either one of them was the Judge?

A. No, sir; I remember particularly that two nights he didn't drink at all when the bottle was passed.

Q. And you remember some nights he did drink when the bottle was passed?

A. Yes, sir.

W. E. DEAN,

Sworn as a witness on behalf of the respondent testified.

Examined by Mr. ARCTANDER.

Q. Mr. Dean, where do you reside?

A. At Tyler, Lincoln county, Minnesota.

Q. What is your profession?

A. Lawyer.

Q. You are a lawyer by profession?

A. Yes, sir.

Q. How long have you known Judge Cox?

A. I think about five or six years.

Q. I will ask you to state whether or not you were present and in attendance at the term of the district court in and for Lincoln county, held at Tyler in the month of June last?

A. Yes, sir; I was.

Q. State whether or not you were in attendance at every session of court held there.

A. Yes, sir; I think I was. I was not in the court room all the time, but nearly all the time.

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Q. You didn't miss any session?
A. No, sir.
Q. Now, I will ask you to state what was, during the whole of that session, from the beginning to the end, the condition of Judge Cox as to sobriety or inebriety in court?
A. I noticed no signs of drunkenness at any time upon the Judge during that term.
Q. Did you notice any signs of the influenee of liquor?
A. No, sir; I did not.
Q. Had you any doubt about his perfect sobriety at the time?
A. I had none.
Q. You have none now?
A. No, sir.
Q. I will ask you to state whether or not there was any difference in his appearance, his manner or his language, the first part of the day as compared with the latter part of the day.
A. I noticed none, but then I was not looking for it. I did not anticipate this trial or I would have noticed perhaps more particularly.
Q. Were you in his room that Friday evening that they have been speaking of here?
A. Well, I can't swear to the day, but I was in his room that night that they had the good time.
Q. Now, did you notice Judge Cox's condition as to intoxication, as to whether or not he was intoxicated that night?
A. I noticed nothing unusual.
Q. Well, did you have any idea he was intoxicated?
A. No, sir, I did not.
Q. Did you at any time during that term oustside of court notice him in a state of intoxication.
A. No, sir, I did not.
Q. Were you around with him considerable in the evening?
A. Yes, sir; well, I won't say I was with him evenings only that night. That was the only night I sat up late during the term.
Q. Did you board there at the hotel?
A. I did.
Q. You saw him around in the evening in the parlor?
A. Yes, sir.

Examined by Manager DUNN.
Q. Did you drink with him that night?
A. No, sir, I did not.
Q. Did you notice any of the crowd that were at all under the influence of liquor?
A. I think I did, sir.
Q. Who were they? A. Judge Weymouth, if any man.
Q. He was pretty well "set up" was he?
A. He wasn't so well "set up" but what he knew thoroughly what he was about I think; but then I think he was slightly under the influence of liquor.
Q. They were drinking there, weren't they?
A. Well, I didn't see anyone drink in the fore part of the night.
Q. Well, in the latter part of the night?
A. In the latter part of the night I do think that I saw two bottles brought in, but I don't recollect seeing any one drink, but I presume I did in the nature of things.

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Q. You knew Judge Cox was drinking there, didn't you?
A. I did not.
Q. Did you ever see him drink there at Tyler?
A. I don't know that I ever did; that is, during that term of court.
Q. You presumed he was drinking, from the nature of things?
A. I can't say that I did, but it would be natural enough that he being in the crowd might have taken some.
Q. When was it that you first heard it questioned as to whether Judge Cox was drunk or sober at that term of court?
A. I think, sir, it was when I read of his impeachment or attempted impeachment.
Q. Did you read the Lincoln County *News* occasionally?
A. Yes.
Q. Did you see a letter in it written from Tyler in which it was stated that Judge Cox was intoxicated at Tyler shortly after that term of court?
A. Now, that I think of it, I did.
Q. Your attention was called to it then?
A. Yes, sir, I recollect that.
Q. You didn't know who wrote the letter, did you?
A. I think I do.
Q. Who do you think wrote it?
A. I think it was Mr. Seward.
Q. Of Marshall?
A. Yes, sir. I won't attempt to say that it was him, but then I have an inkling that I have heard so, or something to that effect.
Q. Did he ever tell you so? A. No, sir.
Q. And in that letter Judge Cox is spoken of as having been drunk at Tyler?
Mr. ARCTANDER. [To Mr. Manager Dunn.] Don't you think that is rather improper cross-examination?
Mr. Manager DUNN. I think it is proper, to test the recollection of this witness.
A. I recollect reading that paper, but as far as the facts are concerned I don't know anything about who did write the letter. I wouldn't attempt to say.
Q. That letter spoke of Judge Cox being intoxicated,—so that your attention was called to it then, was it not?
A. I think it was, yes, sir.
Q. But you thought it was not so at the time, did you?
A. Yes, sir.
Q. You thought the man who wrote that letter was mistaken; that there wasn't any intoxication upon the part of the Judge, did you?
A. Yes, sir.
Q. And you still think so? A. I do.
Q. Mr. Seward was there at that term of court, was he not?
A. Mr. Seward was there the first of the term. I think he left afterwards.
The court then took a recess till 2 o'clock P. M.

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AFTERNOON SESSION.

President GILMAN in the chair.

Mr. ARCTANDER. Shall we proceed with the examination of witnesses?

The PRESIDENT. Upon what article is this witness to be examined?

Mr. ARCTANDER. The fourteenth article, Mr. President—the one upon which we have been examining this forenoon.

DR. W. R. SCRIPTURE.

Sworn and examined as a witness on behalf of the respondent testified.

Q. Where do you reside?

A. Tyler.

Q. What is your business?

A. Practitioner of medicine, and also I run, in connection with my business, a drug store.

Q. I will ask you to state whether or not you are acquainted with the respondent, Judge Cox?

A. I am acquainted with him; that is, I have met the gentlemen.

Q. You reside at Tyler, do you?

A. I do; yes, sir.

Q. Did you reside there in June last?

A. I did, yes sir.

Q. I will ask you to state whether you were there and present during a term of court held at Tyler in June last?

A. I was.

Q. How much of the court did you attend in Tyler?

A. Well, I was there most of the time, that is on and off; I expect I was there every hour in the day, during the time, although at different times I was called away to attend to my drug store, but would return as soon as I got through with my business; possibly I was there every hour.

Q. You think you were there every hour during the whole term?

A. I think so, as near as I can state.

Q. Now, I will ask you to state, doctor, what was the condition of the respondent as to sobriety or inebriety during any portion of that term.

A. As near as I could judge he was perfectly sober.

Q. I will ask you to state whether you at this time had any reason for observing the respondent closely as to his condition?

A. Well, yes, I had reason, knowing that he was a man that drank some, and I watched him pretty close.

Q. You watched him pretty close when you were in court?

A. Yes, and I saw nothing that would lead me to believe that he was drunk by any means.

Q. Did you see any thing that would lead you to believe that he was under the influence of liquor at all?

A. No, sir.

Q. Did you see him, Doctor, the morning that he left?

A. Yes, sir; I saw him at the train just before he left?

Q. Tuesday morning?

A. Yes.

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Q. What was his condition then as to sobriety?
A. Well, he was sober then, I think; to the best of my knowledge I think he was sober.
Q. Had you any doubt about it at the time?
A. No, sir, I had not.

CROSS-EXAMINATION.

By Mr. Manager DUNN.
Q. Are you a practicing physician there?
A. Yes.
Q. How long have you been practicing?
A. I commenced my practice in July a year ago,—about two years back.
Q. Where did you study medicine?
A. I studied medicine in Owatonna, and at Rush Medical College.
Q. In Chicago?
A. Yes.
Senator CASTLE. I did'nt hear the Docter; speak a little louder.
A. I studied medicine in Owatonna in office reading, and at the Rush Medical College.
Q. You keep a drug store, you say?
A. Yes.
Q. You observed the Judge there pretty close did you, Doctor?
A. Yes.
Q. You knew he was a drinking man?
A. I knew he was a drinking man.
Q. How did you find that out?
A. Only by reputation.
Q. How long have you know him?
A. Well, I had known him only a few months; about that time.
Q. You never saw him before?
A. I saw him once before.
Q. You never knew him before?
A. No, sir.
Q. You knew he had the reputation of being a drinking man?
A. Yes.
Q. And you watched to see whether he drank any at that term of court?
A. No; I did not watch to see whether he drank any, but I watched to see whether he was under the influence of liquor.
Q. You don't know whether he drank any?
A. No; I do not.
Q. You don't know whether he purchased any at your store?
A. Yes; I do know that he did not.
Q. You don't keep it for sale?
A. Yes, I do.
Q. Well, you didn't know that some was not purchased for him?
A. No, sir—Yes; I am quite positive, because I did not sell any in a way that I think could be used.
Q. How do you know that you did not sell any,—you were in court most all the time?
A. While I was in court, my doors were closed; if any one wanted to see me, they had to go after me.

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Q. You don't keep a clerk, then?
A. No, sir; I do not.
Q. Did you have any business in court, Doctor?
A. No, sir.
Q. Simply went in and looked on?
A. Yes, sir.
Q. You had no reason to endeavor to obtain the attention of the court to any particular point?
A. No, sir, not particularly, only I went with the crowd.
Q. Did you board at the hotel?
A. I did.
Q. Were you with the crowd there?
A. I was.
Q. Were you with the crowd at the hotel there?
A. Yes.
Q. Were you in the crowd when they passed the hat?
A. I saw no hat passed.
Q. When they were in the parlor, singing, and the organ playing, and they passed the hat around?
A. I didn't see that.
Q. Were you up in the Judge's room?
A. I was in the Judge's room.
Q. Did you play cards there?
A. I didn't play cards.
Q. While you were there, were they playing cards?
A. I saw cards played there.
Q. Did you see the Judge play there?
A. No; I did not.
Q. Then you wern't there much?
A. I was there Thursday night?
Q. How late?
A. Well, I don't know exactly, but I should judge it was about half-past ten or near that.
Q. You didn't see any liquor drank there?
A. No, I don't think I did.
Q. Are you positive?
A. No; in fact, I know I didn't.
Q. Of any kind?
A. No, I saw none.
Q. What was the crowd doing there?
A. There wasn't much of a crowd there when I was there; there were parties there playing cards and that is all I saw; I don't know of anything else.
Q. You don't know whether the Judge was playing or not?
A. I do; I know he was not playing.
Q. He wasn't playing when you were there?
A. No, sir.
Q. You went away and left the game going on?
A. Yes, sir.
Q. On other nights did you ever see any liquor drank there?
A. No, I never saw any liquor drank there, at any time when I was in.
Q. You never saw the Judge drink any during the term?
A. No, sir, I did not; he might have drank but I don't know anything about it.

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E. HODGMAN,

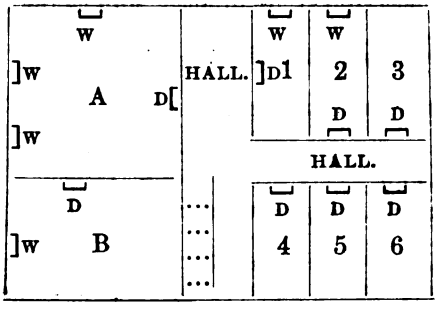
Sworn as a witness on behalf of the respondent, testified.

Examined by Mr. ARCTANDER.

Q. Where do you reside?
A. In Tyler, Lincoln county.
Q. What is your business?
A. I keep a hotel there.
Q. Do you know the respondent, E. St. Julien Cox?
A. Yes.
Q. Did you keep the hotel at which he boarded during the term in June last.
A. Yes, sir.
Q. When did you first see the Judge, in connection with his being there on the business of that term?
A. I met him at the train.
Q. Where did you take him?
A. I took him to Marshfield.
Q. Did he stop any at Tyler?
A. No, sir; he telegraphed me to meet him at the train, to take him over to Marshfield.
Q. And you went over with him?
A. Yes.
Q. Was there any drinking on the road?
A. No, sir.
Q. Any liquor aboard?
A. I didn't see any.
Q. There was no drinking, you say?
A. No, sir.
Q. Now I will ask you to state whether or not you, or any of your party, when you came to Marshfield, helped the Judge out of the buggy or wagon?
A. No, sir.
A. Or steered him out?
A. No, sir; he got out just as well as any man.
Q. Jumped out himself?
A. Yes.
Q. I will ask you to state what his condition was when he came to Marshfield, Mr. Hodgman.
A. When he came from there?
Q. When he came to Marshfield or during any time of this thing,—more particularly Marshfield, of course,—what was his condition as to sobriety or inebriety?
A. Well, I didn't see anything out of the way but what he was just as sober as any man.
Q. Just as sober as any man?
A. Yes.
Q. You had a talk with him and heard him talk on the way going over?
A. Yes.
Q. Had a talk with him, Colonel, going over; did he stagger any when he walked?
A. No, sir.

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Q. Was his voice thick? A. No, sir.
Q. You took him right back again that same day, did you?
A. Yes.
Q. Did you see him the morning that he left to go to Marshfield on the train?
A. Yes.
Q. What was his condition then?
A. He was straight.
Q. I mean as to sobriety?
A. He was sober, apparently.
Q. Any doubts about it?
A. I couldn't see a thing but what I should call him straight and sober as I ever saw him; the train was rather late and they had to hurry up; they had to run to get the train, I beleive.
Q. I wish you would make a draft of your house, showing the room that Judge Cox occupied during the time he was there, and the position of the room Mr. Chapman occupied. Make a rough pencil draft, please, on this paper, so as to illustrate it.
The witness sketched the following diagram:



A. Judge's room. B. McPhail's room. 2. Chapman's room. 1, 3, 4, 5, 6. Bed rooms. D. Doors. W. Windows. ... Stairs.

Q. Now explain to the Senate the relative positions of the different rooms; and show where the Judge's room was.
A. Here is the stairs, and into the left is the big room, the sitting room.
Q. The Judge's room?
A. Yes; and in here was a door leading to Col. McPhail's room, marked B. Chapman's room was down here and was marked 2.
Q. And the other rooms shown there were other bedrooms around the hall?
A. Yes; on each side of the hall were rooms all the way down.
Q. The hall went up from the stairway and went back across the other end of the house?
A. Yes.
Q. Now, I will ask you, Mr. Hodgman, whether there were any windows in the room occupied by Mr. Chapman, from which he could have any view of what went on in the Judge's room.
A. No, sir; there was just one window in his room, and that was in the back side.

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Q. Did Mr. Chapman's room go back to the back part of the house?
A. Yes, sir.
Q. Then that little bedroom was only a little bit of a room.
A. Yes. The building is twenty-four feet wide, and forty-five feet long; there is no ell; the house is 45 feet long to the right, on the main street; the stairs go up almost in the middle, not quite. I have got a dining room, but it is in another building.
Mr. Manager DUNN. Isn't there any ell on the building?
A. No, sir.
Q. Were there any transoms in the house over any of those doors.
A. No, sir, there is not one in the house only over the front door down below.
Q. You are confident that Mr. Chapman occupied room number two?
A. Yes.

CROSS-EXAMINATION.

By Mr. Manager DUNN.
Q. Would Mr. Chapman, in passing to his room, go by the door of Judge Cox's room?
A. You went up stairs and Judge Cox's room was right on the left, and you turn to the right, and turned around to go into the other gentleman's room.
Q. At the head of the stairs?
A. Yes.
Q. You say there is no ell to this house?
A. No, sir, I built this building twenty-four feet wide and forty-five feet long, and then there is a dining room right on the end set right up by the side of it and my girls occupied right over the dining room; they did not use that room in there at all.
Q. There was no way that you could see from any bedroom into that room?
A. No, sir; a man to look into Mr. Cox's room would have to go right up and look into the door.
Q. You went over to Marshfield with Judge Cox?
A. Yes.
Q. And there was nothing to drink on that train?
A. I didn't see anything, whatever.
Q. Did you notice anything?
A. No, sir.
Q. You didn't smell anything either?
A. No, sir.
Q. How was it when you came back to Marshfield?
A. In the buggy?
Q. Yes.
A. I didn't see no liquor of any kind, or didn't smell any.
Q. Did you go over to Lake Benton with him Sunday?
A. No, sir.
Q. You were not over there that time?
A. No, sir.
Q. They had a pretty hilarious time, didn't they, at your house during that term of court?
A. Well, the boys came in just the same as they do in any hotel in a town like that; they sang and played on the organ. I have an organ

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there, and I generally sit up to about eleven o'clock, and then I go to bed.

Q. You didn't see any drinking of liquor going on during that court?

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

Q. You didn't see any beer nor any liquor?

A. I think I took a drink of beer with the Judge the first thing when he came there.

Q. That was in his room?

A. Yes, I think I took a glass of beer.

Q. And that was all the liquor drank or beer drank that you know anything about?

A. I don't know but I did take a drink of whisky with him one morning when I went into the room to have him come to his breakfast. I took a drink of whisky with Colonel McPhail; and that is the only liquor I saw in the house.

Q. Well, they kept things moving, didn't they, in the Judge's room?

A. Well, I went to bed at eleven o'lock.

Q. Every night?

A. Yes, I intend to go to bed every night; my son sat up and kept the house open until they got ready to shut up the house.

Q. And you don't know how late they did run it?

A. No, sir, I can't tell you that.

Q. But you did not observe any signs of intoxication on the Judge at all did you?

A. I did not.

Q. Whether he was in the court house or any other house?

A. Well, he came regularly to his meals.

Q. You are prepared to swear that you did not see any signs of intoxication in the Judge while he was at your house?

A. Well, I didn't see any signs that I knew on.

Q. Well, you are prepared to testify to that, are you,—that you did not observe the least signs of intoxication upon the Judge at that term, at you house.

A. Well, I don't know as I could.

Q. You say you didn't, don't you, when you get right down to it?

A. No, sir; I do not.

Q. You don't know but you did?

A. No, sir; I don't think that I saw anything.

Q. You answered me just now that you couldn't swear that you did not observe the least signs of intoxication, didn't you.

A. I didn't see him any time during the court that I thought he was tight or drunk.

Q. Will you answer that question,—are you prepared to testify that you did not observe in Judge Cox the least sign of intoxication, while he was there at your house at your term of court?

A. Well, I can swear that I did not think that he was drunk.

Q. Well, that is true; will you answer that question please? Are you prepared to swear that you did not observe in Judge Cox during the time he was at your house at that term of court the least signs of intoxication?

A. Well, I didn't see any time that he was.

Q. Well, are you prepared to swear that you did not observe anything?

Mr. ARCTANDER. Well, he says he didn't see anything?

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The WITNESS. I didn't see anything of the kind, that I thought he was intoxicated.

Q. You did not?

A. No, sir.

Q. Are you prepared to swear that in your judgment Judge Cox was perfectly sober during that whole term of court while he was at your house both in and out of court?

A. I didn't see anything but that he was.

Q. Well, will you swear that he was?

Mr. ARCTANDER. I object to that as improper cross-examination. I suppose it would be good enough for us, but we have not asked him as to but two occasions,—the time he went over to Marshfield with him and the time he saw him there on the traim.

Mr. Manager DUNN. That don't make any difference, You have examined as to the first end and the last end, and I have a right to examine him as to the interim.

The PRESIDENT. The chair would state that the objection upon the questions must be overruled and that the question is a pertinent one.

Mr. ARCTANDER. The question is whether he saw any signs of intoxication in Judge Cox there in the court room or at the house? The witness has sworn he did not observe any. He was not in the court-room and knew nothing about it. Is this question to be allowed on cross-examination when he is not prepared to say whether he was or not,—is a witness to be crowded in that way, when he says that he did not observe anything?

The PRESIDENT. The reporter will read the question.

Mr. Manager DUNN. [To the reporter.] Drop out the court business. I will withdraw that part of the question.

The reporter then read the question as follows:

Q. Are you prepared to swear that in your judgment Judge Cox was perfectly sober during that whole term of court while he was at your house?

Mr. Manager DUNN. At Tyler. [To the witness.] Now, I want an answer to that question yes, or no, Mr. Hodgman.

Mr. ARCTANDER. I insist, Mr. President, that he is not entitled to an answer yes or no on that. He is entitled to an answer as far as this witness knows, and nothing more.

Mr. Manager DUNN. It is his own observation and I am entitled, under the rules of evidence and cross-examination, to an answer to that question yes, or no.

Q. Are you prepared to swear that you did not observe the least sign of intoxication in Judge Cox while he was at your house that night?

Mr. ALLIS. That is not the question.

The PRESIDENT. If that is the question the chair will hold that it is a proper one.

Mr. ALLIS. That is not the question that was originally asked.

The PRESIDENT. Will the reporter again read the question?

Mr. Manager DUNN. Read the question that I first asked.

The reporter then read the question as follows:—

Q. Are you prepared to swear that in your judgment Judge Cox was perfectly sober during that whole term of court while he was at your house at Tyler.

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Mr. Manager DUNN. That is the question that I want an answer to.

Mr. ARCTANDER. Do you withdraw the last question?

Mr. Manager DUNN. Yes.

Mr. ARCTANDER. We object to that because you ask him to swear to something he don't know anything about.

Mr. Manager DUNN. [to witness] Well, you were there,—I will preface that question if that is the objection—You were there, were you?

A. I was there; I wasn't up all night.

Q. Well, you saw Judge Cox every day?

A. Yes, he was around to his meals every day.

Mr. Manager DUNN. I will withdraw the question, and let it go at what he has testified to.

ALEXANDER GRAHAM,

Sworn as a witness on behalf of the respondent testified:

Examined by Mr. ARCTANDER.

Q. Where do you reside?

A. Tyler, Lincoln county, Minnesota.

Q. What is your business?

A. I buy wheat and sell lumber.

Q. Anything else?

A. I am the justice of the peace there; that is all the other business I have there.

Q. Were you at Tyler the general term of court there, held in the month of June last?

A. Yes.

Q. Did you spend any of your time in court during the session of the court there?

A. Probably I was in the court-room three or four times a day.

Q. During the whole term?

A. Yes.

Q. At the time while it was at Tyler?

A. Yes; I presume it was three or four times a day; just as I had leisure I went in there—when I had nothing else to do.

Q. Were you in there any amount of time?

A. No, sir; I was not in there over half an hour I don't believe, any of the time.

Q. Over half an hour?

A. I don't think I was.

Q. Did you observe the Judge at any of the times you were in there?

A. Not any more there than I would any other place, I don't think.

Q. Well, you were sitting where you could have a look at him and see him?

A. Yes, I could see him.

Q. And hear what he said?

A. Yes, I could hear what he said,—what his decisions were.

Q. I will ask you to state whether you ever saw the Judge before that time under the influence of liquor?

A. Well, I think I did; in my opinion I did, anyhow.

Q. I will ask you to state what the Judge's condition was during any portion of the time that he was there in court?

A. As far as I could see he was sober.

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Q. No doubt about it?
A. No doubt about it in my mind.
Q. And you haven't any now?
A. No, sir.

GILBERT I. LARSON,

Sworn as a witness on behalf of the respondent, testified.

Mr. ARCTANDER. This witness is upon the same article—article fourteen. These witnesses are introduced by leave of the Senate, this morning duly had and obtained.

Q. Mr. Larson, what is your business?
A. I am a member of the bar, but I am not in practice; I am auditor of the county.
Q. You are also an attorney, are you?
A. Yes, sir.
Q. Where do you reside?
A. Lake Benton.
Q. The county auditor of Lincoln county?
A. Yes.
Q. Were you such county auditor at the last term of court held at Tyler, in the month of June, 1881?
A. I was.
Q. I will ask you to state if you were present at that term of court?
A. Well, during a portion of the time of the term of court held at Tyler in June, 1881.
Q. How great a portion of the time?
A. Well, I think I was absent on the last day; Tuesday, I was not there at all, and a portion of Friday, and possibly I might not have been there Friday at all, but I think I was.
Q. But Thursday you were there?
A. Yes.
Q. During the whole day—during the sessions of the court?
A. Yes.
Q. You were there during the whole session of court on Monday?
A. Well, one of those days I might have gone home, but I think not before the court adjourned; I might not have reached there some mornings.
Q. Just when court met?
A. Not when it met.
Q. Now, I will ask you to state whether or not, outside of court, you had any conversation and talk with, and met Judge Cox.
A. During that term?
Q. During that term of court.
A. Previous to the court?
Q. No; during court.
A. Yes.
Q. Did you meet him on more than one occasion?
A. Yes, sir; I did.
Q. Have you any conversatien with him at any length, upon business matters?
A. Not at any length, but we had conversation in connection with other parties when the county attorney was present.
Q. Upon business in regard to the county?
A. Yes.

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Q. I will ask you to state what the Judge's condition was as to sobriety or inebriety, while you saw him in court at Tyler at these times.

A. Well, I saw nothing that would lead me to believe but that he was sober.

Q. Had you any doubt about it at the time?

A. None whatever.

Q. Have you any now?

A. Well, in saying that I believe he was sober, I don't mean to infer that I had the impression that he had not drank anything, but there was nothing that would lead me to believe that he was incapacitated for business, nor nothing in his manner that would lead me to believe that he had drank at all.

Q. Now, I will ask you to state whether or not you observed the Judge closely while he was there.

A. I did for the reason that reports—I was at Marshfield just after the Judge left and went home, and reports reached there that evening, and the next morning before I left, that the Judge was intoxicated at Marshfield, and that he was at Tyler; and I went down and got there just as court opened, and I got into the court room, and, of course, I took particular notice of the condition of the Judge, but I saw nothing to lead me to believe that he was intoxicated.

CROSS-EXAMINATION.

By Mr. Manager DUNN.

Q. Do you know, Mr. Larson, whether you are a competent judge as to whether he was intoxicated or not?

A. No.

Q. Had you ever seen him before in an intoxicated condition?

A. Yes, I think I had.

Q. You had seen him intoxicated?

A. Yes.

Q. In the discharge of his duties or otherwise?

Mr. ARCTANDER. Wait; we object to that, under the ruling of the Senate.

The PRESIDENT. Will the reporter read the last two questions and the answers to the same?

Mr. ARCTANDER. I will state, Mr. President, in the absence of the President, questions were asked as to what times and under what circumstances the witnesses had seen the respondent intoxicated or under the influence of liquor at other times than the one they were testifying to, and the Senate then passed a rule, upon the motion of Senator Castle, that in the cross-examination of the witnesses of the respondent, the prosecution should be allowed to enquire, to test the competency of the witness, whether they knew anything as to whether the Judge was drunk or not at this particular time; that they should be allowed to ask whether they had ever seen him drunk, and how many times, but not when or where. Now, they have asked and found out from this witness, that he has seen the respondent at some other time, when he thought he was intoxicated.

Now that is all they can do, except they wish to ask how many times; they cannot, either by implication or otherwise, fix either the place or the time. It seems to me that that question comes within the rule; it is true that by a later ruling of the senate holding that where a witness had

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been asked a question comparing the condition and appearance of the Judge at a certain time, when he said he was sober, with other times when he had seen him in the discharge of his duty, it would then be proper for him to ask whether the witness had ever seen him in the discharge of his duty, intoxicated, at any other time. But this witness was asked nothing of the kind; he was asked to make no comparison; and all they can do now, is simply to establish the fact whether or not the witness had seen him intoxicated and how many times, but not whether it was in the discharge of duty—because that essentially limits the time; that shows the time; shows it was within the term of court—unless it was discharging his duties as an attorney.

Mr. Manager DUNN. This question is asked upon the theory that having interrogated in chief as to whether the Judge, in the discharge of his duty at that time, in court was sober; it then was to be followed up by the cross examination to ascertain the ability of this witness to testify upon that point.

And in order to ascertain his ability it becomes necessary to ascertain from the witness whether he has ever seen the Judge intoxicated under like circumstances, or when holding the same position, or when he had the same surroundings in court. Therefore the question, in order to test his capability for answering correctly upon the point whether he had ever seen him in a state of intoxication while in the discharge of his official duties comes, I think,directly within the rule which the Senate has laid down as to the question we were allowed by a vote of the Senate to ask Mr. Charles R. Davis; I cannot see any difference.

The PRESIDENT. The chair will submit the question to the court. The court has acted upon similar questions.

Mr. ALLIS. I would like to have that question read; I didn't hear it.

The PRESIDENT. The question will be read for the information of the Senate.

Senator ADAMS. Let us hear the question.

Mr. Manager DUNN. If the chair feels that the question is so much in doubt as to need to be submitted to the Senate we withdraw it, as we do not deem it of sufficient importance to take up the time of the Senate. We deem it perfectly apparent, but we don't wish to take up the time of the Senate. We prefer to withdraw the question if the court is not clear upon it.

Mr. ALLIS. Do you withdraw the question?

Mr. Manager DUNN. I will withdraw the question, rather than to take the time of the Senate to vote upon it.

Senator CAMPBELL. My recollection is that we decided the question just as Mr. Arctander states we did; that is my reccollection.

Mr. ALLIS. It is the fourth time that it has been done.

Mr. Manager HICKS. Although we prefer to withdraw the question than to take up the time of the Senate, I will state that the same question was decided. We asked Mr. Davis the same question, but his answer was against us. The Senate will remember the fact that after a long debate, and a vote in our favor, the answer was against us, although the witness thereto given an intimation——

Senator CAMPBELL. Well, previous to that——

Mr. Manager HICKS. Well, later than that,—there was another, and the later ruling would govern.

Senator CAMPBELL. I think the Senate did change its decision.

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Mr. Manager DUNN. The question was whether he saw him intoxicated while in the discharge of his official duty.

Senator CAMPBELL. Where?

Mr. Manager HICKS. We do not ask *where* in this case.

Senator CAMPBELL If he was in the discharge of his official duty, wouldn't that be while he was upon the bench? That is the question I understood we acted upon, and that is the ruling of the Senate as I understood it.

Senator POWERS. It is correct that we decided that the question when and where should not be asked; it is also correct that it was ruled that a similar question could be asked, and the chair ruled that the question where had not a strict geographical significance, but that, under like circumstanees, might be asked, and the question was asked, and as the managers say, the answer was against them.

The PRESIDENT *pro tem.* Under the circumstances the chair will feel inclined to submit the question to the court, whether the question may be asked.

Mr. Manager DUNN. Well, I withdraw the question and will not take up the time of the Senate to vote upon it; it is of very little importance anyway.

J. L. CASS,

Sworn as a witness on behalf of the respondent testified.

Examined by Mr. ARCTANDER.

Q. Where do you reside?

A. Lake Benton, Lincoln county, Minnesota.

Q. What is your occupation?

A. I am a lawyer, sir.

Q. Do you know the respondent E. St. Julien Cox?

A. I do.

Q. Were you present at a term of court that he presided over at Tyler in the month of June last?

A. In 1881; yes, sir.

Q. What part of the term did you attend?

A. Well, I was there during the whole term.

Q. During Thursday, Friday, Saturday and Monday?

A. Yes; and Wednesday.

Q. Well, I don't care about that; I was asking you about Tyler. You weren't there Tuesday, the mornlng that the court finally adjourned?

A. No, I was there only Monday.

Q. But up until the adjournment Monday, you were there.

A. I was there all day Monday.

Q. Were you at court there every session during those days?

A. Yes, I think I was there every day.

Q. You had business there, had you not?

A. Yes.

Q. I will ask you to state what was the condition of the Judge, as to sobriety or inebriety, at that term or any portion of it when you attended there?

A. Well, I considered the Judge perfectly sober; just as sober as I am now.

Q. During the whole of the term?

A. Yes,

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CROSS EXAMINATION.

By Mr Manager DUNN.

Q. What business had you there?

A. I had three or four cases in court.

Q. You had cases that you were employed in in court; does your name appear on the calendar as attorney for parties there?

A. Yes, sir; my name is on the calendar.

Q. You say you considered the judge perfectly sober.

A. Yes, I did,

Q. Did you stop at the same hotel with him, Mr. Cass?

A. Yes,—well, I was there—I wasn't there every night; I don't think I was there every night; but while I was there I stayed at the hotel where the Judge stayed.

Q. Did you stay there upon any person's solicitations at all, or upon your own business entirely?

A. My own cases were all decided the first or second day I think.

Q. They were all the first day, weren't they?

A. They were all decided the first day.

Q. And then what kept you after that?

A. Then I told him that I was going home.

Q. Your cases were all settled up the first day, weren't they, Mr. Cass?

A. Yes.

Q. And you were going on to say—

A. I was going to say I was going home, because I had no more business; and the Judge did say something to me about stopping.

Q. What was it, what did he say?

A. He wanted to know why I was going home, and I told him I didn't like the way things had proceeded?

Q. What was it?

A. I didn't like the adjournment from Marshfield over to Tyler.

Q. What else didn't you like?

A. Well, I suppose I am like every attorney who has a case decided against him—he feels kind of ugly.

Q. Well, what did the Judge say to you?

A. He didn't want me to go home feeling ugly, and he wanted me to stay.

Q. Well, what else did he say to you?

A. I told him I didn't know as I would have anything to do during the time the court would remain in session, and I didn't know but I would stay, and I did stay.

Q. Is that all he said to you?

A. Well, he might have said more; I don't remember.

Q. Was anything said about your expenses while you were there?

A. No, sir.

Q. Nothing of that kind?

A. Any more than I said that I wasn't able perhaps to bear my expenses.

Q. What did he say to that?

A. He didn't say that he would bear my expenses; I bore my own expenses.

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The PRESIDENT *pro tem.* The question is not what he didn't say, but what he did say?

Q. What did he say to it when you said you weren't able to bear your own expenses?

A. I don't remember what he said.

Q. Did he say anything?

A. He might have said something.

Q. Did he say anything about your expenses being paid, if you stayed, or that it wouldn't cost you anything?

A. No, sir; he did not.

Q. Nothing of that kind?

A. No, sir.

Q. Nor no one said that to you while you were there?

A. No, sir; if they did I don't remember it; in fact, I am certain that no one said that, because if they had, I would have remembered it.

Q. Well, you would have known it when you came to pay your bill?

A. Yes, sir; and I paid my own bill.

Q. Now, please give me your idea of what you mean by a man that is perfectly sober, Mr. Cass.

A. Well, I should consider a man perfectly sober if I couldn't see any indication that he was under the influence of liquor in any way.

Q. If a man had been drinking some and there were no outward manifestations of it physically, notwithstanding he had been drinking, would you consider him perfectly sober?

A. Well, I should call him perfectly sober, because I wouldn't know anything about it.

Q. Well, if you knew he had been drinking some?

A. If I *knew* it?

Q. Yes; and there were no outward physical manifestations of it,—would you then call him perfectly sober?

A. Well, I don't know; he might not be exactly sober if he had been drinking, and not show it in that way, but when I said he was as sober as I am, I should consider him pretty sober, because I hardly ever drink any.

Q. Well, do you know whether Judge Cox drank any at that term of court?

A. Well, it seems to me that—I don't hardly remember—it don't seem to me that he did drink any at all, that I know anything about.

Q. You weren't in his room much?

A. I was in there once in a while.

Q. You weren't one of the card party?

A. No, sir; I hardly ever play cards.

Q. You weren't the one that helped to drink the beer?

A. No, sir.

Q. You weren't the one that helped to drink the whisky out of a hat?

A. I had something to do with it but not very much.

Q. What did you have to do with that; what part did you take in that?

A. I took a part in it.

Q. What was your part?

A. When those two bottles were brought into the room,—

Q. There were *two* bottles?

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A. Yes, and they were tied together with a string or rope.
Q. Who brought them in?
A. I am not positive who brought them in.
Q. Well, think up now?
A. Well, I couldn't say it I should think a day; I've been thinking about it and I couldn't say now.
Mr. ALLIS. Let him answer the question you asked a minute ago.
Mr. Manager DUNN. I will get an answer to that when I get around to it.
Q. Now, you may state what part you took in it.
A. Well, when those two bottles came into the room, some way or another I got hold of one bottle [laughter] and I guess that Judge McPhail—
Q. Col. McPhail?
A. Colonel McPhail,—I am not sure whether it was Colonel McPhail,—I hardly think it was the Colonel,—got hold of the other bottle and the bottle I had slipped off the rope and went into my pocket; and the bottle that some body else got,—I don't remember who got it,—was soon passed to Col. McPhail, and the Colonel sat between me and the Judge,—that was the bottle that Col. McPhail had and he testified that there was no wiskey when it came to the Judge.
Q. How was it when it came to you?
A. That didn't come to me, and I had a bottle in my pocket and some of the boys near me,—I let them drink as little; and afterwards I passed it over to Charlie Marsh and he emptied it.
Q. The Judge didn't get any?
A. No sir; he didn't get a bit of it.
Q. You and a few of your friends drank that up,—the Judge didn't get any of it,—you didn't hand it to him?
A. No, sir.
Q. You wern't polite, were you?
A. No, sir; I didn't propose he should get any out of it.
Q. He tried to drink out of the other bottle, didn't he, the one that went past the Colonel?
A. Well, he might have done like this, (indicating;) they were fooling around with that hat; the bottle was in the hat, and he kind of went through a motion but he didn't drink any, because I sat right side of him, and I could see if he had tipped the bottle up?
Q. You were paying particular attention to see whether he drank any or not?
A. Yes, sir, I was.
Q. And you were going to know for certain?
A. Yes, sir, and I was going to know.
Q. Wern't you asked to watch it?
A. No, sir.
Q. What was your particular anxiety to know whether the Judge drank any or not?
A. Well, I always thought a good deal of the Judge.
Q. Well, you knew he drank a great deal?
A. I knew he had the reputation, but I never saw him drink a good deal.
Q. And your anxiety was great to see whether he drank any that night that you observed particularly as to the hat business?
A. Yes, sir; I did?

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Q. And you noticed the others drink?
A. Yes, sir; and I had a little myself.
Q. Out of the hat?
A. No, sir; not out of the hat?
Q. Out of the bottle that was in the hat?
A. No, sir; I think it was out of the bottle that I had in my pocket; the bottle that was in the hat——
Q. Didn't you go up stairs that night and play cards with the boys?
A. No, sir; I never played cards in public, any more than at home or in a neighbors houses.
Q. Well, you wouldn't call that in public, in Judge Cox's room, a private room in a hotel?
A. I mean that I never play cards in that way.
Q. In what way; don't you play cards?
A. Well, I don't only around home to my own folks or in the neighbors houses.
Q. You considered that pretty public, didn't you; too public for your state of morals, playing cards in that room with Judge Cox?
A. I don't know that I considered it that way particularly, but then I did not have any inclination to play.
Q. The Judge was playing when you were up there?
A. No, sir.
Q. Then you were not in there very much?
A. No, sir; not up there very much.
Q. Were they playing cards any down stairs?
A. I did not see any playing.
Q. That is all Mr. Cass.
A. There was an insinuation thrown out that the Judge paid my board, but he never did no such thing or said he would.
Q. He backed out?
A. No, sir; he never said he would.

By Mr. ARCTANDER.
Q. The Judge never agreed to?
A. No, sir; he never did say so, or do anything about it.

CHARLES H. GRIFFITHS

sworn as a witness on behalf of the respondent, testified:

By Mr. ARCTANDER.
Q. Where do you reside?
A. In Lake Benton, Lincoln county, Minnesota.
Q. What is your occupation?
A. Farmer.
Q. Do you hold any official position?
A. I am one of the county commissioners of Lincoln county.
Q. You live in Lake Benton, do you?
A. Yes, sir.
Q. Were you present at Marshfield at a time when Judge Cox opened court up there in the month of June, 1881?
A. I was.
Q. Did you see him? Was he in full view of you there?
A. Yes, sir.

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Q. Did you hear him talk?
A. I talked with him.
Q. Did you hear him talk in public, too.
A. Yes, sir.
Q. Now, I will ask you to state what his condition was as to sobriety or inebriety at that time?
A. I considered that he was sober.
Q. Had you any doubts about it?
A. No, sir.
Q. Have you any now?
A. No, sir.

CROSS-EXAMINATION.

By Mr. Manager DUNN.
Q. Was it questioned there by anybody whether he was sober or not?
A. Was I?
Q. Whether it was questioned there whether he was sober or not?
A. It was questioned before I met him, and when I did meet him that I would find him drunk; he was to call court there the day before, and for some reason or other he was detained ——
Senator CROOKS. I wish the witness would repeat that last answer again. We cannot hear very well back here.
Q. I asked you whether it was questioned at Marshfield when you were there among you and the by-standers, whether Judge Cox was sober or not?
A. No, sir; there was nothing said about it.
Q. There was nothing said about it?
A. No, sir.
Q. Your attention was not called to it by anybody?
A. No, sir; not right there at Marshfield.
Q. Now, you were there when he came there?
A. Yes, sir.
Q. Were you there when he came there?
A. I was up in the hall that they were going to use for a court-room.
Q. Did you see him when he came up?
A. I did.
Q. See him when he came into the court-room?
A. I did.
Q. What did he say when he got in there?
A. Well, he spoke to several before I spoke to him; I spoke with him on business, and was down there on that purpose.
Q. What did he say when he opened court, do you recollect?
A. No, I don't recollect anything particularly, only the conversation that he had with the clerk.
Q. Well, what was that?
A. Well, he asked the clerk, the first that I remember, about suitable jury rooms, to see that jury rooms were provided; and the clerk said, well, there was a school house room down below will do for one, and then afterwards the Judge ask him, says he, is there any other room; well, he says, there is a bar-room over at the hotel; I suppose we could get that.

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Q. Did he ask the sheriff what kind of accommodations there were there?

A. I do not remember.

Q. Don't you know, as a fact, that there were accomodations there at Marshfield?

A. I think there wasn't any; I know there was not.

Q. Don't you think there was a room prepared there for another jury at Marshfield?

A. No, sir.

Q. You don't know whether there was or not?

Mr. ALLIS. He said there was not.

The WITNESS. I know there was not. There was an old building there which the Judge said afterwards could have been fixed up.

Q. You don't know whether it was fixed up?

A. I know that it was not fixed up.

Q. Well, there had been no preparation made for a jury for that term of court, because there had been no jury ordered? As county commissioner you know that there had been no jury drawn for that term of court?

A. There had been no jury drawn for that term of court, I know that.

Q. Do you recollect anything further that was said there?

A. You will have to ask me a question; I could not remember all the conversation that was going on.

Q. You could not recollect unless your memory was refreshed?

A. I don't know what you want me to tell, whether it was something the farmers were saying or what the Judge was saying.

Q. Something that the Judge was saying; I am not asking you outside of that.

A. All I semember of the Judge saying was, that he asked the clerk how many miles it was to Lake Benton and the clerk told him eight miles, about; then he asked him how many is it to Tyler, and he said between four and five miles, and he ordered an adjournment of court or transfer or something; I did not pay any particular attention to the words and I couldn't express them just as the Judge did, but he ordered the court to Tyler.

By Mr. ARCTANDER.

Q. What was it you were going to say when the counsel interrupted you? What was it you said about having heard Judge Cox's sobriety questioned before he came?

A. Well, I heard—

Mr Manager DUNN. That was not in answer to any question of mine at all. The witnesss mistook my question entirely, and was not answering my question at all.

Mr. ARCTANDER. He is entitled I suppose to explain that.

Mr. Manager DUNN. No, I don't ask him for it and I don't know that he has any right to volunteer it.

The WITNESS. I can give it, if you are willing.

Mr. ARCTANDER. The counsel asked whether the Judge's sobriety was questioned there and the witness started to say something—

Mr. Manager DUNN. I asked the witness whether the Judge's condition was questioned there, at Marshfield, and he went on to say what he had heard before that, and I told him I didn't want to know what he had heard.

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The WITNESS. I didn't understand your question in that way.

Mr. Manager DUNN. And then I asked the question again, and he answered it.

Mr. ARCTANDER. It seems to me that the counsel rather got his fingers burned.

Mr. Manager DUNN. Well, you can ask the question yourself, then.

Mr. ARCTANDER. Very well, I will ask it to show that the condition of the Judge was particularly called to the attention of the witness.

Q. What was it, Mr. Griffith, that you were about to say?

A. Well, I expected that when I met the Judge that I would see him under the influence of liquor, because I had been told that the reason he was not there before was that he was on a drunk—by some of the attorneys, and when I met the Judge and found him sober I was surprised.

Q. Wasn't it Bob Coleman that told you that?

Mr. Manager DUNN. I object to the question, who told him.

Mr. ARCTANDER. Does the court think that is not a proper question?

Mr. Manager DUNN. I certainly object to it.

The PRESIDENT. What is the question?

Mr. ARCTANDER. Who was it of the attorneys that told you the Judge was on a drunk; Bob Coleman is one of the witnesses for this prosecution and it may throw some light on the question—

Mr. Manager DUNN. Well, you have not called his attention to the subject.

Mr. ARCTANDER. You admit then that he lied?

Mr. Manager DUNN. I say that if he said so he told the truth; a man might be very drunk one day and moderately sober the next.

The PRESIDENT. Are there any further questions to be asked of this witness?

Mr. ARCTANDER. None, unless the court holds this question is proper.

The PRESIDENT. I do not think the question is admissible.

CAPT. STRONG,

Sworn as a witness on behalf of the respondent, testified:

Examined by Mr. ARCTANDER.

Q. Where do you reside?

A. Well, I have lived for the last two years and a half, in Tyler, Lincoln county, Minnesota.

Q. What is your business?

A. Engaged in buying wheat on the Dakota Central Railroad.

Q. Own elevators up there?

A. I own warehouses.

Q. Were you present at a term of court held in Tyler, in the month of June, 1881, Captain?

A. Yes, sir; I was on and after Wednesday; I was west in Dakota on Tuesday; the day that the Judge came there I was west, and came back Tuesday night, and was there Wednesday morning, when court opened at Tyler.

Q. That was Thursday morning when the court was opened at Tyler; you are mistaken about that.

A. Yes, Thursday morning; I was on the grand jury at that session of court.

Q. Do you know a man by the name of George Chapman, that was indicted at that term of court, and tried?

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A. I do; yes, sir.
Q. Were you present in court during any part of his trial?
A. No, sir; I think not.
Q. Do you know when he was tried?
A. Know when?
Q. Yes.
A. Well, I think that he was brought in there, arrested and brought in on Saturday, and arraigned and tried either Monday or Tuesday following; I am not positive, but I think it was one of those two days.
Q. I will ask you to state whether on Monday, in your presence, Judge Cox had any conversation with this man Chapman?
A. No, sir; he did not.
Q. On the streets outside of the saloon, or anywhere else in Tyler?
A. No, sir; he did not; on Saturday Judge Cox and I were sitting out on an old work-bench there by the side of the street, talking there, and I think the deputy sheriff brought in Mr. Chapman there, and I spoke to the Judge and said, "that is Mr. Chapman that is brought in here, that the grand jury have indicted."
Q. And the Judge then had a talk with him in your presence?
A. He came along up there; yes, they had a little talk there, probably a dozen words passed.
Q. This time was before he was arraigned and tried?
A. Oh, certainly; he was just brought into town.
Q. After that, he never came up in your presence and spoke to the Judge or the Judge spoke to him in your presence anyway?
A. No, sir; that is the only time I saw the Judge and Mr. Chapman speak at all.
Q. Is there another gentleman living around Tyler by the name of Strong except yourself?
A. No, sir.
Q. Nor in the county?
A. No, sir.
Q. The Judge didn't on Monday, after the trial, go off and talk with Mr. Chapman; go off from your presence?
A. Not to my knowledge; I know nothing, if there was anything of that kind; I saw nothing of the kind.

CROSS EXAMINATION.

By Mr. Manager DUNN.
Q. Were you at that term of court during the whole term of court, Mr. Strong?
A. Yes, sir; I was; that is, I was at the Tyler term; I was not over at Marshfield when court was called there; I was at Tyler.
Q. In court a good deal of the time?
A. No, sir; I was not; our grand jury were occupied until Saturday night of that first week, the Monday and Tuesday following, I think I was in the court room once or twice below until the jury was discharged.

FRANK NASH,

Sworn as a witness on behalf of the respondent, testified.

Examined by Mr. ARCTANDER.
Q. Where do you reside?

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A. In Tyler.
Q. What is your business?
A. A merchant.
Q. Were you present at a general term of court held at Tyler in the June, 1881?
A. I was on the grand jury there?
Q. I will ask you to state whether or not you were present in court during the proceedings there, to any extent?
A. I was, several times.
Q. Several times a day; were you in attendance every day upon court?
A. I think I was in there every day.
Q. I will ask you to state what the Judge's condition was as to sobriety or inebriety, during the time you were in court?
A. I saw nothing that I thought indicated that he was intoxicated, at any time.
Q. Had you any doubt about his sobriety at the time?
A. None in the least.
Q. And have none now.
A. Have none now.

CROSS-EXAMINATION.

By Mr. Manager DUNN.
Q. Do you live in Tyler?
A. Yes.
Q. You are a merchant there?
A. Yes.
Q. Did you board at this hotel of Hodgman's?
A. I do not.
Q. You aren't around the hotel?
A. No, sir.

FRANK APFELD,

sworn as a witness on behalf of the respondent, testified:

Examined by Mr. ARCTANDER.
Q. Where do you reside?
A. In Tyler, Lincoln county, Minnesota.
Q. What is your business, a saloon keeper?
A. That is one part of my business.
Q. Did you keep a saloon at Tyler during the last general term of court at Tyler held there in the month of June, 1881?
A. Yes.
Q. Did anybody there in town keep saloon but you?
A. Nobody but me.
Q. I will ask you to state whether or not you had any barkeeper, or whether you attended the saloon yourself?
A. I attended the saloon myself.
Q. All the time?
The PRESIDENT *pro tem.* You had no bar-keeper?
The WITNESS. No, sir.

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Q. I will ask you to state what day during that term, Judge Co first came into your saloon?

A. He came into my saloon I think it was either Thursday or Fri day, I am not positive, for the first time; I think it was Friday. suppose I will have to go on and tell the circumstances that induce him in there.

Mr. Manager DUNN. Oh, you needn't; nobody asked you that,—unles you want to.

Q. There was trouble in there?

A. There was trouble in there.

Mr. Manager DUNN. Nobody asked you that.

Q. There was trouble in there and he came in and got the part out?

A. The man that was in there was a little bit intoxicated and h came and called him out and that is what induced him in there.

Q. That is all he did that way?

A. Yes.

Q. When after that was he next in your saloon?

A. To the best of my memory and recollection it was on Monday.

CROSS-EXAMINATION,

By Mr Manager DUNN.

Q. Who was this man who was taken out?

A. His name was Bill Ross or William Ross.

Q. He came in again on Monday?

A. He came in again on Monday?

Q. Was that when the grand jury came in with him?

A. Well, I couldn't tell as to that; I was very busy; that is th busiest part of my business.

Q. When court is there?

A. There was a good many more people in town then than the genera average, and I didn't pay no attention to this.

Q. When court was there, they patronized you pretty well?

A. Yes.

Q. And you did a good thriving business?

A. Yes.

Q. Didn't the Judge bring the grand jury over there and treat them once?

A. I wouldn't swear to it.

Q. Would you swear that he didn't?

A. No, sir; I would not.

Q. You think he didn't, don't you?

A. I don't know; I don't remember.

Q. Didn't he pay for it?

A. I guess he did; he paid for what he called for.

Q. Well, which day was that?

A. That was on Monday?

Q. Did the grand jury last until Monday?

A. I couldn't tell you.

Q. He was in on Monday?

A. He was not on Monday.

Q. He was in on Friday?

A. He was in either Thursday or Friday.

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Q. And he was in when the grand jury came in there?
A. I don't know; I don't remember whether he was in with the grand jury or not.
Q. Well, you kept the only saloon there?
A. Yes.
Q. Did you keep a liquor there you called bug-juice?
A. Well, the boys have various names for it; they call it most everything.
Q. What kind of liquor is it, that they call bug-juice,—what Col. McPhail calls bug-juice?
A. I guess he named it himself; I don't know what it is.
Q. Well, you don't keep any regular article branded bug-juice?
A. I keep brandies.
Q. I mean branded "bug-juice?"
A. No, sir.
Q. If he got what he calls bug-juice, it was probably whiskey or brandy?
A. If he got bug-juice it was somewhere else.
Q. Well, he says he got it at your saloon?
A. No, sir.
Q. Well, if he bought anything there it wouldn't be bug-juice?
A. Why it might be brandy, whiskey, gin, ale, rum, wine or anything.
Q. You recollect McPhail buying liquor there?
A. Yes.
Q. What would he buy?
A. He would come in and get some whiskey.
Q. And he would probably call it bug-juice to an outsider?
A. Yes.

S. P. PUMPELLY

Sworn as a witness on behalf of the respondent testified.

Examined by Mr. ARCTANDER.
Q. Mr. Pumpelly, where do you reside?
A. I reside the town Shaokaton, Lincoln county, Minnesota.
Q. Are you a farmer?
A. Yes.
Q. Were you present at the last general term of court at Tyler in June 1881?
A. I was, most of the time.
Q. Were you foreman of the grand jury at the time?
A. Yes.
Q. I will ask you to state whether or not this is your signature (showing witness paper.)
A. Yes, sir; that is my signature.
Q. I will ask you to state at what time of the day it was acted upon by the grand jury.
Mr. Manager DUNN. I object to that,—what have you got there? I object to your saying anything about it unless you show it to me.
Mr. ARCTANDER. I will state Mr. President, what it is. We expect to introduce a paper that has been identified here on the trial, the resolution adopted by the grand jury at that term of court commending the

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manner in which the business of the court had been administered by the respondent during the term. We offer to introduce it, not to prove that that was a fact but we offer it as testimony rebutting that introduced by the prosecution with reference to the most vicious conduct during the whole term of court there on the part of the Judge,—that he was drunk all the time; that there was not a day but what he was drunk in court, for the purpose of showing the unreasonableness of that testimony. I think if it could be shown that the grand jury, at the last day of the term when they were in session, unanimously passed a resolution commending the able and splendid manner in which the Judge had conducted the term, that that would go, for what it was worth to show that the evidence that has been forward here is maticious and false;—not as proof of the fact that the conduct of the respondent during the term was in fact commendable, but as a circumstance to rebut the testimony offered by the prosecution.

Mr. Manager DUNN. That is something like a paper that we wanted to introduce, and which the Senate very properly in my judgment, notwithstanding that they ruled against me, held to be hearsay testimony, which could not be introduced. We had here a resolution passed at the Lincoln county term where the grand jury, every member of it, indicted Judge Cox for being drunk. We wanted to introduce that, and that was claimed to be hearsay, and I think properly so, although signed by every member of the grand jury.

Senator MACDONALD. Well, if they both go in, it will be a standoff.

Mr. Manager DUNN. It was signed by every member of the grand jury that was in there; but the Senate refused to receive that, and I am inclined to think the Senate will hardly receive a hearsay matter of that kind that is signed simply by one individual. The handwriting of the document and the hand writing of the date, is in an entirely different ink. There is nothing about it on its face that has any authenticity, and in the next place, it is secondary evidence, and is only put in here anyway as a little matter of buncombe.

Mr. ARCTANDER. I never do anything for buncombe, Mr. Dunn.

Mr. Manager DUNN. How long since? There is, however, nothing about that paper that could make it admissable here.

Mr. ARCTANDER. I don't offer that as evidence that Judge Cox was sober or drunk; and I claimed that when the other paper was sought to be introduced for the purpose of showing that Judge Cox was drunk; I said that did not prove that he was drunk, and that it would be hearsay evidence; so would this be if it was offered to show that Judge Cox was sober, but it is offered as a circumstance to rebut the testimony, as it must certainly do, the prosecution. I do not care particularly for it one way or the other, but the witness is here.

Mr. Manager DUNN. There is but one issue which we are trying here. Was the Judge drunk or was he sober, at one term of court. Now, if the counsel says that that is not offered in evidence, or pretended to be offered here to show that he was sober or drunk, it certainly is not material in the case.

Mr. ARCTANDER. Very well; I will withdraw it.

The PRESIDENT *pro tem.* The chair will sustain the objection.

Mr. Manager DUNN. It can be withdrawn now; it has served the buncombe for which it was offered.

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Mr. ARCTANDER. We now will take up article twelve.

Senator CASTLE here took the chair to act as President *pro tem.*

GEORGE H. MEGQUIER

Sworn as a witness on behalf of respondent, testified :

Examined by Mr. ARCTANDER.

Q. Mr. Megquier, where do you reside?

A. Bird Island, Renville county, Minnesota.

Q. What is your occupation?

A. Lawyer.

Q. Were you present and in attendance upon court, at the general term of the district court, held in and for Renville county, at the village of Beaver Falls, in the month of May, 1881?

A. I was.

Q. What portion of the time were you in attendance upon court there, Mr. Megquier?

A. The entire term except the first half day.

Q. The first half day; you came there Tuesday at noon, did you?

A. Yes.

Q. That was the time you arrived there?

A. Yes.

Q. How long have you known the respondent, E. St. Julien Cox?

A. Thirteen years.

Q. Have you known him intimately?

A. I have.

Q. You stated you were in attendance upon court. Were you there during the entire term, during every session?

A. During every hour of the term, except the first half day.

Q. I will ask you to state what the condition of the respondent was to sobriety or inebriety during that term, while you were in court.

A. He was sober.

Q. Were you the attorney of Mr. Peter Bernegan at that term of court, Mr. Megquier?

A. I was.

Q. Were you in court when he was brought in there under a bench warrant, upon an indictment?

A. I was.

Q. What took place, if anything, at that time?

A. I, in his behalf, announced that he was ready for trial.

Q. He first pleaded, I suppose?

A. Yes; Judge Cox asked the county attorney if he was ready to proceed with the trial. He said he was not; Judge Cox then told Mr. Bernegen, or more particularly seemed to be addressing the clerk, that Peter Bernegen would be held to appear at the next term of court upon his own recognizance.

Q. He directed his language to the clerk?

A. He directed his language apparently more to the clerk, than any one else, turning in his direction.

Q. I will ask you to state, if there was anything different on this occasion in regard to the remarks made by the Judge, than has been usually the practice in that court whenever anybody is required to give recognizances,—to be released upon giving his own recognizance.

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A. No perceptible difference, except that the Judge seemed to be somewhat annoyed on account of the county attorney not being prepared to proceed with the case.

Q. Was there any talk between the Judge and county attorney, there before he made the order, in regard to witnesses in such cases?

A. There was.

Q. What was that?

A. He asked the county attorney if he had his witnesses, if he was ready to proceed with the trial; the county attorney said he was not.

Q. Did he give any explanation of why he was not.

A. I don't remember.

Q. I will ask you to state whether the Judge at that time addressed any language to Peter Bernegen the defendant in that case, as follows, "Peter Bernegen you are discharged on your own recognizance; you can leave the court room ?"

A. I don't remember any such language.

Q. How long have you practiced in that district, Mr. Megquier?

A. About twelve years.

Q. You have been county attorney of that county for a number of years??

A. I have.

Q. How many years?

A. Three years; one by appointment and two by election.

Q. I will ask you to state what has been the practice in regard to recognizances there, whether to take them of record or have the order entered for giving a recognizance and then for the county attorney to see that the thing was done afterwards?

A. The order was usually entered and the recognizance given, and filed with the clerk and submitted to the county attorney for his inspection and approval.

Q. That has been the practice there?

A. Yes.

Q. Then I understand that it has not been the practice to take anybody's recognizance in open court?

A. It has not.

Q. I will ask you to state whether you were the attorney there in several of those whisky prosecutions for the defense?

A. I was.

Q. I will ask you to state whether or not the county attorney was ready in any one of those cases, to proceed.

A. He was ready in two.

Q. Those were old indictments, were they?

A. Old indictments; he was ready in none that I remember, of those upon which indictments were found during this term.

Q. Did the Judge make any statement there in court, of any desire to have these cases prosecuted?

A. He did.

Q. What was it?

A. He stated that there had been a laxity upon the part of officers whose duty it was to prosecute parties offending in the sale of liquors without license, and that it was his desire that those cases be prosecuted and vigorously.

Q. And not to go over the term?

A. Yes.

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Q. I will ask you to state whether or not it has been the practice in that county since 1874, that no indictments were to be tried at the same term which they were found.

A. That has not been the practice generally.

Q. You were county attorney yourself, for years, were you?

A. Three years.

Q. Three years after 1874?

A. Yes.

Q. What was the practice during that time?

A. The practice and effort was to try all cases in which indictments were found during the term then pending; it was not always done, but that was the effort.

Q. But when ever the defendant requested trial, it was never postponed, was it?

A. Not to my recollection.

Q. You were also attorney, I understand, for Mr. Anderson, were you not?

A. I was.

Q. He was convicted at that term?

A. Yes; he was.

Q. That was one of the old indictments? A. Yes.

Q. He was convicted and sentenced to pay a fine of twenty-five dollars, and to stand committed until paid?

A. He was.

Q. On the last day of the term did you make any application to the Judge on the matter?

A. I did.

Q. What was it?

A. To have the fine remitted.

Q. Did you notify the county attorney before proceeding?

A. I did before I presented it to the Judge.

Q. Now, upon what grounds was your application based?

A. After the trial and conviction my client, Anderson, showed me a receipt of which I had no previous knowledge. It was a receipt of the county treasurer for a certain sum that I have now forgotten, but I remember that it was sufficient to cover it.

Q. That is in evidence as having been sixty-eight dollars.

A. Of money that he had paid to him under a mis-apprehension, evidently thinking that it was sufficient to pay the money required for the license to the county treasurer, and that receipt I presented to Judge Cox?

Q. Before you presented it to Judge Cox, had you presented it to anybody else?

A. I will tell you. Before I presented it to Judge Cox I called Mr. Miller's attention to it, and told him that I had not known of the existence of that receipt at the time of the trial, and said that it would be rather a hardship to require this man to pay a fine under those circumstances, he having, to all intents and purposes, as far as he knew how, complied with the law, and notified him that I should ask Judge Cox to remit that fine. I told him at the time that it was an informal procedure, it was true, but it would best meet the ends of justice.

Q. Well, what did Mr. Miller say to you?

A. Mr. Miller asked me, although I had told him, as I stated, he asked me why I didn't call that up. I then told him again I didn't know

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of the circumstances, that my client was not a man who was intellectually as bright as he ought to be, and had not shown me this receipt prior to the trial or any time during it.

Q. Did he enter any objection to it there, or what did he say about it?

A. He agreed with me that it would be a hardship on Anderson to require him to pay a fine under the circumstances, and I presented the matter to Judge Cox in his presence, he standing shoulder to shoulder with me—

Q. Miller, the county attorney?

A. Yes, and entered no protest whatever.

Q. Mr. Miller said nothing against it when you made that application?

A. He said nothing against it.

Q. Had you any understanding with him before as to his not objecting to it, if you brought the matter up.

A. He did not say he would not object to it, but there seemed to be a tacit understanding between us.

Q. And he never said a word when the matter was submitted?

A. Not an objection.

Q. I will ask you to state whether or not he at that time informed the court that the receipt did not cover the time for which he was indicted for selling?

A. He did not.

Q. You are positive of that?

A. I am positive. I will state why I am positive. At the time I presented the receipt it occurred to me that that might be the case. I looked it over very carefully. Since that time I have read the testimony given here by Mr. Miller upon that point, and refreshed my memory thoroughly upon it; hence I remember that there was nothing of the kind said by him.

Q. Now, state whether or not Judge Cox was intoxicated on this occasion?

A. He was not.

Q. Judge Cox remitted the fine upon your application, the county attorney not having anything to say against it?

A. He did.

Q. I will ask you to state whether or not at the same time it was reported to the Judge that your client was in such circumstances that he could not pay the fine and would have to go to jail?

A. It was, by myself. I will say that I mentioned the fact by the way, and not for the purpose of pressing the point that I presented.

Q. Do you know whether or not the Judge there, in court, enquired of the county treasurer as to the genuineness of the receipt?

A. The county treasurer was at the so called court house. Court was held in the school house, the school house upon the hill. Before remitting this fine he sent for the county treasurer to enquire into the matter; was not satisfied—

Q. So as to learn whether it had been paid in good faith, or after the prosecution?

A. He did.

The PRESIDENT *pro tem.* Who was sent?

A. Judge Cox sent for the county treasurer. I will not be positive but I think Mr. Mc Gowan, the clerk of the court went, but I am not positive as to that; but somebody went—

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Q. But you know that he came, and enquiries were made by the Judge of the county treasurer?

A. How?

Q. You know that the county treasurer came and enquiries were made?

A. He did not come but he sent word by the party—

Mr. Manager DUNN. Hold on now; you have gone far enough.

Q. I will ask you to state Mr. Megquier, whether at that time, Judge Cox stated as follows, or words to that effect; that he considered it unjust to imprison and convict upon a technical offense when the party was virtually not guilty, having paid his license money in good faith?

A. He did, very emphatically and publicly, and aloud, so as to be heard by the entire court. He stated it was not the object of the court in pressing these prosecutions to punish a man who had fully intended to comply with the requirements of the law; that a technical failure so to do would be overlooked by the court.

Q. I will ask you to state whether or not the Judge in these whiskey prosecutions, instructed the county attorney to send for his witnesses immediately?

A. He did.

Q. Did the county attorney do it; I mean in these cases that were pressed for trial on the part of the defense?

A. Apparently he did not.

Q. What did the Judge do thereafter?

A. He repremanded the county attorney and repremanded the sheriff of the county, and ordered them at once to subpœna certain witnesses; the names of those witnesses, I do not remember; they were quite a number.

Q. They were afterwards brought in?

A. They were, the deputy sheriff traveling as he stated, and as I fully believe, through the night many miles; that deputy sheriff was Mackintosh.

Q. Mr. Megquier, do you remember of the night of a concert there during that term of court?

A. I do.

Q. Were you there at the concert?

A. I was.

Q. I will ask you to state if there was anything particularly annoying, that you remember of at that concert?

A. Yes.

Q. What was it?

A. The heat and the musquitoes.

Q. The next day, in court, did you noticc whether there were any musquitoes?

A. They were very annoying in court, very numerous and very large, and ravenous.

Q. There had been a heavy rain the day before the concert, had there not?

A. Yes.

Q. Now, I will ask you to state, Mr. Megquier, whether or not while you were there in court, you ever observed any gesture by the respondent in this way [bringing the palms of the hands forcibly together, followed by a motion as if pressing a small object between the thumb nails.]

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A. That is somewhat exaggerated.
Q. What was it he did?
A. He did this. [Clapping his hands.]
Q. That is just what he did?
A. He made a motion characteristic of Judge Cox.
Q. A particular Coxonian motion?
A. Yes.
Q. Was the way that he made it anything which would indicate that he was intoxicated?
A. Oh, no; not ludicrous; it exhibited the fact that he was annoyed.
Q. Were you annoyed yourself there?
A. Indeed I was.
Q. By the mosquitoes?
A. Yes.
Q. I will ask you to state whether, during this term of court or any portion of it, there was any more side whispers on the part of the Judge than there generally is at his term of court?
A. No, sir; my observation of Judge Cox is that occasionally he was given to *sotto voce* remarks to attorneys, but nothing unusual at that term of court.
Q. I will ask you to state whether the recesses were any more frequent at that term of court than they usually are at terms of court that you have attended?
A. Less frequent; the hours consumed were longer than usual, and when I say than usual, I speak of the past twelve years.
Q. You have noticed a growing dispositian on the part of Judge Cox upon the bench to crowd business right along from the time he came, have you not?
A. That seemed to be particularly his desire at the last May term of court.
Q. Do you know Robert W. Coleman?
A. I do.
Q. I will ask you to state, Mr. Megquier, whether Mr. Coleman was in the court house Friday and Saturday during that term of court?
A. I don't remember that he was, and had he been there I should have been quite sure to have remembered it.
Mr. Manager DUNN. I object to that.
Mr. ARCTANDER. Is that not proper?
Mr. Manager DUNN. No; that is not proper; he don't remember that he was, is his answer to the question.
The WITNESS. I am quite positive he was not there Saturday.
Q. How is it about Friday?
A. I would answer as I did before.
Q. That you don't recollect of seeing him there?
A. Yes.
Q. You may state if, during the term of court, there was any difference in the personal appearance of the Judge as far as dress, tidiness and neatness were concerned; any carelessness noticeable.
A. None that I noticed; he appeared in dress and person, neat as usual.
Q. During the whole term?
A. Yes.
Q. I will call your attention to the fact that there has been testimony introduced in this case to the effect that on Saturday the Judge com-

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menced to put his pantaloons in his boots; and I will ask you to state what there is about that matter.

A. It had rained; I remember very distinctly walking up to the court room from the hotel, with Judge Cox; he pulled his pants up to the top of his boot-legs, as I did and many others.

Q. Up in this way? [Indicating.]

A. Yes.

Q. As you did, and many others did?

A. Yes.

Q. I will ask you to state if it was exceedingly muddy there.

A. It was.

Q. Did he have his pantaloons in his boots at any time except during that rainy weather?

A. Not that I noticed; he didn't have them so in the court room at any time.

Q. He didn't have them so in the court room at any time; just walking up and down?

A. And I will explain just now, why I say that particularly. The Judge was inclined to be a little aesthetic, and objected to the attorneys putting their feet up on the table, hence, I noticed his general make up more particularly than I would if he had not done so. I know my feet were quite large, and I had put mine up, and had been requested to take them down.

Q. I will ask you to state whether or not, during the latter portion of that term, the Judge interrupted the proceedings there very often or more than usual.

A. Not unwarrantably.

Q. I will ask you to state whether during the latter part of that term he was careless in his position, on the bench, at any time?

A. I wouldn't like to say that the Judge is always graceful in his position in his chair, but he was not less graceful than usual.

Q. I will ask you to state whether during the latter part of the term in court there he did many things foolish and ridiculous?

A. He did not and I would like to say in connection, that during the last part of the term and especially on Monday he was considerably excited, and that excitement grew out of the fact that the county attorney was not prosecuting all criminal cases.

Mr. Manager DUNN. We don't want any of your opinions here.

The WITNESS It is not an opinion.

Mr. Manager DUNN. That is your opinion.

A. I make that as a statement of a fact that I knew.

Mr. ARCTANDER. I object to this interruption.

The PRESIDENT *pro tem.* When the witness is giving an explanation, it is eminently proper he should do so, and if counsel wish to interrupt him they must first apply to the chair, and have the witness stopped and not be interjecting objections from one side to another.

Mr. Manager DUNN. We have adopted that course heretofore, and Mr. Arctander and myself have got along very pleasantly together; we have been making these quiet objections without taking time to make formal objections, and that is the reason I did not at that time.

The PRESIDENT *pro tem.* Proceed.

Q. He did complain on account of the dilatoriness of the county attorney as a fact; it cropped out in the court room, did it?

A. It was self-evident.

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Q. I will ask you to state whether, in the trial of the liquor case there tried—you were engaged in the trial of the liquor case?

A. I was.

Q. You were the only one who tried any of the liquor cases that were tried?

A. I think I defended them all.

Q. State whether at any time during the trial of any of those cases, the Judge would insist upon the county attorney asking certain questions and without objections made by counsel offer objections himself, or if any portion of that statement is true?

A. He did not, and if I may be allowed to explain—

Mr. Manager DUNN. I object to your explanations.

Mr. ARCTANDER. I will ask you to state what did take place?

A. On the trial of one of the cases, the county attorney asked a question to which I objected; he asked a question leading to the same point but in a different manner a second time. I objected to the form of the question; it was sustained by the court each time and a third time sustained by the court, but both the second and third time the court intimated to the county attorney the manner in which he might ask the question. I objected to the form more than to the matter. The county attorney didn't seem to take the intimation of the court, and then the court said to him "Mr. Miller, you may ask the question in this form," stating it." Now I can't state exactly what that form was.

Q. That was the only thing that was anywhere similar?

A. It is the only thing that had any similarity to the statement you make.

Q. I will ask you to state whether or not the Judge during any of those trials would interrupt the county attorney and speak to him, telling him to hold on, and turning to the witness and asking questions himself?

A. He did once or twice, but evidently to assist the county attorney.

Mr. Manager DUNN. I object.

The WITNESS. I would like to explain that.

Mr. Manager DUNN. I would like, may it please the court, to have the witness cautioned not to volunteer, but to answer the questions.

The PRESIDENT *pro tem.* That is correct, Mr. Megquier; answer the questions that are put to you.

Q. I will ask you whether the questions were put in favor of the prosecution, or in favor of the defense.

Mr. Manager DUNN. I object to that question; ask him what the question was.

The PRESIDENT *pro tem.* I think the question is leading.

Mr. ARCTANDER. I asked him whether or not; and I think our Supreme Court has already ruled that a question framed in that way is not leading.

The PRESIDENT *pro tem.* I think that is so, Mr. Arctander.

The WITNESS. You will pardon me, but I do not like the imputation that I am an unusually willing witness, and my object in explaining is, simply to show what I mean by my answer and nothing more.

The PRESIDENT *pro tem.* Any explanation is always in order, Mr. Witness; but you, as a lawyer, know it is entirely improper to go further than that.

The WITNESS. It is intended as an explanation; I did not intend to overstep the bounds.

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The PRESIDENT *pro tem.* I did not intend to intimate that you would overstep the bounds; only confine yourself to the rule.

Q I will ask whether the Judge at any time there asked questions not pertinent to the case?

Mr. ARCTANDER. That is not to bring out matter on our side, but simply to deny statements that have been made by former witnesses. This statement was made by the witness Coleman. I have taken it down in his exact language, and I ask it with that view. All these questions are asked in the same way, and it is certainly proper.

Mr. Manager DUNN. This simply involves the opinion of the witness, whether they were pertinent or not, and that is certainly something that the witness has no right to explain to the Senate. It is something that was brought out by the other side, if it was brought out.

Mr. ARCTANDER. I think not.

Mr. Manager DUNN. It was certainly objectionable, and it could be objected to by them, if we had brought it out. We had no right to ask for an opinion of that kind.

Q. He can give the questions that were asked and then the matter in controversy, and the jury or the Senate can judge as to the pertinency of it.

The PRESIDENT *pro tem.* I think that is a little leading, Mr. Arctander; and I have grave doubts as to whether it is competent or material; it is incompetent certainly.

Q. I will ask you to state, Mr. Megquier, whether you remember any of the questions put by the court; what was the nature of the questions?

A. I remember them.

Q. What were they?

A. What were the nature of the questions?

Q. Yes.

A. Touching the nature of the indictment directly.

Q. Do you remember them now, so you could repeat them; the substance of them, at least?

A. I could repeat the substance; not verbatim.

Q. What were they?

A. One question particularly was: Did you, on a certain day, (and that day I have forgotten; the day named in the indictment, in which the charge was laid) drink in a saloon named, any liquor; if so, what was it? That was one of the questions.

Q. How did the Judge come to ask those questions; what was the occasion of it?

A. I find that I am treading on dangerous ground; I can not tell you how he came to ask it, only from impression; an opinion that would be.

The PRESIDENT *pro tem.* State the circumstances, Mr. Megquier.

The WITNESS. I objected to the form of the county attorney's questions two or three times, and he didn't seem to get to the point, didn't seem to know how to do so, and Judge Cox asked the question for him.

Q. I would ask you to state, Mr. Megquier, whether or not the Judge at any time during that term of court would laugh very loud and boisterously at his own jokes or laugh loud and boisterously at all?

A. No, sir; he did not.

Q. I will ask you to state whether or not his mental faculties at any time during that term of court seemed to be somewhat clouded?

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A. They seemed to be clear.
Q. You noticed no cloudiness about them?
A. I did not.
Q. I will ask you to state whether the Judge at any time during that term sat on the bench in a dreamy condition?
A. Not that I noticed.
Q. I will ask you to state whether or not at any of those times when the Judge made a motion to kill a mosquitoe, such as you have described here, he stated, "I have got you, you little cuss;" lay back and laugh, in a silly manner?
A. I remember nothing of the kind; I saw no such motion but once, and then I was nearest him, nearer than any other person in the room.
Q. That is the only time you saw a motion?
A. Yes.
Q. And there was nothing such as I have asked you here now, accompanying it?
A. Nothing.

Mr. ARCTANDER. I desire, Mr. President, to read a statement to the witness, given by the witness Coleman, and ask him to state upon that, what the fact is. It is a very complicated question, and I do not know how to get at it in any other way so as to make it intelligent. I do not suppose it would be improper, and I ask leave to read to the witness from the testimony of Mr. Coleman, a witness introduced here on the part of the prosecution; I read from page 19 of the Journal of the 23rd day.

A question would be asked, or something would be going on there, and he would grab hold of his seat or clinch his fists, grit his teeth, and then sit up straight; acting as though it required an over amount of exertion on his part to control his faculties, before he could either perceive the point or force of the question sufficiently to answer it or rule upon it.

I desire to ask the witness to state what, if anything, of that or occurrences of a similar nature took place in court.

The PRESIDENT *pro tem.* I think it is proper.

Mr. Manager DUNN. I do not object.

The WITNESS. I have seen Judge Cox at times previous to that term, and also at that term, show evident annoyance at a question that he thought evidently improper, and at that term on several occasions I saw him show that annoyance.
Q. How does he show it; describe it to the Senate?
A. As, perhaps, seizing the arm of his chair, turning his head, perhaps set his teeth together closely; it is characteristic of the gentleman.
Q. It is a matter that you observed on other occasions in court, quite frequently?
A. It is his habit.
Q. It is one of his habits?
A. Yes, sir.

CROSS-EXAMINATION.

By Mr. Manager DUNN.
Q. Mr. Megquier, you don't reside in Beaver Falls?
A. I do not.
Q. You reside at Bird Island?
A. Yes.

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Q. Where did you stop at Beaver Falls; what hotel did you stop at?
A. At the Dakota House.
Q. Who keeps that house?
A. A man by the name of Holtz.
Q. Carl Holtz?
A. Carl Holtz.
Q. Did you see Judge Cox there sometimes?
A. I did.
Q. Do you know whether Judge Cox drank any liquor there at Carl Holtz' hotel?
A. I do.
Q. You say you know whether he did or not; now, did he?
A. Yes.
Q. At different times in the day?
A. Yes.
Q. Every day?
A. I can't say that he did.
Q. How many days?
A. I can't tell you that.
Q. What is your best opinion as to the number of days, whether it was every day or otherwise?
A. My best opinion is that I didn't see him every day.
Q. You didn't see him drink every day?
A. No, sir.
Q. What day of the term didn't you see him drink?
A. I couldn't tell you.
Q. What day of the term did you see him drink?
A. On Friday and Monday; the last, the only Monday of the term.
Q. What would he drink?
A. I don't remember.
Q. Did you drink with him?
A. I did; every time that I remember of his drinking I drank with him.
Q. That was at Carl Holtz's.
A. Yes.
Q. Do you know anything about his drinking at Peter Bernegen's?
A. I do not.
Q. Or at any other place than Holtz's?
A. I do not.
Q. Did you see him drink in the morning?
A. I don't remember that I did.
Q. At noon?
A. I don't remember that I did.
Q. At any recess?
A. None.
Q. Well, at what part of the day then?
A. In the evening.
Q. Always in the evening?
A. All that I saw and remember.
Q. Well, your memory is good, is it not, Mr. Megquier?
A. Usually so, sir.
Q. Then you don't think that you have forgotten any of the times?
A. I don't think I have.
Q. You say Judge Cox was perfectly sober during that term of court, do you, Mr. Megquier?

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A. That he was sober?
Q. Now, I ask you if he was perfectly sober?
A. In my opinion, yes.
Q. Do you make any distinction between sober and perfectly sober?
A. Some distinction, yes; if a man drinks one glass of whiskey, for instance,—this is to illustrate, you understand,— and I know that his capacity is ten glasses and he only drinks one, I consider him one-tenth drunk.
Q. Do you know anything about Judge Cox's capacity?
A. Yes.
Q. How do you guage him?
A. About fifteen or twenty drinks.
Q. Before he will arrive at what stage?
A. At a stage of intoxication such that those not acquainted with him would see any influence of the liquor upon him.
Q. Well, it would depend somewhat upon the size of those drinks?
A. I speak of drinks such as we all take. I speak of the average. [laughter]
Q. Well, there are some of the gentlemen sitting as a jury in this case, who have very little information upon that point.
A. I am not acquainted with them. [laughter]
Q. Can you give us the size of the drinks that you think it would take about fifteen or twenty of to produce intoxication on Judge Cox; about the amount of each drink?
A. Oh, yes.
Q. Well, about how much?
A. Well, about a fourth of a gill.
Q. That would be of ardent spirits, not fermented liquor?
A. I don't mean water.
Q. Well, you don't mean fermented liquor,—beer?
A. I mean whisky.
Q. And you never knew him to take fifteen or twenty then, on any one occasion?
A. I never have.
Q. Then you have never seen him intoxicated?
A. I have seen him when I thought he was intoxicated, but didn't know how many drinks he had taken.
Q. Well, how did you guage him then?
A. I have travelled with Judge Cox; I have associated intimately with him; I have drank whiskey with him; I have seen him and I know that it takes an unusual number of drinks to get Judge Cox, evidently under the influence of liquor.
Q. Does it take fifteen or twenty drinks to get him so that his tongue is a little loose, looser than usual?
A. Ordinarily I think it would.
Q. Ordinarily it does?
A. As I say, a fourth of a gill.
Q. How large a drink? Well, you say fifteen or twenty?
A. I wouldn't be definite as to the number of drinks, sir; I only speak in a general sense.
Q. But you can be certain that he didn't take fifteen or twenty drinks at any one of these occasions that you have spoken of at Holtz' saloon?
A. I am absolutely positive that I did not see him take fifteen or twenty drinks during any term.

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Q. Or didn't take enough at any time to render him at all under the influence of it?

A. I hold that a man is under the influence of liquor when he has taken one drink.

Q. Well, in what way does that influence him when he has taken one drink?

A. That depends upon the animal that you put the drink into.

Q. Well, take Judge Cox, for instance; he is the man under consideration; how does that effect him?

A. I don't think that one, two or half a dozen drinks, under ordinary circumstances, would be noticed in Judge Cox by his most intimate friends.

Q. Well, you say that you hold that if a man takes one drink he is under the influence of it. In what way does one drink effect Judge Cox?

A. I speak of that in the abstract sense and scientifically.

Q. In what way does drink effect Judge Cox.

A. It goes to his brain; I cannot tell what the effect would be.

Q. It goes to the brain?

A. It is indigestible and its effect is always upon the brain.

Q. It might be tempting?

A. It might be.

Q. And two drinks is more dangerous?

A. Certainly.

Q. An so on it increases?

A. *Ad infinitum.*

Q. Until absolute stupor takes place and he cannot drink any more?

A. Yes.

Q. And then you have seen Judge Cox in that condition when he has taken more than one drink, haven't you?

A. I have seen him when he has taken more than one drink.

Q. During this term?

A. Yes.

Q. How many drinks have you seen him take at this term of court?

A. Not more than two or three; I will not be definite as to any one day that I remember.

Q. Have you seen him take three?

A. He may have taken three drinks.

Q. And you never knew him to drink anything in the morning?

A. I have known him to drink in the morning.

Q. At that term of court?

A. I don't remember his drinking in the morning at that term of court.

Q. You won't be positive?

A. Usually I did not see him in the morning at that term of court.

Q. You didn't see him in the morning?

A. Not usually until we went into court; Judge Cox all but one day within my memory stopped at another place; that is the reason I didn't see him.

Q. What day was that?

A. I think that was on Saturday, may be on Friday.

Q. Did you see him on Sunday?

A. I did.

Q. What was his condition as to sobriety?

A. He was somewhat exhilerated.

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Q. Had you been drinking with him yourself?
A. On Sunday?
Q. Yes.
A. No, sir.
Q. Where did you see him?
A. At Holtz's hotel.
Q. Did you see him drink there?
A. I did not see him drink there, not that I remember.
Q. He made a little music there, didn't he, that Sunday morning, the Judge?
A. Sunday morning?
Q. Yes.
A. Not that I remember.
Q. On a piano?
A. No, sir.
Q. Or an organ?.
A. Not that I remember Sunday morning.
Q. Well, you saw him a little exhilerated there, didn't you?
A. I did.
Q. Was it to any great degree or extent?
A. Not to a disgraceful degree.
Q. Well, it was to such a degree that it was apparent to everybody?
A. I cannot say that it would be apparent to everybody; it was apparent to me.
Q. About how many drinks do yon think he had taken to produce that effect upon him?
A. I couldn't guess now, and wouldn't undertake to.
Q. Do you think he had arrived at the fifteen or twenty necessary to produce that effect?
A. I don't know; he might have drank one drink, and he might have taken a pint.
Q. One drink might have brought on that condition?
A. If it was large enough, certainly.
Q. Are you on very good terms with Mr. Miller, the county attorney of that county?
A. On the very best terms.
Q. You haven't a very high appreciation of his legal attainments?
A. I have not an immoderate idea of them?
Mr. ARCTANDER. What was it, about his legal attainments?
The WITNESS. I have not a high appreciation of his legal at tainments.
Mr. Manager DUNN. I don't know; I never met him until I saw him here.
The WITNESS. I consider him a gentleman, and a hard student, and he has been for years; I have been intimate with him.
Q. He bore a good character in the community, didn't he.
A. Yes, sir.
Q. He has a good reputation as a truthful man?
A. He has.
Mr. ARCTANDER. Oh, we object to that; they can't bolster up their witness in that way.
Mr. Manager DUNN. Then I shall withdraw it.
Mr. ARCTANDER. If you think he needs it, however, we do not object.

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Mr. Manager DUNN. Then I ask the question, if you do not object to it.

Mr. BRISBIN. We do not object to it.

Mr. Manager DUNN. Well, by whom am I to be governed in this matter?

Mr. ARCTANDER. Oh, by Mr. Brisbin; he is senior counsel.

Q. Well, his reputation is good is it not, for being a truthful man?

A. Yes.

Q. Now, as to this indictment, you speak of there, Mr. Megquier, Mr. Bernegen was your client?

A. He was.

Q. And you were pressing for a trial?

A. I announced that we were ready for trial.

Q. Did you announce that before you had ascertained that the witnesses had gone home.

A. I know nothing about the witnesses at all.

Q. You had not enquired, had you?

A. No, sir; I had not.

Q. At what time after the indictment had been found with reference to the day did you announce your desire to go to trial.

A. Well, if my memory serves me that indictment was found the term previous.

Q. It was?

A. I may be mistaken but I think it was; there were so many of those found the term previous; in nearly all of them I was retained by the defense; I will not be positive but I think it was.

Q. Well, on what day, did you announce your readiness to go to trial?

A. I think it was on Wednesday.

Q. The term commenced on Tuesday?

A. Yes, it was Thursday, and it might have been Friday; I won't be positive as to the day, but I think it was.

Q. Did you desire to go to trial after Mr. Miller stated he could get the witnesses or would get them.

A. I desired to go to trial; when I so stated, I was sincere.

Q. Did you desire to go to trial when he stated he could go?

A. I was ready at all times.

Q. You didn't press it?

A. I didn't tear my shirt, as the saying is.

Q. You didn't insist very hard?

A. I insisted as hard as I usually do for trial.

Q. You simply stated to the court that you were ready for trial, did you?

A. Yes.

Q. And made no appeal to the court to press the matter for trial?

A. I didn't waste any eloquence on the court.

Q. Well, you made no strenuous objection to a continuance?

A. Not particularly so.

Q. You were perfectly willing the case should be continued, weren't you Mr. Megquier?

A. Yes, but not delighted.

Q. You say it is the practice there in that district to take written recognizances; rather than oral ones before the court,—record recognizances?

A. Yes.

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Q. Who generally drew up these recognizances when you were district attorney?

A. I usually asked the attorneys for the defense to do that.

Q. Did you draw any in the case of Peter Berngen when you were his counsel that time?

A. I drew a large number.

Q. Did you draw any in his case?

A. I don't remember, I drew quite a number.

Q. Will you be kind enough to state the exact words that Judge Cox used as far as your memory serves you, when he ordered Peter Bernegen to enter into his own recognizance, at the time?

A. As near as I can remember, turning in his chair, which was pivoted, to the clerk, he said, "Peter Bernegen will enter his own recognizance for his appearance at the next term of court."

Q. That is all he said?

A. That is about all; he might have said something, but that is as near as I can remember.

Q. Did Peter Bernegen leave the court at that time; was he present?

A. He was there.

Q. And he left?

A. I don't remember whether he did or not; he was in the back part of the room I know, and I was near the Judge's stand.

Q. Now in this case of Anderson that you have testified to, what time was it that Anderson was indicted for selling liquor—I believe he was indicted for selling liquor without a license, was he not?

A. Yes.

Q. Now, at what time of the court was he indicted?

A. I can't remember; there were a large number of cases.

Q. Your memory isn't unusually good, is it?

A. My memory is unusually good; extraordinarily so.

Q. And *that* you cannot remember.

A. I cannot remember that.

Q. You don't remember at what term of court that indictment was found?

A. I am not positive; I could explain if you desire, why I am not positive, in order to show why it is that a man with good memory would not be positive.

Q. I have no doubt but you have a good explanation; we will take that for granted; what period of time was it alleged in the indictment that he had sold liquor without a license?

A. I don't remember.

Q. Have you no recollection upon that point at all, Mr. Magquier?

A. I have no recollection upon that point at all, none that is definite, I mean.

Q. At what place was it alleged that he sold liquor without a license?

A. At Bird Island, Renville County, Minnesota.

Q. But you can't tell the year, or the month, or the time?

A. Oh, yes, I can tell that; I can tell the year.

Q. Well, what year?

A. The year 1881.

Q. But you cannot give us any idea of the month in which it was alleged that he sold liquor without license?

A. I can't; there were a large number of those cases.

Q. Well, now, how many were there that you had anything to do with?

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A. I think I was retained——
Q. At that term of court?
A. At that term of court I think I was retained by seven, that is, of those that had been indicted the term previous and at that term.
Q. Who were they?
A. There were Peter Bernegan, Andrew Anderson, John Wadenspanner, the two O'Connors, their given names I have now forgotten, James and John, I think they were.
Mr. ARCTANDER. Two different indictments?
A. Yes, two different indictments, separate indictments; Andreas Betz and one Anderson, I have forgotten his given name.
Q. What was the date of the receipt which your client produced to you?
A. I don't remember the date; I paid no attention to the date, except that it occurred to me that it covered the period within which he was charged with having sold without license.
Q. Did that receipt specify that it was for money received for a liquor license?
A. It did not in those words.
Q. It was simply an ordinary receipt for money, was it?
A. Yes.
Q. Without specifying what it was for?
A. Yes, sir.
Q. Did you know at the time, Mr. Megquier, that your client had given any bonds as the statute prescribes for the sale of liquor without license?
A. I did not.
Q. Do you know whether he had?
A. I don't.
Q. Do you know whether he made any application, or did you, for a license, as the law requires?
A. Only from his own statement to me.
Q. Only from his own statement to you?
A. Yes.
Q. He stated that he had, didn't he?
A. He stated that he had; and he stated the manner in which he made the application.
Q. When did he state that to you?
A. He stated that to me prior to the trial.
Q. Didn't you ask him if he had paid any money?
A. I did.
Q. What did he say?
A. He said he had.
Q. Didn't you ask him whether he had a receipt for it?
A. I didn't.
Q. Did you ask him how much he paid?
A. I did.
Q. How much did he tell you he had paid?
A. Sixty-five dollars.
Q. You didn't ask him if he had taken a receipt?
A. I did not.
Q. Did you ask him when he paid it?
A. I did not.
Q. You didn't undertake, in his defense, as an attorney, to ascertain

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whether that money was paid then to cover that period of time, did you, Mr. Megquier?

A. Yes.

Q. Well, what did you find out about it?

A. I found, it was my impression, from what he stated to me, that it had been.

Q. Did you attempt to produce any evidence of it before court on trial?

A. I didn't have anything that I considered competent evidence, and hence didn't attempt to produce it.

Q. Didn't you have him there?

A. I did, but I didn't have him on the stand.

Q. Didn't you have the county treasurer at hand?

A. I didn't know at the time that he had paid it to the county treasurer.

Q. Who did he tell you he paid it to?

A. He didn't tell me; he told me he sent it down.

Q. You took no means then to ascertain that the money had been paid as your client said it had?

A. No.

Q. And were you prepared to go to trial without making any effort to ascertain?

A. If you will permit me——

Q. Answer my question?

A. I would like——

Q. Well, you can explain bye-and-bye,

A. Very well; it is a matter of self defense, you understand.

The PRESIDENT *pro tem.* You can explain bye-and-bye.

Q. That is all right; I am only asking this question now in my own way. Your client was then convicted of that offense?

A. Yes.

Q. After the conviction the court sentenced him?

A. He did.

Q. To pay a fine?

A. He did.

Q. What day was that sentence imposed?

A. I think it was on Friday.

Q. When did you first ascertain that your client had a receipt for some money?

A. About five minutes after the sentence.

Q. At what time did you make the application to vacate the judgment?

A. On Monday.

Q. Why didn't you do it on Friday?

A. I didn't desire to.

Q. You didn't desire to?

A. I was not ready to do so.

Q. You desired to postpone it?

A. Yes.

Q. Did you see the receipt then?

A. I did.

Q. Did you take any measures to verify, from the county treasurer, whether it was money received for the payment of that license or covered the period of time for which your client had been indicted?

A. I did.

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Q. Who did you see?
A. I saw the county treasurer.
Q. Did he inform you that that was the fact?
A. He didn't, no.
Q. Didnt't the date of the receipt, compared with the indictment, show whether it was a fact or not?
A. I asked him if he received the money.
Q. Answer the question; wouldn't the date of the receipt and the indictment itself, comparing the dates with the period for which he had been indicted, show that fact?
A. Assuredly.
Q. Did they show it?
A. They did.
Q. What date was that receipt?
A. I don't remember.
Q. What period of time was he indicted for?
A. I don't remember.
Q. You testify positively that did cover the same time?
A. That was my impression at the time.
Q. Well, you testify that they did, or that it was merely your impression at the time?
A. It was my impression at the time; fully convinced at the time.
Q. Did you so state to the court that you fully believed it to be true?
A. I did.
Q. And you compared them so that you could not be mistaken?
A. I might have been mistaken, but that was my impression.
Q. Did you compare them so that you could make a statement truthfully to the court, on that point?
A. I did.
Q. And found that they compared?
A. I found that they covered the time.
Q. Did the receipt cover the time?
A. It did.
Q. Was the receipt dated subsequent to the period for which your client was indicted, or prior?
A. Prior.
Q. How long prior?
A. But a short time; I don't remember the time, but I remember the general impression.
Q. Did you ascertain whether or not that money was paid for license money or not?
A. I did.
Q. You ascertained it was?
A. I ascertained that it was.
Q. For license money?
A. Yes.
Q. Upon that showing to the court, you say that Judge Cox set aside the sentence?
A. He remitted the fine.
Q. He remitted the fine?
A. Yes.
Q. He had been sentenced, had he?
A. He had.

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Q. The fine had passed from the hands of the court and had become a sentence of the law?

A. That is a legal proposition, and I refuse to testify to it.

Q. He simply remitted the fine?

A. He stated that the fine was remitted.

Q. And that you say was done without protest, by the county attorney?

A. It was.

Q. And with his consent, as you understand it?

A. Yes.

Q. Who was present in court when that was done?

A. W. W. McGowan, the clerk of the court, and many others; he notably, because he was very near us.

Q. He made no objection at all, no protest?

A. No protest.

Q. The Judge and Mr. Miller had some little controversy, didn't they, in the trial of some of those cases?

A. No, sir; the Judge and Mr. Miller had no controversy.

Q. They didn't A. No, sir.

Q. There was no apparent ill-feeling between them, was there, in the trial of the case?

A. I stated before the Judge reprimanded Mr Miller, but Judge Cox and Mr. Miller had no controversy.

Q. Were there any apparent ill-feelings between them upon the trial of that case?

A. What the feelings were that actuated Judge Cox, I do not know

Q. Apparent ill-feeling; I made my question intelligent?

A. Apparent ill-feelings?

Q. Judge Cox was apparently incensed at the conduct of Mr. Miller during the term of court. He took no particular pains to conceal it did he?

A. I don't know that he did; he exhibited it.

Q. Did Mr. Miller behave in any unseemly way there, improper manner?

A. Do you mean was he boisterous?

Q. Yes.

A. He was not boisterous, not outrageous.

Q. Did he behave there in an improper manner to the court?

A. No; evidently inefficient.

Q. He gave it as no contempt of court, no insolence or anything of that kind?

A. No, sir.

Q. Evidently he was inefficient? A. Yes.

Q. Well, he convicted your client, didn't he; he succeeded in doing that?

A. Yes, and mostly any man could have done it under the circumstances; a good many he didn't.

Q. Well, I have no doubt most any man could.

A. I am not comparing his efficiency with mine.

Q. He convicted some others? A. He didn't.

Q. Did he try any others?

A. Yes; a liquor case.

Q. What did the jury say in that case?

A. Not guilty.

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Q. That is not an unusual verdict up there, in liquor cases?
A. It isn't anything unusual; it was not strange.
Q. Well, you didn't lay it to any inefficiency upon the part of Mr. Miller, because that man was not convicted?
A. Emphatically.
Q. He ought to have been convicted. A. Yes, sir.
Q. And you defended him? A. Yes. [Laughter.]
Q. And the Judge was incensed at that, was he?
A. The Judge was very much dissatisfied that these men were not convicted, and told me that he would take the bits in his own teeth if they didn't by and by convict somebody.
Q. Was he dissatisfied at the conviction that was had?
A. No, sir.
Q. All that you produced to the court to procure the remission of that fine or sentence and virtual acquittal of your client, on that day, was simply that treasurer's receipt?
A. Nothing earthly else.
Q. Do you know where that receipt is?
A. I do not.
Q. In whose possession did you last see it?
A. In my possession; but I laid it on the Judge's desk, and havn't seen it since.
Q. You don't know whether it was filed in the clerk's records?
A. I don't know anything about it.
Q. Well, in what way was Mr. Miller's inefficiency manifested in that case in which the acquittal took place?
A. He asked the witness what he drank; he said he drank beer and he rested satisfied with that, fixing the time and place; and I called the attention of the jury to the fact that he didn't testify whether it was pop-beer, birch-beer, spruce-beer, or what.
Q. And that was all there was of it?
A. Yes, and the jury found him not guilty. [Laughter]
Q. Well, the Judge didn't attempt to help him out on that?
A. The Judge helped him more than I would like to have him do.
Q. Didn't suggest that he ought to have proved that the beer was intoxicating?
A. No, sir; I would have been very sorry if he had.
Q. He let it go at that?
A. Yes.
Q. Well, in the other case any one could have convicted him?
A. Yes.
Q. That was whisky, probably?
A. That was whisky.
Q. And there is only one kind of whisky I beleive?
A. There is a question that has not been fully determined by the court yet.

The PRESIDENT *pro tem.* Is there anything further with this witness?

Mr. Manager DUNN. I don't know; Mr. Megquier's examination was very lengthy, and I have taken but a few notes.

PRESIDENT *pro tem.* Perhaps the witness may make the explanation now, with reference to the trial of Anderson. [To the witness.] You stated that you wished to make an explanation with reference to certain things that were called to your attention by the counsel. You can do so now if you wish.

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The WITNESS. I do not know what it is important to do so. It was only relative to my memory and there being so many it was only a general impression; I didn't take any particular note of the defendants.

Q. What time was this court held?

A. The 24th of May it convened.

A. Wasn't that rather early for mosquitoes in Beaver Falls?

A. Yes, sir; but I have seen them earlier; there is not any doubt, sir, but there are mosquitoes, and a great many of them,—not the slightest.

Q. When you notified Mr. Miller of this receipt did you show him the receipt?

A. I did.

Q. Before you called the attention of the court to it?

A. Yes, sir.

Q. And he made no objection at all, at that time, did he?

A. No, he did not.

Q. Rather agreed that it ought to be done, didn't he?

A. He tacitly agreed with me, when I stated to Mr. Miller "it will be hard to fine this poor fellow,—he is ignorant and we know him to be so generally, and he has done what he thought was right; he gave this money to the county treasurer, and thought that he was doing what was right, and it is a mere matter of justice."

Q. Do you know what the price of the license was?

A. No, I don't remember now.

Q. You don't know what amount the county commissioners had fixed, do you?

A. No, I don't; I don't know that I knew at that time, but I asked Mr. Miller if that was not sufficient; he said that it was. I asked Mr. Miller if the amount was not sufficient, showing him the receipt; he said yes, that it covered the amount.

Q. Mr. Miller said that covered the amount did he?

A. Yes,—that it covered the amount up to that time; not the amount for one year, understand; it was the amount for one half of a year and more.

Q. Well, do they license people to sell for less than a year, up there?

A. They do, yes, sir; they license them for three months even.

Examined by Mr. ARCTANDER.

Q. Mr. Megquier, Mr. Dunn asked you if after Mr. Miller was ready to get his witnesses whether you pressed the case for trial; I will ask you to state whether Mr. Miller was ever ready to get his witnesses at that term in that Bernegen case?

A. Mr. Miller was never ready.

Q. Have you ever known him to be ready in a criminal case?

Mr. Manager DUNN. He was ready in the Anderson case, wasn't he?

A. Yes, he was ready in that case.

The WITNESS, (To Mr. Arctander.) What was your last question?

Mr. ARCTANDER. Well, that is not material.

Q. When this matter came up it was not put over for any time was it—the Bernegen matter—after he was arraigned. All of this occurred at the same time?

A. Yes.

Q. When he was arraigned—the binding of him over?

A. Yes; it had been talked over out of court between the counsel for

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the defense and the county attorney as to his readiness in those two cases.

Q. Now do you know whether Mr. Berncgen had been arrested on a bench warrant, whether he was in the custody of the sheriff, or had just been notified to come up there?

A. He had not been arrested at all, that I know of; he had been requested to come up; he being a responsible man was not taken directly in charge; he was requested to come up and appear.

Q. You have stated something in regard to your client having made an application for a license and how you knew it?

A. Mr. Anderson, do you mean?

Q. Yes.

A. I stated that I didn't know whether he had made an application or not. He had made what he thought was an application—so informed me, and it was evident that he was ignorant of the form necessary.

Q. I will ask you to state if, at the time that this receipt was brought up, the Judge had the indictment before him in the case?

A. He did, he called for the indictment when I presented the receipt; took the indictment and the receipt and laid them on his desk and looked them over. Mr. McGowan, the clerk of the court, gave him the indictment.

By Mr. Manager DUNN.

Q. This man Anderson that was indicted, how long had he lived at Bird Island?

A. About three years.

Q. How long had he kept a saloon?

A. He had been keeping saloon about a year and a half at that time.

Q. He had had a license, hadn't he?

A. He had had a license. That license was obtained by his brother, within my knowledge, for him. He was under his brother's supervision.

Q. Well, he had a license in his own name?

A. Yes.

Q. And at that time the license had run out, had it?

A. Yes; I say he had a license, I believe he had in this case. I don't know that; I didn't see it.

Q. Well, how do you know it was obtained for his brother?

A. He stated that his brother had obtained the license, and was so understood. I speak from a general knowledge.

Q. Do you say he was ignorant?

A. Quite.

Q. What nationality was he?

A. Swede.

Q. Could he read and write?

A. Yes.

Q. An intelligent man, isn't he?

A. No.

Q. He is not an intelligent man?

A. He is not an intelligent man,—not what we term an intelligent man. He is rather the butt of ridicule on account of his want of intelligence, and yet he can read and write.

Q. And keep a good saloon?

A. No.

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JOSEPH W. WHITNEY,

Sworn as a witness on behalf of the respondent, testified:

Examined by Mr ARCTANDER.

Q. Where do you reside?

A. I reside at Walnut Grove in Redwood county, Minnesota.

Q. What is your business?

A. I am an attorney.

Q. An attorney at law?

A. Yes, sir.

Q. Do you know the respondent, Judge Cox?

A. I do.

Q. Were you present at the general term of court held in Renville county by respondent in the month of May, 1881?

A. I was.

Q. What portion of the term were you present in court?

A. I was present all the time from the beginning of the court until its adjournment.

Q. Until the final adjournment?

A. Yes, sir.

Q. I will ask you to state what the condition of the Judge was during that term, the whole of it, and any part of it in court as to sobriety or inebriety?

A. In my opinion the Judge was perfectly sober.

Q. Had you any doubt about it?

A. Not in the least.

Q. I will ask you to state whether or not there was any difference in the manner, conduct, language, or appearance of the Judge in the latter part of the term from what there was during the two first days of that term?

A. I saw no difference in the Judge's appearance with one exception. There was one day there that he seemed quite annoyed on account of the negligence of the county attorney, Mr. Miller. With that exception his appearance was the same on the last day, and every day of the term, that it was upon the first.

Q, Now what was the difference in his appearance at that time?

A. He seemed annoyed at the inefficiency of the county attorney.

Mr. Manager DUNN. Well, I object.

Q. Well, you have stated that already, but what was the difference in his appearance at this time; in what did it exhibit itself?

A. Simply that he seemed annoyed.

Q. Did he grow excited any at that time?

A. No, he did not.

Q. Simply an expression of annoyance in his appearance?

A. Yes.

Q. Was there any difference in his conduct, manner or language in the latter part of the term from the two first days of the term?

A. None in the least that I observed.

Q. Were you present on Monday when Mr, Megquier made the application to the court to have the fine remitted in the Anderson case?

A. I was.

Q. I will ask you to state what Mr. Miller's conduct was at that time;

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that is to say, whether he entered any protest or objection or what he did.

A. He did not say anything.

Senator POWERS. Mr, President, I have not had an opportunity of talking with other Senators, but it is within a few minutes of the time to adjourn. I wish to test the sense of the Senate as to a night session and I therefore move that at 6 o'clock we take a recess until 8 o'clock this evening and have a session to-night.

Mr. ARCTANDER. I will state that that will be very convenient for the witnesses that are now here. The witnesses desire to go home and can go. There are only four witnesses here to be examined upon the articles of impeachment, and three witnesses simply upon a question of character.

Senator RICE. I hope that this motion will be adopted in as much as there is no prospect of having a session to-morrow or Monday. I have taken a little pain to investigate that matter here, and I have found that there is not enough to make a quorum, and it seems as though it would be in justice to the members and to the State that we should have a session this evening.

Senator HINDS. Mr. President, as a substitute to the pending motion I move that the Senate continue in session until the witnesses that are now in attendance are examined.

The motion was seconded, and the roll being called, there were yeas 14. and nays 8, as follows :

Those who voted in the affirmative were Messrs. Aaker, Campbell, Case, Castle, Hinds, Johnson, A. M., Macdonald, Mealey, Perkins, Peterson, Rice, Shalleen, Wheat and Wilkins.

Those who voted in the negative were Messrs. Adams, Crooks Johnson, R. B., Morrison, Officer, Powers, Shaller and Wilson.

So the motion prevailed.

Q. I will ask you to state, Mr. Whitney, whether you were the attorney for John Morgan, that was indicted for selling liquor at this term of court?

A. I was.

Q. At the time of arraignment, what did you do?

A. Well, Mr. Morgan, the defendant presented to me a receipt from one of the county officers, I think the county treasurer, showing that he had paid—

Mr. Manager DUNN. Well, I object to this; it is entirely immaterial, and it has no bearing, whatever, upon the case.

The PRESIDENT *pro tem.* I can't see the materiality of it.

Mr. ARCTANDER. Well, it is in reference to the testimony that is already in, (of Mr. Miller) that at the time of the plea of John Morgan, Judge Cox requested him to enter a *nolle pros*, and that he refused to do it. Now, I want to show by this witness, that he in pursuance of the agreement with Mr. Miller, did go in and do it.

Mr. Manager DUNN. I object to it still as immaterial.

The PRESIDENT *pro tem.* Oh, I think it is material; to get at all the circumstances that occurred there.

Mr. Manager DUNN. But that was nothing that was brought into the case at all to show the Judge's condition, as I understand it; it was simply as a matter for showing the practicing in that county.

Mr. ARCTANDER. Well, he has claimed that the Judge was intoxicated at the time.

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The PRESIDENT *pro tem.* Well, go on with the testimony.

By Mr. ARCTANDER.

Q. Well, what was done there in regard to it?

A. Well, Mr. Morgan presented to me a receipt and stated that—

Mr. Manager DUNN. Well, I object to what he stated to you.

The WITNESS. Well, the receipt showed—

Mr. Manager DUNN. Well, I object to what the receipt showed.

Q. You may state whether or not Judge Cox, at any time in that court, requested Mr. Miller, the county attorney, to enter a *nolle pros.* in the case of John Morgan.

Mr. Manager DUNN. I object.

Senator CAMPBELL. I would like to interrupt the proceedings. It is barely possible that our Senators may leave us without a quorum, and that we cannot do any better than adjourn until to-morrow morning. I, therefore, move that when the court adjourn it do adjourn until Monday evening at 8 o'clock.

The motion was seconded.

The PRESIDENT *pro tem.* You have heard the motion; are you prepared for the question? Those in favor of the motion will manifest it by saying aye; the contrary no. The motion prevails.

Q. I will ask you whether or not Judge Cox at any time during any of the proceedings in the John Morgan case, or at any other time in court, requested the county attorney, Mr. Miller, to enter a *nolle pros.* in the case of John Morgan.

Mr. Manager DUNN. I object.

The PRESIDENT *pro tem.* Let me see if I understand this question, Mr. Dunn. I understand Mr. Morgan has testified that such was the fact.

Mr. Manager DUNN. Well, he has testified that this young man was present. If he asks him in his presence I have no objection to it. I have no objection to taking his statement as to what he heard, but I don't propose to have Mr. Miller contradicted in that kind of a wholesale way.

The PRESIDENT *pro tem.* Modify the question to that extent.

Mr. ARCTANDER. I will ask him first whether he was present at all the proceedings in that case.

Q. Mr. Whitney, state whether or not you were present in court during all of the proceedings in that case?

A. I was as the attorney of John Morgan.

Q. Now I will ask you whether or not at any time when this case was brought up, or any proceedings had in it, Judge Cox requested Mr. Miller, the county attorney, to enter a *nolle pros.* in that case.

A. He did not.

Q. I will ask you to state whether or not Mr. Miller at any other occasion during any of the proceedings in that case refused to enter a *nolle pros.*?

A. No, sir; on the contrary he consented to it.

Q. He consented to the matter?

A. He consented to it.

Q. I will ask you to state whether or not you presented to the court,—

The WITNESS. [interrupting] Or rather the court asked him if he had any objection, and he said he had not?

Q. What occasioned that colloquy between him and the Judge?

A. Well, I made the motion on affidavits;—I think of the county treasurer, but I would not be positive;—but of John Morgan the defend-

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ant and the receipt of the treasurer, and I made a motion showing the facts to the court.

By Mr. Manager DUNN,

Q. Well, did you make that on affidavit?

A. I made that on affidavits.

Q. Filed affidavits?

A. I think they were filed, yes.

Mr. Manager DUNN. Well, then I object, let us have those affidavits.

Mr. ARCTADNER. I didn't ask him to state what the affidavits were.

Q. You moved on affidavits setting up certain facts you said?

A. I did.

Mr. Manager DUNN. Well, I object to that.

Mr ARCTANDER. I didn't ask him what the facts were.

Q. You moved for what?

A. I asked the court to discharge the defendant.

Q. Then the Judge asked Mr. Miller if he had any objection, and Mr. Miller said what?

A. Mr. Miller shook his head, he didn't say anything. The court asked him if he had any objection; that he thought that the ends of public justice would be subserved by discharging the defendant, or words to that effect and asked the county attorney if he had any objection to the discharge of the defendant, and he shook his head and said no. I had prior to this had a conversation with Mr. Miller,—

Mr. Manager DUNN. Well, I object to your volunteering any evidence at all.

Q. Well, I will ask the witness whether or not prior to that motion he submitted the matter to the county attorney.

A. I did.

Q. What was the result of that submission?

A. I had a conversation with the county attorney requesting him to enter a *nolle pros* in the case and he said if the court had no objection that he had none. That he would not enter a *nolle*, but that if I would make them affidavits, and set up the facts, and if the court had no objection that he hadn't.

Mr. Manager DUNN. Now, that is all immaterial, Mr. Whitney, Mr. Miller testified to the same state of facts exactly.

Q. I will ask you whether or not it is a fact that during that term the Judge told the county attorney to send for witnesses in these whisky cases that were pending there in which indictments had been found.

A. He did.

Q. Did he do it?

A. He did not.

Mr. Manager DUNN. I object.

The WITNESS. He did not to my knowledge.

Q. Well, you may state how you derived that knowledge?

A. I derived that knowledge from being present in court, and the cases being called and the county attorney saying that he was unprepared to go to trial for the reason that his witnesses were not there.

Q. That was after the Judge had told him to send for witnesses, was it?

A. It was.

Q. State whether or not the Judge then sent an officer after the witnesses himself.

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A. My recollection is that Judge Cox ordered the sheriff, or the deputy sheriff, to go after witnesses in those cases.

Q. I will ask you to state whether or not you remember the night of the concert that has been spoken of at that term of court?

A. Yes, sir, I was present at that concert.

Q. Do you remember what night it was?

A. My recollection is that it was on Thursday night of the first week in the term. The Judge and me went to the concert together.

Q. It was in the school house where the court was held?

A. It was.

Q. Now I will ask you to state whether or not you noticed anything peculiarly annoying there that concert night?

A. There were several mosquitoes around there that evening.

Q. Well, what do you mean by several?

A. Well, there was a great many. The mosquitoes were very thick there and very annoying.

The PRESIDENT *pro tem.* What time was that?

A. May, 1881.

Q. State whether there had been a heavy rain that day just before that concert?

A. There had been.

Q. Now, I will ask you to state whether you know Robert Coleman?

A. I do.

Q. I will ask you to state whether or not Robert Coleman was present in court at any time after that night of the concert?

A. Not to my knowledge I didn't see him in court after the concert. In fact I didn't see him in court after Wednesday; he was present in court on Tuesday and Wednesday, and after that he wasn't in court at all that I seen and I was there all the time or nearly all the time.

Q. I will ask you to state whether or not there was any difference in the carefulness of Judge Cox about his person during that term at any time in dressing, etc.

A. I noticed no difference in his personal appearance, in dress, with the exception of the day that it rained. It rained and I seen that he had his pants in his boots. There was no sidewalk there and the road was quite muddy.

Q. I will ask you to state whether or not there was any difference in the deportment of the Judge upon the bench as far as dignity and reticence was concerned between the first two days and the latter part of the term?

A. None whatever that I observed.

Q. I will ask you to state whether or not he interrupted the proceedings in any unusual mannor, or any more in the latter part of the term than he did the first two days?

A. He didn't.

Q. I will ask you to state whether or not he was careless in his position while sitting on the bench in the latter part of the term compared with the first two days?

Q. Did he do anything foolish or ridiculous upon the bench there?

A. Nothing that I observed.

Q. I will ask you to state whether or not during the trial of the liquor cases on Friday, the Judge in any instance, insisted upon the county attorney asking certain questions and no others, or whether he,

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without objection made by counsel, offered objections himself at any time?

A. There was nothing of that kind that I observed.

Q. You heard the statements of Mr. Megquier upon that point, did you?

A. I heard Mr. Megquier's full testimony.

Q. I will ask you to state whether or not you observed anything similar to it at any time when the Judge asked any question; and what it was and how it came about?

A. Well, the counsel, Mr. Megquier and Mr. Miller, in one case, in one of the whisky cases, got into a wrangle as to the admissibility of certain evidence,—concerning questions that Mr. Miller asked and Megquier objected to, and they couldn't get any definite understanding whatever, and got into a wrangle; and the Judge, I think, at one time, stopped them and asked the question himself; he says,"I will put the question," and Mr. Miller seemed to be unable to put the question in proper form, and the Judge done it for him.

Q. I will ask you to state whether or not the Judge at any time there, would sit back and laugh loud or boisterously about his own jokes, or of his own doings, or of anything while on the bench there?

A. I seen nothing of that kind.

Q. You saw me deseribe the motion to Mr. Megquier, that has been testified to about cracking on his finger and slapping his hand down from the back of his head; was there anything of that kind?

A. Well, the mosquitoes were very thick, and I noticed the Judge several times, brushing mosquitoes away from his head this way, [indicating]; I seen him have his handkerchief out; I seen nothing that I thought was ridiculous or out of the way.

Q. You say mosquitoes were very thick there at that time when he did it?

A. Yes, sir.

Q. I will ask you to state whether at any such time he would make any remark like this "I have got you you little cuss" and lay back and laugh in a silly manner; or laugh at all, or do anything of that kind?

A. Nothing of that kind.

Q. I will ask you to state whether or not the mental faculties of the Judge seemed somewhat clouded during any part of that term.

A. I don't think they was.

Q. Did you notice anything of the kind in the rulings, or anything of the kind?

A. I did not; my impression was at the time that his rulings were all correct.

Q. Did he give them in a clear manner?

A. Yes, sir.

Mr. ARCTANDER. You may take the witness.

Mr. Manager DUNN. I don't desire to cross-examine this witness, Mr. President, with this thin Senate; I don't think there is a quorum here. I am willing to take any other witness than this, if they have got a witness of no importance, and go on with him, but this is an important witness, and I want a quorum at least when I cross-examine him. I do not propose to raise the question about a quorum, but upon consultation with my associates we have concluded that is what we desire to do.

Senator Perkins here took the chair to act as President *pro tem.*

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PATRICK KIRWAN,

Sworn as a witness on behalf the respondent, testified.

Examined by Mr. ARCTANDER.

Q. Mr. Kirwan, where do you reside? A. Beaver Falls.
Q. What is your business?
A. I am auditor of Renville county.
Q. Do you know Robert W. Coleman?
A. Yes, sir.
Q. How long have you resided in Beaver Falls?
A. I believe since 1876.
Q. Do you know where Mr. Coleman has resided during the last two or three years?
A. At Beaver Falls.
Q. When did he leave there?
A. He left there in the fall of 1881.
Q. Prior to that time how long had he resided there?
A. I think he came there in the spring of 1879. Maybe it was 1880.
Q. I will ask you to state,—do you know the general reputation of Robert W. Coleman in the community in which you both live, for truth and veracity?
A. Yes, sir.
Q. What is that reputation good or bad? A. It is bad.
Q. State if you would on that reputation believe him under oath.
Mr. Manager DUNN. I object to that question, I think that is not a proper question.
Mr. ARCTANDER. I understand that the present ruling is that it is not a necessary question, but that it is a proper question.
The PRESIDENT *pro tem.* My judgment is it is not a proper question, but if desired, I will submit it to the Senate.
Mr. Manager DUNN. I think there ought not to be any dispute between lawyers that it is not a proper question.
Mr. ARCTANDER. You see there is a dispute between you and the chair.
The PRESIDENT *pro tem.* I hold that the question is not proper. Do you wish it submitted to the Senate?
Mr. ARCTANDER. I don't want it submitted to the Senate.

Mxamined by Mr. Manager DUNN.

Q. Mr. Kirwan, who have you heard speak about Mr. Coleman's reputation for truth and veracity?
A. Well, the people in the village generally.
Q. Have you heard it questioned much?
A. Yes, a great deal.
Q. How long since have you heard it questioned?
A. Well, since the man first came to the village.
Q. In what way was it questioned?
A. Well, in this way, that he was a great fellow for to make large stories, tell lies.
Q. Well, do you mean simply exaggerate, or tell things that weren't true for a purpose?
A. Some things that weren't true and to exaggerate also.
Q. Whom have you heard make any such remarks as that, that he was an untruthful man?

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A. Well, I have heard S. R. Miller, for one.
Q. When did you hear him say so?
A. I won't state when.
Q. About when?
A. Well, several times during the time I have spoken of during Coleman's residence in Beaver Falls.
Q. What did you hear him say?
A. Well, that he thought he was an untruthful man.
Q. When did he say that?
A. I won't state.
Q. Where was he when he said it?
A. Well, sir, at his office. I have heard him say it so many times that I can't tell you all the places.
Q. What did he say?
A. That he was an untruthful fellow.
Q. That is just what he said; that was his language, was it?
A. Yes.
Q. That he wrs an untruthful fellow?
A. Yes; he would not always state it in that way; but he would make expressions to that effect.
Q. Now, who else have you heard say that, or words to that effect?
A. I have heard his brother George Miller.
Q. Well, who else?
A. Well, I have heard Hermann ——.
Q. What did you hear him say?
A. Well, about the same.
Q. Where was that?
A. I couldn't tell.
Q. When was it?
A. During that period of time.
Q. Had he had any difficulty with Mr. Coleman?
A. Not that I knew of.
Q. In what way did that come around?
A. Well, I don't know. In general conversation between ourselves. that was all.
Q. You had had some difficulty with him, hadn't you?
A. Never.
Q. How came you to be talking about it?
A. I can't tell you?
Q. You were talking about your neighbors, were you?
A. Well, I never made a practice of doing so.
Q. Well, was there anothing that brought Mr. Coleman's name prominently before you?
A. Something that Mr. Coleman would say about some one that would bring it up.
Q. Would he be present at the time when you made these remarks?
A. No.
Q. Well, what were you talking about that led to those remarks?
A. I won't state; I can't tell.
Q. Well, now, who else?
A. Well, I don't remember, it has been a matter of general comment.
Q. I don't want that general comment; I want to know who they are?

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A. I won't state any further.
Q. You don't remember of anyone else?
A. No.
Q. Those are the only three men you can give?
A. That is the only three men I can give you.
Q. And upon those three names you come in here and say that his general reputation in that community is bad, do you?
A. Yes, sir.
Mr. Manager DUNN. That is all.

By Mr. ARCTANDER.
Q. Do you mean to say that these three are all you can now give or that they are all the people that have ever spoken of it?
A. Oh, no, I didn't say that; I said I couldn't remember the names of others.
Q. This S. R. Miller is the county attorney of that county?
A. Yes, sir.
Q. George Miller is his brother,—the Miller who has been a witness in this case?
A. Yes.

By Mr. Manager DUNN.
Q. Now, can't you give me the name of a single other one?
A. Yes, I will give you one more that occurs to me now, and a circumstance that occurred with it. It was this: this man Coleman took a town order from a tax payer to go and settle that man's tax. I think the town order amounted to $12; he came up to the county treasurer and we were sitting in the office together one evening there in the office alone, and he came in and he wanted to know if he could pay the taxes. I told him I didn't know. He wanted to know if he could pay that man's taxes with that order; I told him I didn't know, he could see the treasurer; while he was in there the treasurer came in; he asked the treasurer if he couly pay that man's tax with that town order; he said it would be a great accommodation to him; the treasurer told him it was larger than he could take on taxes very well.
Mr. Manager DUNN. Well, I don't care anything about a long lingo about a conversation; you heard the treasurer state did you that he was an untruthful man?
A. Yes, I heard the treasurer say that.
Q. What is the name of the treasurer?
A. Hans Gronwold.
Q. When did he say that?
A. After this occured about the receipt.
Q. It was something in connection with the receipt was it?
A. Yes, sir.
Q. Now those are the only ones?
A. Yes, sir.
Q. Those four are all you can think of?
A. Yes, sir.
Q. Well, now do you pretend to say you have ever heard anyone else say it?
A. Yes, sir.
Q. Well, it is only a short time; it is only about a year or so in all. Those four men are the ones you base your opinion on are they?

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A. Yes, that is a part of it.
Q. You can't think of any more?
A. I won't state.
Q. You have had some difficulty with Mr. Coleman, haven't you?
A. Never.
Q. Hasn't he lied to you about something?
A. No.
Q. He hasn't?
A. Oh, yes, in his talk, yes.
Q. Told kind of Munchaussen stories?
A. Yes.
Q. That was more of a jocose way that he had of talking than lying wasn't it?
A. Well he used to tell them for earnest.
Q. You thought they were a joke didn't you?
A. I supposed he was telling them for dead earnest.
Q. Was it anything material?
A. Oh, I don't know; no, nothing material.
Q. Just something which was not in a business deal with you nor anything in that way?
A. No, I never had any business deal with him.
Q. Isn't that what you mean by saying that he frequently tells untruths?
A. That is what I said on the start, that there were large stories, that he exaggerated.
Q. You don't know that he had a reputation of lying in business dealings?
A. That circumstance I was going to tell you is the only business deal I ever had with him.
Q. That was a matter of dispute wasn't it?
A. No.
Q. Well, some act that you thought was not right?
A. Yes, that is it.
Q. The reputation that he has got then is simply for enlarging stories and telling big stories stories to make a laugh, rather than lying in ordinary matters concerning every-day pursuits.
A. Well, no, I don't think it was done to make a laugh; he don't tell all his stories to make a laugh. He was a good story-teller no doubt.
Q. Well, it would be in the matter of telling stories, wouldn't it?
A. Sometimes, and sometimes in the matter of telling about his business and so on.
Q. Have you got anybody else in your town gifted that way?
A. I don't know of anyone that does as much of it as he did.
Q. When was the first time you ever heard that Coleman was an untruthful man?
A. Oh, I don't remember, I can't tell.
Q. He came there in 1880, didn't he?
A. I won't state whether he came there in 1879 or in 1880.
Q. He was less than a year there, wasn't he?
A. More than that.
Senator CAMPBELL. I would like to ask the witness a question; if he desired the Senate to understand that the relations existing between him and Mr. Coleman have been of a friendly and cordial character?
A. They are; always were.

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Q. In other words, there is a friendly feeling existing between you?
A. Yes, sir.

By Mr. Manager DUNN.
Q. Were you present at that term of court that Judge Cox held there?
A. Yes, sir.
Q. Did you see Mr. Coleman there?
A. No, I don't remember anything about that; I couldn't say; I was only twice in the court-room I think during court, and then in only for a minute to see somebody or something of that kind.

Mr. ARCTANDER. I have no other witnesses now, except those that I would like the whole Senate to hear.

On motion of Senator MACDONALD the Senate then adjourned.

THIRTY-FOURTH DAY.

ST. PAUL, MINN., Feb. 20, 1882.

The Senate met at 8 o'clock A. M., and was called to order by Senator Wilson, acting as President *pro tem.*

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

Messrs. Aaker, Adams, Campbell, Case, Gilfillan C. D., Hinds, Johnson, A. M., Johnson F. I., Johnson, R. B., McCrea, McLaughlin, Morrison, Perkins, Powers, Rice, Shalleen, Wilkins and Wilson.

The Senate, sitting for the trial of E. St. Julien Cox, Judge of the Ninth 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. Henry G. Hicks, Hon. O. B. Gould, Hon. L. W. Collins, Hon. A. C. Dunn, Hon. G. W. Putnam and Hon. W. J. Ives, entered the Senate Chamber and took the seats assigned them.

E. St. Julien Cox, accompanied by his counsel, appeared at the bar of the Senate and took the seats assigned them.

No quorum being present the Senate at 8:45 adjourned.

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THIRTY-FIFTH DAY.

ST. PAUL, MINN., Feb. 21, 1882.

The senate met at 10 o'clock a. m., and was called to order bv the President *pro tem.*

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

Messrs. Aaker, Adams, Buck, C. F., Campbell. Case, Castle, Gilfillan, C. D., Hinds, Johnson, A. M., Johnson, F. I., Johnson, R. B., Langdon, McCrea, McLaughlin, Morrison, Perkins, Peterson, Powers, Rice, Shalleen, White, Wilkins, Wilson.

The Senate, sitting for the trial of E. St. Julien Cox, Judge of the Ninth Judicial District, upon articles of impeachment exhibited against him by the House of Representatives.

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The managers appointed by the House of Representatives to conduct the trial, to-wit: Hon. Henry G. Hicks, Hon. O. B. Gould, Hon. A. C. Dunn, Hon. G. W. Putnam and Hon. W. J. Ives, entered the Senate Chamber and took the seats assigned them.

E. St. Julien Cox accompanied by his counsel, appeared at the bar of the Senate, and took the seats assigned them.

The PRESIDENT *pro tem.* Have the members of the Senate any motions or resolutions to offer before the counsel proceed with the case? If not we are ready to proceed, Mr. Arctander.

Mr. ARCTANDER Mr. President, I desire to state, for the benefit of the prosecution, in case they should desire to produce any rebutting evidence, that our evidence will close on Friday night; a few of our witnesses are subpœnaed for Friday, and our evidence will undoubtedly close by Friday night. I thought it might be desirable for the prosecution to know.

Mr. Manager DUNN. Yes, sir; we are much obliged to you for the information. It will expedite our business in the matter of getting our testimony, as we can be preparing now to get our rebutting evidence.

J. W. WHITNEY,

Recalled as a witness, for cross-examination, testified.

Examined by Mr. Manager DUNN.

Q. Mr. Whitney, how long have you lived at Walnut Grove?

A. I have lived at Walnut Grove since about July, 1881.

Q. Where did you live prior to that?

A. Prior to that I lived at Chatfield, Minnesota.

Q. How long had you lived there?

A. I spent last winter there.

Q. Prior to that?

A. Prior to that I was book-keeper at the Metropolitan hotel in St. Paul.

Q. How long were you book-keeper there?

A. About three months.

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Q. Who kept the house?
A. Col. E. C. Belote.
Q. Where did you live prior to that?
A. I was a law student prior to that in P. M. Talbot's office, in Rochester.
Q. Where were you admitted to the bar?
A. I was admitted to the bar in Fillmore county, Minnesota.
Q. In what year?
A. In October 1880.
Q. Where did you first become acquainted with E. St. Julien Cox?
A. At Sleepy Eye, Minnesota.
Q. When?
A. I think it was in the latter part of April 1881.
Q. What was your business there; did you have any business at Sleepy Eye that time?
A. Yes, sir; I came west to hunt up a location to practice my profession.
Q. You met Judge Cox there at Sleepy Eye, did you?
A. I did.
Q. Did you stop there with him, in his company, any length of time at that time?
A. I did.
Q. How long?
A. I don't know just how long; I think three or four days.
Q. At Sleepy Eye?
A. Yes, sir.
Q. What time in April was this?
A. I don't know; it was in the latter part of April or along about the first of May. It was about the time the Brown county term of court was.
Q. Did you go with him to the Brown county term of court?
A. I did not.
Q. Did he go from there to the Brown county term of court?
A. He did.
Q. Where did you meet him next?
A. I met him again at Sleepy Eye.
Q. When was that?
A. That was after the Brown county term of court.
Q. Did you stay in his company then any length of time?
A. I went with him then to Renville county.
Q. How did you come to go with him?
A. I was looking for a location and I told him so; and he kindly offered to allow me to go with him through his circuit, for the purpose of giving me an opportunity to see the country and get acquainted.
Q. Well, when you got to Beaver Falls, had you any acquaintances there?
A. I had not.
Q. Where did you stop in Beaver Falls?
A. I stopped at, I think, the Dakota House,—no I didn't either,—I stopped at Wm. McGowan's, the clerk of the court.
Q. Where did the Judge stop?
A. He stopped there too.
Q. Did you and the Judge room together?
A. We did.

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Q. You were with him pretty constantly, were you, there at Beaver Falls?
A. I was.
Q. Did the Judge introduce you to people there at Beaver Falls?
A. He did.
Q. He took considerable interest in you, didn't he?
A. He did.
Q. The Judge did not stop all the time at McGowan's, did he?
A. No, sir.
Q. Do you know where he did stop at other times?
A. Yes, sir.
Q. Whereabouts?
A. At the Dakota House. I think it is the Dakota House,—Mr. Holtz kept it.
Q. When the Judge went there, did you go too?
A. Yes, sir.
Q. Did you room with the Judge then?
A. Yes, sir.
Q. After you left Beaver Falls, you went to some other circuit with him, did you not?
A. Yes, sir.
Q. You went to Redwood?
A. Yes, sir.
Q. And to Tyler?
A. Yes, sir.
Q. And to Marshall?
A. Yes, sir?
Q. Anywhere else?
A. No, sir.
Q. Roomed with the Judge all the time, didn't you, at all of those places?
A. Yes, sir.
Q. Were constantly with him?
A. Yes, sir.
Q. Now, Mr Whitney, did you see the Judge, or do you know whether the Judge drank any intoxicating liquors at Beaver Falls?
A. Yes, sir.
Q. Where did he drink,—I mean in what houses?
A. At Peter Berndigen's and Mr. Holtz's.
Q. Anywhere else?
A. Not that I recollect.
Q. What business did you have at Beaver Falls, Mr. Whitney?
A. I was looking for a location to practice my profession at that time.
Q. You had no cases there in court did you?
A. I did have after I got there.
Q. What case was that?
A. The State against John Morgan.
Q. Did you know this man Morgan?
A. I did not.
Q. Who introduced you to him?
A. My recollection is that he introduced himself to me.
Q. Introduced himself to you?
A. Yes.

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Q. You had never seen him before?
A. I had never seen him before.
Q. And that is the best recollection you have got on the subject?
A. Yes.
Q. He was indicted for selling liquor without a license was he not?
A. Yes.
Q. Did he tell you who, if anybody, directed him to you?
A. He did not.
Q. You had never met him before?
A. I had not.
Q. Did not know how he came to introduce himself to you?
A. I do not.
Q. This man Morgan introduced himself to you; what day of the term was that?
A. I think it was the first or the second day; I am not positive which.
Q. But it was either the first or second?
A. I think so.
Q. That case was dismissed, Mr. Whitney, was it?
A. Yes; the defendant was discharged on payment of costs.
Q. It was not tried?
A. No, sir.
Q. Upon what ground was the case dismissed?
A. It was dismissed upon the ground that the defendant had paid his license money in good faith and, thought—
Q. No matter what you thought; state facts.
A. Well, that was the grounds. He had paid his money in good faith for his license; that was the sum and substance of it.
Q. How much had he paid?
A. I don't recollect.
Q. Do you know how much he had paid?
A. I do not.
Q. Was the case called for trial?
A. It was.
Q. Was there a jury empanelled?
A. There was not.
Q. What evidence had you there that he had paid his license money?
A. Had a receipt, I think, from the county treasurer—I wouldn't be positive—or from one of the county officers,—a receipt.
Q. You don't know what officer?
A. I don't now, no; I don't recollect; I think it was the county treasurer, though.
Q. Do you know what the license fee amounted to; how much licenses cost in that county?
A. I think it cost $50.
Q. Did you examine the records, as his attorney, to see?
A. I did not.
Q. You did not examine the records to see how much it cost?
A. I knew it was $50. I think it was $50 under the State law, I think.
Q. A State law?
A. Yes, a State law. He sold not in an incorporated town; the town where he sold was not incorporated.
Q. The license fee was $50 under the State law?
A. Yes.

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Q. And he showed to the satisfaction of the court that he had paid the $50?
A. He did.
Q. And that was shown by some kind of a receipt, and you don't know what the receipt was,—how much it was for, do you?
A. Well, I don't know sure enough to swear positively to it, but I think it was for the entire amount of $50, perhaps more.
Q. Perhaps more?
A. It might have been more.
Q, Well, did you demur to that indictment?
A. I did not.
Q. Did you move to set the indictment aside for any informality or irregularity in it?
A. I did not.
Q. When had your client been indicted, at that term of court or the previous term?
A. My recollection is that he had been indicted at the term prior.
Q. Do you know when that term was held?
A. I do.
Q. When was it?
A. It commenced May 24th, 1881.
Q. No; but the term prior to that,—at the date of the indictment?
A. No; I do not.
Q. You made a motion to dismiss?
A. I made a statement to the court.
Q. Well, what was your motion?
A. I made a motion that the defendant be discharged upon a certain state of facts, setting them forth by affidavits.
Q. Were those affidavits filed with the court?
A. I think they were.
Q. Who made the affidavits?
A. I drew them up.
Q. Who swore to them?
A. John Morgan.
Q. Well, the case was dismissed on affidavits, was it?
A. Yes, and virtually by consent of the county attorney.
Q. Well, how do you know that the county attorney consented to it?
A. I had a conversation with the county attorney prior to that, and he requested that I make these affidavits to the court, this showing to the court.
Q. When did you have that conversation?
A. I don't know; it was sometime before I presented them to the court.
Q. Well, how long before?
A. I think it was the same day, before court opened.
Q. Where did you have it?
A. With Mr. Miller I think, upon the street.
Q. What time of the day did you have that conversation?
A. I think it was in the morning.
Q. Before the court opened, was it?
A. I think so.
Q. What day of the term was this that this indictment was dismissed?

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A. Well, really, sir, I couldn't say; I think it was the first or second day.

Q. You think it was the first or second day?

A. I am pretty positive it was the second day of the term.

Q. You are positive about that, are you?

A. No, sir.

Q. It might have been the fourth day, might it not?

A. No, sir.

Q. Well, that receipt would have been sufficient for a defense to a jury as you looked at it?

A. Yes, sir. I thought so.

Q. You thought the receipt would have acquitted the man?

A. I didn't think that he could have been convicted at the time; I thought so at the time.

Q. You thought that the receipt would have got him off?

A. I didn't think he would have been convicted if tried, and so stated to the county attorney.

Q. Was that receipt dated prior to the indictment or after?

A. My recollection is that it was.

Q. That it was dated prior; will you swear to that?

A. I would not now.

Q. Will you swear it was in a sufficient amount to cover the license fee, whatever that was?

A. I wouldn't; I don't want to swear positively, to a thing I don't know for sure; there is no doubt in my mind that it did cover the whole amount and was dated prior.

Q. Well, why don't you swear positively that you have got no doubt about it; why don't you swear to it; what are you afraid of?

A. Well, I am not sure.

Q. Then you have some doubts; isn't that why you don't swear positively?

A. Yes.

Q. Well, why do you say you have no doubts? And this you say the county attorney agreed to, do you, Mr. Whitney, in submitting that case?

A. He told me that he had no objections to the case being dismissed, —if I would make these affidavits to the court that he would make no objection,—the man had paid his money in good faith.

Q. Well, then can you conceive any way that he could be indicted after he had paid his license money?

A. What do you say?

Q. How could he be indicted if he had paid his money?

A. Well, they indict a man for most anything in Renville county.

Q. How do you know that; you had never been there? Where did you learn that bit of news about Renville county,—a man that had never been there before?

A. Well, I attended the term of court.

Q. Well, where did you learn that piece of news, that they would indict most anybody there in Renville county,—whom do you know to have been indicted over there without cause; can you mention their names?

A. I cannot mention their names; I don't know.

Q. How did you get over there from Redwood Falls to Beaver Falls at that term of court?

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A. I rode over in a wagon.
Q. Who went with you?
A. Judge Cox, William McGowan, Mr. Pierce, an attorney from St. Paul, and myself were in the wagon, and, I think, a driver.
Q. When you got over to Redwood Falls, do you know what was done the first thing after you got there? What did you do the first night, you and the Judge?
A. The first night, I don't recollect.
Q Did you drink any liquors that night? A. Me?
Q. Yes, sir. A. Yes.
Q. Did the Judge drink any that night?
A. He drank—
Q. Just say yes or no; I am not asking you what he drank.
A. Yes.
Q. Well, the next morning, did he drink any liquor?
A. Not to my knowledge.
Q. Did you drink any or he either?
A. I don't think I did.
Q. Do you know that you didn't?
A. I don't.
Q. Do you know that he did not?
A. I do not.
Q. Well, the next noon, did you drink any liquor?
A. I don't recollect.
Q. Did the Judge drink any?
A. I don't know.
A. That night—that would be Wednesday night?
A. I can't say; I don't know; I don't recollect.
Q. Do you know whether you drank any that night? A. I don't.
Q. Where did you pass the evening?
A. We slept at William McGowan's.
Q. Where did you pass the evening; not where you slept?
A. We were up town, I think, perhaps up to the hotel; I don't know where we were.
Q. Well, in Holtz' saloon; were you in the saloon, you and the Judge that night?
A. The saloon is in the hotel; we were in the hotel, and perhaps in the saloon.
Q. Did you take anything to drink there?
A. I don't recollect.
Q. Do you know that you didn't. A. No, sir.
Q. Do you know that the Judge didn't?
A. No, sir.
Q. Do you recollect that he did?
A. No, sir.
Q. Well, that night you went back to McGowan's to sleep?
A. The first night?
Q. The second night, I am talking about, now.
A. Yes.
Q. What time of night did you get there?
A. I don't know.
Q. Do you know about what time of night it was; do you know anything about it?
A. We retired quite early every night we were there.

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Q. What do you mean by quite early?
A. Oh, between ten and eleven o'clock, perhaps.
Q. You and the Judge always go together?
A. Not always.
Q. Did you go together that night?
A. I don't recollect.
Q. Well, the next morning, Thursday morning, did you take anything to drink that morning, you and the Judge together?
A. We did not, that I recollect of.
Q. Did you take anything at noon?
A. I don't know.
Q. Well, that Thursday night, did you and the Judge take anything together?
A. I don't recollect.
Mr. ARCTANDER. The night of the court?
Mr. Manager DUNN. Now, don't prompt him a bit.
Q. Thursday night, do you recollect whether you and the Judge took something to drink that night, together?
A. I think we did.
Q. Where did you drink that night?
A. I think we took a glass of beer at Peter Berndigen's.
Q. You are sure it was a glass of beer, are you?
A. Yes.
Q. Nothing else?
A. I know that I drank that, but I don't know what the Judge drank.
Q. What time did you get home that night?
A. Well, we got home after the concert; we went to a concert that night.
Q. Well, are you sure that concert was Thursday night or do you get that from Mr. Arctander?
A. What do you say?
Q. Are you sure that concert was Thursday night?
A. Well, I won't swear to that positively.
Q. Now, state what time the concert broke up, if it was that night.
A. At about ten o'clock; I should think about half past ten.
Q. You went straight from there home?
A. Straight home with the ladies,—Mr. McGowan's wife; it rained and we walked down with the ladies, and I think retired immediately after we got home.
Q. Didn't you go back up town?
A. After the concert?
Q. Yes.
A. I don't recollect.
Q. So you don't recollect whether you took anything to drink with the Judge that night do you?
A. I think before I went up to the concert——
Q. No, I speak after the concert now?
A. I don't recollect drinking with the Judge after that; no, sir.
Q. You don't know but you did, and you don't know as you did?
A. Yes.
Q. Now, Friday morning did you take anything to drink with the Judge?

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A. I don't recollect.
Q. Friday noon,—at any recess during that term of the court?
A. What do you say?
Q. At any of the recesses during that term of court?
A. I don't recollect.
Q. Where were you Friday night; where did you stop Friday night?
A. I would not swear positively, but I think we stayed at Mr. McGowan's on Friday night.
Q. You don't know whether you had anything to drink with him that evening or not?
A. No, sir.
Q. The next morning Saturday morning, did you have anything to drink with him?
A. I don't know.
Q. Did you have anything to drink with him during the morning recess at court?
A. I don't know.
Q. Saturday noon, how was it?
A. I don't know.
Q. Don't remember whether you did or not; might or might not?
A. Yes.
Q. Well, Saturday afternoon after the noon recess did you go out and take a drink with the Judge?
A. Saturday afternoon, I don't recollect.
Q. How was it Saturday night?
A. I don't know.
Q. Did you have anything to drink with him Saturday night?
A. I don't know.
Q. Saturday night?
A. Saturday night; I think I stayed with Mr. Holtz.
Q. Didn't you sleep with the Judge?
A. I can't remember whether I did or not.
Q. Didn't you sleep with him there; can't you remember about that?
A. I slept with him two nights at Mr. Holtz's; and I think the Judge,—I think we stayed there.
Q. What time did you get to bed that night?
A. I don't recollect.
Q. Have they got a musical instrument there?
A. Yes.
Q. Did the Judge make some music there that night?
A. I don't think he did; the Judge is not very musical.
Q. Well, was he in condition that night to make music?
A. I don't know whether he was or not; I don't know what you mean.
Q. Well, was he sober that night?
A. Yes,
Q. Perfectly sober?
A. I don't know what you mean by perfectly sober; this Saturday night do you mean?
Q. I am talking of Saturday night; you don't know what I mean by perfectly sober?
A. No, sir.
Q. You do not?

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A. No, sir.
Q. Did you tell what time you went to bed that night?
A. I did not.
Q. Well, Sunday morning did you take any drinks with him?
A. I don't know.
Q. Well, during the day did you take any drinks with the Judge?
A. I don't know.
Q. Nor in the evening you don't know, I suppose?
A. No, sir.
Q. How was it, Monday morning?
A. I don't recollect.
Q. Where did you stay Sunday night?
A. At Mr. Holtz's Sunday night,—at the Dakota house.
Q. Did you sleep with the Judge Sunday night?
A. I don't know.
Q. Don't remember?
A. No, sir.
Q. How was it Monday morning, did you take any drink with the Judge there Monday morning?
A. I don't recollect that either.
Q. Did you take any with him during the noon recess?
A. I don't recollect that.
Q. Or Monday noon, during the noon recess?
A. I don't recollect.
Q. Or Monday afternoon recess.
A. I don't know.
Q. Or Monday night?
A. I don't recollect.
Q. Well, where did you stay Monday night?
A. I stayed at the Dakota House.
Q. Well, Tuesday morning, how was it; did you take anything to drink with the Judge Tuesday morning?
A. I think I did.
Q. Where did you drink that morning?
A. In the forenoon, I think, with Mr. Holtz.
Q. Before court opened?
A. I think there was no court on Tuesday.
Q. No court on Tuesday, so you took a drink with him Tuesday morning at Mr. Holtz's; well, where did you go with him then; how many drinks did you take with him then?
A. I don't recollect.
Q. More than one? A. I don't know.
Q. You went from there where?
A. I went from there to Sleepy Eye.
Q. Where did the Judge go? A. I don't know.
Q. Didn't he go with you? A. He did not.
Q. He stayed there a while?
A. He left Beaver Falls before I did.
Q. He left Beaver Falls before you did?
A. He left ostensibly,—he went out to Schoerege's, to some friends he had out in the country; he left before I did.
Q. You testified that Friday evening, the Judge was perfectly sober during all of this term of court?
A. I did.

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Q. You still insist upon it? A. I do.
Q. That he was perfectly sober? A. Yes.
Q. You didn't see him when he was at all under the influence of liquor?
A. I didn't see him when I could discover that he had been drinking from his appearance.
Q. He took some little pains during that term of court to instruct you in the litany of the church.
A. What is that?
Q. He took some pains during that term of court to instruct you theologically in the church litany, didn't he, one evening at McGowan's?
A. Not that I remember of.
Q. You don't remember that, do you?
A. No, sir.
Q. You weren't intoxicated, were you, during any of this time, so that your memory would be blunt?
A. No, sir.
Q. You don't recollect anything of the kind?
A. No, sir.
Q. You don't recollect of any conversation about it?
A. We might have had a conversation about it, but I don't recollect it at this time.
Q. Well, I asked you if you recollected it.
Mr. Manager DUNN. This is all with this witness at present; but we would like to have him remain until after the noon recess, until we have an opportunity to examine some papers that Mr. Gould has in his room, and upon which we may desire to cross-examine this witness.
Mr. ARCTANDR. Very well, sir; he will remain.

MARTIN JENSEN

Sworn as a witness on behalf of the respondent, testified.
Q. Where do you live?
A. Beaver Ealls, Renville county, Minnesota.
Q. What is your occupation?
A. I am sheriff of Renville county.
Q. How long have you been such sheriff?
A. Since 1874, continually.
Q. Do you know the respondent, E. St. Julien Cox?
A. Yes.
Q. How long have you known him?
A. For about twelve years.
Q. Have you known him intimately about that time?
A. About ten.
Q. You have, you say?
A. About ten years I have known him; it is twelv eyears since I met him first at St. Peter.
Q. Were you present as sheriff during the last term of court held in the month of May, 1881, at your county?
A. Yes, sir; I was in court most of the time.
Q. State whether or not you were there during the entire term?
A. Except two afternoons.
Q. And what were they?
A. Wednesday and Friday afternoons.

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Q. With the exception of that you were in court there every session?
A. Yes.
Q. I will ask you to state Mr. Jensen, whether or not Judge Cox was intoxicated during any of the portion of this term while you were in court?
A. No, sir, he was not intoxicated on the bench.
Q. I will ask you to state whether or not while you were in court he was under the influence of liquor at all?
A. Well, that is something that I can't answer.
Q. Why?
A. Because a man might have taken a drink, you know, and be under the influence of liquor, and still not show it.
Q. Well, what I mean is, did he show it in any manner at all?
A. No, sir.
Q. Of being under the influence of liquor in court there.
A. I did not notice anything.
Q. Well, do you know whether he showed it or not?
A. Well, I didn't see anything out of the way with him.
Q. I will ask you to state whether there was any difference either in his appearance, his conduct, his language or his manner, between the first two days of that court and the subsequent days when you were in court?
A. No, not exactly.
Mr. Manager DUNN. What is your answer. No, not exactly?
The WITNESS. Not exactly; except on two occasions.
Q. What were those occasions?
A. There seemed to be some difficulty between the county attorney and him.
Q. Was that all the difference?
A. Yes.
Senator CASTLE. I didn't hear that answer, Mr. Jensen; please repeat.
The WITNESS. Except on a couple of occasions, he looked a little different; he seemed to be a little out of humor.
The PRESIDENT *pro tem.* I didn't understand that word.
Mr. ARCTANDER. He looked a little out of humor, he says.
The WITNESS. There was some difficulty between the county attorney and him.
Q. Between the county attorney and him?
A. He reprimanded the county attorney; that was all there was about it.
Q. He seemed to look out of humor when he did it?
A. Yes.
Q. What was the cause of that reprimand?
A. Well, because the Judge—we understood that the county attorney sent two witnesses—
Mr Manager DUNN. Now never mind that.
Q. Well, what came up in court about it?
A. Because the county attorney was slow in the prosecution of criminal cases.
Q. What do you mean by that?
A. That he was not prepared for trial.
Q. And the Judge got mad at him?
A. Well, he said something, I don't recollect particularly.

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Q. Reprimanded him, did he?
A. Yes, sir.
Q. I will ask you to state whether or not on Friday while you were in court—you weren't there in the afternoon I understand, but you were there in the forenoon?
A. Yes, in the forenoon.
Q. And on Saturday,—whether or not his face was more flushed than on the first two days, Tuesday and Wednesday?
A. No, I didn't notice any peculiarity about the Judge at all in court.
Q. You noticed no difference whatever in his manner or conduct except the time he reprimanded the county attorney?
A. No, sir.
Q. I will ask you to state whether or not recesses were any more frequent at that term than they have been at other terms?
A. No, I don't think they were.
Q. State whether or not the Judge made any more side whispers to attorneys at that term, or the latter part of it, than at other times when you have been there?
A. No, he looked to be more strict in all his rulings in court.
Q. During that term he seemed to be more strict than he used to be?
A. Yes, especially towards the last.
Q. After he got mad?
A. Yes.
Mr. Manager DUNN. Well, you needn't put that in.
Mr. ARCTANDER. That is a fact.
Mr. Manager DUNN. We say that it was after he got drunk; you say after he got mad, and I say after he got drunk. If you put your say in I will put in mine, and the sword will cut both ways.
Q. I will ask you to say, Mr. Jensen,—do you know Mr. Robert W. Coleman?
A. Yes.
Q. I will ask you to state whether or not he was in court during Friday forenoon while you were there, and during Saturday at all?
A. No, sir.
Q. Do you remember, Mr. Jensen,the night of the concert?
A. Yes.
Q. Do you remember what night it was?
A. Yes; Thursday night.
Q. I will ask you to state whether or not after Wednesday there was any difference in the personal appearance of the Judge—I mean as to dress, was he more careless in his dress, in any shape, form or manner than he was before?
A. No, sir.
Q. It has been testified that he kept his coat or vest loose; had his hat on one side, was there anything of that kind?
A. No; well, I never paid any particular attention to that; I have seen Judge Cox very well dressed, and I have seen him very poorly dressed. He don't seem to take much pride about himself sometimes, and still not be drunk.
Q. Well, you noticed nothing of the kind there,—that there was any difference in his appearance?
A. No, sir; he had the same suit the last day that he had the first.
Q. I will ask you to state whether or not there was any difference in

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the manner with which he sat on the bench and acted during the first two days than during the last; whether there was any more dignity about him the first two days than the last.

A. No, sir; not to my knowledge; as a general thing I never paid particular attention to watching the Judge.

Q. Well, you were right there where he was all the time?

A. Yes, although I have been in court I did not notice it.

Mr. Manager DUNN. You have heard his answer; he said he didn't pay any particular attention.

The WITNESS. No, sir; not to watch his actions.

Q. You were right there in court all the time where you could see him; your seat was right near the Judge, was it not?

A. Yes, sir; and if he acted very peculiarly I certainly would have noticed it.

Q. Did he do anything foolish or ridiculous while he was in court there?

A. Not to my knowledge.

Q. I will ask you to state, if you remember Mr. Jensen, after the night of the concert about your being plagued by anything in the court house; was there any nuisance in the court room after the night of the concert?

A. That night?

Q. No, the next day after the concert? A. No.

Q. I will call your attention to whether or not there were plenty of mosquitos around in the court room?

A. I don't recollect; I know there were plenty of mosquitoes that season before court; I was out after witnesses and found them on the bottoms.

Q. But you don't recollect about mosquitoes in the court-room on Friday?

A. I do not.

Q. You were there only in the forenoon, I understand?

A. No, sir; I noticed that there were some when I was out in the night after witnesses.

Q. Have you lived in Beaver Falls during all the time you have been sheriff?

A. Yes.

Q. Continuously? A. Yes.

Q. How long, if any, has this Robt. W. Coleman lived in Beaver Falls?

A. About two or three years; I forget exactly what time he may have been in there.

Q. Two or three years? A. Yes.

Q. He moved away this fall, did he? A. Yes.

Q. To Moorhead?

A. Yes.

Q. I will ask you to state, Mr. Jensen, if you know—and this question requires an answer yes, or no,—what the general reputation of Robert W. Coleman is as to truth and veracity in the community in which you both live at Beaver Falls; do you know what his general repute is?

A. Yes.

Q. What is it, good or bad?

A. Bad.

Q. Did you see Coleman the night of the concert?

A. Yes.

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Q. What condition was he in?
A. Drunk.
Q. Drunk?
A. Pretty drunk.
Q. What was he doing?
A. Well, he was around puking in the saloon; he couldn't walk straight.
Q. The Senators might not understand that technical term; you mean vomiting, I suppose?
A. Yes, vomiting.

CROSS-EXAMINATION.

By Mr. Manager DUNN.
Q. You say that Judge Cox was not intoxicated on the bench?
A. Yes.
Q. Do you know of his having drank any intoxicating liquors during that term of court?
A, Yes, sir; I have.
Q. How often?
A. I don't know anything about it, unless one evening he drank three glasses of beer to my knowledge.
Q. That is all you know?
A. That is all I know, as a matter of fact. I heard he had been drinking,—the people said he had been drinking some in the evening with the boys, but I didn't see him.
Q. You weren't paying much attention?
A. I wasn't along with him.
Q. Do you know whether you saw him intoxicated off the bench that term of court?
A. No, not in term time.
Q. What?
A. No; I don't think I saw him intoxicated in the term.
Q. In the term time?
A. Yes.
Q. Are you positive of that, Mr. Jensen?
A. Well, yes; I think I am; when I call a man intoxicated ——
Q. When do call a man intoxicated?
A. A man who has not full control over his mind and body is what I would call an intoxicated man.
Q. What was it,—you said he reprimanded the county attorney; what did he say to him?
A. I don't recollect exactly the words that he used; there was one day particularly, there were two parties indicted—
Q. Well, I want to know what he said to him; what did the Judge say to him?
A. Well, I don't recollect the exact words, I say; but he got tired of this—
Q. Well, that is guess work?
A. There is no guess work; he said he was tired of this monkey business.
Q. Oh, now you are telling us what he said; that is right; he said what?

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A. That he was getting tired of this monkey business; that is one thing.
Q. He told the county attorney that?
A. Yes.
Q. He told him he was tired of that monkey business?
A. Yes; cases were called and the witnesses were sent home.
Q. What is that?
A. Cases were called and the witnesses were sent home.
Q. Sent home?
A. Yes, sir; sent home by the county attorney; and they had to send me to bring them back.
Q. How do you know they were sent home?
A. Because it was so reported, and the county attorney did not deny it.
Q. Didn't the county attorney tell him that the witnesses went home?
A. Went home?
Q. Did he say that he sent him home?
A. No; but the witnesses told me that he sent them, and Miller didn't deny it to me.
Q. Didn't the county attorney say in court that the witnesses went home?
A. No, sir; he did not.
Q. What did he say?
A. I don't think he said anything; I don't recollect what he said; he got mad too.
Q. He got mad at the Judge, and the Judge got mad at him; how long did that last?
A. Oh, that didn't last long.
Q. What case was that in?
A. That was in the O'Connor case.
Q. When was that indictment found?
A. Thursday.
Q. The same day, was it not?
A. No, sir.
Q. What day of the term was the indictment found?
A. The indictment was found,—on Friday this occasion happened.
Q. On Thursday and Friday this altercation occurred between you and the Judge?
A. Yes, sir.
Q. Well, that is the way he reprimanded, was it, that he was tired of this "monkeying business?"
A. Yes; that the officers were slow.
Q. He reprimanded you all did he?
A. Yes, it sounded that way.
Q. Well, did you deserve any reprimand?
A. Perhaps so.
Q. Were you slow?
A. Sometimes I am a little slow.
Q. Were you slow about that business?
A. Not particularly.
Q. Then what was he reprimanding you about?
A. Generally.

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Q. He just put in a general reprimand over the whole of you, did he?
A. Well, he reprimanded the officers?
Q. Well, what did he say?
A. He said the "officers of the county are awful slow in criminal cases" or to that effect.
Q. And that is what he said to the county attorney and to you, and to all hands, was it?
A. Well, he didn't look at me.
Q. You wasn't talking to him was you?
A. No, I was not.
Q. You didn't put in any excuse for yourself, did you?
A. No, I did not.
Q. He reprimanded the clerk of the court, too, didn't he?
A. Well, I can't tell you what he meant, although I took it that way,—all the officers.
Q. Is that what he said when he would talk about the monkeying business?
A. Well, he said that afterwards.
Q. He said that to the county attorney, did he?
A. Yes; he said it to the county attorney, that he had got tired "of this monkeying business."
Q. What did the county attorney tell him?
A. He said "I am tired too."
Q. So they both were tired?
A. Yes.
Q. Now, on the other occasion you say he was a little different; what was the trouble then?
A. Well, there was some difficulty between them concerning the trial of that case.
Q. What case?
A. That was the O'Connor case; there were two O'Connor cases, I think.
Q. That was the next Monday?
A. I think it was.
Q. You are sure of that?
A. They had an agreement over the case, that is, the grand jury list seems to be squashed; that is the grand jury seems to be squashed there; and it appeared to me that the judge reprimanded the officers, generally, including the county commissioners—
Q. He put the county commissioners in on that deal, did he?
A. Yes, sir.
Q. That was on Monday. Now, what did he say when he reprimanded the whole of you?
A. Well, he thought the officers of Renville county were very slack in their business.
Q. That was on Monday?
A. Yes, sir.
Q. What part of Monday?
A. That was in the forenoon, sir.
Q. That was when they were trying the O'Connor cases, wasn't it?
A. They tried none of the cases because the grand jury was squashed, then it was held to be an illegal grand jury.
Q. Well, now haven't you got those terms of court a little mixed?

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A. No sir, I have not.
Q. You are sure that grand jury was set aside, are you, at that last May term of court in Renville county?
A. I am sure of that; and the petit jury, too.
Q. On account of some irregularity?
A. Yes sir.
Q. How did you try your cases without a petit jury?
A. We tried the cases without a petit jury; there never was any objection raised until Saturday morning.
Q. Who raised the objection?
A. George H. Megquier.
Q. What cases was he trying?
A. That was the O'Connor case they commenced to try. They were to empannel a jury then for that case Saturday morning and the petit jury was set aside.
Q. How many O'Connor cases were there there?
A. There were two.
Q. Were they both tried?
A. No; none of them were tried.
Q. What cases were tried there?
A. There was a good many civil cases.
Q. Well, what criminal cases were tried?
A. The Anderson case, the Dennis Dasey case,—
Q. What other criminal cases?
A. I don't recollect; there were a great many other cases argued there.
Q. What was the result in the Anderson case?
A. In the Anderson case, they brought in a verdict of guilty.
Q. What was the result in the Dasey case?
A. Not guilty.
Q. They were both whisky cases, weren't they?
A. Yes, sir.
Q. What lawyers were in that court the first day of the term?
A. The first day of the term, there was Mr. Little, Mr. Morrill, George H. Megquire and Mr. Pierce. There was a good many attorneys in court the first day. I don't know who all were there.
Q. Who was there the second day?
A. The second day, I guess there were Mr. Coleman and Mr. Megquier, and this little Whitney was there all the time, I think, every day.
Q. What other lawyers?
A. I don't recollect; Morrill, I think, was there.
Q. The third day?
A. About the same; that day Little went home.
Q. What lawyers were there the fourth day?
A. George Megquier and Miller and Whitney; that is all I know of; there might be some one else.
Q. Well, the fifth day?
A. The same attorneys.
Q. You don't recollect all that were there?
A. No, I don't; because there were parties that had cases there that were interested.
Q. You don't recollect who was there the fourth or fifth day so as to name them all.
A. No, I don't.

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Q. You didn't pay particular attention to it, did you?
A. No, I did not.
Q. Where were your evenings spent during that term of court?
A. Oh, I was around home some of the time.
Q. Were you around in the saloons?
A, Occasionally, yes, sir.
Q. Were you in the saloons every evening?
A. No, not every evening.
Q. You only saw Judge Cox in a saloon once?
A. Yes, sir.
Q. That was all, was it?
A. That was all; because I didn't follow Judge Cox; I never follow judges or attorneys.
Q. How came you to see Mr. Coleman in there, you followed him, didn't you?
A. No, I didn't follow anybody.
Q. Wasn't Judge Cox in there that evening?
A. Yes, sir; that was the evening he was in there.
Q. Which was the drunkest, he or Mr. Coleman?
A. Mr. Coleman was the drunkest of the two. Mr. Coleman got drunk because his wife let the piano go to that concert in the school-house against his will; he got on a toot for it.
Q. Because his wife let his piano go to the concert against his will?
A. Yes, that is the statement she made.
Q. You say he got on a toot?
A. Yes, he got on a toot.
Q. Did you see him drink any liquor?
A. No, not since I came in, because he was drunk enough when I came into that saloon. He drinked beer when I was there.
Q. Well, what did Judge Cox drink?
A. He drinked beer.
Q. You think Mr. Coleman was a little the drunkest of the two?
A. Yes, a good deal so.
Q. That was Thursday night?
A. Yes, sir.
Q. What time of night was it?
A. Between 9 and 10 o'clock.
Q. After the concert?
A. Yes, sir.
Q. Did you see this "little Whitney" there, as you call him?
A. I don't recollect that I did. There was a good many in the saloon that night.
Q. They were having a pretty good time in the saloon that night, weren't they?
A. Yes, sir; there was a good many drunk besides Coleman.
Q. It was a little difficult to tell who was the drunkest in the whole crowd, was it not?
A. Oh, I could soon tell that by their actions.
Q. You don't remember whether you saw this little Whitney there or not?
A. I don't recollect; he might have been there; he generally followed the Judge around.
Q. He kept right close to the Judge all the time, didn't he?
A. Both of them were around together a good deal.

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Q. He seemed to be a sort of partner to the Judge up there, didn't he?
A. I never saw the Judge have a partner.
Q. Well, he appeared to be around with him, didn't he?
A. Well, he was around with him a good deal; yes, sir.
Q. Didn't you see the Judge drinking in at Peter Berndigen's.
A. Yes, sir; I drank beer with him myself that night.
Q. And into Mr. Holtz's, too?
A. Not to my knowledge, that night.
Q. Where was it that Mr. Coleman was?
A. Mr. Peter Berndigen's saloon.
Q. You don't know whether he drank any in Mr. Holtz's
A. No, I do not; I didn't see it.
Q. How long did you stay in that saloon that night?
A. I stayed there until about ten minutes past ten, and if I recollect this, Mrs. Berndigen came in and told us to go out; that she wanted to shut up the saloon.
Q. Did you go out?
A. Yes, after ten minutes, they all went out.
Q. All went out together?
A. Mostly, yes.
Q. Where did you go from there?
A. I went up the street.
Q. Did you go home?
A. No, sir.
Q. Where did you go?
A. I went up to the brewery.
Q. Up there to get some more beer?
A. Yes, sir.
Q. Who went up there with you?
A. Nobody.
Q. You went up alone?
A. Yes, sir.
Q. Who keeps the brewery?
A. It is Andrew Betz.
Q. You don't know where the rest of them went?
A. No; I don't.
Q. How long did you stay at the brewery?
A. I stayed there only a few minutes.
Q. How far is that from where you lived?
A. Oh, it is not very far; as far as from here to the Clarendon Hotel down here.
Q. Was that on your way home?
A. No, sir.
Q. That was in an opposite direction from where you lived?
A. Yes, it was.
Q. From there you went home?
A. Well, I went down to the office; my family was gone at that time and I had a bed there and I stayed in the office; I was a bachelor that week.
Q. You are sure the Judge did not go with you up to the brewery?
A. Yes, sir.
Q. You went all alone up there to the brewery?
A. Yes, sir; I know that, because I was not drunk that night.

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Q. Well, you never get drunk, I suppose?
A. Once in a while; yes.
Q. You do? A. Oh yes.
Q. But you recollect you were not drunk that night?
A. No, I was not drunk during court; I took particular pains to keep sober then.
Q. You took your regular drinks, didn't you, right through the court?
A. Oh, no.
Q. You don't drink anything during court?
A. I drink once in a while; yes.
Q. Don't you drink every day more or less?
A. No; I drink evenings sometimes.
Q. Well, that is what I mean—I don't mean in the daytime particularly, but every day during the court.
A. Well, you say regular drinks. I didn't take regular drinks; I drink when I feel like it, and let it alone when I feel like it.
Q. Well, you said you took some drinks every evening during the term of court.
A. I don't recollect if I took some *every* evening,——
Q. Well, evenings; I thought you said every evening?
A. No.
Q. Well, how long has Robert W. Coleman been in Beaver Falls?
A. Oh, he must have lived there two or three years. I don't recollect the date he came in there.
Q. You say his reputation for truth and veracity is bad?
A. His reputation is bad, yes, sir.
Q. What do you understand by truth and veracity, do you know what signification that has?
A. Well, the way I understand it is, if a man tells the truth or if he is a liar. [Laughter]
Q. Now, tell me when was the time you ever heard it questioned in Beaver Falls as to whether Coleman was a truthful man or not?
A. Well, that has been spoken of so often I can't recollect the date.
Q. Well, when was the first time?
A. Oh, the first time I ever noticed it was about a year ago, the first time I knew he was a liar was about a year ago.
Q. That was something you noticed then?
A. On my own business, yes, sir.
Q. When was the first time you ever heard anyone else say he was a liar?
A. That I can't tell exactly the time.
Q. Had you heard it before you noticed it yourself?
Q. I think I had too.
Q. Who had you heard speak of it before a year ago?
A. People generally around the town.
Q. Well, who was one of the people you heard speak of it; give me the names?
A. There is McIntosh.
Q. What is his first name?
A. John.
Q. When did you hear him speak of it?
A. I don't recollect the time at all.
Q. I am speaking now of the time before you recognized from some

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business deal that you had with him that he was a liar; now was it before or since that time that you heard McIntosh say that?

A. I can't recollect the dates at all.

Q. Don't give me any names that you hadn't heard speak of it before that?

A. I might have heard McIntosh speak of it before that time, and I might not.

Q. Now, who can you tell me by name that spoke of it before that?

A. I can't swear positively to that, but afterwards a good many of them.

Q. Well, now I want the names of "a good many of them?"

A. Well, sir, in fact every man in town.

Q. Well, give me the names of every man in town?

A. Well, there is Hans Gronewald, the county treasurer.

Q. When did you hear him speak of it?

A. Inside of the last two or three months.

Q. Who else?

A. Henry Ahrens.

Q. When did you hear him speak of it?

A. Right along within the last two or three months, inside of two or three weeks too.

Q. Who else?

A. Herman Zumwinkle.

Q. When did you hear him speak of it?

A. Inside of three or four weeks.

Q. Who else?

A. Mr. Cossentine.

Q. What is his business?

A. He is working there.

Q. What is his business?

A. Teamster and chopping wood.

Q. When did you hear him speaking of it?

A. Inside of a couple of weeks.

Q. Well, who else?

A. Peter Berndigen.

Q. When did you hear him speak of it?

A. I heard it lately.

Q. Within two or three weeks?

A. Yes, sir.

Q. He keeps a saloon there?

A He keeps a store and saloon, yes.

Q. Who else?

A. I don't know,—yes, Sam. Miller, the county attorney.

Q. When did you hear him speak about it?

A. Two or three weeks ago; he stated in the office he believed Coleman was a liar.

Q. Who else?

A. George Miller.

Q. When did you hear him speak of it?

A. Here lately.

Q. Well, who else?

A. I don't know as I recollect any more.

Q. But you said every man in town; you have only given a few names; is that what you mean by every man in town?

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A. Well, the men generally; his general reputation is what I mean.
Q. Is that all the men you have got in town, just those you have given me?
A. Pretty near, yes.
Q. You haven't more than seven or eight men at Beaver Falls, have you?
A. Well, there is Mr. Betz there. I didn't hear him, of course.
Q. Now, that is one you didn't hear?
A. Well, I mean men generally, you understand.
Q. Well, you have given me the names of seven or eight men. Now, can you give me the names of any other men that you will swear you have heard say that he is not a man to be believed?
A. I couldn't positively, but if you will let me go home, I can.
Q. Oh, of course you can scour up those saloons and get up any quantity, now that Coleman has moved out; did you ever hear any man say anything of this man Coleman before he moved away from there?
A. Yes, sir.
Q. Well, who did you hear before he moved away?
A. There was John McIntosh.
Q. Well, who else?
A. And Sam Miller.
Q. Now, who else?
A. George Miller.
Q. Who else?
A. I don't know if there is any more.
Q. Those are the only three you have ever heard speak of his reputation for truth and veracity, before he moved away from there?
A. I might have heard more, you understand.
Q. I know you might, but I want to know what you did hear.
A. Well, that is all I know positively.
Q. That is what you know positively?
A. Yes, sir.
Q. How many inhabitants have you got in Beaver Falls?
A. Oh, not very many; I don't recollect the number now.
Q. About how many?
A. Oh, about two hundred, I think; I don't think there is two hundred,—that is, I mean in the village.
Q. Well, how many have you got in the township?
A. I don't recollect exactly; we poll about one hundred and fifteen votes in the township, I think.
Q. You had some difficulty with Coleman, didn't you?
A. No, not particularly.
Q. Well, you said you found out he was a liar; you had some business trouble with him, didn't you?
A. Well, yes; no, not trouble particularly, but—
Q. Well, business difference?
A. Well, difference; yes, sir.
Q. You claimed he owed you some money, didn't you; and he claimed he didn't, didn't he?
A. No, that wasn't it. That wasn't what I referred to.
Q. Well, it was about some business matters?
A. Yes.
Q. It was about some business deals wherein you and he disputed?
A. No; there was no dispute, but he told me things which I found out afterwards was not true.

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Q. He told you things that you found out afterwards were not true; you took another man's word for it?

A. No; I took evidence for it. He told me he didn't give certain papers to my deputy, which he had done, and the same deputy handed them to me. That is where I fouud out he is an untruthful man. I had forbid him to give the deputy any legal business.

Q. You didn't want the deputy to do any business, did you?

A. No, sir.

Q. You wanted to do the business yourself?

A. Well, I had certain reasons for taking the business away from the deputy.

Q. You didn't want the deputy to do business?

A. No, sir.

Q. When did he give them to the deputy?

A. I don't recollect; it is a little over a year ago.

Q. And after that you told him not to give any business to your deputy?

A. I told him long before.

Q. Well, he was your regular deputy sheriff, wasn't he?

A. Yes, sir.

Q. You had never revoked his appointment?

A. No.

Q. He was authorized to act?

A. He had the right to act; yes, sir.

Q. That was the reason you thought he was a liar?

A. Yes, sir.

Q. And that was all the reason?

A. Yes, sir.

Q. Did he ever lie to you about anything else?

A. Well, not about anything of any importance.

Q. Well, anything you know of that he ever lied to you about?

A. Well, I can't recollect.

Q. From that fact you claim he was a liar—because he told you he didn't give certain papers to your deputy, and then afterwards you found out he had given them to him?

A. Yes; and on general reputation.

Examined by Mr. ARCTANDER.

Q. You have stated that at this time, at the term of court, the judge reprimanded the county attorney; the judge was mad and the county attorney was mad, too. I will ask you to state whether or not the county attorney was mad until after the judge reprimanded him there?

A. No.

Mr. Manager DUNN. Well, we object to that. Our objection is, that it is immaterial.

Mr. ARCTANDER. I suppose we have a right to bring that out.

Mr. Manager DUNN. We are not trying the county attorney here.

Mr. ARCTANDER. Now I maintain, Mr. President, that this was brought out for some purpose upon the cross-examination; the witness states that the judge was mad, and that the county attorney was mad, too; I apprehend it was brought out to show that the county attorney was provoked at the judge because he thought he had been drinking. Now, I desire to show by this witness that that is not true. The managers very cunningly brought that out in the shape they did, so as to

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leave it so that they can base some argument upon it. Now, I claim we have a right, in rebuttal, to explain that, and have the witness state whether or not it is a fact that the county attorney acted in any way mad towards the judge until the judge rebuked him,—to show that the rebuke he got was the reason for his getting mad, and not because he thought the judge under the influence of liquor.

Mr. Manager DUNN. Well, I don't think this witness competent to testify as to that.

The PRESIDENT *pro tem.* You may answer the question.

Q. I asked you to state whether or not the county attorney was mad before he was reprimanded by the judge?

A. No, I didn't notice that.

Q. Now, you stated that the grand jury was set aside on Monday; what did you mean by that,—indictment set aside or—

A. No, I mean—

Mr. Manager DUNN. The grand jury was squashed, he says.

The WITNESS. Squashed, squashed.

Q. Were the grand jury in session on Monday?

A. No, they were discharged, but Mr. Megquier made the motion to set the indictment aside on the ground that it was an illegal grand jury.

Q. You stated, I believe that none of the O'Connor cases were tried?

A. No, they were not.

Q. Was there a jury impanneled?

A. Yes, sir, there was a jury impanneled, but they didn't go to final trial; the jury did not find a verdict.

Q. You stated that this night, when you saw Coleman so drunk, that Coleman was the drunkest of the two; I will ask you to state whether or not the Judge was drunk at all that night?

A. No, I couldn't call him drunk.

By Mr. Manager DUNN.

Q. You had no trouble to call Mr. Coleman drunk, had you?

A. A man that can't stand very well, I think is drunk.

Q. You don't like Coleman very well, do you?

A. Oh, yes; I like him as well as a good many others, as long as he will behave himself.

HENRY AHRENS,

Sworn as a witness on behalf of the respondent, testified.

Senator C. D. GILFILLAN. The attorneys on the part of the respondent state that there are six witnesses who have been summoned here to appear on the 15th, and who have been here ever since; three who appeared here on the 17th, and one on the 16th. They request that they be paid their mileage in accordance with the precedent established in the other cases, and I have drawn up the following order to submit to the court.

"Ordered that the following witnesses, viz: Joseph Whitney, James Greeley, H. Ahrens, P. Berndigen, John McIntosh, Chas. Andrews, B. T. Weymouth, M. E. Mathews, V. Seward, be paid the per diem at the rate of two dollars per day, while in attendance upon this court, and one day's pay while coming to and a like sum while returning home, and four cents per mile necessarily traveled in coming to and returning from this trial.

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The PRESIDENT *pro tem.* Do you understand that it is necessary that the roll shall be called upon this order?

Senator GILFILLAN C. D. No, sir; I think not.

The PRESIDENT, *pro tem.* The court has heard the order read. Are you ready for the question. As many as favor the adoption of the order will say aye; the contrary no. The order is adopted.

Q. Senator where do you reside?

A. At Beaver Falls, Renville county, Minnesota

Q. What is your business?

A. A farmer,

Q. Do you own a mill there?

A. I used to, but I sold it lately.

Q. Have you been a member of the Senate of the State of Minnesota?

A. I have.

Q. Do you know the respondent, E. St. Julien Cox?

A. I do.

Q. How long have you known him?

A. About ten years.

Q. Have you known him intimately during that time?

A. Yes.

Q. How long have you lived in Beaver Falls?

A. Well, I have lived there since 1865.

Q. I will ask you to state whether you were present during any portion of the May term held in 1881, in Renville county?

A. I was.

Q. What portion of the term were you there?

A. That was Saturday and Monday.

Q. Were you there during the entire session, from Saturday to Monday that the court was in session.

A. Well, I was there Monday, but Wednesday I don't know.

Q. Saturday, you mean?

A. Saturday was the first day; I was subpœnaed on a special venire as a juror on Saturday.

Q. What time did you go into court during the day?

A. Well, it was between 10 and 11 o'clock in the forenoon.

Q. Were you there in court during that Saturday then, the whole of it?

A. Yes, sir.

Q. When court was in session? A. Yes, sir.

Q. Were you there during Monday the whole time that the court was in session?

A. Yes, I was.

Q. Now, I will ask you to state what the Judge's condition was as to sobriety or inebriety during those two days, Saturday and Monday, during court?

A. Well, in my opinion, he was perfectly sober.

Q. Did you see anything out of the way,—any difference from what he usually is in his appearance or actions, conduct, or manner?

A. No, I did not.

Q. You were there sitting on the jury a part of the time, were you not?

A. Yes.

Q. You were called on one jury there? A. Yes.

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Q. Did you observe the Judge while there?
A. Yes, sir.
Q. Sitting so you could have a full view of him?
A. Yes, I did.
Q. I will ask you to state whether or not there was anything different in the Judge's appearance as far as dress, tidiness, and neatness were concerned during those two days from what there had been at any other time you had seen?
A. I didn't observe any difference.
Q. Do you know Robert W. Coleman?
A. I do.
Q. I will ask you to state whether or not Mr. Coleman was in court Saturday or Monday during the sessions of the court?
A. I didn't see him.
Q. Well, do you know whether he was there or not?
A. Well, he wasn't there in view; if he was there he was stuck under a bench somewhere.
Q. It has been doubted somewhat as to whether you had moquitoes up there at Beaver Falls, at that May term of court?
A. Yes, plenty of them.
Q. Do you know whether you had them or not?
A. We had plenty of them.
Q. This Robert W. Coleman, who now lives at Moorhead, has lived at Beaver Falls for some time, hasn't he?
A. Yes.
Q. How long has he lived there?
A. Oh, he came there about three years ago and moved away last fall some time.
Q. Do you know what his general reputation is in the community in which you both reside for truth and veracity?
A. Bad.
Q. Well, do you *know* it; that is the first question; answer yes or no.
A. Yes.
Q. What is that, good or bad?
A. Bad.
Q. I will ask you to state whether, during the ten years you have been acquainted with Judge Cox, you have ever seen him under the influence of liquor so that you can tell whether he is sober or not?
A. Well, I think I have seen him under the influence of liquor to a certain extent.

CROSS-EXAMINATION.

By Mr. Manager DUNN.
Q. You say you have seen the Judge under the influence of liquor?
A. Yes.
Q. Havn't you seen him intoxicated?
A. By the term intoxicated I would consider him drunk and under the influence of liquor,——
Q. Well, havn't you ever seen him drunk?
A. Not, what I should call him drunk!
Q. Well, what do you call drunk?
A. I call a man drunk when a man who looses control over himself.
Q. Didn't you go from St. Paul to St. Peter on the train with Judge

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Cox in the winter of 1878 and Judge Cox had his little boy with him,—Didn't you go from the Merchants Hotel when you were a State Senator?

A. I did.

Q. Wasn't Judge Cox drunk then, sir?

Mr. ARCTANDER. Well, that we object to.

Q. Did he have control over himself then there.

Mr. ARCTANDER. That we object to, sir.

The PRESIDENT. *pro tem.* He stated he has never seen Judge Cox drunk. This is for the purpose of disproving that statement.

Mr. ARCTANDER. I withdraw the objection.

Q. Didn't you have to go to take care of Judge Cox at that time?

A. Well, to a certain extent. I wanted to take Judge Cox home.

Q. Didn't you see me on that train?

A. I don't recollect whether you were or not.

Q. This was at the time when he had been charged with being drunk at Fairmont, and the legislature had had a little whitewashing in relation to the matter. Didn't you have to put the judge into a carriage at the Merchants Hotel, and didn't he get out of the carriage and get back in spite of you?

A. I went down with him in the carriage.

Q. Didn't he want to get out of the carriage?

A. Yes he wanted to get out.

Q. Didn't you have to hold him in the carriage to keep him from getting out?

A. Not exactly to hold him?

Q. Well, didn't you have to prevent him from getting out?

Mr. ARCTANDER. Well, we object to that.

Q. You went with him up to St. Peter; didn't you have to prevent him from getting off at almost every station on that trip?

A. It was myself and Mr. Borer, from Le Seuer.

Q. Yes, Felix Borer, I was with you right there and saw the whole of it. Now is it not a fact that Judge Cox was drunk on that occasion, so that you and every other man would call him drunk?

A. Well I don't think he was drunk.

Q. But you wouldn't say you had to prevent him from getting off the train, you and Felix Borer at the station?

A. We did prevent him from getting off.

Q. And held him, didn't you?

A. Didn't hold him.

Q. Didn't you put him back in his seat and compel him to sit there?

A. Yes.

Q. And you and Felix Borer kept him from getting off, did you?

A. Yes.

Q. And you say he was not drunk, do you?

A. I don't think he was.

By The PRESIDENT *pro tem.*

Q. Do you think a man is not drunk as long as he can assist himself at all?

A. That is what I should call drunk; when a man loses self-control over his mind and body.

By Mr. Manager DUNN.

Q. Well, do you think he had any control over his mind at that time?

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A. I think he did; he talked reasonably.
Q. He did?
A. At times, yes.
Q. What did you go with him for?
A. Well, I was going up that way and I wanted to get the Judge away from St. Paul.
Q. You went over to St. Peter with him, did you?
A. Yes.
Q. You got off from the train at St. Peter?
A. Yes.
Q. You took a carriage and took him home, didn't you?
A. No, I didn't.
Q. Where did you leave him?
A. Just as we turned the corner there, I met a friend, a partner of mine; I don't know where the Judge went then.
Q. Did you get out of the carriage?
A. Well, we went right on the corner out of the carriage.
Q. You left the Judge in the carriage?
A. Yes, we didn't go home with him.
Q. Who went home with him, Felix?
A. I don't know; no, I don't think Felix went up to St. Peter with him.
Q. No, he got off at Le Sueur, I believe. Did you see Judge Cox drink any liquors at Beaver Falls during the last term of court?
A. There was one night I seen him drinking, but I can't swear whether it was liquor or beer.
By Mr. ARCTANDER.
Q. Where was this?
A. It was at Pete Berndigen's.
By Mr. Manager DUNN.
Q. You can't swear what he drank, but you saw him drinking something?
A. I saw him drinking something.
Q. Was it water?
A. It might have been water as well as anything else. There was a big crowd there, and I didn't pay any attention to what he did drink.
Q. Did they drink at the bar?
A. Yes.
Q. Well, do they drink water over the bar?
A. Not very often.
Q. Well, then, it wasn't water, was it?
A. Well, no; I hardly think he did.
Q. What night was that?
A. That was Saturday night.
Q. There was a big crowd there?
A. Yes.
Q. Did you notice this little Whitney there?
A. I couldn't say positively whether he was there; there were so many of them.
Q. Was Mr. Coleman there?
A. No, sir.
Q. Was Mr. Megquier there?
A. I hardly think he was there; I didn't stay the whole of the evening.

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Q. Was Mr. Jensen, the sheriff, there?
A. I believe he was there.
Q. They were all drinking?
A. They were all drinking that I saw.
Q. You didn't see Megquire, you think?
A. Well, I have no recollection whether he was there or not,—in fact, I don't recollect any, except the Judge, because me and him had a conversation before we went in; the rest of the crowd—
Q. How long did you stay there?
A. Well, I stayed there about an hour.
Q. And you went away and left them there, did you?
A. Yes; well, the crowd finally went out again on the sidewalk.
Q. Well, you went away and left the crowd there?
A. Yes; well, not in the saloon; we were standing on the sidewalk; a part of them were in the saloon and a part of them on the sidewalk.

Senator CAMPBELL here took the chair to act as President *pro tem.*

Q. Well, didn't you see him drink on Sunday?
A. No, sir.
Q. Haven't you frequently seen Judge Cox intoxicated since you have known him?
A. Not very frequently. I have not seen him generally, not any oftener than the terms of court, when he was there as an attorney.
Q. Well, I mean since he has been elected Judge?
Mr. ARCTANDER. That is objected to as incompetent and immaterial, under the ruling of the court.
Mr. Manager DUNN. Well, I don't think so.
Mr. ARCTANDER. I asked him whether, during the ten years he had known him, he had seen him intoxicated. Now, you have no right to limit it to time since he has held the office.
Mr. Manager DUNN. I think that question was allowed.
The PRESIDENT *pro tem.* My recollection is that the Senate decided that if it was intended to prove drunkenness on the bench it would not be allowed.
Mr. Manager DUNN. I am simply asking him whether he has seen him intoxicated since he was elected Judge, not while on the bench nor off the bench but generally.
The PRESIDENT. *pro tem.* I will submit that question to the Senate. My impression is that the question is one that the Senate has ruled out.
Mr. Manager DUNN. Well, I don't care enough for the question to take up the time of the court with it. I will withdraw the question.
Q. What is your business in Beaver Falls?
A. Farmer.
Q. You don't live in the village?
A. Not now.
Q. How long since you did live in the village?
A. About two years ago last spring.
Q. Are you in the village frequently?
A. Yes.
Q. How far out do you live?
A. About a mile and a half.
Q. Now, how much acquaintance have you with Robert W. Coleman?

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A. Well, I have been acquainted with him since he came there.
Q. You say his reputation for truth and veracity is bad in Beaver Falls, do you?
A. Yes, his general reputation.
Q. Well, what do you mean by general reputation?
A. That is what people say in general.
Q. What the people generally say? A. Yes.
Q. Well now, how many different people have you heard say that?
A. In fact, every man I heard speak of him in Beaver Falls.
Q. You mean every man you spoke to about it?
A. That I have heard speak, or that I spoke to.
Q. Well, how many was that?
A. Oh, it might be half a dozen or more.
Q. When did you speak to them about this?
A. This was in the course of the last year.
Q. Well, what part of the last year?
A. Well, it was some time during last spring or summer; the date I can't exactly tell.
Q. Now, who did you speak to last summer?
A. I spoke to Hans Gronwold.
Q. Who else? A. Pat Kirwan.
Q. Who else? A. John Nelson.
Q. Who is he?
A. He is a laborer there.
Q. Who else? A. John McIntosh.
Q. Who else? A. Peter Berndigen.
Q. Who else? A. John Cossentine.
Q. Who else? A. Phillip Miller.
Q. Who else?
A. Well, I don't remember them all.
Q. Now, when did you talk to Peter Berndigen about it?
A. Well, I talked with Peter Berndigen about it sometime during the summer.
Q. What time during the summer?
A. I guess about the middle of the summer.
Q. What led you to have any talk with him about him?
A. Well, there was general talk about Coleman,—about the way that he carried on, there.
Q. How came you to be talking about Coleman?
A. It was the general conversation.
Q. They don't talk about much of anything else up there except Coleman, do they?
A. Oh, yes, they talk about everything else; but——
Q. Where did you talk about Coleman with Peter Berndigen, in the saloon?
A. Yes.
Q. What was the occasion of talking about Coleman at that time?
A. Well, what the occasion was that made him say so was, I don't recollect, but that was the conversation.
Q. What did he say?
A. Well, he said he wouldn't believe Coleman under oath.
Q. Was he mad about something?
A. I don't think he was.
Q. Well, what did you say?

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A. Well, I said I was of the same opinion.
Q. You wasn't mad about something, was you?
A. No.
Q. Had he ever lied to you?
A. Yes.
Q. Mr. Berndigen said he had lied to him, did he?
A. Yes.
Q. What did he lie to you about?
A. He had a case there and he got a man to bring in two head of cattle and he was going to pay them, but afterwards he didn't pay them; and he told me he had paid them and I knew the fact that he had not paid them.
Q. Coleman told you that he had not paid them?
A. No; Coleman was to pay the money; it was in a law suit.
Q. A law suit for you?
A. No, somebody else.
Q. Who was Coleman's client?
A. Charlie Henning.
Q. And you had one side of the case, did you?
A. No, I was the justice, it was tried before me.
Q. And he told something in that law suit, did he?
A. Coleman was to collect the money and pay these men to get two cows from a certain man that had his law suit; the suit was settled and he was to pay these men $2.00 to fetch them up, and Coleman told me that he had paid them, and I found out afterwards that he had not paid them.
Q. How did you find it out?
A. By Nelson, the man he said he had paid it to.
Q. Well, then you took one man's word against the other?
A. Well, I had other evidence.
Q. What other evidence had you except that Nelson told you?
A. Well, I didn't have it from anybody but Nelson.
Q. Well, then you believed Nelson, not Coleman?
A. Yes.
Q. Well, now, why did you think Nelson right instead of Coleman?
A. Because I had evidence showing he had not paid his $2.
Q. Well, what was there?
A. Well, there was some case that belonged to some lodge, and he was going to pay that money over to the lodge and didn't pay it.
Q. He belonged to some lodge?
A. Yes.
Q. What lodge was that?
A. He belonged to the Odd Fellows Lodge.
Q. Do you belong to it?
A. Yes.
Q. And he lied about it there, did he?
A. Yes.
Q. Did he say in the lodge he hadn't paid or had paid it?
A. He was going to pay, and afterwards it was proved he had not paid it.
Q. That was where he was going to pay it?
A. Yes.
Q. Then that was all the trouble you ever had with Coleman?
A. Yes.

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Q. That was the only time he had ever lied to you?
A. Well, that is the only time I distinctly recollect.
Q. Peter Berndigen claimed he had lied to him?
A. Yes.
Q. About some whisky bill?
A. Well, what it was I don't remember what.
Q. When did you hear this man Cossentine say anything about it?
A. Well, that was at the same time as this Nelson affair, because Cossentine belonged to the same lodge.
Q. That was about the same thing,—he had the same grounds you had, did he?
A. Yes, and he had another, about this Phillip Miller business.
Q. When did you hear Phillip Miller speak about it?
A. Well, this Nelson conversation was early in the spring, and this Phillip Miller conversation was sometime during the summer.
Q. When did you hear Hans Gronewold say anything about it?
A. That I don't recollect but I heard it on several occasions, I was at the court house several times and heard him speak about it.
Q. Some business deal that he had with him?
A. Yes, I think so.
Q. Well, those other people;—when did you hear them speak about it?
A. Well, the other parties,—Pat. Kirwan, I think was on the same occasion when we talked with Hans Gronwold. It was about some official business there I think it was about the same thing.
Q. Now, have you given me all the instances you can remember and the names of all the people?
A. In regard to this Phillip Miller matter,—it was some lodge,—he made application to go into the lodge; Coleman collected the money for him and didn't pay it into the lodge, and he didn't return the money until about six months afterwards.
Q. Coleman was secretary of the lodge, was he?
A. Yes.
Q. And he finally settled up with the lodge and paid them all up?
A. I believe so.
Q. Then it was simply a question of when he was to pay it?
A. No; he had to pay it right back.
Q. Now, you've given all the instances have you?
A. Well, all that I can distinctly recollect about.
Q. Well, these are all the men you have spoken to are they?
A. Well, it has been spoken of when there were twelve or fifteen present. It was sometimes a general subject of talk in the court house when they were speaking about matters and things, and spoke in regard to Coleman. There might have been ten or fifteen present for all I know. I don't recollect because I paid no attention at the time.
Q. It didn't make any impression on your mind?
A. No, sir.
By Mr. ARCTANDER.
Q. I understand you to say that there are several persons besides these you have mentioned, but you can't recall the name, or the occasion?
A. No.
By Mr. Manager DUNN.
Q. Well, how do you know there were several, if you can't recollect their names?

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A. I know on certain occasions it was spoken about and several of them said something or joined in.
Q. Now, give me the name of one of them?
A. Well, there is this Mr. Cossentine.
Q. That is one you have given already.
A. There is Karl Mort, the Register.
Q. You have heard him say so, have you?
A. Well he was there in the general conversation; he expressed his feeling that he would not believe him any more than the rest of them.
Q. When was that?
A. That was on the same occasion that I had this conversation up in the court house.
Q. How long ago was that?
A. I think it was in the fore part of summer, if I recollect right.
Q. Hasn't that been since this impeachment trial commenced?
A. No, sir; we spoke about that before.
Q. Well, can you give the names of any more besides Karl Mort?
A. I don't recollect exactly any more the names who were there.
Q. Well, all these was on the one occasion about the lodge business?
A. Oh, no; oh, no; this in the court house had nothing to do with tt; that was about some other business transaction between them.

Examined by Mr. ARCTANDER.
Q. The manager asked you whether or not this matter was the only trouble you had ever had with him. Have you ever had any trouble yourself at all with Mr. Coleman?
A. Well, we had—no, not any personal trouble.
Q. You had no feelings towards him at all?
A. No, sir; not any.

JAMES GREELEY,

sworn as a witness on behalf of the respondent, testified.

Examined by Mr. ARCTANDER.
Q. Mr. Greeley, where do you reside?
A. Beaver Falls.
Mr. Manager DUNN. Is this the same charge?
Mr. ARCTANDER. Yes, sir.
Q. How long have you known Judge Cox?
A. About eleven years.
Q. Have you known him intimately during that time?
A. A part of the time.
Q. Were you present at the May term of court, held in and for Renville county, in Beaver Falls, in the month of May 1881?
A. I was.
Q. What official position, if any, did you hold at that time?
A. Well, I was a justice of the peace.
Q. And court commissioner also at the time?
A. Yes, sir.
Q. I will ask you to state whether or not you were present in court during the whole of that term, from beginning to end.
A. I was present every day with the exception of Monday.
Q. Monday you were not there?
A. That is, a part of the time each day.

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Q. A part of the time Monday you were not there.
A. No.
Q. Were you paying particular attention to matters going on there?
A. Well, yes; I paid the attention that a person ordinarily would under the circumstances.
Q. I will ask you to state what was Judge Cox's condition as to sobriety or inebriety during a whole or part of that term while you were in court.
A. His indications were sober.
Q. What did you say?
A. He indicated being sober.
Q. The indications were that he was sober?
A. Yes.
Q. I will ask you to state whether there was anything in his appearance, language, manner or conduct during any portion of that time, which was peculiar or different from what they had been on other occasions when you had seen him and known him to be perfectly sober?
A. Well, there was a little difference.
Q. What was it?
A. He was not as well clad as I have seen him before.
Q. Not as well dressed, you mean?
A. Yes.
Q. That was during the whole term of court?
A. Yes.
Q. Was there anything else?
A. No.
Q. No other difference in any way?
A. No.
Q. I will ask you to state whether the Judge seemed to be any more nervous or irritable than usual during that term of court?
A. A part of the time he was a little more so than I have seen him before?
Q. At what occasion was that?
A. It was on Friday afternoon I believe.
Q. What was the occasion of his nervousness at that time?
Mr. Manager DUNN. Well, I object to that.
Q. Do you know what occurred there in the court room,—was he nervous just when he came in?
A. No.
Q. He was not nervous when he first came in?
A. No.
Q. Was there anything that occurred in the court room that appeared to make him nervous?
Mr. Manager DUNN. I object to that; let him describe what did occur in the court room.
Mr. ARCTANDER. Well, I am going to come to that.
The PRESIDENT *pro tem.* Well, ask him that.
Q. What occurred in the court room there immediately before he got nervous?
A. He called up some case; I think it was—I can't exactly remember what case it was;—it was some criminal case where an indictment had been found and he asked the parties if they were ready to go to trial and they said yes, and I believe their attorney was George Megquier. And Mr Miller, the county attorney, told the judge that he was not prepared

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to go to trial, and the judge asked him the reason;—said he "There are some witnesses that I let go home." I believe that Judge Cox ordered the witnesses sent for immediately; he said that he came there with the intention of clearing the docket of that county for once, and he would try and do it before he left, he said the state ought to be always ready to go to trial; those are his exact words.

Q. And that was at the time that he looked nervous?

A. Yes.

Q. Now had there been any recess between the time when he came in at noon and when this occured?

A. There might be.

Q. You don't remember whether there was any or not?

A. No, I couldn't say whether there was or not, there might be. There were recesses there from time to time, but I couldn't exactly say whether there was one then or not; there might be and there might not be.

Q. I will ask you to state now whether that nervousness exhibited itself before that particular occason, when he found the State was not ready.

A. I didn't notice it at any other time.

Q. This is the only time at which you noticed any nervousness?

A. Yes, that was the only time.

Q. I will ask you to state whether there was any difference, except this nervousness at that occasion, in his appearance, manner, conduct, or language, between the two first days of that term and the balance of the term?

A. No, not any that I noticed.

Q. You have been in Judge Cox's court frequently there in Beaver Falls?

A. Yes, a good many times.

Q. Do you remember anything about that concert in the school house there some time during the week?

A. Yes.

Q. Do you remember what night that was?

A. It was Thursday evening, I believe.

Q. Were you there at the concert?

A. Yes.

Q. Did you notice any particular annoyance at the concert that night.

A. Well, there was a rattling of music there.

Q. Were there any insects annoying you?

A. Yes; there were some mosquitoes there.

Q. Were there few or many?

A. Well, I couldn't tell you how many there were; there were enough to annoy me.

Q. Did you notice anything about those mosquitoes next day in the court room?

A. Yes; there were some the next day; they were somewhat annoying; they were to me while I was there.

Q. During that next day or at any time during that term, did you notice any motions of Judge Cox in this way? [Indicating.]

A. No; not exactly that way.

Q. What did he do?

A. I noticed Judge Cox particularly at that time for the reason that

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all over the court they were slapping their cheeks a good deal, most every person. The mosquitoes were annoying, and I saw some mosquitoes lighting on Judge Cox's face, and I was thinking that he would have to make a dive at them; and he put his hand up and slapped it that way. [Indicating.]

Q. Was there anything unusual or uncommon in that?

A. No.

Mr. Manager DUNN. Well, I object to that.

Q. I will ask you to state whether the movement you have described was just the movement he made.

A. Yes, he simply put his hand up and slapped the mosquitoe off, and then brought it down on his hand that way. [Indicating.]

Q. State whether or not he chuckled at the time he made it; made any remarks, such as "I have got you, you little cuss," or anything of that kind?

A. I didn't hear it.

Q. State whether or not he leaned back and laughed when he did it, in a silly manner?

A. No, I didn't notice that he laughed, any more than his face seemed to me to have a twitching movement at the time, I didn't know what caused it. His face was not as straight as it usually was, at the time he made the movement.

Q. But that was only when he slapped, was it?

A. Yes.

Q. It was not before or after?

A. Well, he might have done it before, but I didn't see it.

Q. Did you notice anything in his face except at those occasions when he slapped?

A. No.

Q. Did you see him do it more than once?

A. No; I saw him slap mosquitoes with his hand more than once; but I didn't see him make that movement more than once.

Q. I will ask you to state whether or not you saw Mr. Coleman hitch up his horse and drive away during this term?

A. I saw him Friday afternoon hitching his horse up. I asked him where he was going and he said——

Mr. Manager DUNN. Never mind, never mind.

Q. You saw him drive away, did you?

A. Yes.

Q. I will ask you to state whether or not Mr. Coleman was in the court room after that time when you saw him drive away?

A. I didn't see him.

Q. When you were there during Friday forenoon was he there in the court room?

A. No; there wasn't much court Friday forenoon. I guess I was in the court room, but not all the time. I think, if I remember rightly, there was a recess and I did not go back again until afternoon.

Q. I will ask you to state whether there was a difference in the personal appearance of the Judge as far as dress was concerned, between the latter part of the term, and the first part of the term?

A. Nothing.

Q. Did carelessness or anything of that kind exhibit itself?

A. I noticed nothing. I noticed one day when he was coming up to the court room, he had his pants in his boots.

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Q. What kind of a day was that?

A. It had rained in the morning and in the night before, and it was very muddy.

A. Mud is pretty deep up there when it rains, isn't it?

A. Well, yes; it was, a part of the way to the school house, where they held court.

Q. There was no sidewalks? A. No.

Q. I will ask you to state whether or not there was any difference in the position of the Judge on the bench during the latter days than the first days?

A. As to Monday, I couldn't say.

Q. Well, as to the latter part, up to Monday? A. No.

Q. I will ask you to state whether or not the Judge at any time there during that term laughed in court very loud and boisterously at his own jokes or at anything at all?

A. The only time I heard him laugh loud there was when some attorney, I forget who now, made some motion, and the Judge told him that he had tried that game himself several times, and then they all laughed.

Q. And the Judge laughed? A. Yes.

Q. Did he laugh loud and boisterously?

A. No, not any more so than other parties.

Q. The same as usual? A. Yes, about.

Q. Did he, while there in court, during any of that term do any foolish or ridiculous thing that seemed out of the way at all?

A. Not anything that seemed foolish to me.

The PRESIDENT *pro tem.* This court stands adjourned until half-past two P. M.

AFTERNOON SESSION.

The Senate met at 2:30 P. M., and was called to order by Senator Wilson, the President *pro tem.*

The PRESIDENT *pro tem.* Are you ready to proceed with the examination of the witness, Mr. Dunn?

Mr. Manager DUNN. We are, sir.

JAMES GREELEY

Direct examination resumed by Mr. ARCTANDER.

Q. Mr. Greeley, I think you have stated already that you are acquainted with Robert W. Coleman?

A. Yes.

Q. How long have you resided at Beaver Falls.

A. I have resided at Beaver Falls about a year altogether, and in its vicinity about 11 or 12.

Q. Do you know how long Robert W. Coleman resided there?

A. I think about two years; it might be a little more.

Q. When did he leave there?

A. I think he left last fall.

Q. I will ask you to state (and this question you can answer yes or no) whether or not you know what his general reputation is and was in the village of Beaver Falls, or in the community in which both of you live, his general reputation for truth and veracity?

A. I do.

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Q. What was it good or bad?
A. It was bad.

CROSS-EXAMINATION.

By Mr. Manager DUNN.
Q. How do you arrive at your knowedge of his general reputation, Mr. Greeley?
A. From the expressions of people.
Q. When did you first hear it questioned as to whether he was truthful or untruthful?
A. It was some time last summer or spring; as to the exact time I can't tell.
Q. Well, about what time?
A. Well, between May and August, or probably April, chiefly, it was since that time.
Q. Whom did you hear speak of it?
A. I couldn't tell who I first heard speak of him.
Q. You cannot tell?
A. No, sir, not exactly.
Q. How many men did you hear speak of it some time between May and August last year?
A. I can't tell exactly as to the number.
Q. Well, how many,—I am not particular as to the exact number, whether a dozen or fifteen?
A. Well, I couldn't tell as to the number.
Q. Did you hear more than one?
A. Yes.
Q. Well, who was it?
A. Herman Zumwinkle.
Q. When did you first hear him speak of it?
A. I couldn't tell.
Q. Who else did you hear,—between May and August last year, I am talking of?
A. I heard Carl Holtz.
Q. I am talking of the time between May and August?
A. Oh, it might have been between May and September, I couldn't tell exactly as to the day or the week.
Q. You heard Hermann Zumwinkle,—what did he say?
A. He said he was a notorious liar. Those are the words.
Q. What did Carl Holtz say?
A. All parties know that.
Q. They were together, were they, at the same time?
A. Yes.
Q. He said all parties knew that?
A. Yes.
Q. What did you say?
A. I didn't say anything.
Q. Where was it?
A. At Mr. Holtz's bar-room, across from the saloon.
Q. What were you doing there?
A. We were sitting down.
Q. Talking about Robert Coleman?
A. We were talking some about Coleman.

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Q. And what else?
A. I can't tell about who else.
Q. What was the conversation about—how did it arise?
A. Do you mean what led us to make those expressions about Mr. Coleman?
Q. Yes, what was it about?
A. The conversation at first was about a pension case there that he figured conspicuously in, or was attorney for.
Q. A pension case—what do you mean by that?
A. The procurement of a pension which he obtained.
Q. Then you were canvassing his merits or demerits in that conversation?
A. No, we were not canvassing his merits, but some of them said that he told them he only got $50 for the case, and some more said that he got $1,000; that he lied, for he had told them that he had got a thousand dollars.
Q. And that was the first time you had ever heard it questioned about his being a man of truth?
A. No, sir.
Q. Well, when was it before that?
A. Oh, I can't tell exactly when.
Q. Well, about when?
A. Well, I couldn't tell when.
Q. Now, when was the next time after this one time?
A. Well, I couldn't tell exactly.
Q. Well, I don't want you to tell exactly, but I want you to tell.
A. Well, some time about a week, and it might be two, and it might be a month ——
Q. Well, who did you hear speak of it then?
A. I heard several parties.
Q. Well, name one of them.
A. Amongst them was Gus. McClure, and a man by the name of Aldrich and a man by the name of White.
Q. Who is Gus. McClure?
A. He is Gus. McClure.
Q. What is his business?
A. He is a hardware merchant up there.
Q. When did you hear Gus. McClure speak of it?
A. I heard it some time subsequent to the procuring of that pension.
Q. How long after?
A. I couldn't tell.
Q. When did you hear the man White speak about it.
A. It was at the same time.
Q. When did you hear this man Aldrich?
A. About the same.
Q. That was all at the same conversation was it?
A. I believe it was.
Q. What were they talking about?
A. I can't tell what the drift of the conversation was; such as any neighbors would be talking about, and his name would be introduced but I can't tell what the subject was.
Q. What did Gus. McClure say; give us his exact language?
A. I believe that Gus. said, that it was no use in saying what he got, or didn't get; that you couldn't believe him.

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Q. They were talking about this same pension matter?
A. Well, it might be; I think it was but I couldn't be positive.
Q. Well, what did you say,—did you make any remark?
A. No, sir, I was listening.
Q. Not taking any part in it?
A. Not any prominent part.
Q. Those three men were talking it over, were they?
A. Yes.
Q. That was twice; now when was the third time that you heard it talked about?
A. I heard it several times; I can't tell exactly.
Q. Well, give us the next time?
A. I couldn't tell you exactly, nor the next time; it would take quite a while to remember.
Q. Well, I want you to remember; that is what you are here for?
A. Then you will have to give me time.
Q. I will give you time to remember; we can afford to give you time when you are swearing to a man's character up hill and down dale. We can afford to give you all the time you want.
A. I heard it about the time that Bob left.
Q. That was the next time?
A. No, it might not have been the next time.
Q. Well, I want the next time after McClure, and Aldrich and White and others spoke of it?
A. I don't know whether it was or not.
Q. You can't give us the next time?
A. That may be the next time, and may not.
Q. Well, what did you hear then?
A. I heard them speaking about him generally, I can't tell exactly what the conversation commenced about, but I heard them saying that it was about time that Bob left there, and looked out for new fields or new pastures, or something like that.
Q. What had that got to do with his truth or veracity?
A. Well, it tends to introduce or question his truth and veracity.
Q. *How* did it? what did they say?
A. They said he had got so here that no person had any confidence in him, and couldn't believe what he said anyhow.
Q. Who was that and who was engaged in that conversation?
A. A good many of them.
Q. Give us the names.
A. Carl Holtz and Zumwinkle.
Q. Now, who was the other man?
A. Well, these others were parties; I do not know their names, but they were parties that he had some legal dealings with; they came there to the court house to hunt up some records, and they found out that he deceived them, some way, and they began to tell what the story was about.
Q. How many of them were there?
A. I think there were five, altogether, but I don't know whether the five were aggrieved or not, or whether there was only one, but I think there were five together.
Q. You can't give the name of any one of them?
A. No, I can't give the names.
Q. Where do they live?

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A. They live in Renville county.
Q. Do you know them?
A. Yes.
Q. Do you know the men?
A. No, I don't know the men.
Q. How do you know they live there?
A. I know because they came there to look up the records.
Q. How do you know they live there?
A. Because I heard them say so.
Q. You heard them say so?
A. Yes.
Q. You don't know what town it was in?
A. Yes, I believe I do.
Q. What was the town?
A. It was the town of Wellington.
Q. But you don't know the names?
A. No, sir; they were Germans, and I can't tell the names.
Q. They were talking in German?
A. A part of the time they talked in German, amongst themselves; when they talked to us, they talked English.
Q. Part of the time they talked in German?
A. Yes.
Q. What did they say?
A. They said Coleman went away and agreed to keep their notes or something for them, and didn't keep them; something about that; that is what I understood them.
Q. What did Zumwinkle say at that time?
A. Oh, I don't know what the other fellow said.
Q. You said there was somebody else there besides Zumwinkle.
A. Oh, I can't tell what was said.
Q. That is all that was said?
A. No, there might have been something more.
Q. That is all you remember?
A. I don't remember anything more of importance.
Q. Is that the last time you heard his reputation questioned?
A. Oh, no.
Q. When did you hear it before?
A. At different intervals, since I heard it first questioned.
Q. When was one interval?
A. Well, it was chiefly about the time he gave his testimony here and we happened to see it and was talking about him, saying he was there during court.
Q. That was chiefly about that?
A. No, not chiefly but it was the last time of any note that I heard his truth questioned.
Q. Who was questioning it then?
A. Well, the neighbors generally.
Q. Well, who?
A. Well, all those that I mentioned to you before; they generally congregated in the evening.
Q. Were those five men there?
A. Oh, yes; there might have been five, and there might have been ten.
Q. Were those five German's there that were up in the upper part of the country?

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A. No.
Q. Then there was Gus. McClure?
A. He might have been; I can't say positively that he was there.
Q. Mr. Zumwinkle was there?
A. Yes.
Q. And Aldrich was there?
A. Yes; and John M. Nelson was there, and Cossentine was there.
Q. What does John M. Nelson do?
A. I cannot tell what his business is; he has different kinds of business.
Q. What is Mr. Cossntine's business?
A. Well, he works for a living.
Q. He is a laborer?
A. Yes.
Q. What does Zumwinkle do?
A. He is a harness maker and a farmer.
Q. And has a shop in town?
A. Yes.
Q. And it was these men congregating and talking of Mr. Coleman?
A. Yes.
Q. And upon that general conversation detailed here you swear that his general reputation is bad?
A. Yes.
Q. You were in court you say all the time?
A. No, not all the time.
Q. All except a little while, I think you said?
A. No.
Q. How much of the time were you there then?
A. I can't tell; I was there at intervals. Sometimes I would get in there, and stay until noon or stay until recess, and that, at different times during the day.
Q. Were you in there only a part of different days?
A. That was all.
Q. You were in there no whole day, all day long?
A. No, because court was not in session all day.
Q. Well, some day it was?
A. Well, some days I was there while court was in session.
Q. Do you wish to be understood that you were not there in court while court was in session any one day?
A. Yes, I do mean to be understood that way.
Q. You were there a part of the time?
A. Yes.
Q. What time did you go in court the first morning when court opened?
A. I got in there just as the judge took his seat, and began to charge the grand jury.
Q. What time did you get in the second morning?
A. I can't tell.
Q. What time in the third morning?
A. I couldn't tell.
Q. The fourth?
A. It was generally about 9 or 10 o'clock.
Q. Well, give me the fourth morning; there is no generally about it. I am after particulars.

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A. About 9 or 10 o'clock.
Q. Did you go in the fourth morning about 9 or 10 o'clock?
A. Yes.
Q. The fifth morning? A. Yes.
Q. The sixth morning? A. No, sir.
Q What time did you go in there the first afternoon?
A. I didn't get there the first afternoon until court was adjourned.
Q. Then you were not there at all the first afternoon?
A. Yes, I was.
Q. Until court adjourned?
A. Yes, I was; that was the time they took exception to the jury.
Q. You were not there until after the court adjourned?
A. Yes.
Q. You were not there while court was in session at all that first afternoon?
A. No, sir.
Q. Well, the second morning of the term when did you get there?
A. I couldn't tell you; I got there about the time the court adjourned.
Q. Abont the time court adjourned the second afternoon?
A. Until they would meet.
Q. Were you there in the evening any of the time?
A. Yes, part of the time.
Q. How much were you there in the evening; how many evening sessions did you attend?
A. I could not tell; I think I was there two.
Q. What were they?
A. I could not tell.
Q. Now, I want you to be positive; what evening did you attend?
A. I think it was—I couldn't say positively now as to the date, but I believe it was Friday evening.
Q. Friday evening?
A. Yes; I think it was.
Q. Were you there Saturday evening?
A. No, sir.
Q. Were you there Monday at all in court?
A. No, sir; not until court was adjourned.
Q. Nor Saturday, you were not in court were you?
A. Yes, I was.
Q. Well, what time did you get there Saturday afternoon?
A. I got there about—I should think about half past 4 or 5 o'clock.
Q. Saturday afternoon?
A. Yes.
Q. How long did you stay?
A. I stayed there until court adjourned.
Q. What time did court adjourn?
A. I couldn't tell exactly.
Q. Were you on the jury?
A. I was on the special venire that was drawn.
Q. That was drawn Saturday afternoon?
A. It was drawn Friday afternoon, but they did not convene and were not sworn in until Saturday forenoon.
Q. The special venire for a grand or petit jury?
A. A petit jury.
Q. Was it a special venire or were you a talesman?

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A. No, it was a special venire.
Q. Who summoned you?
A. Martin Jensen.
Q. What time did you get to that court Saturday morning?
A. I can't tell what time I got there Saturday morning.
Q. Did you serve on any juries?
A. I served a part of the time on that jury.
Q. What jury was it?
Q. That is, I was just sworn in; that is all.
Q. What case was it?
A. It was the case of State and O'Connor, I believe, but would not be certain.
R. The case of State and O'Connor?
A. Yes,
Q. That was what afternoon?
A. It was Saturday evening; it was almost evening; I should judge it was between 5 and 6 o'clock.
Q. Court was in session that evening?
A. I think not, I will not be positive.
Q. Did you try the case that evening?
A. No, sir.
Q. Were you in court that evening?
A. Yes; I was there and was sworn in on that jury.
Q. When were you discharged?
A. I was not discharged; I was fined Monday; I couldn't get back.
Q. You were fined on Monday?
A. Yes.
Q. The Judge fined you, did he?
A. Yes.
Q. Pay your fine?
A. No, sir.
Q. He remitted it, did he?
A. Yes.
Q. When was that jury discharged?
A. It was discharged before I got there; they discharged it because I could not get there.
Q. That is the reason you were discharged?
A. That is what I was led to believe; I do not know it as a fact.
Q. Did you play cards with Judge Cox at that term of court?
A. No, sir; or at any other term.
Q. Did you see Judge Cox playing cards there?
A. No, sir.
Q. Didn't you go out one evening from the hotel and borrow some money for Judge Cox?
A. I did, sir.
Q. Wasn't he playing cards at that time?
A. I do not know; he was not when I saw him.
Q. Didn't he send you out, and wasn't he playing cards when he sent you out?
A. No, sir; he was talking to me.
Q. Didn't he just get up from the card table?
A. No, sir; I don't know whether he was or not, I can't tell.
Q. Did he tell you what he wanted the money for?
A. No, sir.

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Q. What time of night was that when you went out to borrow money for Judge Cox?

A. It was some time in the evening; I couldn't tell exactly. I believe it might be 6 or 7 o'clock; I couldn't tell exactly; it was somewhere in the evening about 8 o'clock.

Q. Where were you?

A. It was in Holtz's.

Q. Was it in a private room?

A. Yes, sir; I was not in the room.

Q. Who was in the room?

A. I couldn't tell exactly who was in the room; I believe that,—I couldn't say positively who was there, but I believe that George Megquire was there and some other parties.

Q. Was Mr. Whitney there?

A. He might be; that is, I believe he was there, but do not know it as a fact.

Q. You didn't look in?

A. No, sir.

Q. You didn't see him there?

A. I saw two there.

Q. Who did you see?

A. I saw the Judge and Megquire; the door was just partly open; I went up there; I think that George Miller was there.

Q. Well, what did the Judge say to you?

A. The Judge said something to me,—"have you got any change?" Says I "No; I haven't got any." "Well," he says, "won't you go over to Mr. Berndigen's and borrow five—" I forget now what amount—"dollars for him;" and I went, and knocked on the door and gave it to him; didn't go in.

Q. In this private room?

A. It was not a private room, it was a bedroom; I believe it was a bedroom.

Q. It was not a public room; what I mean by that is, it was not a bar-room, or anything like that?

A. No, sir.

Q. It was in a room up in the hotel?

A. Yes.

Q. You didn't look in to see what was going on there?

A. No, sir, I didn't go in at all.

Q. The Judge didn't tell you what was going on in there, or what he wanted with the money?

A. No, sir.

Q. You got the money from Mr. Berndigen for him?

A. Yes.

Q. That is the man who was indicted at that same term for selling liquor?

A. Yes.

Q. Borrowed five dollars from him?

A. No, I didn't say that.

Q. Well, you said it was?

A. No, I said it might be, but probably it was.

Q. What amount was it?

A. I should judge from my recollection about it, that it was $3.00.

Q. What was it in?

A. In silver change.

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Q. How large pieces was it?
A. I think it was in,—I think, if I recollect right, that it was two standards and two half-dollars.
Q. You were over to Peter Berndigen's and told him that the Judge wanted to borrow $3.00 from him?
A. No.
Q. What did you tell him?
A. I told him that the Judge wanted to borrow a few dollars from me, and I have not got it; can you spare it?
Q. Didn't you tell him that the Judge wanted you to go over and get it?
A. No, sir; these are the very words.
Q. You borrowed it on your own hook?
A. No, sir.
Q. What do you say?
A. He told me to go over and see if Berndigen would let him have it.
Q. And you went over there and borrowed it on your own hook?
A. It was not exactly on my own hook, or the Judge's.
Q. Who paid it back; did you pay it back to Berndigen?
A. No, sir.
Q. Well, you didn't consider that you were to pay it back to Berndigen?
A. I didn't, but if he should ask me for it I should consider I was responsible.
Q. You considered that you borrowed the money of him?
A. I did in that way.
Q. Did the Judge ever pay you back?
A. No; I know no more since of the transaction.
Q. Haven't you got a brother-in-law of the name of McNeil?
A. No, sir.
Q. Of McNeil; what is your brother-in-law's name, that you have there in town?
A. I haven't got any there in town.
Q. Did you have any there then?
A. No, sir.
Q. Was your brother there?
A. No, sir.
Q. Do you know a McNeil?
A. I do; five or six,—no, four.
Q. Do you recollect being in Berndigen's store or saloon one evening during that term of court, when one McNeil was there?
A. No, sir.
Q. When there was trouble between them?
A. No, sir.
Q. You stopped the quarrel?
A. No.
Q. You swear that didn't occur?
A. I swear that I was not there, and didn't stop the quarrel.
Q. Will you swear that that didn't occur in your presence?
A. In my presence, the quarrel?
Q. Yes.
A. Yes, sir.
Q. Are you positive you didn't see the Judge there when he was quarrelsome?

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A. No; I didn't see the Judge there when he was quarrelsome.
Q. Or when he was intoxicated, or under the influence of liquor?
A. Well, he might be, but not that I could tell by him; he might be under the influence of it, and not apparently to me.
Q. Did you see the Judge one evening when they had some music in the parlor of the hotel?
A. Yes.
Q. Was the Judge perfectly sober then?
A. Well, I should not judge that he was perfectly sober, for the reason that I saw him take his share amongst nine or ten, of a bottle of beer.
Q. Amongst nine or ten?
A. Yes, there must have been nine or ten.
Q. Did the bottle go round?
A. No, some took cigars. I know they did, but I know there was a bottle there.
Q. Where did they drink, at the bar of the hotel?
A. No, sir; it was in the parlor, where they had some music.
Q. You didn't see him drink any more that night, before or after?
A. No, sir.
Q. You didn't drink any that night?
A. No, sir.
Q. You never drink?
A. I do.
Q. You have seen the Judge under the influence of liquor frequently?
A. I saw him once, ten or eleven years ago.
Q. It is eleven years ago?
A. Yes, it must be ten or eleven; it was when I first got acqauinted with him, or first got to know him. Then I thought he was under the influence of liquor.
Q. You have never seen him since under the influence of liquor?
A. No, sir; not to know of; he might be under the influence of liquor, but not apparent to me.
Q. Didn't you see the Judge that evening when they had music, rolling over the bed?
A. They were all rolling and clapping their hands at the music, but not from his being intoxicated.
Q. Oh, I have not asked you about that whether he was intoxicated or not.
A. He laid over on the bed, and I did, too, on the bed.
Q. You were all rolling and tumbling over on the bed?
A. No, sir.
Q. What do you mean by saying that they were all rolling?
A. Well, I mean those people that were sitting looking at the musicians; turns about, would lie on the bed.
Q. Well, I mean rolling on the bed?
A. No, there was no rolling on the bed. They might roll on the bench.
Q. How many times were drinks ordered when you were in there?
A. Only once.
Q. How long were you in there?
A. I can't tell exactly.
Q. Well, about how long?
A. Probably about half an hour.

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Q. Did you go away and leave him there? A. Yes.
Q. Was Mr. Whitney there?
A. Yes, I think he was.
Q. Was Mr. Megquier there?
A. I couldn't say positively whether he was there or not.
Q. Was Coleman there?
A. No, I think not.
Q. What night was that?
A. I couldn't swear positively as to that night, but I think it was Friday night, I am not positive.
Mr. ARCTANDER. What was that?
A. I think it was Friday night.
Q. Who was it made this music?
A. Well, there was,—Mr. Whitney fiddled awhile there and a man by the name of Knapp, he fiddled too. But as to which of them made the music, I couldn't tell.
Q. There was some singing there, wasn't there.
A. No, sir, no singing while I was there.
Q. And the music was so enlivening that the Judge and the rest of you rolled over on the bed?
A. No, but we laid there to rest ourselves; there were not chairs enough, and at turns we laid on the bed. Sometimes one would turn the other off to get a seat.
Q. Weren't there any chairs in the room?
A. Yes, there was four or five that the musicians were using.
Q. Did the Judge have a chair?
A. Sometimes he had a chair.
Q. You remember that the Judge was very nervous one afternoon, do you?
A. Well, I don't know whether it was nervousness, or what you would term it.
Q. He was a little different?
A. He was a little excited or angry—I should call it angry.
Q. You don't know whether it was nervousness or not, and you now think it was anger?
A. No, I should think from his appearance that the Judge was a little angry or irritated; I couldn't tell whether it was nervousness or not.
Q. And the county attorney was somewhat angry?
A. No, I don't see that he was angry.
Q. You didn't see that he was angry at all?
A. No, he is generally a cool man; I never saw him angry.
Q. Simply the Judge was angry?
A. Yes, he was a little angry,—the Judge, I thought, was angry or at least vexed, I should call it; he was vexed.
Q. You didn't discover anything of that kind in the county attorney?
A. Yes; I noticed that after court adjourned he was pretty angry, or at least he used expressions—
Q. Well, how did the Judge act at this time when he was angry?
A. He scolded.
Q. What did he say?
A. He told Mr. Miller he ought to be prepared to go to trial when the parties were,—that he always ought to be; that he came there with the intention of clearing the calendar of that county for once.
Q. Was that all?

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A. Well, there might have been some more.

Q. Did you hear the Judge say he didn't want any more of that kind of "monkey work" there?

A. He said something about he didn't want such "monkeying" there.

Q. And Miller said he didn't want it either?

A. I couldn't hear; he might have said it. But if he said it I should have heard it.

Q. You didn't hear anything that Miller said?

A. Yes I heard him say something about—

Q. What did you hear him say?

A About saying to the Judge,—as much as to say he was not to blame for that, that he could not help it.

Q. You heard him excuse himself to the Judge; is that what you mean to say?

A. Yes.

Q. Is that all you heard him say?

A. I heard him say about introducing some authorities but I couldn't tell you what.

Q. What day was that?

A. I think, if I am not mistaken, that it was Friday.

Q. What time of the day on Friday?

A. Just about the time that the lamps were lighted, about dusk; I should judge it was about dusk; I can't tell just what time it was, but I should judge it was about that time.

Q. How long did that nervousness last, how many minutes?

A. Oh, I should judge about four or five minutes, perhaps three minutes, it might be eight or ten; but it was a short time.

Q. Well, you think the Judge was not dressed that term as he usually is?

A. No, I don't think he was; I have seen him when he was better clad, I mean.

Q. What seemed to be the matter,—were his clothes torn?

A. No, they were kind of bare; that is, they were not new.

Q. They were old, that is all?

A. Yes.

Q. Well, he was dressed as well as they are usually dressed up in that country, wasn't he?

A. Oh, yes.

Mr. ARCTANDER. What is that the witness said?

The WITNESS. He was dressed better than they usually dress up in that country.

Mr. Manager DUNN. The Judge was better clad than the rest of them?

The WITNESS, Not than all of them, but the majority of them.

Q. Well, his dress was not in such a shape as to attract attention?

A. No. sir; not general attention; it was such as would lead to attention,—passing notice, and nothing else.

Q. It attracted your attention?

A. Yes, sir.

Q. You have been at his terms of court at Beaver Falls?

A. Yes.

Q. How many?

A. Two or three.

Q. When were they held?

A. I think it was in November?

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Q. When was the other one?
A. And he had special sessions there sometimes; I don't exactly know when it was.
Q. Is that all you have ever attended there?
A. Yes, there was another general session there the year before; that was before he had the two terms.
Q. Judge Cox held that term, did he?
A. Yes, I think so.
Q. Are you sure that he did?
A. Yes, I think I am; that is my impression. I think I was there two general terms and a special term.
By Mr. ARCTANDER. And you feel certain that you saw him one general term and two special terms,—whatever time they took place?
A. Yes, whatever time they took place.

JOHN MC INTOSH.

Called as a witness on behalf of the respondent, testified.

Mr. ARCTANDER. I will state, Mr. President, that this witness as well as the next one, and one further which has not yet arrived, are summoned simply upon the impeachment of Mr. Coleman, but as this witness is here, I would like as a favor from the Senate, to be allowed to ask him one question in regard to this matter of Mr. Coleman's absence, he being one of the deputies and a man that saw Mr. Coleman go away and also a man that was present in the court room, and I would ask leave to ask this question of the witness on this article.
PRESIDENT *pro tem.* If there is no objection the witness will be heard.

By Mr. ARCTANDER.
Q. Where do you live?
A. Beaver Falls, Renville county.
Q. What was your occupation the last May term of court, in Renville county?
A. Deputy sheriff.
Q. Were you a court bailiff?
A. Yes, sir.
Q. State whether or not you were present in court during the whole of that term, and if not, what portion of that term?
A. I was present with the exception of two half days.
Q. You were present the whole term except those two half-days?
A. Yes.
Q. What two half-days was it you were not there?
A. Thursday forenoon and Saturday forenoon as near as I can remember.
Q. I will ask you to state whether the balance of the time you attended court right there in the court room, and whether you were about in the court room all the time during the session of the court.
A. Yes.
Q. I will ask you to state when Mr. Coleman was last in the court room that term, during the time you were in there.

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A. To the best of my knowledge it was Wednesday forenoon, the second day of the court.

Q. I will ask you to state whether or not you saw Mr. Coleman go away from the term there with his horse and buggy?

A. I did.

Q. What day of the term was it?

A. Friday.

Q. What time on Friday?

A. About 1 o'clock.

Q. Saw him drive off, did you?

A. Yes.

Q. How long have you lived in Renville county, or in Beaver Falls, rather?

A. I have lived in Beaver Falls since a year ago last October.

Q. Lived in the village?

A. Yes; I have lived in the county ten years.

Q. Did Mr. Coleman live there during any portion of that time?

A. Yes.

Q. During the whole of that year, from October to October?

A. Yes, until he left in October some time.

Q. Do you know what the general reputation of Mr. Coleman for truth and veracity was in the community in which you both lived during that year?

A. I do, sir.

Q. What was it, good or bad? A. Bad.

CROSS-EXAMINATION.

By Mr. Manager DUNN.

Q. You say your business was deputy sheriff and bailiff during that term of court?

A. Yes.

Q. Did you have any other business at that term of court?

A. At that term of court?

Q. Yes? A. No, sir.

Q. Did you have anything to do with Peter Berndigen?

A. Yes, sir; I worked there morning and evening as a general thing, when I was not on duty.

Q. You attended bar there for him?

A. I have sometimes.

Q. Didn't you at the last term of court?

A. I did sometimes.

Q. You attended bar in the morning?

A. I did sometimes, and sometimes I did not.

Q. Did you sell Judge Cox any liquor there in the morning?

Mr. ARCTANDER. We object to that as not proper cross-examination; we have not asked him anything about that.

Mr. Manager DUNN. He said he had no other occupation, and I want to show that he had other occupation in selling liquor there to Judge Cox.

Mr. ARCTANDER. It don't prove his occupation to show that he sold liquor to Judge Cox, any more than anybody else; it is certainly improper cross-examination.

Mr. Manager DUNN. Are you afraid of the question?

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Mr. ARCTANDER. It is improper cross-examination; I don't know what the answer will be.

Mr. Manager DUNN. I don't know what the answer will be either. But I suppose we want light on this subject; it might possibly be trenching upon the rule of cross-examination a little; but I should like very much to learn what this witness knows about this matter.

The PRESIDENT *pro tem.* I think the objection is good.

Q. You attended bar, that was your business in the morning and evening?

A. It was not my business. It is my habit to go over to Mr. Berndigen's. I work for him a good deal, and whenever I am there I take hold and help him with whatever he has to do.

Q. Well, during the term of court you made that part of your business?

A. Not any more than I did at any other time since I have lived in Beaver Falls.

Q. Well, you did attend bar there?

A. Yes, I did a few mornings, I couldn't tell how many.

Q. Do you know who was in the court on Friday?

A. I don't know as I can tell you all their names, sir.

Q. Can you tell who was there on Saturday?

A. I couldn't tell you all of them.

Q. How did you come to notice that Mr. Coleman was not there?

A. More particularly by his own statements, and conversations that I had with him on Sunday morning.

Q. You saw him there on Sunday, did you?

A. Yes, he was in town, and came from Red Wing and went away the same day.

Q. Then it is more particularly from what he said than from what you noticed?

A. No, sir, I knew he was not there to my knowledge.

Q. You knew that he was not there?

A. Yes, and I asked him the question why he was not there, and he answered it.

Q. How long have you been deputy sheriff, Mr. McIntosh?

A. I think it was two years last January, if I am not mistaken.

Q. Are you deputy sheriff now?

A. Yes.

Q. Now you say that this man Coleman's reputation in that community is bad?

A. Yes.

Q. When did you first hear that it was bad?

A. I think the first time I ever knew the man.

Q. The first time you ever knew the man?

A. Yes, the first time I ever met him.

Q. Where did you meet him?

A. In Beaver Falls.

Q. Was that his reputation in Beaver Falls?

A. I supposed it was from the few gentlemen that I heard speak of it.

Q. Who were they?

A. George Miller and S. R. Miller.

Q. What did they tell you?

A. They warned me not to have much to do with him.

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Q. Why?
A. Because they said he was the biggest liar on earth.
Q. Where was it they said that to you?
A. In Miller's office.
Q. Well, where did you next hear that?
A. Well, I found it out to my knowledge afterwards in business transactions that I had with him.
Q. You had some difficulties with him then?
A. No, sir; no difficulties whatever.
Q. How did you find it out, then?
A. Only as I tell you, in regard to business that I had done myself.
Q. There was a difference of opinion between you and him, was there?
A. Difference of opinion between him and me?
Q. Yes.
A. I didn't say there was any difference of opinion.
Q. Are you the deputy sheriff that Mr. Jensen didn't want to have business given to?
A. I couldn't tell; I think not, however. I think it was Mr. Dahl.
Q. He had two deputy sheriffs then?
A. He has at present; but then he had three, and one he was going to discharge.
Q. Then you heard these Millers say this; who else did you hear say it?
A. I think nearly every man in town since Coleman's absence; it has been general town talk.
Q. Since Coleman's absence?
A. Yes. Whenever anybody would hear from him it would make a talk.
Q. It has been more since he left there and since these impeachment proceedings began than before?
A. Well, somewhat, yes, sir.
Q. Who else did you hear speak of it before these impeachment proceedings commenced?
A. I heard Mr. Peter Berndigen.
Q. He is the man you worked for and kept his whisky shop, isn't he?
A. Yes.
Q. Who else?
A. Hermann Zumwinkle.
Q. Who else?
A. Carl Holtz.
Q. Who else?
A. Hans Gronwold.
Q. Who else?
A. P. H. Kirwan.
Q. Who else?
A. William McGowan.
Q. When have you heard him say that?
A. I have heard him say that so many times that I could not say exactly.
Q. Well, tell me when?
A. I have heard him say it this winter and last summer and last winter. And I heard him say it a good many times besides.
Q. And who else besides him?

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A. At that time?
Q. Yes.
A. Well, I heard all the county officials,—those three that I have mentioned,—at the same time.
Q. Now, you have got three county officers here; who else have you heard?
A. In Beaver Falls?
Q. Yes.
A. I have heard John M. Nelson and Cosentine.
Q. Who else?
A. I have heard a man by the name of Joseph Whitt.
Q. Who is he?
A. He is a man that works there in town.
Q. What is his business?
A. You might call him a laborer; he has a team and works for a living.
Q. Where did you hear him talk about it?
A. In the bar-room; and also in the store of Mr. Berndigen.
Q. That is a new man; who else?
A. I think that is about all the men that I had any particular conversation with in Beaver Falls.
Q. That is those are all the men you have ever heard speak about his truth and veracity?
A. No, sir.
Q. Well, give me the names of them.
A. No, I have heard more of them, men that live in Bird Island and Redwood.
Q. Well, give me the names of the men that live in Beaver.
A. Well, those are all that I know at present in Beaver.
Q. Well, when did you hear them talk of it?
A. That is this winter and last summer.
Q. Where were you last summer when you heard him talk about it?
A. In Mr. Berndigen's store.
Q. How, did you come to talk of it there?
A. Oh, we were talking,—Mr. Berndigen had some business transactions with Coleman; and he lied to him or at least misrepresented it. —He had agreed to do a certain job for him for a certain sum of money, and when he came to bring in his bill he had him charged $40 instead of $5; and that is what brought up the conversation.
Q. Made him pay it, did he?
A. Yes, Berndigen paid it.
Q. And that is when Berndigen made up his mind that he was not a truthful man?
A. No, I think not; I couldn't say as to when he did make up his mind as to that.
Q. But that was the time when Whitt was talking about it?
A. Yes.
Q. What did Whitt say?
A. He made a general remark that he wouldn't believe the man because he was the biggest liar on earth; that was the general conversation. Whenever a man says anything in Beaver Falls, he says he wouldn't believe Bob. Coleman, because he is the biggest liar on earth.
Q. They all say that do they; a large majority say that?
A. Yes, a large majority.

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Q. Well, give me the names of the men whom you have heard make that remark?

A. George Miller and S. R. Miller.

Q. Well, you have given me those names; give me the names of others and I will send for them and see if it is so?

A. Those are all I have associated with.

Q. Well are those all of the men you have to associate with up there?

A. Well, we haven't got more than 15 of 16 altogether I suppose, that is all there are there; we have a mighty small town you know.

Q. Well, you have got 150 people in the village haven't you?

A. Well, I don't know how many we have.

Q. How many in the village?

A. About 100, women and children, young and old.

Q. And you have heard seven men speak of it?

A. Yes, that is all.

PETER BERNDIGEN,

Sworn as a witness on behalf of the respondent testified.

Mr. Manager DUNN. What article is this witness called upon?

Mr. ARCTANDER. He is called as to the impeachment of Mr. Coleman.

Q. Where do you reside?

A. Beaver Falls, Renville county, Minnesota.

Q. How long have you lived there?

A. Ten or eleven years.

Q. What is your business?

A. A general store.

Q. Keeping a saloon attached to the store?

A. A saloon attached to the store.

Q. You have the only general store there, have you not?

A. Yes.

Q. And do the biggest business there?

A. Yes.

Q. How long have you known Robert W. Coleman?

A. Oh, I guess since about three years ago.

Q. He came there to Beaver Falls about three years ago?

A. Yes.

Q. Do you remember the night the concert was had at the church during the last term of court at Beaver Falls?

A. At the school house?

Q. Yes, at the school house?

A. Yes.

Q. Did you see Coleman that night?

A. Yes.

Q. Where did you see him?

A. I saw him in my saloon.

Q. What condition was he in?

Mr. Manager DUNN. I object to that. We are not trying Mr. Coleman here, as I understand it. If he is he ought to be served with a copy of the articles. We are trying here the issue as to his truth and veracity.

Mr. ARCTANDER. I don't care particularly about it, but Mr. Coleman

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testified that Judge Cox was drunk during that whole term of court—evening, daytime and all. I asked him the question whether he was not drunk himself—blind drunk one night—the night of the concert, and whether he did not leave the next day, and Mr. Coleman said that it was not so, that he never was drunk in his life, or something like that, and I suppose it would be proper to impeach him upon that, because it would he material in two ways; one to show that the witness is untruthful generally, and another to show that if he was in a condition of drunkenness himself—blind drunk—he was probably not in a very excellent condition to judge what the condition of the respondent was that night. He has made rather a general and sweeping charge against the respondent, of intoxication during that term; but then I do not care particularly about it, if the court has any doubt as to its materiality.

Mr. Manager DUNN. If the Court wishes to try Mr. Coleman's condition that night we must send up there for witnesses. Of course the charge as to his truth and veracity we are always prepared to try; but it seems to me that whether Mr. Coleman was or was not on that particular night in an intoxicated condition is a question foreign to this issue. It does not bear at all upon the truth of his testimony.

The PRESIDENT *pro tem.* You need not go into that, Mr. Arctander.

Mr. ARCTANDER. Does the chair sustain the objection?

The PRESIDENT *pro tem.* Yes, sir.

Q. Mr. Berndigen, do you know what Mr. Coleman's general reputation is and has been in the village of Beaver Falls,—the community in which you both live,—for truth and veracity? You can answer that, yes or no,—whether you know what his general reputation is and has been for truth and veracity?

A. It is pretty bad.

Q. Just answer me, yes or no; it is proper to answer it in that way, and in no other; do you know what his reputation is? A. Yes.

Q. Now, what is it, good or bad?

A. It is bad.

CROSS-EXAMINATION

By Mr. Manager DUNN.

Q. You keep one of the prominent whisky shops in Beaver Falls, don't you?

A. I guess there is one there that is more prominent than mine.

Q. There is one other more prominent than yours; then you keep one of the lower ones,—one of the cheaper varieties?

Mr. ARCTANDER. That is your testimony, not his.

Q. There is one other that is more prominent than yours; how many are there there?

A. Two.

Q. You keep one and Mr. Holtz keeps the other?

A. Yes.

Q. You have had some difficulty with Mr. Coleman, haven't you, Mr. Berndigen?

A. Yes, sir; a little.

Q. You don't like him very well, do you?

A. Oh yes.

Q. Like him first rate?

A. Oh yes.

Q. And yet you have had difficulty with him. Are you the Peter Berndigen that is under indictment in that county?

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A. Yes.
Q. You are out on your own recognizance?
A. Yes.
Q. How many places of business have you got in Beaver Falls?
A. What do you mean—stores?
Q. Stores and places of business of all kinds.
A. I guess there are three.
Q. Three places of business?
A. Yes; a crockery store, a drug store, and then my store,—that is three.
Q. Isn't there a hotel there?
A. Yes, a hotel.
Q. Isn't there any other kind of business carried on there besides your store—any blacksmith shop?
A. Yes.
Q. Is there a mill there?
A. Yes, there is a mill there.
Q. Any carpenter shop?
A. No carpenter shop.
Q. A school house there?
A. Yes, there is a school house there.
Q. No churches there?
A. No church there; we use the school house for a church.
Q. Any ministers live there?
A. Yes.
Q. What denomination?
A. Methodist.
Q. Any other?
A. That is all.
Q. A school teacher there?
A. Yes.
Q. How many families have you in Beaver Falls?
A. Oh, I couldn't tell; some 150 inhabitants.
Q. Some 30 or 40 families?
A. Somewhere along there, I guess.
Q. How many inhabitants have you got in the township?
A. I couldn't tell exactly.
Q. About how many?
A. I couldn't tell.
Q. Can't you tell pretty near how many? You know how many votes you cast.
A. We cast about a hundred votes.
Q. About a hundred votes in the township?
A. Well, we have about 125 generally, I think.
Q. How many men are there that live in Beaver Falls village?
A. I couldn't tell exactly.
Q. Are there 50?
A. I guess there are not that many; there might be somewhere between thirty and forty.
Q. Now, when did you first hear Mr. Coleman's reputation questioned as to being a truthful man?
A. The way he used me, and came up and asked me about it,—whether that was so or not. And then they generally stated he was nothing but a rascal, and so on.

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Q. The way he used you ?
A. Yes, sir.
Q. He had some trouble with you then, did he ?
A. He done some business for me; I had a contract with him once to attend to a case for me. That was why I was interested in it; it was a land case in the land office, and made a bargain with him to take the case for $5, and afterwards he sent in his bill for $40.
Q. Did you pay it? A. Yes.
Q. Was that the first time you had heard he was a bad man,—had a bad reputation ?
A. Well, there was general talk about it, but I never took any particular notice about it.
Q. Who was doing this particular talk before that ?
A. Oh, I couldn't tell; Carl Holtz and others were talking about him, but I didn't listen to such things.
Q. When was that; when was it that he had this trouble with you ?
A. Trouble with me ?
Q. Yes; when was it about this bill business ?
A. Oh, that must have been a year ago.
Q. Well, up to that time you thought he was all right, didn't you; you didn't think he had a bad reputation up to that time ?
A. Well, they were talking about it, but I didn't listen to it.
Q. Well, it didn't make any impression on you, what you heard ?
A. Well, he had been lying back and forwards some, but I didn't take no particular notice.
Q. What about ?
A. Oh, about several things, I can't remember.
Q. Well, you were satisfied to make your bargain with him for $5, providing he would stick to it ?
A. Yes.
Q. You had confidence in him then ?
A. Yes.
Q. Then he had no bad reputation at that time, so far as you were concerned ?
A. I didn't think he would be as mean as that.
Q. You thought he wouldn't lie about a thing of that kind ?
A. No, sir.
Q. And so you made your trade with him ?
A. Yes, sir.
Q. How long after that did he bring in his bill for $40.
A. Oh, I can't tell exactly; I think it was somewhere about a month or two, or three.
Q. When he brought in his bill for $40, then you made up your mind he was a bad man ?
A. Oh, no, I found it out worse than that, after.
Q. Before that ?
A. No, sir.
Q. After that you made up your mind ?
A. No, I thought he was pretty bad, but I found him out worse than that.
Q. In your own matters ?
A. Yes, sir.
Q. Well, who have you heard talk about his being bad ?

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A. Oh, I have heard others there that I didn't take particular attention to.

Q. Then you are swearing more particularly to what you know yourself than to the general talk?

A. Yes; I have heard others talk, but I didn't pay attention.

Q. Well, I want the general talk?

A. I couldn't tell you the names.

Q. Well, give us some of the names?

A. I have heard Pat. Kirwan, and John McIntosh.

Q. Well, we have had them; give me others. Zumwinkle, you have heard of him?

A. Yes, I have heard him talk too.

Q. Haven't you Aldrich,—can't you go through the same list the other witnesses have gone through?

A. Well, I didn't take no notice of it. They have been talking back and forth every day.

Q. You didn't pay much attention to it?

A. I didn't pay much attention to it; I had enough to do to attend to my own business.

Q. Well, the fact is, Mr. Berndigen, you think he does not tell the truth because he lied to you once or twice? You think he is not a man that tells the truth more particularly because he has lied to you in some things?

A. Oh, I don't know.

Q. Isn't there where you got his reputation particularly?

A. No, sir; his general reputation is bad.

Q. Well, I want you to explain to this senate something about that.

A. Well, I have heard talking about him backward and forward; I don't know; I don't remember.

Q. Well, they say he played cards?

A. Well, I can't——

Q. What is that they say about him?

A. The way he used me it satisfied me and I don't want any business to do with him.

Q. Well, the way he used you was enough for you?

A The way he used me was enough; and when they talked about him I didn't care to hear it,

Q. Well, he pays his debts, doesn't he,—he didn't go way from there in debt to anybody?

A. No, he paid me, in that way,—by bringing in a bill against me.

Q. What did he owe you for?

A. He owed me for goods taken out of the store.

Q. Did he have any property?.

A. No, sir. He was doing business for me off and on.

Q. When did he pay you this bill in that way?

A. Well, as I told you.

Q. About a year ago?

A. No, sir; well, about four or five months before he left.

Q. Did he do any business for you after that?

A. Not that I remember.

Q. You don't know whether he did any business with you after that or not?

A. Yes, he did some business for me last fall, but I was connected with another man.

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Q. Did you pay him for that?
A. Well, he hired—we were in partnership—it was me and a fellow by the name of Christianson.
Q. Did you pay him for it?
A. Yes, I paid him for it.
Q. And you kept on employing him it seems; well that will do, Mr. Berndigen.

Mr. ARCTANDER. I will state to the court that we have one more witness upon the subject of the impeachment of Mr. Coleman, and when he comes, we will ask leave to call him. We will now call the attention of the court to article fifteen, the last general term of court in Lyon county. We will call Judge Weymouth.

B. T. WEYMOUTH,

Sworn as a witness on behalf of the respondent, testified.

Mr. ARCTANDER. Before proceeding with this witness, Mr. President, I desire to make application to the Senate to introduce upon this article, if the witnesses should come and the snow blockade does not prevent it, eleven witnesses. I will give the names if the court desires me to do so. I will call attention to the fact that this charge runs over at least three days, and with some of the witnesses five; that a portion of the testimony consists of occurrences out of court, the first day before the Judge came up. I will call attention further to the fact, that the prosecution was allowed to, or did introduce, at least eight witnesses on this charge; five under the charge proper, and three to the same effect, and the same subject matter, under the pretence that it was introduced under article 18. I speak more particularly of the testimony of Mr. Forbes, Mr. Hunt, and Mr. Hunter; so that, in all, the prosecution were allowed eight witnesses on this article. I will state that some of our witnesses will be very short. One of them is a witness that we simply desire to introduce to show the condition of the Judge when he left Tracy that morning, where the cars stopped for an hour; to show by a man who was with him all the time what he drank, and to show his condition when he left Tracy. By some of the other witnesses, I think two of them, we can show only the Judge's condition before he went into court that afternoon, upon the street, or during part of the proceedings of the court, and one of them we shall only be able to call as to a short time in the first afternoon during his charge to the grand jury. I will state that some of the witnesses were not present during the charge to the jury, such as Judge Weymouth, Mr. Seward and some others, while they were present later in the day. And we desire to introduce some testimony also as to the time when the Judge charged the grand jury. I do not think that it is an unreasonable request upon our side, to desire to bring in that testimony; two other witnesses have not yet arrived. I will read the names of the witnesses that we intend to offer to the Senate, that I make this application for. They are Judge Weymouth, Mr. Seward, Mr. Andrews, Mr. Mathews, Mr. Main, Mr. James Morgan, Mr. Whitney, Mr. Butts, Mr. Gley, Mr. Hermann, Capt. Webster, and J. J. Hartigan. I trust the Senate will extend the same courtesy to us that they have heretofore done.

The PRESIDENT *pro tem.* The Senate have heard the application of the counsel; what is its pleasure?

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Senator ADAMS. I move that the request be granted.

The PRESIDENT *pro tem.* Does the motion receive a second?

Senator BUCK C. F. I second the motion.

Mr. ARCTANDER. I will state it is the last article upon which we will ask any extension of the rule.

The PRESIDENT *pro tem.* Is the Senate ready for the question? Those in favor of granting the request of the counsel will say aye, the contrary, no.

The motion is carried.

By Mr. ARCTANDER.

Q. Where do you live, Judge Weymouth?

A. I reside at the present time in the village of Marshall, Lyon county; usually I reside on a farm, but I am in town—

Q. What is your business?

A. I have been an attorney for forty years, but my principal business up in this country is farming and planting trees.

Q. You are a practicing attorney, and have been for forty years?

A. Yes; I go into court sometimes.

Q. How long have you know Judge Cox?

A. I think it is about thirty years since I firt knew Judge Cox; I knew him sometime in Wisconsin, and then for about nine years up here.

Q. You have resided up there for about nine years?

A. About nine years.

Q. During those nine years you have been intimately acquainted with the Judge?

A. Yes; I have seen him quite frequently.

Q. And associated with him whenever you met him?

A. Yes; used to try cases with him before he was Judge, and generally have been in the terms of court at Lyon, and some in Lincoln county and New Ulm, and special terms at St. Peter, and at Redwood Falls sometimes.

Q. Now, I will ask you to state, Judge, if you were present, and in attendance at a general term of the district court, held in and for Lyon county, in the month of June, 1881.

A, Yes, sir; I was.

Q. When and where did you first see the Judge on that occasion?

A. I saw the Judge coming from the station; I recollect the circumstances that I was going over to the station to see Mr. Mathews; he was associated in a case in which I was; I was thinking whether I would ask for a continuance or not, when the court came in, and Mathews came in on the same train as Judge Cox; I started to go over to the depot to see Mathews; he lived on that side and wouldn't come over, and when I had got about to the river the train had got in, and the little foot-bridge we had there was a bad-looking place to get over, and I stopped waiting there until Judge Cox and Mr. Whitney, I think, were coming,—there were others along before and after and I saw Whitney and Cox coming, and I waited until they came over and spoke to them.

Q. You saw the Judge then, across the river, crossing the bridge, going over to the hotel?

A. Yes, I did.

Q. I will ask you to state, Judge, what kind of a bridge that was that you had there at the time?

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A. Well, it was a foot bridge; our bridge across the Redwood river, had gone off, and some one had put down a couple of horses as we call them, in the bed of the river; and there was one or two planks laid horizontally on those horses and then there were planks sloped down the banks, [indicating.]

Q. And you had to walk on that?

A. Yes.

Q. How wide was that bridge where the foot planks were, and where the Judge went over?

A. I think the middle plank was a pretty wide plank perhaps, with another under it. I think there were two planks doubled in the middle and the other, I think, were two narrow planks where they walked down.

Q. The whole thing was lying there loose?

A. Yes, and a mere temporary structure.

Q. Now, I will ask you to state whether or not you had any proper bridge across that river at the time?

A. Not at that place.

Q. Any near there?

A. Not within forty or fifty rods, perhaps; there was an old bridge that had floated down, that had been fixed so that they drove carriages over, but it was not a good bridge for passengers; the water ran over some parts of it at that time.

Q. You saw the judge walk across this bridge while you were standing on the other side of it, did you?

A. Yes, sir; he and Mr. Whitney.

Q. The new bridge was built at that time?

A. I don't particularly recollect; there was a new bridge put in soon after.

Q. Nobody could walk over the new bridge at that time?

A. Oh, no; the new bridge was not up, but there might have been timbers lying there, and possibly timbers that belonged to the bridge, unless it might have been a pile or two driven, or something of that kind.

Q. Now, when he came to cross this plank, did you notice him?

A. I did; I noticed him particularly, and recollect that he had quite a large and apparently heavy satchel, or little trunk.

Q. Now, how did he walk, going across that bridge, as to whether he was staggering or walking straight or not?

A. Oh, he walked straight enough.

Q. No staggering about it?

A. Nothing of the kind. I was a little afraid to walk over, but I saw that he could walk it well enough. I did not like to walk over there, myself.

Q. Now, when he came across the bridge, did you meet him and shake hands with him?

A. I did immediately. I met him and shook hands with him, and then walked up to the Exchange tavern, where he left his baggage.

Q. Did you have any talk with him while you walked up to the hotel?

A. Yes; we were talking.

Q. What was the Judge's condition at that time when he came into the hotel?

A. I inquired of him about his health, and he spoke of not having slept well; he was not looking as well as usual in health.

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Q. I mean as to what his condition was as to sobriety or inebriety?

A. Oh, he showed no evidence of inebriety.

Q. Had you any doubt at all at the time of his being perfectly sober?

A. No, sir; and I particularly observed him, because there had been a letter written there, as was reported all over town about it, and I noticed him particularly for that reason.

Q. I will ask you to state whether or not there was any reason for you to notice him particularly to find out whether he was sober or inebriated in any way?

A. Yes; on account of what had been said about a letter from Tyler, or Lake Benton, or somewhere; that had been talked over the town.

Q. That he had been on a spree?

A. Yes; and I paid more attention to his appearance than I would at any other time.

Q. Now, you went with him to the hotel door; did you stay there, or did you go away, after he came to the hotel door?

Mr. Manager DUNN. I object to this kind of an examination of this witness. I prefer he would not lead the witness.

By Mr. ARCTANDER.

I would ask you to state whether or not, before the Judge left you, you had any conversation with him in regard to when he would open court, and, if so, what it was?

A. I think while we were standing or walking in front—

Mr. Manager DUNN. I object to that.

Mr. ALLIS. What is the objection?

Mr. Manager DUNN. The objection is that you cannot make out your case by showing conversations between your client and your witnesses. He may say that he talked with him, but as to conversation which is directed to another branch of the case entirely, it is entirely improper cross-examination, it never can be admitted in any court; statements made by a defendant to his own witness in his favor are certainly inadmissable.

Mr. ARCTANDER. It is certainly part of the *res gestæ*. It is claimed that he was intoxicated that day; it is claimed that the Judge adjourned the court instead of charging the grand jury at that time,—that he adjourned court thirty minutes after he went back. Now I desire to show by this witness that he had a conversation with the Judge at the time in which he asked him whether or not the Judge would open court right off or wait until after dinner; the Judge told him he would go right up and open court and call the grand jury, so that if there was a deficiency of grand jurors he could issue a special venire while he was at his dinner, so as not to delay matters any more than was necessary, as he might be compelled to wait because of insufficiency of grand jurors; that it would be better to have the time consumed in taking his dinner occupied by the work incident to the special venire rather than to wait in court after dinner. I intend to follow that up by showing that on that statement Mr. Weymouth remained outside the hotel and waited until the Judge came out, and to show also how long the Judge was in the hotel before they all walked up to the court house.

The PRESIDENT *pro tem.* Your objection is to the counsel asking whether such and such a conversation occurred?

Mr. Manager DUNN. No; my objection is to giving any conversation at all which occurred between Judge Cox and this witness, as he is a

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witness called on behalf of the defense. It can be seen at a glance, if that class of testimony was admissible or proper, how a defendant in any case could fix up a conversation with a witness with whom we have had and could have had no conversation, and make any kind of a statement to the court as to his own actions. They can prove only the acts which were open to the public gaze, and as to which we have an opportunity to inquire and a chance to rebut; but things that were said between the defendant and this witness we cannot rebut. It would be impossible to obtain a witness by whom to rebut a private conversation between those two individuals.

Mr. ARCTANDER. May it please the court, if the Judge at the time had such foresight and such knowledge of what was proper, and if he had stated his reasons in a manner which was certainly very proper, I apprehend that that in itself would be evidence that Judge Cox, if he was intoxicaied there, as is claimed by the prosecution, was certainly not intoxicated to such a degree that he was unable to transact the business which he was there to perform. We have a right to bring out everything that Judge Cox did and said to show whether he was intoxicated that day. That is the question before the Senate; anything that will throw light upon this subject is proper to be introduced; anything that will show a dulness of his mind the prosecutors have a right to bring forth; anything that will show mental brightness, and show that the respondent was perfectly clear in his mind, we have a right to bring.

This is one of the circumstances,—the perfect clearness with which he acted under those circumstances,—the statements which he made to Judge Weymouth,—not only rational statements but ones which you or anybody else would khow not only that he had his wits about him, but that they were extraordinarily right. It certainly seems to me there can be no objection to it. There was no objection on our side when they tried to bring in anything that Judge Cox had said, or when they tried to bring up anything that he said to the deputy sheriff Hunter on that memorable evening, when in the dark, the witness Hunter was able to say that the defendant's eyes were bloodshot in the evening of a day on the 7th of November, 1879. We did not object to their showing what he had said there about breaking in the door. What was it allowed for? It was allowed to show what Judge Cox's condition was as to sobriety or inebriety. Now we have a right to show the whole transaction upon this matter, just as well as they have shown it or attempted to show what Judge Cox said or did, out of or in court. We have the same right to do it, and if the conversation he had with Judge Weymouth showed that he was a man that had full possession of all his faculties at the time, it is certainly a conversation we have a right to.

Mr. Manager DUNN. But the objection is that these are declarations sought to be introduced in his own favor. At a matter of course we can prove what he said because he can come onto the stand and make his own statements. These are declarations made by himself in his own favor and sought to be proved by their own witnesses,—that we have no opportunity of coming into court and denying, be they ever so false,—private conversation between the defendant in this case and the party they bring upon the stand. They seek to bring in here by this witness declarations in his own favor, as showing sobriety. The rule is entirely different as between the two declarations. When we introduced the declarations they were declarations showing the condition of the Judge, which they have an opportunity to rebut. We have no such opportunity in

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this case. It is exactly like a man accused of crime proving his innocence by saying that he was innocent to some individual and having that individual go on and say that he was innocent.

Mr. BRISBIN. If the court please, one moment. It has already been suggested by my associate that the reasons which make this testimony admissible of itself are that it is a part of the *res gestae*. Mr. Weymouth was allowed, and very properly, without objection, to show his conduct in passing over the bridge. We propose now to follow the respondent from that bridge, if you please, to the Exchange hotel, and from there to the court house, and show as part of the transaction what was said. It is not the rule and I think the gentleman himself will admit it is not the rule that you cannot show declarations in your own favor if they are accompanied by acts. It is a rule very common in criminal cases that the declarations are allowed in connection with acts,—declarations made immediately at the time when there is not so great an intervention of time as to make it presumable that the declaration was for the purpose of manufacturing evidence in the party's favor.

Mr. ARTANDER. This is not a declaration alone.

Mr. BRISBIN. That is what I am urging. It is a declaration or statement, however you will please to characterize it,—it is a statement accompanied by an act, characterizing the act, and we propose to go in that manner to the time which the other witnesses, the adversary, have testified about, for the purpose of contradicting it.

The PRESIDENT *pro tem.* I will overrule the objection unless the court determines otherwise. (To the witness.) You may state the conversation that occurred, but not as to any particular conversation that has been suggested by Mr. Arctander. Go on and state the conversation as it occurred.

The WITNESS. All that I recollect is that I asked Judge Cox or heard someone else ask him, and I presume I did myself, if he was going over then or not till after dinner.

I didn't know but what he might have got his dinner at Tracy; and he said he would go over immediately and see if the panel of the grand jury was full, so that if it was not a special venire could be issued and a sheriff could summon the jurors while he was getting dinner or to that effect. I don't pretend to give his exact words.

Q. I will ask you to state now when the Judge went into the hotel; what you did, whether you went off or what you did?

A.. Oh, I think I was shaking hands and talking with other parties that came in about the same time, probably on the piazza until he went in and left his baggage and then we went out and we all went over to the court house.

Q. Now, I will ask you to state how long a time was, it about, that elapsed between Judge Cox coming into the hotel and his coming out again and you all going over to the court house?

A. I think it was a very short time; it might have been time enough to put away his baggage and wash his hands and face perhaps, something of that kind, but it was a very short time. I know he went over as quick as a man could go after coming in from a ride and disposing of his baggage.

Q. Did you go up to the court house with him?

Q.. There was a crowd of us all went together; I don't know how near I may have been to the Judge; we all went up to the court house.

Q. Now, I will ask you to state whether or not you saw him when he came up on the stage at the court house.

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A. I have no recollection of seeing him stop up there; I was in the court house; I presume I may have seen, but I have no recollection of seeing him step up on the steps of the stage; it was a theatre, the court room was, and the steps went up on the stage part where they played.

Q. Well, you have no distinct recollection of anything unusual there?

A. Oh, I noticed nothing unusual.

Q. What is that?

A. No; I noticed nothing unusual, but I don't recollect particularly that I saw him walk up those steps, although I presume I might have been right there.

Q. Now, I will ask you to state whether there was any difference in the condition of the Judge as to sobriety or inebriety, between the time when you met him on the bridge and the time when you all walked up to the court room, and when he went into the court room and called the grand jury there and opened court?

A. I noticed nothing; I noticed no difference.

Q. You were there when he opened court and gave directions to the sheriff and the clerk in regard to the business?

A. I recollect distinctly I was there; I think I was a witness for a man or two that was being naturalized, and I remained in there so as to be ready whenever I should be called up. I know I didn't go out until he got ready to charge the grand jury; then I think I went out and went into Mr. Drew's office to take a smoke while he was doing it. I had heard his charge a great many times and did not care to hear it again.

Q. This about the grand jury was after he adjourned for dinner?

A. Yes; I remained in there until he adjourned for dinner, and was in there when he came back from dinner, but while he was charging the grand jury, my recollection is I went out; I am something of a smoker and I went right across the hall way and probably smoked a pipe while he was charging the grand jury.

Q. Well, you were in the first time when he gave the orders to the sheriff and clerk; state whether or not they were given in an ordinary manner, in as clear and distinct voice as usual?

A. I saw nothing to the contrary; the most that I recollect of what was said then, I remember the Judge found fault with the arrangement of the seating; the Judge's desk, and the clerk of the court, and perhaps a desk or table for the sheriff was upon the stage, and there were four very large windows right in front, or five; I don't know but there were five; I am not sure; I knew that they took up the whole side of the building almost; and he complained of the light and that he didn't like to be so high, and there was some talk of making another arrangement of the seats at that time.

Q. Now, I will ask you to state whether or not there was anything incoherent in his speech at that time or at any time during that afternoon, or the next day when you were there in court?

A. I noticed nothing of the kind.

Q. Now, what portion of the time were you in court; you have stated that you were in court on the first, until the adjournment, and then you were out when the grand jury was charged; when did you come again?

A. Immediately afterwards there were several parties naturalized immediately after the grand jury were charged, and I was there at that time.

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Q. Did you remain in the court room until the final recess that afternoon?

A. I couldn't say how many times I went out, but I was generally there all the afternoon except when the grand jury was charged; I don't remember of being away any length of time.

Q. Do you remember of being present when the case of Bradford against Bedbury, a replevin case, was tried?

A. Yes, my impression is that I was there when it was called, and my impression is that it didn't last very long; there wasn't much testimony; I think I was there nearly through the trial.

Q. The next day, the second day, what portion of the time did you spend in the court room?

A. I think I was there every day through the trial; I think I assisted in the trial of every case after the Bedbury case, until perhaps some of the last criminal trials, that I was not particularly engaged in.

Q. So that there was not a session during the court, at least of the first four or five days, at which you were not engaged in court?

A. I was present and engaged in the trial of cases all the time. Yes, there was one case I recollect now, a case of Main against the railroad company. I was not engaged in that, but I was paying some attention to it.

Q. So that you were present in court during the trial of that case, too?

A. Yes, I was present at that time.

Q. Now, I will ask you to state, Judge, what the condition of Judge Cox was, during those first three days, as to sobriety or inebriety while he was there in court?

A. I saw nothing to indicate inebriety. The judge, the first day, looked tired, worn and wearied, and improved the second and third days.

Q. The second and third days he improved?

A. He looked better, as he went on, than when he came in; I noticed he looked better the second day than when he came over.

Q. With the exception of that tiredness and weariness the first day, was there any difference either in his appearance, manner, language or conduct between the first three days or the first two days of the term, and the latter part of the term.

A. I saw no difference.

Q. I will ask you to state whether or not during any portion of the first week, with the exception of the weariness the first day, there was any difference either in his language, manner, actions, or conduct, from what it had been at other times when you had seen him, when you knew he was perfectly sober?

A. I saw no difference.

Q. What was his condition as to sobriety or inebriety as to the fourth or fifth day?

A. Well, I don't know that I observed any difference; I believe the fact was that the Judge didn't drink at all after a day or two; that is the recollectiion that I have about it; but still I didn't observe any difference in his manner.

Q. It did not make any difference in his manner?

A. After the first day or two, I have a recollection that he didn't drink any; there was some talk about it, but still I didn't observe any difference in his manner of doing business after that. The Judge some-

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times takes a drink, but I think the first day or two of that term he did not drink anything.

Q. Didn't drink a drop?

A. I think not; I have no recollection about it.

Q. Now, I will ask you to state whether or not during any time in this term during the first day or any of the other days of that term—you say the fourth or fifth day—there was any swaggering in the Judge, either in walking or sitting?

A. I didn't see any such thing.

Q. Was there any reeling in him when he was sitting on the bench.

A. No, sir; the Judge has a way sometimes when he is a little perplexed, of leaning back and dropping his eyelids; I don't know whether he did that way; I know he does sometimes do it, when a question comes up on the admission of testimony or something of that kind, after hearing arguments he sometimes will lean back and apparently think a little. There was no time—

Q. Well, there was no reeling in his behavior so that he would not be able to sit straightly or anything of that kind?

A. I saw nothing of that kind.

Q. I will ask you to state whether his eyes during any portion of that term had a puffed-up appearance?

A. I never saw them have that appearance as I remember.

Q. Never in his life?

A. I don't think I ever did.

Q. I will ask you to state whether or not you observed, after recess, that his face would be more flushed or puffed-up than otherwise.

A. I didn't notice anything of the kind.

Q. I will ask you to state whether or not it is a fact that the Judge, during that term of court more particularly did not expedite business in the usual manner; explain fully.

A. Yes, he keeps driving right along; he always does hurry up business; he is a man that transacts business rapidly.

Q. State whether there was any difference in his conduct of the business at this term of court than at any other term of court, so far as expediting business is concerned?

A. I think not; the weather was quite hot, and he might of had a recess more frequently than otherwise; but I don't remember. Perhaps witnesses would not come in and there would be a little lull, and the jurors might be allowed to step out; it was in the hottest part of the year —very warm—right in midsummer.

Mr. Manager DUNN. In June?

A. The 21st day of June was the day it commenced.

Q. Do you call that mid-summer?

A. It was the longest day of the year, I believe.

Q. Now, I will ask you to state whether there was, in the first three days, from six to twelve recesses during the day.

A. Well, I didn't count any recesses, but I don't think there were more than two in the forenoon, or two in the afternoon, and I don't remember that there was as many; I think there were two recesses the first afternoon, one when the Judge went to get his dinner, and one, perhaps, when they had got through the naturalization business, calling the jury or after calling the jury; if I recollect right, when they called the jury in the Bedbury case, the counsel on one side or the other, didn't expect the case would be taken up the first afternoon, and they were

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ready to go to trial, but not quite ready; I think they had to send out somewhere where Mr. Bedbury was at work on a building or something of that kind, and a short recess was taken, perhaps after the jury were called, I don't remember just when it was, but something like that.

Q. That is the only recess you can remember that day?

A. I am pretty sure that was all there were that afternoon.

Q. Now, during the second and third day, was there anything like from six to twelve recesses a day.

A. No; I don't think there was; if there had been I should have remembered it. I don't remember that there was anything unusual about it.

Q. About the recesses, at all?

A. No, sir; I don't. I have no doubt there was one or more recesses every afternoon or forenoon, but if there had been four I am sure I should have remembered it, but I don't remember any such thing.

Q. Do you remember when a recess was taken at five o'clock the first day after the Bedbury case was disposed of, and what that recess was taken for; it was taken the next day, I mean?

A. I think it was that time that they took a recess until early in the morning to give an opportunity to change the seats in the court room; the Judge's seat was taken from the same as this here (indicating) and brought down on that side of the building [to the right], and the jury sat back next to the stage and it made a completely new arrangement of all the furniture of the building. I understood that was to be done in the evening, and the court met enough earlier in the morning to make it up for not having an evening session. I think that is all.

Q. The court met at 7:30 that morning?

A. Yes; I am not certain there was any case to be taken up that night. We generally don't get to work much the first half day of our term in our county. The Judge generally gets in before dinner, and the charge to the grand jury and naturalization and those things generally occupy the first half day, so that we don't make much preparations for trials of cases until the morning of the second day, and don't generally subpœna our witnesses until the morning of the second day.

Q. When the Judge came upon the stand that afternoon was there any cuffing of the leaves of the statute books backwards and forwards more than usual as if he could not find what he was after?

A. I don't know; I presume there was a book lying on the table, and I don't know but the Judge, at the time he charged the grand jury,—

Q. No, that is not what I mean. Well, what were you about to say?

A. I think at the time he charged the grand jury he referred to some special statute about selling liquor to Indians—

Mr. Manager DUNN. Are you swearing to what you remember or what you suppose?

A. I think I saw him turn over the statute book, and that is all.

Mr. Manager DUNN. We object to any more volunteered testimony.

Q. Did you see anything like what I have stated, as if he had any difficulty in finding it?

A. No, sir, I don't recollect; I recollect he was appearing to be troubled with the light in his eyes.

Q. I will ask you to state, Mr. Weymouth, whether or not the Judge was at any time that afternoon in a stupor on the bench?

A. I didn't see anything of the kind.

Q. I will ask you to state whether or not his head seemed to settle down between his shoulders as he sat?

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A. I didn't see anything of the kind. The Judge is generally lively enough and erect enough, and I noticed no difference that time.

Q. You have noticed that he complained of the light; state what was the trouble there about the light, as a matter of fact. You have stated about the windows, but was there any trouble with the windows?

A. It was a very strong glare of light from five large windows right in front, and there were I think, some white buildings on the other side of the street,—that is, wooden buildings painted white, or Mr. William's store, or something of that kind.

Q. Reflecting from it?

A. Yes, sir; the street runs northwest, and the sun in the afternoon would shine upon the opposite buildings, and reflect over on those so as to make it a pretty strong light.

Q. You remember that there was a glare there then?

A. I remember that the room was very light, and remember the Judge speaking of it with reference to having the seats changed.

Q. That is not the county hall or the court hall in which there are permanent seats?

A. The seats were chairs and tables.

Q. Well, it is a regular town hall?

A. It is really built for theatres and dances; it belonged to Mr. Chittenden. The county has a building of its own now, but it had not at that time.

Q. I will ask you to state whether or not the Judge, during that afternoon, or during any of those first days, did not perceive clearly what occurred there; that he could not see a point as quick as usual, or how his conduct was in regard to that,—what his deportment was?

A. I don't know that there was anything of the kind; sometimes I complained of the Judge seeing a point too quick; I don't remember that he did any quicker, or that there was anything about it different from usual.

Q. Just about the usual thing in regard to his percieving points?

A. Yes, sir; I don't think he was slow about anything.

Q. How was it during the trial of that Bedbury case, about his seeing points that afternoon?

A. That case, according to my recollection, was a very short case; I noticed nothing unusual about it; I had been employed the winter before—if we had a term in December—to assist in trying that case, so it was a familiar one to me.

Mr. Manager DUNN. We object.

The WITNESS. I think there was but very little done in it.

Mr. ARCTANDER. What do you object to, Mr. Dunn?

Mr. Manager DUNN. I object to his volunteering testimony. You ask the question and I will take his answer, but we wish nothing more.

Mr. ARCTANDER. Well, I don't care about it. You may cross-examine.

CROSS-EXAMINATION.

By Mr. Manager DUNN.

Q. Judge, just two or three questions and I will be through. You are positive about that foot-bridge, are you?

A. Yes, perfectly.

Q. Have you taken any pains to ascertain, since this case was commenced, and since the other evidence in the case was introduced, whether that new bridge had been completed at that term of court?

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A. No, sir; I never took any pains any further than I recollect distinctly there was not any bridge there when that court commenced.

Q. Did you know before you went on the witness stand that the witnesses for the State had testified that the new bridge was completed? Mr. Sullivan testified to that effect.

A. No, sir, I did not.

Q. Mr. Sullivan built the new bridge, didn't you know that?

A. No, the town built it.

Q. Well, he was contractor?

A. Well, I think he was president of the village, but the town built it. I don't think Mr. Sullivan had anything to do with it unless to sell some lumber for it.

Mr. ARCTANDER. I don't think Mr. Sullivan testified to that.

Mr. Manager DUNN. Well, one of the witnesses did; perhaps it was Mr. Drew.

The WITNESS. Perhaps Sullivan furnished the lumber.

Q. You didn't know there was any testimony upon that point?

A. Not that I remember.

Q. You took no pains to ascertain whether it was built or not?

A. No, sir; I have not to the best of my recollection.

Q. You may state Judge, whether Judge Cox drank any intoxicating liquors at that term of court?

A. I am not sure, but I think I saw him drink once, early in that term and I may have seen him drink more. But I think I have a recollection of seeing him drink at one time in the fore part of that term.

Q. Which day of the term was that?

A. I couldn't tell. I know it was early in the term that is, that is my recollection.

Q. Whereabouts did he drink there?

A. My recollection is that it was at Mr. Hunt's bar; if I saw him drink at all.

Q. Well, didn't you drink with him once or twice?

A. I don't think I did. I think the time that I remember about, that I took a cigar and did not drink.

Q. Well, you were of the party that drank?

A. I think so I have a recollection of being in there; I think I can remember of somebody else that was in there getting a cigar.

Q. More than once?

A. No, I don't remember of seeing him drink anywhere else at that term.

Q. What was it that he drank there?

A. Well, sir; I can't recollect. I have no distinct recollection about it, except being in there at Mr. Hunt's with Judge Cox and some others and they got some beer or something, and that I took a cigar.

Q. Was there a preliminary call at that term of court?

A. No, sir; not what we would call strictly a preliminary call.

Q. Well, that is all; there was no preliminary call?

A. Well, I don't know what you mean by that; we had a chance to make our motions for judgment and everything of that kind, and to see if everything was ready for trial; but there was no going through and marking the cases for trial.

Q. I speak of the preliminary call as professional men speak of it: there was no regular call of the calendar, such as attorneys understand it?

A. No, sir.

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Q. Such as to go through and make a preliminary call undher te rules?

A. No, sir; I think not.

Q. When this case of Bradford against Bedbury was reached it was called peremptorily for trial was it not?

A. It was called and the Judge asked the counsel if they were ready for trial and both parties said they were, only I think Mr. Matthews said it would take a few minutes to send for his client or some thing, and there was a little recess to let him do it, but both parties were willing to go on.

Q. Then you say both parties were willing to take that up by consent do you?

A. No, I don't think it was any other way than,—the case was called and they were asked if they were ready.

Q. Didn't Mr. Matthews object to going on that day?

A. I think not further than that, that he didn't expect it to come up, and his witnesses were not in court and he was willing to go on if they were, and he let them send for Mr. Bedbury who was at work on Mr. Case's house.

Q. Well, he said he wasn't ready then, didn't he?

A. Yes.

Q. And the Judge insisted on his going on?

A. No, I don't know as there was any controversy about it. Mr. Matthews wasn't ready but would be ready in a very few minutes, and was immediately ready, and they went on, it was neither by consent nor with any objections as I understand it.

A. You say after the first day or two the Judge didn't drink any at all?

A. I have that recollection.

Q. Do you know whether there was any reason for his not drinking any at all?

A. I don't know but there was, there was some talk about his drinking, and it had got around in some way and he stopped off entirely.

Q. Do you know how it got around?

A. Not of my own knowledge.

Q. Didn't you know, Judge,—didn't you see the resolutions of the grand jury, in your bar meeting,—didn't you see them, signed by the members?

A. I presume I saw all the papers that related to that matter, where there was any but I didn't see them go to the Judge.

Q. You were in court then when the grand jury handed them in?

A. I don't think I was.

Q. Then you didn't pay particular attention to all the things?

A. Oh, I only attended to the business in which I was interested specially.

Q. You weren't attending particularly to the other matters except what you were interested in?

A. No, sir; except to take a general interest to see how things were going along.

Q. You say you were particularly interested to see how things were going along because a letter had been written saying that the Judge was intoxicated over in Tyler?

A. Yes, the boys were all drunk over there.

Q. Hadn't you been over there?

A. Yes.

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Q. Well, you knew how things were going?
A. Oh, I came away before they had the jamboree.
Q. Well. you were there?
A. I was there one night.
Q. Were you there one night when they had a dance?
A. I was there when they had some singing.
Q. You weren't there when they had the grand picnic?
A. I wasn't there when they brought in any bottles.
Q. Or when they passed the hat,—that occurred afterwards?
A. I know nothing about that; there was nothing of that kind occurred when I was there.
Q. You had heard something about it, and therefore you were on the look-out for the Judge?
A. It had been talked about; there had been some letters written over there, and a good deal of talk made about it.
Q. About that bridge; may you not be mistaken that the new bridge was in then, and that the time you saw him coming across that foot-bridge was the special term before that?
A. No, at the time of the special term the water was so high that the foot-bridge couldn't be there at all; for it was up.
Q. Well, you couldn't by any possibility be mistaken?
A. I think I am not mistaken.
Q. Then if there was in fact a new bridge in there, you didn't meet the Judge?
A. Oh, I met him; and I am sure I saw him coming over that bridge.
Q. Well, if you saw him at all, he came over a rickety footbridge, and not a new foot-bridge.
A. I might possibly be mistaken about the footbridge, but I know I saw him.
Q. Well, if you saw him at all, he came over a rickety footbridge, and not the new bridge.
A. Oh, he didn't come over a new bridge.
Q. One thing is just as clear in your mind as the other.
A. I am perfectly satisfied that he came over the old bridge, and that there was not a new bridge there.
Q. Just as certain as you are that you met him?
A. Yes, just as certain as I am about anything; I don't say that I am not liable to mistakes; I recollect that I didn't want to go over that bridge a step there, because I was in that condition; I was a little afraid of it.

Mr. ARCTANDER. Will the court indulge us in a recess of five minutes?

AFTER RECESS.

VIRGIL SEWARD,

Sworn as a witness on behalf of the respondent, testified:

Mr. ARCTANDER. This is under article 15.
Q. Where do you reside?
A. Marshall, Lyon county, Minnesota.
Q. What is your profession?
A. Attorney at law.
Q. How long have you resided there?
A. Since April, 1879.

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Q. You are a partner of Mr. Forbes then,—a member of the firm of Forbes & Seward?

A. I am.

Q. Do you know the respondent, E. St. Julien Cox?

A. I do.

Q. How long have you known him?

A. Personally acquainted with him since December, 1879.

Q. Since that time?

A. Since the general term in December, 1879.

Q. That was the term you first met him?

A. That was the first time I met him so as to become what you would call acquainted with him. I had been introduced to him before.

Q. Since that time have you appeared before him at every term of court in your county and in the surrounding counties?

A. No, sir; I have appeared before him in all the terms in our county, but not in all in the surrounding counties.

Q. Well, have you appeared at any terms in the surrounding counties?

A. Yes.

Q. How many?

A. Well, I appeared before him at the June term, 1881, in Redwood and Lincoln counties, and then some special business term down at St. Peter.

Q. And also at special terms in your own county?

A. Yes.

Q. I will ask you to state whether or not you were in attendance at the general term of court in and for Lyon county, held in the month of June, 1881?

A. I was.

Q. State whether or not you were continually in attendance during that term of court.

A. With the exception of during his charge to the jury, I was in attendance all the time,—except, perhaps, the time I was absent from the term, which would not exceed an hour altogether, with the exception of the charge to the jury.

Q. Altogether during the whole of the term?

A. The three weeks term.

Q. When did you first see the Judge when he came up that day?

A. I saw him about 1 or 1:15 in the afternoon.

Q. Where was that?

A. That was in the office of the Merchants' Exchange.

Q. The hotel?

A. Yes.

Q. The Merchants' Exchange hotel?

A. Yes, sir.

Q. Do you know how long before that, the train had come in?

A. It had not been in to exceed five or six minutes, I heard the train, and went down to meet him there.

Q. Were you in court when the Judge came into court that afternoon?

A. Yes.

Q. This time when you saw him in the Merchants' Exchange, was when he came into the hotel?

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A. He was in the hotel; I suppose he had just come in; he couldn't have been in long.

Q. How long a time elapsed between the time when you saw him come into the hotel and when you saw him coming into court?

A. Not to exceed a quarter of an hour.

Q. And you said you were in court all that afternoon, except the time that he charged the grand jury?

A. Yes.

Q. The second day what portion of the time were you in court?

A. I think I was there the whole time.

Q. The third day?

A. Through the term.

Q. The whole time, the third day?

A. Yes.

Q. Now, I will ask you to state whether, during any portion of that term, and more particularly during the first two days,—in short any portion of the term,—the judge was intoxicated?

A. He was not.

Q. I will ask you to state whether or not there was any difference in his appearance, his language, his conduct and deportment between the first two days of that term and the latter part of the term?

A. There was not.

Q. State whether or not there was any difference in his appearance, his actions, conduct or deportment, between this particular time,—more particularly the first days of the term,—and what that conduct, language, appearance and deportment, has been on other occasions when you have seen him when you knew he was perfectly sober?

A. You have got me mixed on that question; now I will ask you to have it repeated.

Q. Probably the question was mixed; we will have the reporter read it in order that you may answer it as it was asked.

A. I think I understand it, but I am not positive.

[The question was then repeated by the reporter.]

A. There was no difference.

Q. State whether or not that afternoon, or the second day, or any of the first portion of the term, there was any incoherency in the speech of Judge Cox?

A. It was plain enough for me?

Q. Well, did you observe any incoherency at all?

A. No, sir.

Q. It has been stated in evidence—and I desire to call your attention to the fact—by one of the witnesses, that Judge Cox's ruling in the case of Bradford against Bedbury, was evidence to the witness of his intoxication at the time; I desire to ask you whether or not you were one of the attorneys in the case?

A. Yes.

Q. Who were the attorneys for the plaintiff?

A. We were the attorneys for the plaintiff and got beat.

Q. Forbes & Seward were the attorneys for the plaintiff, and they were beaten?

A. Yes.

Q. Who were the attorneys for the defendant?

A. Matthews & Andrews.

Q. Now, I will ask you to state what that ruling was; you were there

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in court and tried that case; explain to this court what that ruling was about and what the ruling was?

A. The complaint alleged general ownership of property.

Q. A complaint in replevin?

A. A complaint in replevin; alleging general ownership of property. All the evidence of ownership we had was an iron-clad note, sometimes called a machine note; we sought to introduce that in evidence and it was objected to, and Judge Cox ruled it out. If he had allowed it to go in, I should certainly have thought he was drunk.

Q. Well, he ruled it out and gave his reasons for it, did he?

A. He said something about an iron-clad note not tending to prove any allegation of the complaint.

Q. Now, after that ruling had been made, what were the further proceedings in the case?

A. The Judge asked me if we had any more evidence to offer, and I told him we had not, and he ordered judgment for the defendant.

Q. That was the first afternoon of that term?

A. That was the first afternoon, Tuesday afternoon, June 21st.

Q. Now, I will ask you to state whether or not you were present during the trial of the case of Main against the Winona & St. Peter Railroad Company?

A. Yes, I was.

Q. The case that Mr. Lind tried there? A. Yes.

Q. Do you remember whether or not that was the second day of the term?

A. That was the second day of the term.

Q. Were you present when the Judge non-suited them in that case?

A. I was.

Q. I will ask you to state whether you paid any particular attention to the proceedings in that case?

A. I paid particular attention for reasons I can give you if you wish.

Q. Well, you may give them.

A. Well, we had been spoken to on that case, and had expressed an opinion that they had no case. After this they commenced the case, and of course we were interested to see whether we knew anything at all or not.

Q. Now, you say you were present when the Judge made a non-suit in the case, and heard him give his reasons for it?

A. Yes.

Q. I will ask you to state whether or not there was anything in the language used in making that order, or in giving his reasons for the order, that was in any way out of the way?

Mr. Manager DUNN. We object to that.

Mr. ARCTANDER. I can go through it all, if you wish me to.

Mr. Manager DUNN. I think that is calling for his opinion as to whether it was out of the way or not. I don't think that is legitimate evidence.

The PRESIDENT *pro tem.* You can ask what his appearance was.

Mr. ARCTANDER. I am now asking about his language. The witness Lind was allowed to testify that his language, in making the order in the Main case, convinced him that he was drunk.

Mr. Manager DUNN. Wasn't that upon cross-examination?

Mr. ARCTANDER. I believe not.

Mr. Manager DUNN. I think it was.

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Mr. ARCTANDER. It may have been, but that does not make any difference.

Mr. Manager DUNN. Well, then, you must not say he was allowed to do it. Let him state the reasons he had for calling him intoxicated.

Q. I will ask you to state whether the Judge, in making that decision, made any reference to, or dwelt upon the liability of the corporation as common carriers to passengers?

A. Do you mean laid any stress upon it?

Q. Yes?

A. No; he mentioned it and spoke of it.

Q. How did it come in; you may explain to the Senate what that case was about, and what remark he made, as near as you can recollect it.

A. The case of,—Charles W. Main was appointed administrator for a Norwegian—

Mr Manager DUNN. We object, that case is in writing somewhere, and I do not think it proper to have this witness state the case.

Mr. ARCTANDER. I didn't ask this witness to give the contents of any writing; I asked him to state what it was about. I suppose that is perfectly proper. If I had asked him to give the contents of the complaint there it would be different.

Mr. Manager DUNN I have no objection to his stating that it was a replevin action, or an action in tort, or anything of that kind.

The PRESIDENT *pro tem.* Well, you may state, Mr Witness.

The WITNESS. Charles W. Main as administrator of some Norwegian, I can't remember the name now, brought a suit against the Winona & St. Peter railroad company to recover five thousand dollars for damages for the loss of his life and for damages for the destruction of his team. It was shown upon the direct examination, that is, shown upon the cross-examination of the plaintiff's witness, that the party was some eighty to one hundred and sixty rods from a highway and was in fact a trespasser on the railroad.

Q. On the railroad track where he had been struck?

A. Judge Cox spoke of the liability of the corporation—

Q. Before you go any further I will ask you to state whether or not it had come out in cross-examination what the condition of the man was before he left town, before going on the track as to inebriety?

A. It was shown he was intoxicated before he left Tracy, or Walnut Grove. I am not sure but his condition at that time was not shown.

Q. Now, after that evidence came in what was the Judge's order?

A. Judge Cox spoke of the liabilities of railroad companies as common carriers as contra-distinguished from their liability to trespassers and strangers; he spoke of them; that they were not as much in duty bound to protect strangers as they were passengers. and toward trespassers they had still less duty.

Q. He spoke of the different degrees of negligence?

A. Yes, sir.

Q. I will ask you to state whether or not his language, in giving that decision, was coherent; whether it was given in a legal manner as legal opinions and decisions are given?

A. Well, perhaps I am not a judge,—it was, in my opinion.

Q. I will ask you to state whether anything the Judge stated at the time he came in there, was entirely irrelevant, or irrelevant at all to the issues or matters that came before him there?

A. Not that I could see at all.

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Q. I will ask you to state whether or not Judge Cox, during any portion of that term, swaggered in there, in his walking or sitting?

A. Well, what might be a swagger to some men, wouldn't be a swagger to Judge Cox; and I don't know that I could say that it was not a swagger; but there was nothing out of the way in Judge Cox.

Q. It was Judge Cox, anyhow?

A. It was Judge Cox, natural. For instance, I could point you to an occasion where there was no question about his being sober; I was arguing the law points in a case to him and he swung his chair completely around, his back to me, and took up a newspaper and paid no more attention to me during the whole case. It vexed me at first, but when he got through and gave his charge to the jury it was perfectly satisfactory. I was perfectly satisfied.

Q. You found that he covered all the points that you asked him, when he was reading the papers?

A. He was not different from any other time when he was perfectly sober, all that time.

Q. Now, while sitting on the bench during this term of court, at any time during the three days, was there any reeling in his deportment or behavior?

A. No, sir.

Q. I will ask you to state whether or not during any of the first part of the term there was any puffed up appearance in his eyes?

A. Not that I noticed.

Q. Did you notice anything flushed in his face, or that his face was more puffed up after coming from recess than it was at any other time?

A. Yes, I think he was more flushed when he came in from recess, I don't think there was a man that came into that room at recess during the middle portion of that day but what was flushed.

Q. How do you explain that?

A. It was very hot; these were all very warm days; the coming up a long flight of stairs would naturally flush them; I doubt if there was anyone there that didn't come up with a flushed face, but it was not from liquor.

Q. I will ask you to state if it was a fact that Judge Cox did not expedite business during this term, or any portion of it?

A. He most certainly did.

Q. Expedite it in the usual manner?

A. Yes, we had over seventy cases tried in three weeks,—not all of them tried, but disposed of.

Q. Was there any difference in his manner of expediting business in the first three days of the term from what there was in the latter part of the term?

A. Not after the first day, the first afternoon there was not much business done.

Q. There was an adjournment taken after the Bedbury case?

A. There was an adjournment taken some time after that; it was about 5 o'clock I should think.

Q. An adjournment taken until the next day?

A. Yes.

Q. Do you remember the occasion of that adjournment?

A. I do.

Q. What was it?

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A. Because there was no case ready for trial.
Q. And you adjourned next morning to what time?
A. 7:30 or 8.
Q. Now, I will ask you to state whether or not recesses were more frequent during the first part of that term than during the latter part?
A. I cannot state, Mr. Arctander, whether they were more frequent or not. I could state this,—that there were very few recesses taken at that time, but what were taken at the request of the attorneys or the clerk of the court.
Q. Whenever they were taken they were taken at the request of the attorneys or the clerk of the court?
A. Yes, generally; there might have been one or two exceptions, when Judge Cox ordered the recess on his own account or on account of the jury.
Q. I will ask you to state whether there was in the first two or three days usually from six to twelve recesses a day?
A. There were not.
Q. Do you remember how many recesses there were the first afternoon?
A. Two.
Q. What was the first one?
A. The first one was for the Judge to go and get his dinner.
Q. The second recess what was that for?
A. To take some fifty or more naturalization papers, I think along about 3:45, at least there were a great many foreigners naturalized at that term, on that afternoon, whether fifty or not, I don't know.
Q. And then they finally took a recess until the next morning?
A. I meant two besides the final adjournment.
Q. Then there were the two that you have mentioned, and then a final adjournment over to the next day?
A. Yes.
Q. Now, the next day how many recesses were there taken?
A. Oh, I couldn't state; there were two or three possibly.
Q. Any more than that?
A. No, sir.
Q. The third day was there any difference?
A. No, sir.
Q. About the same number?
A. Yes, sir.
Q. I will ask you to state how this Bradford against Bedbury case happened to be taken up the first afternoon.
A. Judge Cox came in after he had his dinner and stated to the court or the parties present that it was very late and he would dispense with the preliminary call, that he would go on with the call of the cases, and as soon as he found any case where both parties were ready for trial he should call a jury.
Q. Then he went on and charged the grand jury after that?
A. Yes.
Q. Then after that was done you went away to your office?
A. I was not there during the charge to the grand jury.
Q. You came back when they were charged, or about that time?
A. Yes.
Q. Now, at this time when the grand jury was charged, what did he do then?

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A. After the grand jury was charged?
Q. Yes.
A. He called the case of the State of Minnesota against David Bell; no, after the recess—he had a recess, I think, after he charged the jury, and after the naturalization papers; but the first work done in court was the case of the State of Minnesota against David Bell.
Q. That was just a motion in that?
A. Yes, sir.
Q. Now, after that had been done he came to a case, did he, this Bradford against Bedbury, did he?
A. Yes.
Q. When he called that case what was stated in court?
A. He asked if we were ready for trial; we told him yes; he asked Messrs. Matthews and Andrews if they were ready; they said they were; he said, Mr. Clerk, call a jury.
Q. He said "Mr. Clerk, call a jury," and went on and empanneled a jury there?
A. Mr. Matthews then got up and said he didn't suppose they would try that case that afternoon. Judge Cox made some remark about his saying he was ready, and he said "I am ready, but I will have to go and send for my client," and he turned to his partner and told him to go for Mr. Bedbury, and he went off and in about five minutes he came back and we proceeded to trial.
Q. You didn't see Judge Cox when he crossed the river, Mr. Seward?
A. No, sir, I did not.
Q. Did you at that time hold any official position in the village?
A. I was on the board, yes, sir.
Q. You were on the board of trustees there?
A. Yes.
Q. Do you know whether or not, at this time, a new bridge had been built across the Redwood river?
A. It was being built, yes, sir.
Q. Had it been built so that it was in use at that time?
A. To the best of my recollection, it had not.
Q. Do you remember what conveniences people had to get across the river at that time?
A. Prior to the high water when the bridges were washed out, we had a bridge direct from the Merchant's Exchange over to the railroad track, and then on to the Main street, which street the Merchant's Exchange fronts, there was a bridge; there was also another bridge across the Redwood river at another place, perhaps a quarter or an eighth of a mile apart. The upper bridge was broken loose during the high water and had floated down and had struck the lower bridge.
Q. The upper bridge was that by the hotel on the way to the depot?
A. Yes; where foot passengers go; it had been arrested by the lower bridge and there had formed a bridge capable of transporting wagons; that was the only way of crossing the Redwood river at that time with a team. The town board had built, or some one at their request had built a foot bridge across the Redwood river where this upper bridge was.
Q. Near by the Merchant's Exchange?
A. Yes; the one Judge Weymouth spoke of.
Q. Well, how was that; describe what that was?

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A. That was built of just a few plank laying down across, resting on some kind of studding, I don't know what; I had nothing to do with the building of it; it was just a temporary concern made of plank laid lengthwise.

Q. How wide was it?

A. I don't think it exceeded eighteen inches; I think in some places it was a foot wide.

Q. These planks were laid on horses, or something, in the river?

A. Yes.

Q. How did you get at it from the banks?

A. From the banks they had to go down steps made in the earth, perhaps five feet, four steps down in, so as to get on these planks.

Q. Were those planks laid loosely across there or were they fastened?

A. They might have been fastened in some way; they were not firmly secured at all.

Q. I will ask you to state, Mr. Seward, whether or not, in your opinion, a man walking across that bridge and being so drunk that he would stagger, could have walked over there, carrying a heavy burden, across these stringers without falling in the river?

A. I would hate to express an opinion, for I never saw anyone do it.

Q. You say that you were there when the Judge came up in the court first; I will ask you to state whether or not at the time the Judge went up on the stage he had any difficulty in getting up there.

A. I couldn't state one way or the other; I don't think I saw him going up.

Q. You don't think you saw him going up on the stage?

A. That is, not to remember it now.

Q. I will ask you to state whether or not the Judge, in coming from the court room or going on the stage, reeled or staggered in any way.

A. He did not.

Q. State whether or not the Judge, when he came upon the bench there, cuffed the leaves of the statute book forward and back, as if searching for something which he did not know how to look for.

A. If you change the word "cuff" to passing the leaves backward and forward, I should say he did; I don't know what you mean by the word "cuff."

Q. Passing the leaves forward and back?

A. I should think he searched there for several minutes.

Q. Was there anything unusual in his behavior at that time?

A. No, sir.

Mr. Manager DUNN. I understood the witness to say, if I am not mistaken, that he didn't hear the charge to the grand jury.

Mr. ARCTANDER. This was not when he charged the grand jury, but before.

Mr. Manager DUNN. (To the witness.) Am I mistaken in that?

The WITNESS. I didn't hear the charge to the grand jury.

Mr. ARCTANDER. This is not with reference to the charge to the grand jury; it was before, and the testimony of Mr. Drew was directed to that.

The WITNESS. The grand jury was not charged for some time after that.

Q. I will ask you to state, if he acted as if he had any difficulty in finding what he wanted there?

A. I couldn't say that; it is a very difficult statute to find unless

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you are very well posted on just what you want. I didn't notice anything in his manner.

Q. I will ask you to state whether or not there was anything in Judge Cox's appearance at that time which would indicate or make you to think that he would break down, that he was unable to proceed any further?

A. No, sir; there was not.

Q. Now, after recess; you went there, but went out after the grand jury was charged?

A. Yes.

Q. Now, state whether or not there was any difference in his condition when he first went in, and when he came back after that session?

A. Not perceptible to me.

Q. I will ask you to state whether or not on that afternoon at any time the Judge's eyes were closed, or that he was in a stupor for a moment, at any time?

A. All I can say is that I saw nothing of that kind; I couldn't say that he was not.

Q. State whether or not his head settled down between his shoulders, so that he was sagging?

A. Not to my knowledge anyway.

Q. What time of day, if at any time, would these windows up there trouble you during the first part of the term?

A. The windows troubled us until the middle of the afternoon, but the only way that I can account for it is that the sun was up about noon,—I can't account for it by the buildings across the street, but the buildings faced northeast, and they were large windows, perhaps not as large as these, in the front part of the building.

Q. Well, what was the result of it in the room?

A. It made it almost impossible to see from the back of the building where the stage was, from where court was being held, to the front part of the building where the witnesses, bailiffs, and other men that were frequently wanted—

Q. The matter was afterwards changed, was it?

A. It was changed and the court was held in the front part of the building, and the audience and spectators were placed in the front part.

Q. Two or three changes were made there, were they not?

A. Two changes were made, I think the second day from the platform, the stage, where Judge Cox and the clerk had their desks down on to the floor where the jury and the attorneys were. Then Friday, I, think, the fourth day, he changed back to the front part of the room.

Q. So that the Judge sat just the opposite way from what he had been during the first part of the term and turned his back to the windows?

A. Yes.

Q. I will ask you to state, Mr. Seward, whether or not there was any derangement of the Judge's mental faculties during any portion of that term; I mean so that he couldn't perceive a point as quickly as otherwise.

A. He certainly could and did perceive all the points that were necessary to carry on that court in a successful manner, if that is what you mean.

Q. Was there any difference from what it had been at other times.

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A. No, sir.

Q. This same Bradford against Bedbury case that you tried some months before came up on a motion for a new trial, did it not?

A. It did not.

Q. No, for a settlement of the case, I mean?

A. I say I did not; my partner thought there was a point in it.

Q. But you were there?

A. I was there, but had nothing to do with it; I considered that the only chance was to commence again, to make a complaint in the right way, and go ahead.

Q. You were there when your partner made an attempt to get the case settled?

A. Yes.

Q. I want to know whether Judge Cox called your attention to anything that had happened on the trial?

A. Judge Cox called Mr. Forbes' attention to an omission in the proposed case, which left out his asking me whether we had any more evidence, and our answer.

Q. He recalled that to Mr. Forbes about two months afterwards?

A. Well, it was in the special term in August.

Q. Your special terms were held rather late?

A. Some the latter part of the month, and some the first. It was the Thursday before the first Saturday in each month.

Q. You have stated, Mr. Seward, that you were present during all that term except about an hour or so. I will ask you to state whether or not at any time you heard Judge Cox say, upon a motion or some matters being raised in court, "Mr. Gale, did you ever hear of such a thing as that before?"

A. I did not.

Q. I will ask you to state whether or not the Judge's eyes during the first part of that term were dull or inexpressive?

A. Not that I noticed.

Q. You said that the recess was taken the first day after the Judge got dinner. State, Mr. Seward, whether or not Judge Cox was during this recess in your office, the office of Forbes & Seward, at all.

A. What recess do you speak of?

Q. The recess that was taken after dinner the first day.

A. My attention had not been called to that until very recently; to the best of my recollection he was not.

CROSS-EXAMINATION.

By Mr. Manager DUNN.

Q. There was quite a difference of opinion among the attorneys the first two or three days as to whether Judge Cox was intoxicated or not?

A. I do not know.

Q. Don't you know whether he was?

A. No, I don't.

Q. Don't you know there was a meeting of the bar called to consider that question?

A. There was no meeting of the bar called to consider his condition at that term of court.

Q. What was that meeting called for?

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A. The meeting of the bar was called to consider some resolutions.
Q. Weren't those resolutions connected with his condition?
A. The resolutions I believe did not specify any time or place, except on or off the bench; didn't refer to drunkenness any more that to integrity.
Q. The question as to whether or not he was intoxicated or otherwise was not suggested at that meeting?
A. I didn't say so, I presume it was.
Q. Wasn't that a question considered there?
A. Not his condition at that time.
Q. Not at that term?
A. No, sir.
Q. And you wish to say that question was not considered?
A. I say that was not the question at that bar meeting.
Q. Was not that considered there?
A. It might have been by some; I would not say that it was not, but I say that was not the question under consideration.
Q. What is the question?
A. The question was whether the grand jury had any right to present any resolutions to the Judge, censuring him for his conduct.
Q. What was the question,—whether the grand jury had stepped out of the line of their duty or not?
A. Yes, sir.
Q. That was the only question?
A. That was the question, and that is the way it was decided; of course his condition of intoxication both in the past and the present was brought up there; his record from the time that he first was elected, and perhaps before that, was brought up there.
Q. It was all talked there among the lawyers there at that time?
A. Well, it was talked over some; yes, sir.
Q. You were present at that meeting?
A. Yes, sir; I was.
Q. Can you state who were present besides yourself?
A. Yes.
Q. Mr. Allen was with him?
A. I think that was the name; I won't be positive. You are speaking now of the meeting of the bar at the banking house in the forenoon of Thursday, and the bar meeting on that evening?
Q. Yes, the meeting called by Judge Cox to consider the resolution.
A. Judge Cox requested the bar to meet him at his rooms at the Bagley House.
Q. And he said at the time he called the meeting, that if those things were so, he was not fit to be on the bench?
A. No, sir.
Q. Or words to that effect?
A. He gave no intimation of what was coming; he simply requested the members of the bar to meet him at his rooms at the Bagley House —M. E. Matthews, C. W. Andrews, A. C. Forbes, E. S. Jewitt, E. A. Gove, Charles Butts, Charles W. Ma?n, Frank L. Randal, Robert W. Coleman, H. C. Grass, A. G. Chapman, John Lind, Judge Weymouth, a man by the name of Kingsley; I think that was about all.
Q. Where was Mr. Kingsley from?

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A. He was on a visit to his parents; they lived in Marshall, and he resides in Fillmore county somewhere.

Q. Is he an attorney?

A. Yes, sir.

Senator POWERS. Chatfield?

A. Chatfield, I think.

Q. Did you not, at that meeting, in the presence of those gentlemen some or all of them, state "we must not go back on Judge Cox because he was drunk, because we have been drunk ourselves," or words to that effect?

A. I know what you mean, if you will allow me to state the conversation.

Q. Did you say that?

A. No, sir.

Q. Then you may say what you did state.

A. It was Thursday evening; I asked one of the opposition—the opposition in that case was this: the side that I was on was in favor of and worked to bring in a resolution deciding, or claiming or saying that we would have nothing to do with it; that the jury overstepped their bounds, and would have nothing to do with it; while on the other side were parties desirous of having it investigated; that is all the difference; some wished to have it investigated, while we claimed we had nothing to investigate, and our desire was to get it so unanimous that they would all join. I asked one of the members of the opposition, says I: "have you never been on a drunk with Judge Cox?" and I guess I mentioned at the time that I had. Says he "yes," but says he, "if the grand jury pass a resolution censuring me, I should get away." "Well," says I, "if they had passed a resolution censuring you, we would all stand by you, and now we want you to come round and stand by Judge Cox."

Q. And you wanted them to come round and stand by Judge Cox?

A. Yes. To decline to investigate any such charges.

Q. Did you state that to him, "Now we want you to come round and stand by Judge Cox" declining to investigate?

Q. I didn't say "declining to investigate."

A. "Stand by Judge Cox?" you put in. Now "declining to investigate;" that is not what you told them?

A. Yes, I think the resolutions offered told him what we wanted.

Q. Did you not, Mr. Seward, on or about the 22nd day of June, 1881, at the Lyon county bank at Marshall, in the presence of J. K. Hull, S. T. Howe, H. M. Burchard and M. Sullivan, state that if the grand jurors of Lincoln county did their duty they would indict E. M. Mahoney for selling liquor to an habitual drunkard,—to wit, E. St. Julien Cox, or words to that effect?

A. I did not.

Q. Did you tell him that, at that time, or at any time about the 21st of June?

Mr. ARCTANDER. We object to that because it is not a proper subject for impeachment. It is not material for any purpose whatever, whether or not Judge Cox is an habitual drunkard, and does not enter into the testimony of this witness as to whether or not he was sober or drunk at a particular time; anything that he might have said as to Judge Cox, or his opinion as to whether Judge Cox was an habitual drunkard or not

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should not enter into this case at all. I see very well what the object is. The managers have once been refused permission to show what Judge Cox's habits were as to drunkenness. The Senate rightously sat down upon it, and did so upon the strength of the authorities; now I say this is another attempt to sneak this matter in, certainly it is not consistent with the great dignity of the State to resort to the lowest and meanest of police court practices. No lawyer with any sense of honor about him will claim or maintain for a moment that it would be a proper cross-examination of this witness, or material to his testimony, to inquire whether or not he had said Judge Cox was an habitual drunkard, or that such a man ought to be indicted for selling liquor to him as an habitual drunkard, because whether he said it or not would make no difference; it would not be material to his testimony, it could not affect his testimony, as to whether or not Judge Cox was drunk or sober at this particular time. Now, the rule, so far as I understand it, with reference to impeachment is, that you cannot impeach a party or lay a foundation, except upon a matter that is material to the issue, and to the testimony of the witness.

It is not material to any issue upon which this witness has been called, whether Judge Cox was a drunkard or not. The only question is, was Judge Cox drunk or sober at this time; and if this witness had not stated at the same time that Judge Cox was drunk at that time, it would be perfectly proper as laying a foundation for impeachment to show that he said so. If he had said anything of the kind it would be material and pertinent to the issue upon which this witness is testifying, but this matter is not. I do not make this objection because I am afraid of this testimony, because the witness has already said that he did not so state; but I do it to purge the record of this, as I think, low-handed attempt to get in what is not proper, what cannot properly, and in a decent manner, in a suit, tried as lawyers ought to try one, come in; and save us the trouble and expense of sitting here to listen to four or five witnesses who would have to be called down to rebut something that is entirely immaterial. I think the time to object to it is here, and I object to any further testimony. I object to the question now put and move to strike out the question and answer right before where the answer came too hurriedly for me to object. I think there can be no doubt about it, and I don't think the managers will, upon second thought, claim that it is proper.

The PRESIDENT *pro tem.* I desire to submit that question to the Senate, as to whether the objection shall be sustained or not.

Mr. Manager DUNN. The only reason, may it please the Court, that I think this is pertinent is because it is in evidence here that Mahoney is a man that sold liquor there at that term of court, and that Judge Cox had been seen going in and out of that saloon and had purchased liquor there. Some of the witnesses for the State—I cannot recollect the names of them now—have testified to such a state of facts. Now, this witness is brought on the stand to prove that at this term of court the Judge was perfectly sober. I simply call his attention to this matter in this—I won't say to impeach him, for I don't care much about impeaching his evidence,—but it is called to his attention particularly so that he may refresh his memory and see whether Judge Cox was perfectly sober, for I propose to follow it up by other questions; and so I asked it in the first instance; and so it might be called an impeaching question. As to the habitual drunkard part of it, I can't conceive that the oppos-

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ing counsel is correct if he thinks I am intending, by this question, t prove that Judge Cox is an habitual drunkard. I do not intend to prov it by this question, and I don't think it is proper to do so, but I d think it is proper, taken in connection with the evidence that has gon before it, that at this very time that the witness has testified that th Judge was sober,—at this term of court, at the very time when the were discussing that it was on the 21st of June, Lyon county,—jus about the very term of court, that he was discussing the matter befor these gentlemen, and stated that if the grand jury that he has testifie brought in certain resolutions, did their whole duty they would indic one Mahoney for selling liquor to Judge Cox who was an habitua drunkard. I don't wish to take up time with it, however.

Mr. ARTCANDER. When was it?

Mr. Manager DUNN. The 21st day of June, 1881, and during the term of court.

Mr. ARCTANDER. I desire to call the attention of the Senate to the fact that the remark is said to have been made on the second day of the term, about which this witness has been testifying.

The PRESIDENT *pro tem.* The roll will be called by the secretary on this question. Those in favor of overruling the objection will say aye; those opposed no.

Upon the call of the roll it was discovered that a quorum was not present.

Senator CAMPBELL. I move a call of the Senate. Mr. President, I shall insist upon a call of the Senate because I believe it is the intention to hold an evening session, and we cannot do that without a quorum.

Senator HOWARD. I did not understand that question aright, and should like to have it repeated.

The CLERK. There is not a quorum present, senator.

The PRESIDENT *pro tem.* I will state to Senator Howard what the question is.

Senator HOWARD. I did not understand it, and would like to have it stated again.

The PRESIDENT *pro tem.* Mr. Manager Dunn asked the witness whether or not he used certain language. Mr. Arctander objects to it; and this is upon the question whether the objection shall be sustained. Those in favor of sustaining the question will say aye, and those opposed no.

Senator CAMPBELL. I am going to move an adjournment, and I do it upon the ground, after consultation with the counsel for the respondent, that if an evening session is held and witnesses examined he will have none present with which to proceed to-morrow forenoon, and upon that ground I move an adjournment to to-morrow morning at ten o'clock.

The PRESIDENT *pro tem.* The Senate now stands adjourned till to-morrow morning at ten o'clock.

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THIRTY-SIXTH DAY.

ST. PAUL, MINN., Feb. 22, 1882.

The Senate met at 10 o'clock A. M., and was called to order by the President *pro tem.*

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

Messrs. Aaker, Adams, Buck C. F., Case, Castle, Clement, Gilfillan C. D., Hinds, Howard, Johnson, A. M., Johnson F. I., Johnson, R. B., McCormick, McCrea, McLaughlin, Morrison, Perkins, Powers, Rice, Shalleen, Tiffany, White, Wilkins and Wilson.

The Senate, sitting for the trial of E. St. Julien Cox, Judge of the Ninth 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. Henry G. Hicks, Hon. O. B. Gould, Hon. L. W. Collins, Hon. A. C. Dunn, Hon. G. W. Putnam and Hon. W. J. Ives, entered the Senate Chamber and took the seats assigned them.

E. St. Julien Cox, accompanied by his counsel, appeared at the bar of the Senate and took the seats assigned them.

The PRESIDENT *pro tem.* Are there any resolutions or motions before proceeding to the regular order of business? If not, the counsel may proceed.

VIRGIL SEWARD

Then took the witness stand for further examination.

The PRESIDENT *pro tem.* (To Mr. Arctander.) Do you wish the question to be decided which was under consideration when the Senate adjourned?

Mr. ARCTANDER. Yes, sir. I don't think there can be any question as to what the question was at the time; but I suppose that, as there are Senators present now who were not present last night, it would be proper for us to explain our objections to the question and our reasons for the motion to strike out what had already gone before, inasmuch as it is the understanding that the matter is to be submitted to the Senate. I ask leave of the President so to do.

Mr. Seward, this witness, was called upon article 15, to testify as to the question of the sobriety or the inebriety of Judge Cox at a particular time, namely, at the general term of the district court held in Lyon county, in the month of June, 1881. That was all that was brought out upon the direct examination—that is, as to whether or not the Judge was intoxicated during any portion of the term. Upon the cross-examination the honorable manager (Mr. Dunn) asked him the question whether or not he had not stated, on or about the 22d of June, to certain persons, at the Lyon County Bank, in Marshall, that if the grand jury of that county had done their full duty they would have indicted one

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Mahoney for selling liquor to an habitual drunkard, to-wit, E. St. Julien Cox.

The answer of the witness came immediately, and it was no; that he did not use that language. Then the question was followed up with a further one as to whether or not he did not at that time, or about that time, state to these men, or some of them, those words, or words to that effect. I then interposed the objection, and coupled with it a motion to strike out the former question and answer. Now, my reason for moving to strike out was that it was not proper cross-examination. I claimed that the cross-examination should not go outside of the scope of the direct examination, and his direct examination was simply as to the question as to whether or not Judge Cox was intoxicated during that term in court, and not as to whether or not Judge Cox was an habitual drunkard. It was not pertinent to any testimony which had been given by the witness, nor pertinent to the issue in the case. If the witness had stated that Judge Cox was drunk at that time, it would have been perfectly proper, but this matter was irrelevant to the issue.

As I stated yesterday, and as I reiterate now, the answer to the question shows that we have nothing to fear from it, but I call the attention of the Senate to the fact that if this testimony is allowed to go in, it opens the door for the prosecution to bring in five or six, or perhaps a dozen men to testify whether this witness stated anything of the kind or not.

This is immaterial to the issue, and immaterial upon his testimony, because it is not proper to impeach him upon it; for it is not inconsistent with the statements he makes here in court, as to Judge Cox not being intoxicated during any portion of the term.

If this is a court it is to be guided by the rules which govern courts, and it is a well established rule that you can not cross-examine upon any matter that has not arisen in the direct-examination, unless to show statements which are contradictory to the statements made in the direct testimony, and unless you want to show the feelings of a witness, it would not be proper for the managers to cross-examine this witness and ask this question for the purpose of showing that his feeling is in their favor, and they could not show that he is hostile to them, and friendly to this respondent, because the language which they seek to draw out would not indicate a spirit of friendliness towards this respondent if he had used it. I say there can be no doubt that this is not proper cross-examination; I say it is not proper as a matter of impeachment, and I say that it is not pertinent to the matter concerning which this witness has testified. It looks to me as though it were an underhanded attempt to bring in what the Senate has refused to allow the managers to show by certain witnesses—as to whether or not the respon lent was an habitual drunkard. The Senate held, by an overwhelming vote, that they could not show habitual drunkenness in the way proposed, but that they must show it by specific instances.

It appears to me that it is as clear as daylight that this is improper. I protest against it, not because I am afraid of the consequences, but because it is proper that the matter should be eliminated from the record, —because it is right that an invitation should not be extended to the managers to bring in eight or ten men and have them sworn, to take the time of the Senate, and at a large expense to the State to show matters which would have no useful effect in the case.

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Mr. Manager DUNN. Mr. President and Senators, I did not expect that this matter would provoke any argument this morning. It was argued at some length last evening.

The most of the senators that were here then are here now; a vote was taken upon it but it lacked one or two of a quorum. I deem this question admissable and proper upon the cross-examination for these reasons: This witness' testimony is directed almost entirely, it might be said, to showing or tending to show that the respondent was entirely sober during the term of court at Marshall, in Lyon county. That has been the gist of his testimony, so far. Now, upon the cross-examination we endeavored to show by this witness, if it is possible, that he made certain statements at the time of this session of the court at Marshall that would be entirely contradictory to his present expressed opinion. We have endeavored to show it by asking a certain question, as to whether or not he did not at a certain time, during the session of that court,—at a time when the judge here was being talked about by the grand jury and by others, as having been intoxicated at the time,—that he did at that very time express an opinion, that if the grand jury had done their whole duty, they would have indicted a certain party who, it is in testimony by other witnesses, was the keeper of a saloon in that town, for selling whisky to this respondent.

Now, if the question stopped right there it would be admissable; the only portion of the question to which the counsel for the respondent seems to object, is that in relation to selling liquor to E. St. Julien Cox, because E. St. Julien Cox is an habitual drunkard; and it is upon that narrow issue that the counsel makes the argument here this morning,—merely because it may, by some possibility, induce some senator to believe that the witness is expressing an opinion that the respondent was an habitual drunkard. But that is not the gist of the question. The gist of the question is to show that this witness knew at the time that E. St. Julien Cox was purchasing whisky in that town from this man Mahoney, who it is in testimony here kept a saloon.

If the witness changes his opinion, upon that point; if he was charging the grand jury with not having gone far enough when they brought in their resolutions condemning the actions of Judge Cox; if in his opinion they had not gone far enough, but if they had done their whole dnty they would have indicted the saloon keeper, for selling whiskey to the Judge, it strikes me it might aid the Senate in forming a just estimate of the opinion of the witness on the main issue. Upon that ground we consider this testimony entirely admisable, if upon no other.

Mr. ARCTANDER. Mr. President, I desire simply to state this; if this question was put to the witness as to whether or not he did not know Judge Cox had been purchasing whisky of Mahoney at this time,or drinking whisky during this term, it would be a perfectly proper question upon cross-examination; and I should not object to it; but in the first instance, even that does not prove that the witness stated falsely, or stated what was not true, when he stated that Judge Cox was not intoxicated during that term, because he might buy whisky at certain times and still not be intoxicated at all in court. But if that question had been asked, I should not have objected to it, under the ruling of the Senate heretofore. This question does not call for anything of that kind; it calls for a statement as to whether or not he has said so and so without their first having asked him, whether he had seen him buy any

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liquor at Mahoney's or any other place. Besides that, I call the attention of the Senate to the fact that this question does not include anything as to this drunk; it has nothing to do with this drunk .

Suppose it is taken for granted that Mr. Seward made such a statement, what bearing would it have on this case? Would the statement, if he made it, that the man ought to be indicted for selling liquor to Judge Cox, he being an habitual drunkard, show even by inference, that the whisky had been sold at that term of court? Would it show even by inference that it had been sold at the term before that? Not at all; it is a general question. It may have been in court time, or out of court time, or at any time. My objection to this is that it is immaterial, it does not prove that Judge Cox was intoxicated at this time, nor does it tend to disprove the statement of the witness upon the direct examination in the least; nor is it contradictory of the statement that Judge Cox was sober at this term, and was not intoxicated,—because I apprehend a man may be even an habitual drunkard and still be sober occasionally. It does not prove anything at all. Take the whole question, as admitted for the sake of the argument, and still it does not amount to anything.

Senator CASTLE. Was this witness on the direct examination asked any questions concerning the fact as to whether or not the Judge was an habitual drunkard?

Mr. ARCTANDER. Not one word, sir; nor was there one word as to whether the Judge was drunk or not.

The PRESIDENT *pro tem.* The question will be upon the sustaining of the objection. The roll will now be called.

Senator CASTLE. Mr. President, is it necessary to call the roll upon that question?

The PRESIDENT *pro tem.* I think it is. Upon the roll being called those that favor sustaining the objection will answer aye, as their names are called, and those who are opposed to sustaining the objection will say no—

Senator CASTLE. Mr. President, I don't of course know the ground on which Senators can vote no on this objection.

The PRESIDENT *pro tem.* I don't think it is in order to debate the question.

Senator CASTLE. I am not debating, I have a right to make a statement I suppose at any time. There is no question it seems to me according to all well-settled rules, that a question cannot be asked a witness concerning a matter which has not been brought out upon the direct examination and is immaterial to the subject that his direct examination was pointed at. You might as well ask this witness if he had not stated that the grand jury of the county of Dakota ought to have indicted the Judge for habitual drunkenness; it would be just as material. Of course the importance of this is only manifest here with reference to the precedents established.

The clerk then called the roll.

The roll being called, there were yeas 7, and nays 17, as follows:

Those who voted in the affirmative were—

Messrs. Adams, Buck C. F., Castle, Gilfillan C. D., Johnson A. M., Perkins and Powers.

Those who voted in the negative were—

Messrs. Aaker, Case, Clement, Hinds, Howard, Johnson F. I., Johnson R. B., McCormick, McCrea, McLaughlin, Morrison, Rice, Shalleen, Tiffany, White, Wilkins and Wilson.

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The PRESIDENT *pro tem.* The vote being upon the question there were yeas seven, and nays seventeen, so the objection is overruled.

Mr. Manager DUNN. That ruliug will of course leave the answer that was given last night, in the record; he answered no to the direct question. The next question I asked was the same in substance as this question, but simply extending it in its scope.

The PRESIDENT *pro tem.* The substance of that question as I remember it was, whether or not this witness did not state while standing in front of a certain house to certain parties, that one Mahoney ought to have been indicted for selling liquor to an habitual drunkard.

By Mr. Manager DUNN.

Q. I will now ask the witness this question, did you not state on or about the 22nd day of June, 1881, at the Lyon County Bank, at Marshall, in the presence of J. K. Hall, S. D. Howe, H. M. Burchard and M. Sullivan, that if the grand jurors of Lyon county did their duty they would indict E. W. Mahoney for selling liquor to an habitual drunkard to-wit, E. St. Julien Cox, or words to that effect?

A. I did not; I would like to explain.

Mr. Manager DUNN. I have no objection to taking any explanation the witness desires to make.

The WITNESS. As I understand, the only answer I can give to such a question as that, is yes or no.

Mr. Manager DUNN. I suppose that to be the rule.

Senator CASTLE. That would be the only legal answer you could make.

Mr. Manager DUNN. But still I make no objection to any explanation which the witness desires to make.

The WITNESS. I know what you are driving at, but there was nothing like that.

Senator POWERS. If there is anything in the question calling for an answer yes or no, which would leave an improper inference, I would like to have the witness explain.

Mr. Manager DUNN (to the witness). You may give any explanation that you see fit.

The WITNESS. It was reported during the month of May, 1881, that Judge Cox had been on a drunk. We had a man up there in that town who was filling the Congregational pulpit, and from that time in May up to the term in June, he had divided his time between preaching the gospel and working up a boom against Judge Cox.

Q. What was his name?

A. Samuel J. Rogers. He had proposed to go before the grand jury, to make a charge against Judge Cox, and it was reported that the grand jury were going to indict Judge Cox for habitual drunkenness. I was talking with some of these men that you have mentioned. I couldn't say all were present. I remember Mr. Sullivan was there, and I remember the place, in front of the Lyon County Bank, right below our office. I made the remark then, in substance like this: That the only proper way that they could take cognizance of such an offense as that, would be to indict the saloon-keeper for selling liquor to an habitual drunkard. Whether I mentioned Mahoney's name or Johnny Lautenschlaeger's name, or Mr. Hunt's name, I couldn't testify; but it was merely as a question of *practice*. It had no reference whatever to that term of court,—the question of his drunkenness at that term of court

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was not mentioned, and it was merely whether the grand jury, *if they were* to take cognizance of that offense, how they were to do it.

By Senator POWERS.

Q. Did you express an opinion in reference to whether Judge Cox was an habitual drunkard in fact?

A. No, sir, I did not.

By Mr. Manager DUNN.

Q. Were you not talking about the fact that it was reported that Judge Cox was intoxicated in your town at that time?

A. I was not, nor was it talked of in my presence.

Q. What were you talking about then?

A. We were talking about the report that Mr. Rogers was going before the grand jury to make a charge against Judge Cox.

A. That was before the grand jury had reported was it?

A. That was before the grand jury had reported. I think it was Wednesday; the grand jury reported Thursday. There were some that thought from Judge Cox's charge,—to examine into the conduct of all the officers high or low,—that they had a right to indict him for drunkenness; not taking into account that it was not a statutory matter.

Q. You were giving your opinion simply as a lawyer?

A. I was, yes.

Q. And you are giving it now as to what is not a statutory matter?

A. I am stating what happened there, sir. That is the reason I made that statement; that the proper way to take cognizance of that, was to indict the saloon keeper. I wouldn't say I didn't say Mahoney. I wouldn't say I didn't say Hunt, but probably I said Hunt, because I saw Judge Cox in Mr. Hunt's, and I didn't see him in Mr. Mahoney's.

Q. You may state whether you saw Judge Cox drink alcoholic or intoxicating liquors during that term of court?

A. I can't say—

Q. Well, just answer the question, yes or no.

A. I can't say yes or no to that.

Q. Will you say you didn't see him?

A. No, sir.

Q. Will you say you did?

A. No, sir.

Q. Did you see him in saloons?

A. I did.

Q. Where liquor was sold?

A. Yes, sir; in *a* saloon; I wouldn't say I saw him in two.

Q. In whose saloon?

A. Jack Hunt's.

Q. Well, who is Jack Hunt; where does he live?

A. His wife runs the Merchants' Exchange hotel.

Q. Well, there is a saloon in that hotel, is there?

A. A bar-room; yes, sir.

Q. You don't know whether the Judge was drinking there or not?

A. I know at the time I thought he did.

Q. What day was that?

A. I think that was in the morning of Wednesday, before court; I am not positive; it might have been at noon Wednesday.

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Q. You testified you saw no difference in the Judge between the first two or three days of the court and the latter part of the term, did you?
A. Yes, sir.
Q. You were not in when he charged the grand jury?
A. I was not.

Examined by Mr. ARCTANDER.
Q. You were asked in cross-examination something in regard to these resolutions of the grand jury and the action that was taken upon them; I will ask you to state whether or not there was anything in the resolutions of the grand jury having reference to that term of court at all.
A. Not in the least.
Mr. Manager DUNN. I object.
Mr. ARCTANDER. As long as you bring it out, I suppose I have a right to follow it up.
Mr. Manager DUNN.. Well, I withdraw the objection.
Q. With reference to any drunkenness of the Judge at all at that term of court?
A. No, sir; there was not.
Mr. Manager DUNN. Now, we will give you notice that we will bring in the resolutions.
Mr. ARCTANDER. All right, sir.
Q. I will ask you to state what, if anything, the Judge said when he handed those papers over to the bar committee.
A. He stated that there was a resolution handed to him by the grand jury. He wished the bar to investigate it and report to him their conclusions, and added that if he had been guilty of the offense, or of the offenses charged, he should at once telegraph his resignation to the Governor.
Q. That was all he said, and then he left them?
A. Well, he said that Judge Weymouth, being the oldest member of the bar present, probably it would be best for him to take the chair. That is all he said about the resolution that I can remember.
Q. He left?
A. Yes, sir.
Q. He had nothing more to do with it at all?
A. No, sir.
Q. You stated in answer to Mr. Dunn that the bar passed a resolution finding that the action of the grand jury was ill-timed, and not within the scope of their jurisdiction?
A. Yes, sir.
Q. State whether or not there was anything else in that resolution except that.
Mr. Manager DUNN. We object to that. You may put them in; we would just as leave have the whole thing. Put in the resolution of the bar committee and we will put in the resolutions of the grand jury, and we will go to this Senate on that question. We want it.
Mr. ARCTANDER. You do?
Mr. Manager DUNN. Yes, we do. Put in your resolutions; they are on your records, on the records of the court; I have read them.
Mr. ARCTANDER. I maintain, Mr. President, that if it was proper for them to draw out any portion of that resolution upon cross-examination that it would be proper for us to show the whole thing.
Mr. Manager DUNN. Well, we want it shown. we don't object to it,

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but we want it shown in a legal manner. Put in the resolution of the bar committee and we will put in the resolution of the grand jury.

The PRESIDENT *pro tem.* As long as both parties are agreed, I suppose the senate will not object.

Mr. Manager DUNN. We don't object.

Mr. ARCTANDER (To the witness) Well, then you may answer the question.

Mr. Manager DUNN. No, I object to the question. I want him to put in the resolutions which the bar adopted, not what Mr. Seward thinks of what they are.

The PRESIDENT *pro tem.* You have the document then ?

Mr. ARCTANDER. No, sir; I have only got the printed copy.

Mr. Manager DUNN. Well, let me see it ; I guess I will admit the printed copy, I don t think I shall be technical about that.

Senator CASTLE. Mr. President, I move that all matters pertaining to the resolutions on direct and cross examination be ruled out. They have already been passed upon by this senate. We have got about as far from the questions at issue as is possible to get now. They are not germain to any charge nor any specification, and would not tend to prove directly or indirectly any or either of the charges; they are hearsay in any event. I am aware that the chair has stated, but I hardly think the chair intended so to rule, that we would sit here and take anything that these lawyers, representing the respondent and the House of Representatives might put in here. For my part I don't feel disposed to do so.

The PRESIDENT *pro tem.* I did not make any ruling.

Senator CASTLE. Well, I make that as a motion, Mr. President.

The PRESIDENT *pro tem.* The senate have heard the motion. Are you ready for the question.

Mr. Manager DUNN. Mr. President, on the part of the Board of Managers we would like to ascertain from the Senator, what he desires to rule out here in the question we have presented to the senate.

Senator CASTLE. All matters pertaining to those resolutions of the the grand jury of Lyon county.

Mr. Manager DUNN. Does the Senator propose to rule out the cross-examination of this witness here yesterday when he was not present and did not hear what it was ?

Senator CASTLE. I propose not to hear any testimony in regard to any matter which the Senate has already disposed of.

Mr. Manager DUNN. The cross-examination of this witness was directed to certain matters which occurred, as stated by him, at a certain bar meeting which did not bring out any objection from the other side; does the Senator want to rule that out?

Senator CASTLE. What I propose to rule out are matters not germain to the inquiry.

Mr. Manager DUNN. I would like to have the Senator point out what is not germain.

Senator CASTLE. The contents of those resolutions.

Mr. Manager DUNN. I can understand very well what the object of the Senator is, that we shall not take up unnecessary time with immaterial matters; that I am in perfect accord with; but this matter was brought out on yesterday, and the Senator will bear me and the managers out, that we were anxious to have this whole matter come out in this case in the first instance. We were shut out by their objection, but now they

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have opened the door for us to come in and we are willing to come in at that door at any time and any place we can.

Senator CASTLE. My idea is simply this, that we ought not to be compelled to set here any longer than is absolutely necessary. Certainly, no man, be he lawyer or layman, will pretend for a moment that the subject matter of these resolutions can cut any figure in this case. They would simply cumber the record and have a tendency, if anything, to confuse the minds of the members of the court. I will, if it is preferred make my motion more specific, that the subject matter of these resolutions shall not be enquired into, either upon the direct or cross-examination.

Senator HINDS. Mr. President, while the prosecution were producing their evidence against the respondent, these resolutions of the grand jury were offered in evidence. If received, the effect of the evidence would have been to convict upon opinion of persons, who thus expressed themselves without ever being brought under oath before the court, that would be simply hearsay. The matter now, however, stands entirely different; the respondent has produced witnesses and evidence that connect these resolutions of the grand jury with resolutions of the bar and also connect the witness himself with one or both of them, either as a witness or having reference to them, or something he has said or done. The cross-examination has showed this in part; re-examination has added to it. It seems to me that it is now right in the position it *is* competent for these resolutions to come before the Senate; because the witness is certainly connected with them by his own testimony.

Senator CASTLE. I would like to ask the gentleman from Scott, a question, when he can point out what effect those resolutions either of the bar, or the grand jury, could have upon the question of whether or not the Judge was drunk, at a term of that court, which it seems that neither of the resolutions of the bar, nor the resolutions of the grand jury refer to, I will concede the point.

Senator HINDS. This witness has said that his conversation with certain individuals, had reference to the proposed action of the grand jury in relation to this respondent. He has thus connected his evidence, that is, what he had then said, with a state of facts that he said related to a previous occasion, not to anything that had transpired at that June term. It is certainly competent for the prosecution to show that he is mistaken in that, by producing these resolutions, or by witnesses, to show that his conversation itself did relate to what was then transpiring.

Senator CASTLE. I would like to say to the Senator from Scott, that he is not answering the question at all. I have asked how that could, in any way, prove or disprove, that the respondent at that term of court was drunk? Suppose it were true or false, suppose, as a matter of fact, that Mr. Mahoney had sold a glass of liquor—put it a good deal stronger than it is proposed to do—had sold a glass of liquor to the respondent during the *term of court*, would that prove or disprove that he was drunk at that term of court? As the question is presented here, would it have any effect directly or indirectly, upon it? I am frank to say I can't see how it would.

Senator HINDS. The court has ruled it out once, when it was offered in chief, for the very reason that it would not prove that fact; but now it will prove whether this witness is mistaken in what he said at the

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time when the thing did transpire before him, as to what his testimony related to. He says that it did not relate to what was then transpiring, but to a previous May term.

Senator CASTLE. Now, while you are up will you——

The PRESIDENT *pro tem.* This is all out of order because our rule provides that questions shall be settled without debate unless we go into secret session.

Senator CASTLE. The questions that rule refers to, as I understand it, are interlocutory questions coming up in the trial; what I offer, is an order.

The PRESIDENT *pro tem.* That must be done without debate.

Senator CASTLE. The rule don't say so.

The PRESIDENT *pro tem.* I think it does.

Senator CASTLE. I don't so understand it, but I will abide the order of the chair of course.

The PRESIDENT *pro tem.* I have permitted this because I have been opposed to secret sessions as long as it did not go too far. The question will be upon Senator Castle's order. Are you ready for the question?

Senator POWERS. I would like to ask the honorable manager if they expect to prove by these resolutions, directly or indirectly, that Judge Cox was intoxicated at the term of court held in Lyon county, between the 21st and 30th days of June, 1881.

Mr. Manager DUNN. We propose to prove by these resolutions coupled with the oaths of, I think, perhaps twenty-three grand jurors,—if the Senate will let down the bars to the prosecution as they have done on the part of the defense, and permit us to put in the evidence that they think with us, that Judge Cox was drunk at that term of court; and that that was investigated by that grand jury, and twenty-three of them signed their names to those resolutions. We were prepared to prove that when in the discharge of our duty, we were introducing the evidence for the State; but the doors were shut against us and five witnesses were all we were allowed.

Senator POWERS. That he was drunk at the time charged in this article of impeachment.

Mr. Manager DUNN. Yes, sir; I say we will prove that by the grand jurors themselves that that was the subject of investigation. The resolutions, as I understand them, it is a long time since I have read them,—are couched in very courteous language, so as not to give offence to anyone; but the *gravamen* of the whole charge is the intoxication of the Judge at that time. That was the subject of investigation by that grand jury; and it was the matter which was presented to this bar meeting; and instead of an investigation by the bar meeting, they simply said that the grand jury had no business to investigate it, and whistled them out of court by the resolutions which appear on the record.

These resolutions which were submitted by the grand jury were never placed upon the records of the court, but were handed over to a bar committee and they held their meeting; they passed some resolutions and submlited them to the court, and the resolutions they passed were spread upon the minutes of the court.

Senator CASTLE. I would like to ask Manager Dunn one question. I would like to ask him if it is his opinion, as a lawyer, that that kind of evidence would be proper to prove a specific charge of drunkenness before this tribunal?

Mr. Manager DUNN. Not simply the resolutions themselves; no, sir.

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I admit that no mere resolution passed by any other body would do anything of the kind, but the resolutions, accompanied by the affidavits of the parties, by the oaths of the parties, will tend to prove it.

Senator CASTLE. Mr. Dunn, as a lawyer do you pretend to say that an affidavit, extra-judicial, taken before another tribunal, could be proper evidence before a tribunal of this character?

Mr. Manager DUNN. An indictment—

Senator CASTLE. Just answer that question, will you?

Mr. Manager DUNN. Well, that is not the question at issue here. A simple affidavit? no; but here is a body of men sworn to enquire into all offenses committed or triable in their county,—that is the grand jury; they make a presentment of the judge for certain matters, which, in their judgment, are offenses. That presentment is not spread upon the records; it is pocketed by the judge, handed over to a number of irresponsible lawyers to investigate with the statement as this witness states; that if guilty of the offense charged, he will telegraph his resignation to the Governor at once. These lawyers meet, but they do not investigate the charges, they simply form themselves into two factions, one in favor of investigation, the other simply in favor of saying that the grand jury had transcended their powers and duties, and that predominated.

Senator CASTLE. And that very offense you have made the subject of a charge in article fifteen, haven't you?

Mr. Manager DUNN. Yes, sir.

Senator CASTLE. And that is the offense upon which you have gone to trial, and concerning which you are introducing testimony to sustain, and that the respondent is introducing testimony to disprove?

Mr. Manager DUNN. Yes, sir.

Senator CASTLE. Now you are trying to prove it by what somebody else had done in reference to the said charge. That is the point, is it not?

Mr. Manager DUNN. That is not the point. The Senator states it very nicely, but that is not the exact point. The point we are arguing just now is as to whether or not this shall be brought in here as a matter of cross-examination of this witness. This witness has testified that those resolutions had nothing to do with the charge of drunkenness there; that that was not a matter that was represented in those resolutions.

Now, I think, we are prepared to show that by those resolutions themselves, they *did* have something to do with that matter. We are going to show by these resolutions that this witness is mistaken in the matter when he says that the statement he made near the bank there had nothing to do with the transactions then transpiring; but, as he stated, of some term previous to that. We have submitted to the Senate upon that question and have thought the question was disposed of, but it is now brought out by this witness upon the cross-examination and without objection from the other party, and the other party seeks to introduce certain resolutions of the bar committee which we are willing that they should introduce.

Senator POWERS. Now, right here; you deem the resolutions of the grand jury and the resolutions of the bar committee a kind of necessary key to open the door to other evidence which you regard essential?

Mr. Manager DUNN. Yes, sir; in a certain sense we do; but we are not strenuously fighting for those resolutions. The other side want to put in their bar resolutions; I say to them, no, but if you do put them

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in we shall ask leave to put in the resolution of the grand jury and pen up that whole question.

The PRESIDENT *pro tem.* Are the senate ready for the question? As many as favor the adoption of the order of the Senator from Washington will say aye.

The ayes and nays were then called for.

Senator POWERS. I would like to have it stated again what the resolution is.

Senator CASTLE. I will put it in this way. That the subject matter of the resolution adopted by the grand jury at the term under consideration, and the subject matter of the resolutions adopted by the bar, be alike ruled out, as evidence.

PRESIDENT *pro tem.* The roll will be called.

When the name of Gilfillan J. B, was called, he arose and said.

Senator GILFILLAN, J. B. Mr. President, I would like to be excused from voting.

The PRESIDENT *pro tem.* The Senator will be excused unless objection is made.

When the name of Senator Powers was called, he arose and said.

Senator POWERS. The simple fact that either party, the respondent or the managers, regard this as shutting out important evidence bearing upon this question, will lead me to vote "no;" and I vote "no."

The PRESIDENT *pro tem.* The vote being taken upon the question, there was "yeas" four, "nays" nineteen. So the order is not adopted.

The roll being called, there were yeas 4, and nays 19, as follows:

Those who voted in the affirmative were—

Messrs. Adams, Castle, Johnson A. M., and Perkins.

Those who voted in the negative were—

Messrs. Aaker, Case, Clement, Gilfillan C. D., Howard, Johnson F. I., Johnson R. B., McCormick, McCrea, McLaughlin, Pillsbury, Powers, Rice, Shalleen, Tiffany, White, Wilkins and Wilson.

The PRESIDENT *pro tem.* (to Mr. Arctander). You can put in your resolution.

Mr. ARCTANDER. (Handing witness a paper.)

Q. Is that the full text of your resolution?

Mr. Manager DUNN. There is but one resolution.

Mr. ARCTANDER There are two of them.

Mr. Manager DUNN. No, only one directed to the attention of the grand jury,. The other is directed to another meeting by somebody else.

PRESIDENT *pro tem.* While the witness is examining that, the chair will explain why it did not rule upon that question last night. I preferred that the Senate should do it; not that I had any doubts as to the legality of the matter, if submitted to a court of justice. But a great deal has been said since the commencement of this trial upon "whitewashing" and an attempt to exclude evidence, and I have observed from carefully reading the Page trial, that there were many things that were permitted in that trial that would not be admitted in a district court or any other court of justice. The question is as I have taken it to get at the bottom facts in this matter and for that reason I have admitted things here that I would not if I were a judge of a district court under Mr. Greenleaf's rules of evidence.

Senator CASTLE. Well, Mr. President, if you go outside a step where will you stop? If you go outside of the ordinary recognized rules of evidence one single step, where will the Senate stop?

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Senator RICE. Let us have the regular order.

Senator GILFILLAN, J. B. What is the question?

The PRESIDENT. *pro tem.* The question was asked if that was the full text of the resolutions of the bar meeting.

Senator GILFILLAN, J. B. Well, do counsel agree that it is, or do they disagree?

Mr. ARCTANDER. I don't know.

Mr. Manager DUNN. I don't know; it is simply a printed slip there and is not the record; they say that is the record; I don't know whether it is or not.

Senator GILFILLAN, J. B. Do you expect to show by simply letting the witness read it over and remaining silent?

Mr. Manager DUNN. There is a good deal there that is not in the resolution; I am speaking of the first resolution simply.

Mr. ARCTANDER. Well, that is all we care about.

The WITNESS. The resolution number one is the substance of the resolution passed by the bar on Thursday night.

Q. Is that a correct copy?

A. To the best of my knowledge, it is correct, except the preamble.

Mr. Manager DUNN. Well, I want the whole of it, Mr. Arctander.

The WITNESS. It is on the records.

Mr. Manager DUNN. We will bring the record down when we have our rebuttal.

Mr. ARCTANDER. You are willing then that whenever you introduce your resolutions in rebuttal,—your grand jury resolutions,—we shall have access to the record, and introduce that during your rebuttal?

Mr. Manager DUNN. Yes; I have no objections to it.

The WITNESS. There is one thing I would like to make a statement about. On Friday, there was a statement brought up here in cross-examination of Mr. Dean, to the effect that I had written to Tyler.

Q. That he thought you did?

A. I merely wish to deny that I ever wrote any such thing; if I had it would have been a lie.

Q. Well, Mr. Dean didn't say you had written it; he said he had heard.

Mr. Manager DUNN. Was that an explanation, or did he ask you anything about it, or was it something you volunteered?

A. I suppose it was volunteered. I just desired to make the statement.

CHARLES W. MAIN,

Sworn on behalf of the respondent, testified:

Examined by Mr. ARCTANDER.

Q. Where do you reside?

A. Tracy, Minnesota.

Q. What is your profession?

A. I am a lawyer.

Q. Do you know the respondent, E. St. Julien Cox?

A. I do.

Q. Were you present and in attendance upon any portion of the June term of the district court in and for Lyon county, in the months of June and July, 1881?

A. I was.

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Q. What portion?
A. I went up on Tuesday, and I think I came back on Saturday.
Q. That is, the first week of the term?
Q. Were you on the train with the Judge?
A. I don't know that I was. I didn't see the Judge on going up to Marshall from Tracy.
Q. But you went up on the passenger train that went up that night?
A. I don't remember whether I went up on the passenger or the 10 o'clock accommodation.
Q. Now, did you see the Judge at the opening of court?
A. I did; yes, sir.
Q. At the first opening of court, about noon?
A. Yes, sir.
Q. You were present in court during that first session until the adjournment for dinner, were you?
A. Yes, sir.
Q. Were you back there any time afterward in the afternoon?
A. I returned when court opened and heard the Judge's charge to the grand jury.
Q. Were you there any further that afternoon?
A. Well, I was in and out during all the afternoon; still I might not have been there all the time.
Q. The next day what portion, if any of the time, did you spend in court. You heard the whole of his charge to the grand jury?
A. Yes, sir; I did.
Q. The next day what portion of the time did you spend in court?
A. Well, I think I was there the most of the time; I might have stepped out occasionally.
Q. You didn't miss a session during that day?
A. No, sir.
Q. Did you have a case tried that day?
A. I don't remember the day that the case in which I was administrator was tried—Main against the Winona & St. Peter Railroad Company; I don't remember the day I was there.
Q. You were there during the whole of that trial?
A. Yes, sir.
Q. Now during the balance of the term up to Saturday, when you left to go home, how great a portion of the time were you in ?ourt?
A. Well, I was there most all the time; I had no other business there but to attend court.
Q. So that you wasn't away any session?
A. No, sir.
Q. I will ask you to state what the condition of Judge Cox was as to sobriety or inebriety during any portion of that part of the term that you attended from Tuesday until Saturday, both days inclusive.
A. Well, I never saw the Judge during that term of court or that week that I was there when I knew that he had been drinking.
Q. Well, did you have any idea as to what his condition was as to sobriety? A. I thought him perfectly sober.
Q. You had no doubt about it at the time?
A. No, sir, I had no doubt about it.
Q. You have do doubt now?
A. No, sir.
Q. I will ask you to state whether there was any difference in the

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Judge's appearance, conduct, language, manner or deportment, the first two days of that term and the last two days that you were in court,—say Friday and Saturday?

A. I noticed no difference.

Q. Have you been present at other terms of court that the Judge has held before this?

A. Yes. sir, I was present at a term prior to the June term; I think it was the December term, 1880.

Q. There was not any term there then was there,—that was at the time of the snow blockade?

A. Well, I was in attendance at the term prior to that, but I had no business before the court; I don't remember just when it was. I went up there and stayed during the court week and then went home.

Q. You remember you had attended one term before in that county?

A. Yes, sir.

Q. What time it was, whether in spring or fall, you don't remember?

A. I don't remember now.

Q. I will ask you to state whether or not there was any difference in the condition, appearance, language, demeanor or deportment of the Judge at this term from what it had been at this prior term when you had been present?

A. I noticed no difference.

Q. I will ask you to state whether or not there was any incoherency in the speech of the Judge during any portion of that term?

A. I could understand him.

Q. Well, did you notice anything?

A. No, I noticed nothing indistinct in his utterances.

Q. Any different from what it had been before or afterwards when you heard him?

A. No, sir.

Q. You think you were present during all the time of the hearing of the case?

A. There was only one case in which I was plaintiff. There was two on the calendar, but there was only one tried, and that went off on a motion for a non-suit.

Q. Was that the case Mr. Lind was your attorney in?

A. Yes, sir, and Mr. Randall.

Q. You stated you stayed in court during the trial of that case?

A. Yes, sir; I was on the witness-stand; I was the administrator in the case.

Q. Were there any rulings by the court as to the admissibility of evidence during the progress of the trial?

A. Oh, yes, there were several rulings made.

Q. I will ask you to state what there was about those rulings, whether or not they were, muddled, clear or otherwise.

A. Well, in my judgment they were good rulings.

Q. Well, in what manner were they delivered?

A. They were delivered in the ordinary tone, as clear as ordinary rulings are given. I noticed nothing indistinct about them, nothing irregular.

Q. Were you present at the time when the Judge gave his reasons for the decision upon the motion for non-suit?

A. Yes, sir.

Q. State whether or not he stated anything there that was not entirely relevant to the subject matter.

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A. Well, as I said, he spoke something about the duty of common carriers of passengers; but it was not connected with the ruling at all, as I understood it. It was merely a remark.

Q. A comparative remark or otherwise?

A. Yes, I think so; that was my understanding.

Q. Comparing their duties under different circumstances?

A. Yes, sir.

Q. I will ask you to state whether or not there was any evidence before the court when the plaintiff rested, in reference to whether the man had been in a state of intoxication at the time he was killed?

A. There was a certain amount of evidence, which I think had been drawn out by cross-examination to that effect. There were two or three witnesses upon the part of the plaintiff, who were not present, who were telegraphed for, but failed to come.

Q. That had come out on the cross-examination?

A. Yes, sir.

Mr. Manager DUNN. What! the other witnesses were not present?

Mr. ARCTANDER. Oh no; the fact of this man being intoxicated at the time, or immediately prior to the accident.

Q. Did I understand you to answer my question as to whether or not this matter about their liabilities as common carriers, or any other thing, came in irrelevantly in giving the decision?

A. My impressions are that they did not; I took no interest in the case to speak of.

Q. It didn't strike you that way?

A. No.

Q. I will ask you to state whether or not the Judge at this term of court, while you were there,—whether his eyes had a puffed up appearance at any time?

A. I noticed nothing peculiar about his eyes.

Q. Or any puffed-up appearance in his face at any time?

A No, sir; not to my knowledge.

Q. I will ask you to state whether or not there was, the first three days, more than the usual number of recesses, say from six to twelve during the day.

A. I did not count them, but there were a number of recesses taken.

Q. Well, was it anything like about six to twelve recesses?

A. Well, I couldn't testify as to how many recesses there were.

Q. Do you know what occasioned the recesses whenever they were taken?

A. My impressions are that the attorneys were not ready with their cases; that the recesses were taken until they could get their cases ready.

Q. You mean to get witnesses?

A. Yes, sir.

Q. Or books or papers.

A. Well, there were different things, I don't remember the individual instances.

Q. I think you stated you were in court when court opened the first time there in the afternoon?

A. Yes, sir.

Q. You were in there when the Judge came in were you?

A. Yes, sir.

Q. I will ask you to state whether or not the Judge had any diffi-

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culty in getting up on the stage; did he reel or stagger, in any form, shape or manner?

A. I saw nothing of that kind.

Q. Did you see him walk?

A. I think I was present when he came in; I was present during the whole charge to the grand jury.

Q. I have more particular reference to the first time when he came in?

A. When he called court before dinner?

Q. Yes.

A. Well, I don't distinctly remember whether I went in ahead of him or whether I followed him.

Q. Well, you saw him walk while going or coming did you not?

A. My impressions are that I was there when he came in to open court.

Q. Well, state whether or not he staggered in any way?

A. I saw nothing of that kind.

Q. I will ask you to state how the business was carried on during those three first days compared with what it was at other times.

A. I think business moved off in the usual manner,—perhaps there were more adjournments than usual, more recesses rather.

Q. I will ask you to state whether there was any similar difficulty in the Judge's mind so as not to enable dim to perceive what occurred as clearly as other times?

A. I noticed nothing of that kind.

Q. Did you notice any occasion at which it seemed that he was not able to grasp or see a point as quick as usual?

A. No, sir.

Examined by Mr. Manager DUNN.

Q. You are an attorney?

A. Yes, sir.

Q. Where do you live?

A. Tracy.

Q. Did you see Judge Cox before he went to Marshall that morning?

A. No, sir; I did not. I don't remember as to whether I went up on the freight or the passenger, I went up that day, I don't remember whether it was on a freight or passenger.

Q. You don't remember that you went on the same train with him, do you?

A. I know this that I did not see him on the train.

Q. Don't you recollect that the business car of the road, Mr. Sanborn's car, was on the train that day, and that he was in that car?

A. Well, if I went up on the freight, I would not remember that, because I would leave Tracy at 10 o'clock.

Q. You were there in court you think, when he came in?

A. Yes, sir.

Q. You heard his charge to the grand jury?

A. Yes, sir.

Q. What time of day did he charge the grand jury?

A. It was about 1 or 2 o'clock, I think; between 1 and 2. It was after our dinner.

Q. Did he open court before dinner, or after dinner?

A. My impressions are that he opened court before dinner, and returned to the hotel and we got our dinner and then—

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Q. Do you know that he went to the hotel and got dinner?
A. No, I don't. I don't think I stated so; I said "we."
Q. Did he go with you to get dinner?
A. No; I stated that we went and got dinner.
Q. You went out and left him in the court room?
A. I returned to the hotel and got my dinner, I think; some of the other attorneys went with me.
Q. What hotel did you go to?
A. The hotel kept by Mr. Hunt; I think it is the Merchant's Exchange.
Q. The Judge didn't go with you, did he?
A. He might, and he might not.
Q. Well, did you see him there at dinner that day?
A. I don't remember that I did; he might have been there, and I might not have seen him.
Q. I asked you if you saw him there?
A. Well, I would not state positively.
Q. Well, what is your impression on that?
A. My impressions are that he was there to dinner.
Q. With you?
A. Oh, he might not have gone with me.
Q. Well, I mean when you were there?
A. I think that he returned from the court room and went to the hotel to get dinner at the usual hour.
Q. With you?
A. No, he didn't start with me.
Q. Did he go right out of the court room?
A. Well, I didn't watch his movements; my impressions are I saw him there at the hotel at dinner time in the dining room.
Q. What time did you get your dinner?
A. I think it was a late dinner; something after 12 o'clock; something between 12 and 1, I think.
Q. What time did court first open that morning?
A. Well, I think it was nearly 1 o'clock; I don't think we got our dinner much before 2 o'clock.
Q. Now, you heard his charge to the grand jury?
A. Yes, sir.
Q. You watched it closely, did you, to see whether it was incoherent or not, very close?
A. No, I didn't watch it very closely; I watched it as close as I usually do Judge in making a charge.
Q. Now, do you recollect any particular features of that charge?
A. Well, I remember rather a sweeping clause in it relative to finding indictments against all parties for any crimes or misdemeanors.
Q. That is about all you remember about it?
A. Well, outside of that I think it coincided with other charges.
Q. Well, I am not asking your opinion now,—I don't want any opinion as to whether it coincided or not; I am asking you as to what you remember; do you remember any other feature of the charge than that, any other thing that he said?
A. No; I don't know that I do.
Q. Do you remember of his charging the jury at that term, about selling liquor to Indians?
A. Yes.

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Q. You remember it; do you remember his charging the jury at that term, upon any other particular point at that term?

A. Only as I have stated.

Q. Now, you remember his charging the jury relative to selling whisky to Indians, do you?

A. Whether I do or not? My impressions are that I do.

Q. Now, what did he say in that connection?

A. I don't remember; I couldn't give his charge to the grand jury.

Q. Do you remember a single word that he said in that connection?

A. Well, I don't suppose I could state a single word, but I remember the general charge,—I remember the charge, generally speaking.

Q. Do you remember anything about what section of the statute he read, if any?

A. I think he read the statute; I don't know what section that it is in.

Q. Do you remember what sections, if any, he did read?

A. He read from the statutes; yes, sir.

Q. Well, what did he read from the statutes?

A. I don't remember.

Q. Did he read more than one section or two?

A. I couldn't state how many sections he did read.

Q. Well, your recollection of that charge is very indistinct, isn't it, Mr. Main?

A. Well, I have a general recollection of it.

Q. Isn't it a fact that your general recollection simply consists of the fact that you was there, and the Judge charged the grand jury,—Isn't that about the recollection you have of that charge?

A. Oh, no.

Q. Well, then, can you give me anything else you recollect?

A. I can't give you a verbatim account of the Judge's charge to the jury.

Q. I am not asking you for a verbatim account, I am simply asking you if you can tell me the nature of the sections of the statute he read if any, and you say you can't.

A. I remember of his reading from the statute.

Q. Upon what subject?

A Oh, I don't remember how many sections he read.

Q. Upon what subject did he read from the statute at that time if you remember?

A. Well, I don't remember what section it is in; it is the usual charge to the grand jury read by all the Judges I think, or nearly all.

Q. Well. what are the usual sections, now?

A. I don't know.

Q. Well, then how do you know it was the usual sections if you don't know what they are?

A. I remembered it as being similar to others.

Q. If you don't know what they are, will you tell the Senate how you know it was the usual sections?

A. I know nothing about it, only that it coincides with other similar sections.

Q. Now what was done after the charge to the grand jury?

A. I don't remember the title of the first case called, I had no interest in the case, my impression is I left after the charge to the grand jury during the trial of the first case.

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Q. What was done between the trial of the first case and the charge to the grand jury?
A, I don't remember what was done.
Q. You didn't stay during the trial of the first case did you?
A. I don't think I stayed all the afternoon.
Q. Do you know what case was first called?
A. No, sir; I do not.
Q. You were not paying much attention to that court were you?
A. I had no interest in cases I was not interested in.
Q. Had you taken a few drinks that morning yourself before you went up to that court, sir?
A. Well, I don't know whether I had or not; it is owing to how I felt?
Q. Do you recollect whether you had, or not?
A. I might have.
Q. Did you drink with the Judge that morning?
A. No, sir; I don't think I did.
Q. Do you know that you didn't?
A. I don't remember of having drank with the Judge that day?
Q. Did you drink with him the next day?
A. I don't think I drank with him during the term.
Q. Did you see him drinking?
A. I don't remember that I did.
Q. You don't remember that you didn't, do you?
A. No, I didn't follow him around to see how many drinks he took.
Q. What was done the next day in court?
A. The next day the case in which I was administrator, came up.
Q. Now, that day the case in which you were administrator; did that come up on the second day?
A. I think it came on in the second day.
Q. You are positive of that are you?
A. No, I am not positive; that is my impression.
Q. If that case didn't come on the second day of the term. what took place in court?
A. I think this case I spoke of occupied a part of the time the second day.
Q. What occupied the other part of the time?
A. I don't remember the case.
Q. Now that was a case in which you were administrator for whom?
A. Well, for Ole Elefson.
Q. When were you appointed administrator?
A. He was killed in the fall of 1879, and I was appointed in the winter, I think.
Q. When did you bring this action?
A. Well, Mr. Lind brought it in 1880, some time.
Q. You are an attorney, you say?
A. Yes, sir.
Q. That action was brought with your consent, was it?
A. Well, I was not consulted upon that, at all.
Q. How was it brought then in your name, without your being consulted?
A. Well, I was administrator; appointed for that purpose in order to bring the suit.

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Q. You were appointed for that purpose in order to bring the suit? Didn't you qualify as general administrator?

A. Yes, sir.

Q. Were you appointed as administrator simply to bring a lawsuit?

A. I was appointed by the judge of probate.

Q. Were you not appointed in the manner of all administrators?

A. Yes, sir; but that was the simple object of the appointment.

Q. There was no estate?

A. There was none to speak of; no necessity for an administrator only for that purpose.

Q. You investigated the matter, didn't you, before you were appointed administrator?

A. No, sir; I did not.

Q. You were prevailed upon, I suppose, by the heirs of the estate, to be an administrator?

A. I was asked to be an administrator by some one; it was necessary to have an administrator, and I was appointed; the action was brought in my name; further than that, I had nothing to do with it.

Q. Were there any funds to pay costs with if they got beat?

A. Well, I paid all the costs there were, myself.

Q. And it was a kind of a speculative case, wasn't it?

A. I don't know; it might have been, on the part of the attorneys.

Q. Well, wasn't it on your part?

A. No, sir.

Q. You paid the costs out of your own pocket, did you?

A. I paid a *part* of the costs; I guess the balance has never been paid?

Q. I don't know; there was no estate outside of his right of action against the company.

Q. Did you know when that action was commenced, that your principal was intoxicated at the time he was killed?

A. Well, I don't suppose I had any evidence of that fact, but I knew the place he was killed; he was killed upon the top of an embankment ten or twelve feet high, I should judge; and only from that do I know he was intoxicated.

Q. And you had no knowledge at all of his condition at the time of his being killed, when you commenced the suit; you didn't investigate it, did you?

A. Well, I investigated it in behalf of Mr. Lind and Mr. Randall, to a certain extent.

Q. And the Judge nonsuited you, did he?

A. Yes, sir.

Q. And you thought his rulings were all right?

A. Yes, sir.

Q. Can you tell anything that was done in that court except the trial of this case and the charge to the grand jury, during the time you were there?

A. I had two other cases myself.

Q. Well, what were they?

A. One was the Davenport Plow Co. against Torkelson. Mr. Matthews and myself were the attorneys in that case. There was a demurrer and a motion to vacate.

Q. What day was that motion heard?

A. I think it was the third day of the week.

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Q. Was it heard after the resolutions of the grand jury came in there or before.
A. I think it was before; I took no notice of the dates.
Q. What was the other case?
A. The other case was an appeal case of Rierson against Torkelson.
Q. What was done with the case?
A. The judgment was reversed.
Q. Do you know any other thing that took place in that court, except the disposition of those cases in which you were interested and the charge to the grand jury?
A. Oh, I know that they tried cases all along.
Q. Well, what cases did they try?
A. They tried some five cases.
Q. Do you know the titles of them?
A. They were against the Winona & St. Peter railroad company, I was not interested in them.
Q. You noticed nothing wrong about the Judge's condition at all there did you?
A. No, sir.
Q. You thought he was perfectly sober, didn't you?
A. Well, I saw nothing to the contrary.
Q. Well, you testify that he was perfectly sober there, do you?
A. I don't think I testified to that.
Q. Well, do you; I ask you the question was he perfectly sober?
A. For aught that I could see.
Q. That is not the question,—was he perfectly sober; I don't want "for aught you could see"; but was he in your opinion perfectly sober?
A. Yes, sir, he was in my opinion perfectly sober.
Q. Every day that he was there?
A. During court, yes, sir.
Q. And out of court?
A. Well, I never saw him out of court when I thought he was under the influence of liquor.
Q. But you have seen him under the influence of liquor at other times?
A. Yes, sir.
Q. So you are able to judge?
A. Yes, sir.
Q. You have seen him intoxicated?
A. Yes, sir.
Q. Frequently or infrequently?
A. Only once.
Q. That was not in court?
A. That was not in court.

FRED GLEY,

Sworn on behalf of the respondent, testified.

Examined by Mr. ARCTANDER.
Q. Where do you reside?
A. Marshall, Lyon County, Minnesota.
Q. What is your business?
A. I am bookkeeper in a store there.

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Q. Where did you reside before you moved up to Marshall?
A. New Ulm, Minnesota.
Q. Do you know the respondent E. St. Julien Cox?
A. I do.
Q. For how long a time have you known him?
A. About 12 years.
Q. Were you at Marshall at the June term of court, 1881, held there?
A. I was.
Q. Did you see the respondent there at any time of that June term?
A. I did.
Q. What day of the term did you first see him, and at what time of the day?
A. I saw him I think on the 21st day of June, the first day of the term anyhow.
Q. What time of the day?
A. About half past two in the afternoon.
Q. Where did you see him then?
A. I saw him in front of where I worked.
Q. Walking on the side walk?
A. Yes, sir; I shook hands with him and talked with him.
Q. I will ask you to state what his condition was, as to sobriety or inebriety.
A. He was perfectly sober to my knowledge.
Q. You had no doubt about it?
A. No doubt at all.
Q. Did you know where he was going then; whether from or up to court?
A. He was going up towards the court house.
Q. Did you see him the next day; the second day of the term?
A. I saw him the next day about half past nine in the forenoon; he came into the store and got a cigar.
Q. At that time did you have any talk with him for any length of time?
A. We talked about 10 or 15 minutes.
Q. You observed him at that time, did you?
A. Yes; I talked with him.
Q. Now, I will ask you to state what was his condition as to sobriety or inebriety at that time?
A. He was sober.
Q. No doubt about it at that time?
A. No doubt.
Q. Do you know when that new bridge was built across Redwood river there right by the Merchant's Exchange hotel?
A. They commenced building it in the latter part of May.
Q. Well, do you remember whether, at this time when the court was held there, that new bridge was in use then, or what conveniences you had to get across the river then?
A. No, sir; it was not finished at that time; and there were planks laid across fixed up with 2x4's, not at the bridge but further, at a distance, for foot passengers to walk across.
Senator CASTLE. I can't hear what the witness says.
The WITNESS. There was a bridge in progress of building at the time but it was not finished.
Q. Then I understand you to say all there was at this time of the

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court was these two planks, 2x4, laying side by side for passengers to walk across?

A. Yes, sir.

Q. The bridge where you drove across was about a quarter of a mile further down, wasn't it?

A. Yes, sir.

Examined by Mr. Manager DUNN.

Q. Whose store do you book keep in?

A. O. Pierson's.

Q. What is the business?

A. General stock of merchandize.

Q. How much talk did you have with the Judge there that morning of the first day?

A. I talked with him about 5 or 10 minutes.

Q. That was about ½ past 2?

A. About ½ past 2 in the afternoon.

Q. Do you know what time it was; what makes you think it was ½ past 2?

A. Well, I knew that the train generally arrived there at that time, about 1 or ½ past 1. He was expected on that train to come there to hold court, and the train was a little late that day, it was about ½ past 2, just when the train came. He was on his way towards the court room.

Q. Who was with him if anybody?

A. I am not acquainted with the gentleman; a small man, I think it is this Mr. Whitney.

Q. Anybody else?

A. Nobody else that I recollect.

Q. How far is your store from where they held that court?

A. It is the next door to the Merchant's Exchange hotel; about eight doors below the court room.

Q. Now, the next day when you met the Judge was about ½ past 9?

A. Yes, sir.

Q. He was then going towards the court room or from it?

A. I think he was going towards the court room.

Q. He came inside that store, but you don't know which way he went when he went out?

A. No, I couldn't tell positively.

Q. That morning he came in and bought a cigar?

A. Yes, sir.

Q. Did he light it?

A. Yes, sir.

Q. You didn't keep anything to drink in that store did you?

A. No, sir, just dry goods and general stock.

Q. You think he lit the cigar and went out?

A. Yes; we talked about ten minutes together.

W. S. EASTMAN,

Sworn as a witness on behalf of the respondent, testified.

Examined by Mr. ARCTANDER.

Q. Where do you reside?

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A. Two miles and a half west of Marshall, Minnesota.
Q. What is your occupation?
A. Farmer.
Q. Do you know the respondent, E. St. Julien Cox?
A. Not personally.
Q. Do you know him when you see him?
A. Yes, sir; I have seen him several years.
Q. You have been introduced to him?
A. I never have until lately.
Q. Did you see him during any portion of the term of court held in Marshall, in and for Lyon county, in the month of June, 1881?
A. I did.
Q. What day was it you saw him, of that term of court?
A. I saw him the first day of court, and several times after that.
Q. The first day when you saw him there, where did you see him, in court or out?
A. I saw him in court.
Q. What was he doing in court while you saw him there?
A. He was giving his charge to the grand jury.
Q. You had seen him in court before that time; had you not at other occasions?
A. I had.
Q. And saw him in court after that time during that term of court, several times?
A. I did.
Q. I will ask you to state what was the condition of the Judge as to sobriety or inebriety at the the time you observed him there in court.
A. In my opinion he was sober.
Q. Had you any doubts about it at that time?
A. I had none at all.
Q. You are not a drinking man yourself?
A. I never drink anything.
Q. I will ask you to state whether there was any difference either in his appearance, his language, his conduct or deportment, generally, while you saw him in court there on that first day, from what there had been at other times before and afterwards when you had seen him in court?
A. I saw nothing with the exception of the second day of July, when that telegram came that the President was killed and Judge Cox seemed to be considerably excited and nervous.
Q. That was the only difference?
A. That was the only difference I saw.

Examined by Mr. Manager DUNN.
Q. You say, in your opinion, at that term, the Judge was sober.
A. That was my opinion.
Q. When did you form that opinion?
A. Right there in the court room; I have no idea but that he was sober.
Q. Was your attention directed to it particularly?
A. It was not.
Q. As to whether he was sober or not?
A. It was not.
Q. Were you a member of the grand jury?

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A. I was not; I had no business there at all.
Q. Were you interested particularly in seeing whether he was intoxicated or sober?
A. I was not.
Q. Did you have any conversation with him at all?
A. No, sir.
Q. You wasn't personally acquinted with him you said, at that time?
A. I was not.
Q. You had seen but very little of him?
A. Oh, I have seen him two or three times a year for two or three years.
Q. How far from him were you in that court room?
A. I should think about twenty feet.
Q. There was nothing that impressed itself upon your mind one way or the other about his condition at that time, was there?
A. The impression that I formed was that he was talking very earnestly.
Q. You said you had never been introduced to him until lately; when was it that you were introduced to him?
A. I think not until I came here as a witness; I met him in St. Paul.
Q. Had you been interviewed as to what evidence you would give here, before you came here?
A. I had not.
Q. By nobody?
A. By nobody.
Q. Before you were subpœnaed?
A. By no one at all before I was subpœnaed.

S. WEBSTER

Sworn as a witness on behalf of the respondent, testified.

Examined by Mr. ARCTANDER.
Q. Where do you reside, Captain?
A. I reside in Marshall.
Q. What is your occupation?
A. My occupation is that of a farmer.
Q. Have you held any official position there in that county?
A. I have been sheriff of that county.
Q. For how many years?
A. Two terms.
Q. Are you acquainted with Judge Cox?
A. I know Judge Cox.
Q. How long have you known Judge Cox?
A. I have known him for some ten or twelve years.
Q. Were you present in Marshall during a term of court held there in the month of June, last, 1881?
A. I was in the village every day at the court.
Q. State if you saw the Judge there in Marshall at any time during the first day of the term; and, if so, at what time?
A. I did, but I couldn't state the time.
Q. Was it in the afternoon?
A. It was in the afternoon. I hitched up and drove down town after dinner; I hitched my team in front of one of the stores, and as I was

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going along the sidewalk, the court was coming down and I met the Judge right on the sidewalk.

Q. Did you have any talk with him?

A. I just shook hands with him and asked him how he did.

Q. Stop and talk with him a little while?

A. Oh, there may have been a few other words, but I could not say positively; there were several other friends I had not seen for quite a spell, that I shook hands with almost at the same time.

Q. I will ask you to state whether or not, soon after having seen him there, your attention was called to a statement that he was intoxicated during that day.

A. I went from there over to Mr. Williams' store; that is my headquarters when I am in town, and Mr. Williams says, "I understand that the Judge is drunk;" says I, "If he is, he has got sober very quick, because I have just met him on the sidewalk."

Q. Your attention was called soon after to the fact that he was charged with being drunk?

A. Yes, sir.

Q. Now, I will ask you to state what was the Judge's condition at the time you met him?

A. I didn't notice anything out of the way.

Q. Had you any doubt about his sobriety?

A. At the time I met him I had no thought about anything; I had heard nothing of the kind, and I don't know that I had any thoughts about his being sober or drunk. If he was drunk he appeared to be perfectly sober; he appeared like all the other gentlemen I saw on the sidewalk.

Q. Have you any doubts about his sobriety now, about his being sober at that time?

A. I have no doubt.

Q. I will ask you to state what you know, if anything, Mr. Webster, about this bridge that has been testified to here,—a new bridge across the Redwood river, near the Merchant's Exchange?

A. Well, I ought to; I have to pass it in going from my office to my home every day, and sometimes, a good many times a day.

Q. Now, I will ask you to state what is the true state of facts in regard to that bridge, what became of the first, and when was it re-built, and what was the condition of it at the time of this term of court?

A. The high water in the spring washed both bridges away; one was a block above the other; the upper bridge when it went down, took the lower bridge and carried it ten rods below, and left it in such shape that when the water went down, they built approaches and you could cross it with teams, temporarily; and the upper bridge, Mr. Hunt and a few others went to work and made a plank walk, up above where the bridge stood, by putting horses down in the river and then laid planks across the stream; it was a temporary walk from the hotel.

Q. How wide was the walk?

A. I should think that the lower tier of plank was three or four feet, and then two planks were laid on top of that, that were about two feet.

Q. How did you get access to that?

A. The first week you kind of jumped down the bank; I should judge it was three or four feet from the side of the bank,—from the dirt.

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Q. And from the other side, how was it?
A. It went right down from the old position.
Q. And the planks laid there in about that condition? (indicating).
A. Not quite as steep as that; not quite so much inclined.
Q. Not in a horizontal position?
A. No, sir.
Q. State whether that was the only way to get over there during the time of the court?
A. Well, I couldn't definitely state; between that time, and the time the new bridge was constructed, they built another foot-walk which was a little better than the old one, which brought it up on the sidewalk level with the ground.
Q. I mean whether there was a decent bridge, or simply a plank walk?
A. There was nothing at the time of the court, but simply the foot-walk at the crossing; the bridge was not built or completed until some time in July; I couldn't state the date, but I know that it was not completed so any one could cross it until after the fourth of July, and I think about the middle of July they had it so that you could team across it.
Mr. ARCTANDER. We are through with the witness.
Mr. Manager DUNN. We have no cross-examination.

J. J. HARTIGAN,

Sworn on behalf of the respondent, testified.
Examined by Mr. ARCTANDER.
Q. Where do you reside?
A. Tracy, Lincoln county, Minnesota.
Q. You keep a saloon there, do you?
A. Yes.
Q. Did you see Judge Cox there the day that he came from Tyler, and went to Lyon county in the month of June, 1881, right immediately before the opening of court?
A. Yes.
Q. State whether you saw him immediately after the train came in from Tyler that morning?
A. Within ten minutes, five or ten minutes; just about the time it would take him to come down to my place.
Q. State how long he stayed at your place with reference to the time when the train left going west to Marshall that day?
A. He had 40 minutes from the time the D. C. train came east until the departure of the train going west. I should judge he was at my place about 25 or 30 minutes, somewhere along there.
Q. I will ask you to state what the Judge's condition was as to sobriety or inebriety when he was at your place?
A. Why, there was no question about it, that he was perfectly sober.
Q. I will ask you to state if you know how much, if any, Judge Cox drank at your place?
A. Well; when he came in there first, somebody, I don't know who it was, called the parties up who came with him, and I think there were two besides myself, and they had a glass of beer, and in the meantime I had a new piano, and they had a young fellow with them by the name of Whitney who sang some, and he asked me if he could have

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some music, and I said yes, I would like to have them, and we went up stairs, and I introduced the Judge to my wife, and Mr. Whitney sang one or two pieces, and at that time, I saw the smoke of the train coming, and I said to the Judge, you had better be getting down to make the train; and he said all right, and he came down and took one glass of beer more, somebody else treated, and he had to run for the train to get it.

Q. All he drank at Tracy were those two glasses of beer?

A. To my knowledge; I was in the saloon with him while he was at my place, and he wouldn't have time to go anywhere else after he left me.

Q. Would he have had time to go anywhere else before he came there?

A. He might possibly, but I think not, because it is quite a way from my place to the depot; it is over a quarter of a mile.

CROSS-EXAMINATION.

By Mr. Manager DUNN.

Q. What day was that?

A. That I can't tell you; I know it was the time he came from Tyler.

Q. How do you know that?

A. Because he told me so,—that he came down on the train after getting through with the court.

Q. That is all you know, what he told you; how do you know where he was going?

A. I knew he was going on that train because he made a run for it.

Q. How do you know where he went that day?

A. I don't know where he went to.

Q. You don't know whether he went to Marshall or not?

A. Yes, I know he went to Marshall from parties telling me that he got on the train at the depot.

Q. Well, all you know is what somebody told you?

A. Yes.

Q. He came right from the train to your saloon?

A. I don't know whether he did or not.

Q. Well, you are about a quarter of a mile from the train?

A. Yes.

Q. You are on the main street of Tracy?

A. I am on Front street, as they call it.

Q. How far are you from the land office?

A. Where it was put in first?

Q. Where it is now?

A. About two blocks east.

Q. Well, it is pretty near a quarter of a mile to your place?

A. Yes.

Q. And he got to your place a few minutes after the train got in—about as soon as he could get there?

A. Yes.

Q. And your business is keeping a saloon and selling liquor?

A. Yes.

Q. He and Whitney came there together?

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A. He and Whitney and somebody else; I don't remember who else.
Q. Col. McPhail, wasn't he one of them?
A. I couldn't say.
Q. You know the Colonel, don't you,—a man that talks with rather a thin voice?
A. I might know him, but I am not acquainted with him.
Q. Do you recollect what cars were attached to the train that he went to Marshall on?
A. I don't; I noticed Sanborn's business car was in that train; I know that.
Q. You know Sanborn's business car was in the train?
A. Yes.
Q. The train he took to go away that day?
A. Yes.
Q. Now, do you know whether you furnished him with a bottle of whisky that day?
A. No, sir.
Q. Or whether any was furnished at your bar?
A. No, sir.
Q. Do you know whether he had any with him?
A. I do not.
Q. You didn't see and don't know whether he had any with him, or in the party, at all?
A. I don't know anything about that; that was not my business.
Q. Did you furnish any of the party with a bottle?
A. No, sir, not to my knowledge; and I was there all the time, and if there was any such order made I should have noticed it.
Q. Did you have a bar-keeper?
A. Yes.
Q. Well, you don't know whether he furnished him any or not?
A. I am pretty positive he didn't.
Q. Well, do you know whether he did or not; were you in the bar room all the time?
A. I was there all the time the Judge was there; the Judge was not in my bar all the time.
Q. Where was the other man?
A. All three went upstairs the time I went with them; he wasn't in the bar-room in all more than ten minutes.

H. C. GRASS,

Sworn as a witness on behalf of the respondent, testified:

Examined by Mr. ARCTANDER.
Q. Where do you reside?
A I reside at Currie, Murray county, Minnesota.
Q. What is your profession?
A. I am a lawyer.
Mr. Manager DUNN. Is this still upon article fifteen?
Mr. ARCTANDER. It is.
Q. Do you know the respondent E. St. Julien Cox?
A. I do.
Q. You do not reside in his district, do you?
A. No, sir.

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Q. Were you present and in attendance during any portion of the general term in and for Lyon county, held in the month of June, 1881?
A. I was.
Q. At which he presided?
A. Yes.
Q. What day of the term did you come there?
A. I arrived at Marshall about noon on the second day of the term; I think it was Wednesday.
Q. What portion of the time did you spend in the court that afternoon?
A. Well, I was there most of the time.
Q. That afternoon? A. Yes.
Q. How long were you there, Mr. Grass, during that term?
A. I was there until Friday or Saturday afternoon, I don't recollect which; I think I left Friday afternoon, but I will not be sure.
Q. You sat up there by the lawyer's table, I suppose, there in court?
A. I did.
Q. How far from the Judge about, about as far as it is to over here?
A. Oh, perhaps as far as from here to you, perhaps a little further.
Q. State what condition the Judge was in during any portion of that term while you were there, as to sobriety or inebriety.
A. Well, I have been in court four or five times when Judge Cox was presiding and found no difference in the Judge's action at that term of court than at any other.
Q. Nor in any other days at that term of court?
A. No, sir.
Q. For instance, take the first afternoon that you were there.
A. He appeared as usual.
Q. And acted as usual?
A. Yes.
Q. You had no doubt as to his sobriety at that time?
A. I think he was sober at that time.
Q. You had no doubt as to his sobriety at that time?
A. No, sir.
Q. Have none now?
A. No, sir.
Mr. Manager DUNN. We have no questions.

M. E. MATTHEWS

Sworn as a witness on behalf of the respondent, testified:

Examined by Mr. ARCTANDER.
Q. Where do you reside?
A. Marshall, Lyon county, Minnesota.
Q. What is your profession?
A. Lawyer.
Q. Do you know the respondent, E. St. Julien Cox?
A. I do.
Q. How long a time have you known him?
A. I have known him since 1872.
Q. Have you known him intimately since that time?
A. Quite intimately.
Q. Have you at any time before he came upon the bench been his law partner at any time?

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A. I was his law partner for about three years I believe.

Q. Were you present and in attendance upon the general term in and for Lyon county, held in the months of June and July, 1881?

A. I was.

Q. What proportion of the cases there were you and your firm attorneys for?

A. I don't know.

Q. Well, a great portion of them?

A. Most of them.

Q. At that time you were of the firm of Matthews and Andrews, were you not?

A. I don't know whether we had dissolved. I think we had dissolved at that time.

Q. But these cases on the calendar were most of them in the name of Matthews and Andrews?

A. Yes, they were all cases of the firm.

Q. Now, what portion of the time did you spend in court, Mr. Matthews?

A. I should presume about nineteen-twentieths of the time?

Q. Now, take the first day; what time did you go into court that day, —I mean as to what proportion of the proceedings, the first afternoon?

A. I came into court perhaps about one o'clock; the Judge shortly after I came in took a recess for dinner.

Q. Did you come back after recess, after dinner?

A. Yes, I was there after recess, all the afternoon, I guess.

Q. You were there during the charge to the grand jury?

A. Yes.

Q. There during the recess for naturalization papers?

A. I was there when the recess was taken, but whether I remained there during all this time I couldn't say.

Q. Do you remember what the business was after that recess anyhow?

A. Well, shortly after the recess—perhaps there might have been something done previous, but shortly after the recess, he took up the case of Bradford against Bedbury—James B. Bradford.

Q. You were an attorney in that case?

A. I was.

Q. Was there any business done after that case was disposed of that afternoon, any important business?

A. I don't recollect now.

Q. The next day what portion of the time were you in court then, Mr. Matthews, if at all?

A. Well, I think it was the next day we tried a case in which Edwards was defendant—Wakefield, Crow & Co. vs. C. A. Edwards, I think that was taken up that afternoon, but I wouldn't say positively, or that day I mean; I don't know that it was in the afternoon.

Q. That was in the morning; very well, you were there during the trial of the case. Do you remember being present during the trial of the case of Main, as administrator, against the Winona & St. Peter Railroad Company, that same day in the forenoon or afternoon?

A. Well, I was in court most of the time; I was connected with the case and I was out a little too.

Q. What is that you say?

A. I was out of court some time during that trial, but not very much.

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Q. Well, you were in and out of court during the trial of that case?
A. Yes.
Q. In the evening as well as in the afternoon?
A. I couldn't say about the evening; I think I was there almost all the time.
Q. Do you remember whether you were there?
A. I don't recollect; it may have been an evening session.
Q. I will ask you to state whether you were one of the attorneys for the defendant in the case of the State against Farrington, that was tried that evening?
A. I was.
Q. Were you there during the whole of the trial of that case?
A. I was, sir.
Q. State whether or not you were in court the third day during the trial of the case of Lindsley against the Railroad Company?
A. I was.
Q. During what portion of the time were you in court during the trial of the case?
A. Oh, I should presume three-fourths of the time.
The Senate here took a recess until 2:30 P. M.

AFTERNOON SESSION.

The Senate met at 2.30 p. m.. Senator WILSON in the chair.

MR. E. MATTHEWS.

Direct examination resumed.

By Mr. ARCTANDER.
Q. I will ask you to state Mr. Matthews, whether or not there were any sessions of court when you were not in the court room; the first week of the court for instance, at which you were not present?
A. No, sir; I think not.
Q. I will ask you to state whether Judge Cox was during any part of this term, more particularly during the first part of it, drunk?
A. He was not.
Q. I will ask you to state whether there was any incoherency in his speech, Mr. Matthews, on this first or second day of the term any more than usual?
A. No, sir; there was not.
Q. I desire to call your attention—you stated you were there during the charge I believe; Mr. Matthews, state whether or not there was anything unusual or out of the common routine in the charge of Judge Cox to the grand jury at that time?
A. What time?
Q. Have you heard him charge the grand jury before?
A. A great many times.
Q. Did you notice anything different at this time from other times?
A. Nothing that I know of now; nothing that I recollect.
Q. Nothing of sufficient importance to strike you at the time?
A. I think there wasn't anything,—if there had been I think perhaps I would have noticed it.
Q. Now, I desire to call your attention to the trial of the case of

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Bradford vs. Bedbury that afternoon; you were present during the whole of the trial and conducted the trial on behalf of the defence, I believe?

A. Yes, sir.

Q. Did you hear Mr. Seward the attorney for the plaintiff, yesterday state what the ruling in that case was?

A. I did not.

Q. I will ask you to state to the Senate what the ruling of the court was in that case,(that might be cumulative probably and not necessary;) I will ask you this, Mr. Matthews, whether or not there was anything in the Judge's giving that ruling, the way in which he gave it or the language he used, that showed in the least any aberration of mind or any clouding of his mental faculties?

A. Not at all.

Q. Did you hear the Judge give his reasons, or rather make his decision on the motion for non-suit in the case of Main against The Winona and St. Peter Railroad Company?

A. I was in court but don't recollect anything about it particularly, I recollect discussing that matter.

Q. I will ask you to state whether or not during any or all of those first three days, Judge Cox swaggered in his walking or sitting?

A. No, sir; he did not.

Q. I will ask you to state whether or not during any of those days he reeled while sitting upon the bench; was reeling as we express it?

A. He did not, any more than usual.

Q. Explain that to the Senate, whether there is anything peculiar about him?

A. Well, I mean that Judge Cox don't usually sit very straight on the bench, more than anywhere else, he acts about the same on the bench as he does off; there never appears to be a great change in him.

Q. A kind of free and easy manner in him, is that what you mean?

A. Yes.

Q. Well, there was no reeling probably; I don't understand the meaning of the word used here; I thought it to mean something worse?

A. No, sir; I did not.

Q. State whether his eyes had a puffed up appearance any of those days?

A. Why, I didn't notice anything about his eyes; I don't know whether they were or not, but I didn't notice anything.

Q. I will ask you to state, Mr. Matthews, how business was expedited during the first three days of that term of court?

A. Well, I thought he rushed business pretty rapidly; he did to me, at least, during the whole term, in fact.

Q. Was there any difference in the way of expediting, or the way in which business was transacted or conducted, between the first three days and the latter part of the term?

A. No, sir, not that I can recollect of; one day the same as another.

Q. Same as usual with him?

A. About the same all the time.

Q. I mean as usual, at other times?

A. Well, that is what *I* mean.

Q. It was stated here, Mr. Matthews, that in the first three days, recesses were more frequent than afterwards, than usual—from six to twelve a day. What is your recollection in regard to that?

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A. I don't think we had any more recesses during the first part than we did during the last part of the term, and I don't think the recesses exceeded over four or five a day.

Q. Taking both sessions?

A. I don't think five at the outside.

Q. Whenever, during other terms, recesses were had, what were the usual recesses in Judge Cox's court, out side of this term; you say they were the same, two or three, this term?

A. Oh, I don't know about the same as in any court; I never noticed any difference in his court or any other court about the recesses taken.

Q. Well, are there more than the usual recesses in Judge Cox's court than one in the forenoon and one in the afternoon?

A. No, I didn't say that those were all that he had.

Q. Well, I didn't know and I wanted to ask you what was his idea; what the usual number of recesses was in his court at other terms.

A. Oh, perhaps three or four a day.

Q. Three or four a day is the usual number and has been for years?

A. Yes, sir.

Q. Now, how long a time did these recesses, that took place at this term here,—for how long a time were they usually? The Senate may not understand it as we do who practice.

A. Well, as to that I couldn't say; I know we had some recesses at the term, but they were to assist to give the attorneys time to do something or look up something or to do something that was necessary to be done at the time.

Q. What was the length of the recess, five or ten minutes or half an hour?

A. Oh, for five or ten or fifteen minutes. I asked for two or three myself, and I know that is the time I asked for, five or ten minutes.

Q. During any time of the first day did the Judge stagger or reel in walking?

A. Judge Cox did not reel or stagger during that term of court.

Q. Not at all?

A. Not at any time; not in the village of Marshall.

Q. When he went up on the stage there to open court did you observe any difficulty on his part in getting up the steps?

A. You mean when he first opened court before dinner?

Q. Yes.

A. I was not there.

Q. Afterwards, when he came back after dinner?

A. I don't recollect anything about him going up there, or seeing him at all.

Q. But you remember his movements during the day, do you, so as to be able to tell us, Mr. Matthews, that he did not stagger or reel at all during the day?

A. I am willing to swear that he did not at that term of court, and from what I knew of him there, that he was not in that condition.

Q. Now, when the Judge charged the grand jury do you know whether he read from the printed or written manuscript in his hands, when he charged them?

A. It seems to me he did, something apparently cut from the newspapers.

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Q. Pasted on legal cap?

A. Yes.

Q. That is the one you have generally seen him read from when he is giving his charge?

A. I did, yes. I am pretty sure that he had that at the time, and read from that and also from the statute.

Q. I will ask you to state whether there was any difficulty apparent in his finding what he wanted in the manuscript or statute there at the time?

A. Oh, I didn't notice anything peculiar about it; I didn't notice whether he was any longer or not; I saw nothing peculiar about his examining the law or his manuscript.

Q. I will ask you to state whether or not during that term, at any time, more particularly during the first day, the Judge's head settled down between his shoulders, in a sagging way.

A. Will you please ask the question again?

Q. Whether or not during any part of that term of court his head seemed to hang down, between his shoulders, or that he sagged to a great extent?

A. Well, I didn't see anything different from usual in that respect; his head,—he might have had his head down, I don't know, I didn't see anything of the kind.

Q. Do you remember, Mr. Matthews, what has been called a temperance lecture in Judge Cox's charge, a portion of his charge devoted to selling whisky to minors, etc.?

A. I don't remember anything particular about the charge at all.

Q. Don't remember whether that was given or not given?

A. I do not; I don't remember anything about it peculiar. I have heard his charge sometimes and it is always about the same and I don't know; I noticed nothing different this term, he might have left it out or put something in and might not notice it, I don't know.

Q. I will ask you to state how it was with the mental faculties of the Judge during this term,—whether during any portion of this term from the first day to the last there was any perceptible clouding of his mental faculties?

A. There was not.

Q. Was he as clear as usual during the whole of the term?

A. The whole of the term?

Q. The first days as well as the last?

A. There was no difference in the days particularly.

Q. State whether or not he could see a point as quickly as usual during the first two or three days?

A. Yes, he saw them quick enough; there was no trouble about seeing points.

Q. There was no trouble about his seeing points?

A. Not at all.

Q. Nothing unusual about it?

A. No, sir.

Q. Do you know L. E. Patterson, the clerk of court of Lincoln county?

A. I do.

Q. I will ask you to state, Mr. Matthews, whether or not Mr. Patterson, on the 12th day of August, 1851, soon after the occurrence of the settlement of the case of Bradford against Bedbury, in his office in M

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Wilcox's store, stated to you, as follows: "I thought Judge Cox was drunk that last term, but now I am ready to swear that he was not, for no man could try that case in a drunken condition, and remember like he does to-day," or words to that effect?

A. He did.

Q. Speaking of the June term of court?

A. Speaking of the June term of court, 1881; I don't remember the exact date.

Q. Well, it was on the occasion of the settlement of the case?

A. Yes.

CROSS-EXAMINATION,

By Mr. Manager DUNN.

Q. You answered, Mr. Matthews, that he said that, or words to that effect. Now, what did he say?

A. I can't give his words.

Q. I want his exact language, please.

A. I can't give his exact language.

Q. Well, give it as near as you can; you say you can't give his exact language?

A. He spoke to me about this case; we had settled the case without the minutes of the court or the clerk's minutes; he lost them in some way, and we settled the case, and Mr. Forbes and myself couldn't agree exactly as to what took place, and the Judge, Judge Cox, told the clerk what should be the case, what the case was, the circumstances of the case; and after this, after the case was settled, Charley Patterson, the clerk of the court, found these minutes, and he called me up to his desk and told me about this matter, and I think he said, I think that he related his opinion, telling me what he told his wife when he went home, what he told his wife about it; I think that is the way that he spoke of the matter.

Q. He was telling you what he told his wife about it?

A. What he told his wife about this case, and then he went on to say that he supposed the Judge was drunk at that time, but now he would swear he was not, or ready to swear that he was not, I don't know about the words. I really know about the impression that it created on my mind and that is about as far as I do recollect.

Q. You wouldn't pretend to give us his exact language?

A. I could not, no, sir.

Q. Didn't Mr. Patterson say that his mind was changed; not about his being drunk, but his ability to comprehend what transpired?

A. No, sir; he didn't say any such thing.

Q. Anything of that kind?

A. Not anything to that effect either.

Q. You say now that he was ready to swear that he was not drunk?

A. Yes.

Q. Had there been any talk about swearing at that time that he was drunk?

A. That there had been some talk.

Q. When did this take place?

A. Well, shortly after the trial of this case.

Q. When was that?

A. Oh, that I cannot tell you.

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Q. Well, you can tell pretty near, can't you?
A. Well, the case was after, perhaps, forty days from the end of the term.
Q. Sometime in July or August?
A. Sometime, perhaps about the first of August, I guess.
Q. And the fact of the Judge being drunk or not being drunk at that term had been a matter of talk or comment upon the streets between the term of court and that time?
A. Mr. Patterson——
Q. Well, answer my question please, Mr. Matthews.
A. What is that?
Q. Had the fact of the judge being drunk or not being drunk, been a matter of conversation on the streets of Marshall, between the trial of that case and the settlement of that case that you refer to?
A. Yes.
Q. People had taken sides in the case?
A. Oh, I don't know that they talked about his being drunk, but about the matter of the impeachment and the action of the grand jury was talked over on the streets.
Q. Had there been any talk about the impeachment at this time?
A. Oh, yes, there had and even before this term of court.
Q. On account of the judge's intoxication upon the bench?
A. No, sir.
Q. What?
A. I don't know; they talked about impeachment, that was the subject; I don't know whether it was on the bench or off the bench or where.
Q. It was on account of his intoxication?
A. They were going to have him impeached; I don't think he was charged with anything else.
Q. Was Patterson talking about having him impeached?
A. No, sir.
Q. Then it was in reference to that, that you and Patterson were talking, and Patterson said he was now ready to swear that he believed he was not drunk?
Q. Not in reference to any impeachment. I might make one statement—you would understand me better, I don't know as it would be of any use. Mr. Rogers, this minister, had told Mr. Patterson, and I think it was,—well, I don't know really the time,—Mr. Patterson had told me that Rogers spoke to him about recollecting some date, and we had some talk about this matter; but what the time was, or what there was of it, I do not know, and Mr. Patterson and myself were pretty good friends, quite intimate, and we talked about such things.
Q. You and he at this time were talking about the possibility of the Judge being impeached, were you?
A. No, sir; we were talking about the case that had been settled.
Q. And you were talking with Mr. Patterson about the surprise that it occasioned in his mind that Judge Cox could remember so well at this time, wasn't you? He seemed to be surprised, didn't he, at the fact that Judge Cox could remember?
A. That was what he was conveying to me, that he had changed his mind in respect to that. It appeared that he was surprised about the matter; I don't know whether much surprised or little, but he changed his mind; that is what he said.

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Q. Well, didn't he say he was surprised at his being able to remember that, believing, as he had believed, that he was drunk?

A. Well, I don't know that he said that; he might have thought so. I don't know what he thought.

Q. Well, wasn't that the impression that you got, Mr. Matthews?

A. What impression?

Q. That he was surprised at the Judge's ability to remember, having believed that he was intoxicated?

A. Oh, yes, I think that was the impression I got from him that he had changed his mind.

Q. That he was surprised at his ability to remember and that he thought that he would have to change his mind from that fact?

A. Oh, yes.

Q. Now, had you forgotten about that; was it in your interest that that matter which he had brought to mind should be brought out, or in the interest of this adversary of yours, something about the statement the Judge made—whether or not you had further evidence. I have forgotten which side of the case you were on?

A. I was on the defense.

Q. Then it was in your interest that the decision of the Judge was had, was it?

A. Yes, but there was but one point in the case really.

Q. Well, the memory of the Judge was to your benefit?

A. Yes, sir.

Q. Did that remembrance of the Judge's make any impression on your mind, Mr. Matthews, at that time?

A. I don't know that it did.

Q. You had forgotten it hadn't you?

A. No, sir.

Q. It was not in the case you settled?

A. We hadn't settled any case.

Q. It was not in the proposed case?

A. We had no proposed case.

Q. What were you doing,—I thought you were settling the case?

A. We went in by agreement between the parties,—Mr. Forbes said I didn't know anything about it.

Q. You were in to make up the case?

A. We went in to make up a case and settle it right there.

Q. You were going to settle it on the Judge's minutes, were you?

A. No, it was a short matter;—there was very little of it.

Q. Were you going to settle the case without a prepared case?

A. We were going to make out our case before the Judge and have it settled, as there was but very little to it.

Q. You were going to make a bill of exceptions were you? Were there any exceptions on the trial?

A. Yes, we took exceptions on the trial; but found the clerk had lost his minutes.

Q. What minutes had the clerk lost?

A. I suppose the minutes of the clerk.

Q. Were you going to make a case without the testimony?

A. There was no testimony in the case.

Q. No witness sworn?

A. No, sir.

Q. Simply a promissory note?

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A. No, sir, it was an iron-clad machine note.
Q. Well, it was a promissory note with some conditions?
A. Yes.
Q. That is what you were disputing about with your adversary?
A. It was a case in replevin, claim and delivery, and the only e dence that the prosecution introduced, to show their title, or right possession, was that they offered in evidence this iron-clad note; we o jected to the evidence, and the court ruled it out.
Q. The court ruled it out?
A. The court ruled it out.
Q. You objected, did you?
A. Yes.
Q. What was this peculiar thing that the Judge remembered the at this time when you were trying to make up that case?
A. Mr. Forbes and myself got into a dispute about what took pla in court; I claimed that I spoke to him or Mr. Seward, his partner, a asked them if that was all they had, or in fact, I turned round and to him to go ahead, or something of that kind across the table, and didn't do anything; and I says, is that all the evidence, and he sa yes. He and his partner seemed to be discussing something there, a then I asked him if he rested his case; he told me he did. I got up a in order to have this matter distinctly understood between counsel a court, I made the statement to the court that I understood that t prosecution, or the plaintiff, had rested his case. I wished to have th understood before I made my motion. The court then asked M Forbes, or Messrs. Forbes and Seward, who were there together, if the had any further evidence, and they said they had none; he asked the if they rested their case, and they said they did. I then made my m tion, which was granted.
Q. Then it was upon your motion and suggestion that they had n further evidence, the case was dismissed?
A. I never asked the court whether he ruled upon what I said t him or not.
Q. Well, he granted your motion?
A. I asked for judgment, and he gave it to me.
Q. Well, the point I wished to get at was whether it was done a you made your motion, or if it was done in accordance with your m tion to the court after they had notified you that they rested?
A. They had notified me that they rested, and also notified the co that they rested, and then I made my motion, and was going to ar the motion and the court wouldn't allow any argument upon it.
Q. Now, when you came there in August to settle that case, you h not forgotten that point, had you?
A. No, sir.
Q. You paid no attention to it, and did not insist upon its going i the record?
A. Upon what going into the record?
Q. Upon that point going into the record?
A. Why the case was made up and settled and disposed of there think perhaps it went into the case.
Q. Well, I mean that particular feature of the case,—did you in upon that going into the record?
A. Oh, I don't recollect whether I did or not; I think I made motion,—I wouldn't say,—there are two cases that are so closely co nected that I can't say which is which.

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Q. You were objecting, were you not, to the settlement of any case at all, because the stay had expired?

A. I did object.

Q. You didn't want any case settled?

A. I did object at first, and then Mr. Forbes said I had agreed to let it run, and I says if you say so, Mr. Forbes, it is all right, we will do so; and—

Q. You had quite forgotten that point that the Judge asked if there was any further evidence?

A. No, sir; I had not.

Q. You remembered it as clearly as the Judge did?

A. Yes.

Q. Before the Judge spoke of it?

A. Why, we talked over the matter half an hour before the Judge, and the disagreement and everything.

Q. Well, your first objections were to settling any case at all, because you thought the time to make a case had expired?

A. Yes, I thought the time had expired.

Q. And when you found you had agreed with Mr. Forbes to make a case, then you brought up this objection, that the record was not complete?

A. No, sir; I didn't find any such thing.

Q. You didn't?

A. No, sir; I said, "Mr. Forbes, if you say I did, I will agree to it."

Q. Well, you found out it was a matter that rested on your honor, between you and Mr. Forbes?

A. No, sir; that was not it.

Q. Well, you claimed so.

A. No, sir; I said if you say it was so, I will let it in; there was no honor about it at all. It was not based upon any agreement; I said, if you say that.

Q. Well, Mr. Forbes was claiming that you had agreed to it?

A. Yes.

Q. And you were denying it, but finally you said that if he would insist upon it that you did agree to it, that then you would coincide with him, and let him in?

A. I would let him in.

Q. Let him in to make his case?

A. Yes.

Q. And after you had agreed to that then is it not the fact that you brought up this question because it did not show the fact that he had rested his case, and had been finally asked whether he had any further evidence and answered no, before you made your motion?

A. There was no record of that.

Q. I know there was no record of that.

A. Mr. Forbes had drawn up a case and wanted me to agree upon that.

Q. When did he draw that up?

A. I don't recollect when.

Q. I thought you said that there was no case?

A. I say that he had drawn one up there, and I presume that day. I don't know when; I never saw it; it was a very short one, perhaps what would be on one page of legal cap, and he wanted me to consent to that or agree to it; I told him no, and we talked the matter over between us, and couldn't agree, and the court settled the case for us.

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A. Well, now you talked the matter over between you?

A. Yes.

Q. And then did you not state that you would not agree to the case because it did not contain that feature,—that he had been asked in court if he had any further evidence and had stated no,—before you made your motion for a non-suit?

A. That was really the main discussion between us.

Q. Well, that is what I want to get at; whether you didn't state that to the court, that you could not agree on the proposed case, because it left out that feature?

A. Yes.

Q. And that was before the Judge said anything about it?

A. The Judge didn't say anything about it for some time then.

Q. Well, I want you to state if that was a fact?

A. Yes, that is a fact.

Senator GILFILLAN, J. B. Do we understand the witness to say now and to testify that there was a proposed case, proposed by the opposite counsel?

Mr. Manager HICKS. He has so stated.

The WITNESS. Mr. Forbes had what he called a case.

Q. The difficulty between you and Mr. Forbes was that he claimed you had agreed that he might make a case notwithstanding the time for making the case had expired?

A. Oh, we have passed that matter.

Q. Well, that was the point in the outset, and finally you agreed with him that he might make his case and propose his case, and when he came to settle it you objected on the ground that that feature of the case was not in it; that he had been asked, before you made the motion for non-suit, whether he had any further evidence, and he said no; and then you objected to the case on that ground before Judge Cox said anything about his having said anything about that question?

A. Yes, that is correct. Mr. Forbes and I had talked the matter over and failed to agree.

Q. Was that all the objection you had to the record?

A. I don't recollect anything further.

Q. Now, had Mr. Forbes forgotten—did Mr. Forbes claim that he had forgotten that?

A. No, he didn't claim that he had forgotten it; he said it was not so.

Q. Who tried the case in the district court, Mr. Matthews, Mr. Forbes, or Mr. Seward?

A. Well, I guess perhaps they were both trying the case.

Q. Now do you know that to be a fact?

A. They were both in there.

Q. Who actually tried the case?

A. Both of them were talking,—there was not much trying about it; there was a jury called and they offered to withdraw this note, and the thing stopped right there.

Q. You say that you discovered no difference in Judge Cox's performances in court at this term that was usual with him?

A. Yes.

Q. You were at Marshfield were you not?

A. Yes.

Q. Was there any difference between his actions at Marshfield and at Marshall,—in his condition?

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A. Do you mean whether the Judge was in any different condition there?
Q. Yes.
A. As to what?
Q. As to sobriety?
A. I think he was,—no, I will not say so; I will say to the contrary, answering your question.
Q. You say there was no difference?
A. Yes, there was no difference.
Q. He was just the same at Marshall as he was at Marshfield?
A. Yes.
Q. Was there any difference between his actions at Tyler and at Marshall?
A. There was.
Q. Well, what was the difference?
A. What difference was there?
Q. Was he intoxicated at one of the two points?
Mr. ARCTANDER. That is not proper, Mr. President, I have not asked the witness to compare the two times.
Mr. Manager DUNN. You have asked the witness whether his demeanor was the same as at other times.
Mr. ARCTANDER. I didn't ask this witness any such question.
Mr. Manager DUNN. Well, you have compared him at other times, and I will submit to the record;, you asked him to compare his condition then with what it had been at terms of court in other places.
Mr. ARCTANDER. I may be mistaken, but my remembrance is that I didn't ask any such question, and I would like to have the reporter read that question. It would be in the first part of the examination this afternoon.
The reporter read part of the direct examination by Mr. Arctander.
Mr. Manager DUNN. You are not afraid of it?
Mr ARCTANDER. I don't want to stop to take up time; I think there is humbug enough in this case.
Mr. Manager DUNN. I don't think you ought to object to comparing the difference between his condition then and his condition at Tyler.
Senator GILFILLAN, J. B. What is the question?
The PRESIDENT *pro tem.* He asks whether the respondent was intoxicated at one of the two places, Tyler or Marshfield.
Senator GILFILLAN, J. B. Is there any objection to it?
Mr. ARCTANDER. Yes; it is not proper cross-examination.
Mr. Manager DUNN. They claim that they have not asked for anything on the direct-examination which would allow me to introduce comparisons.
Mr. ARCTANDER. Well, we withdraw the objection. Will the reporter again read the question.
Mr. Manager DUNN. I have a right to a comparison to show his knowledge, if for nothing else; he has testified that he was sober.
The PRESIDENT *pro tem.* I think you can answer the question.
Q. You say he was different at this term from what he was at Tyler —in what does the difference consist?
A. Oh, I don't know anything more than the weather and the size of the town or anything of that kind; I don't know as I could tell you the difference; we see men acting different every day, but we cannot tell the difference.

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Q. Well, don't you know why he acted different at Tyler?
A. No; I don't know why.
Q. You don't know any cause for any difference?
A. I can't give you any difference.
Q. Did you, in your mind, have a knowledge of any cause,—
Mr. ARCTANDER. We object to that; it is certainly improper.
Q. Did you, in your mind, have a cause that you can explain to the Senate?
Mr. ARCTANDER. You need not answer that. I object to that question as improper. It is unprofessional and unlawyer-like, to ask such questions.
Q. You said there was a difference. Mr. Matthews, in his conduct, etc., at Marshall, from what it was at Tyler; do you wish to withdraw that, or do you wish to explain it in any way? I asked you what the difference consisted in.
Mr. Manager HICKS. He says in the weather and the size of the place.
The WITNESS. Here is a question that I understand is objected to. Is there any question for me to answer?
Q. I withdraw that question, and I ask you now if there is any other explanation that you want to make of the difference in his deportment and conduct, except the weather and the size of the place?
A. No; I don't know as I care to make anything further.
Q. Did you go from Tracy to Tyler with Judge Cox when he went to hold that term of court?
A. I did, sir.
Q. About June, 1881?
A. Yes, sir.
Q. Did you write a letter to the newspaper that is published at Marshall, relative to that trip?
A. I did not.
Q. Did you write any such letter?
A. I said I did not.
Q. Did you write one to a man by the name of Whitney about it?
A. No, sir; I did not.
Q. You did not write any letter?
A. I did not.
Q. (Showing witness a paper). Look at that printed letter, and say whether you wrote the original of that?
A. Oh no, I didn't write that.
Mr. Manager HICKS. You didn't write the original of which that is a copy?
A. No, sir.
Mr. Manager DUNN. I will ask the President to mark this paper for identification.
The paper shown to witness was then marked "Exhibit I."
Q. Have you ever seen Judge Cox under the influence of liquor, or drunk or intoxicated, Mr. Matthews?
A. Yes.
Q. Have you ever seen him intoxicated in the discharge of official duties?
Mr. ARCTANDER. That is objected to under the rulings yesterday, and particularly the ruling made by Senator Campbell when in the chair.
Mr. Manager DUNN. I think that was the question allowed after a long argument.

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The PRESIDENT *pro tem.* The ruling was not as to time and place.

Mr. ARTCANDER. Our position is now, Mr. President, that the question as to whether the witness has seen Judge Cox intoxicated in the discharge of his duties has nothing to do with it. This witness was not asked to compare this term with other terms, for which reason it was allowed in the other case, but this is another attempt on the part of the managers to bring in testimony which the Senate said did not wish brought in,—to bring in cumulative evidence as to the facts under article eighteen.

This witness has not been asked as to any other terms when Judge Cox was in the discharge of his official duties, and to put that limitation to it, is to limit it to the time in which he was elected, and that they have no right, under the ruling of the Senate, to do; because the ruling of the Senate was to this effect, that they could not prove when and where, because that would tend to prove a substantive charge, which would not be proper. Now, this is the same thing, because you do not need to prove the exact date; that was held afterward by two different gentlemen in the chair,—by Senator Campbell one night, and when he made his ruling and offered to submit it to the Senate, the question was withdrawn by the managers. This same question was decided by Senator Campbell yesterday, when he was in the chair; he held that he would not allow it but that he would submit it to the Senate if it was necessary; and the managers again withdrew it. It seems to me there ought to be an end to this treading on forbidden ground. Certainly we have not been trying this case hitherto on such close principles that the managers should be allowed to throw down the few guards that the Senate has erected to protect the rights of the respondent. We certainly are entitled to some respect.

Mr. Manager DUNN. It seems that every time an attempt is made to throw any light on this vexed question of the condition of the respondent, or when we come to ask questions of any witness upon the stand as to whether he saw the respondent intoxicated upon the bench here in the discharge of any official duty, it provokes a very discordant sound from my friend, Mr. Arctander.

Mr. ARCTANDER. I like to try a case like a lawyer, Mr. Dunn.

Mr. Manager DUNN. It worries him very much. My remembrance is that the Senate has allowed this very question to be put in more than one instance. It is true that a rule of the Senate has been adopted by which we are not allowed to ask when or where, and it is true also that I never agreed that the rule was sound, but at the same time I submit to it; but it is also true we were permitted to ask whether he had seen the respondent intoxicated while in the discharge of his official duties or upon the bench, because it is not when or where, but simply the circumstances, so that the Senate may be able to judge whether the witness is a competent expert as to whether he was sober or intoxicated while he was on the bench at this particular term of court in Lyon or Marshall county. Now, if he should say he has seen him upon the bench at other terms, and therefore he knew of what he was affirming when he spoke of this term, then it would strengthen the case of the respondent very much; but if he should say, that he had never seen him intoxicated upon the bench, as I presume he will, why, as a matter of fact, it would weaken his evidence as a man competent to judge, whether the respondent was at that time intoxicated, inasmuch as it is a disputed question as to whether he was or not.

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The PRESIDENT *pro tem.* I don't think that question has been ruled upon by the Senate, and has not been while I have been here, and I shall admit the testimony unless overruled by the Senate. [To the witness.] You can answer the question whether or not you have seen him drunk on the bench.

Mr. ARCTANDER. I suppose there is no chance——

The WITNESS. I have not.

The PRESIDENT *pro tem.* He says he has not and that is the end of it.

Q. Have you ever seen him drunk while in the discharge of his official duties?

Mr. ARCTANDER. We object to that; he says on the bench.

Mr. Manager DUNN. He might have a peculiar notion as to what the bench is.

The PRESIDENT *pro tem.* You have no right to ask him when or where.

Mr. Manager DUNN. I do not ask him whether he has ever seen him intoxicated on the bench.

Mr. ARCTANDER. I don't understand that the chair looks upon that question in its narrow sense with reference to when and where;—that you cannot ask the time and place, but that you can ask the question in such a manner as to give the time, at least virtually within the period of the respondent's occupation of the judgship.

The PRESIDENT *pro tem.* The question asked was, have you ever seen the Judge drunk while in the discharge of his duties.

Mr. ARCTANDER. That might be as an attorney.

The PRESIDENT *pro tem* That would not be as to any particular court or any particular term.

Mr. ARCTANDER. If they were judicial duties it would be within the term of his office, and that was within, the spirit, at least of the ruling of the Senate.

The PRESIDENT *pro tem.* I don't understand that it has been ruled upon.

Q. I will ask you to state whether you have ever seen him intoxicated while in the discharge of any official business as Judge?

A. I have seen him intoxicated; I never saw him drunk.

Q. You have seen him intoxicated?

A. Yes.

RE-DIRECT EXAMINATION.

By Mr. ARCTANDER.

Q. What do you understand when you say you have seen him intoxicated; what do you understand by the term intoxicated.

A. Well, I understand that a man is intoxicated—one glass of liquor would intoxicate a man to a degree

Senator GILFILLAN J. B. Will the witness please repeat that answer.

The WITNESS. One glass of liquor in my opinion would intoxicate an individual to an extent, to a degree.

Q. That is your understanding of the word intoxicated.

A. I understand that a man is intoxicated as soon as he takes it into his system.

Q. As soon as he takes the poison into his system, the least quantity?

A. Yes.

The PRESIDENT *pro tem.* I would like to have the witness explain his understanding of the difference between intoxicated and drunk, if he thinks there is a difference; I would like to have him explain the difference?

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A. Well, I consider a man is drunk when his better judgment is influenced by the liquor or poison he drinks.

Q. When his judgment is overthrown?

A. Yes, sir.

Mr. Manager DUNN. Influenced, he said.

The WITNESS. When there is preponderance of weight in favor of the whisky or liquor.

Q. Against his judgment?

A. Against his better judgment.

The PRESIDENT *pro tem.* Then you would call him drunk?

A. I call him drunk.

Q. And if he has drank any, you would call him intoxicated?

A. Yes, up to that perio l; I think a man may be intoxicated without the world knowing anything about it.

Q. That is your understanding of the word?

A. Yes.

Q. I will ask you to state Mr. Matthews just exactly what took place in regard to what you claim should have been in this case before Judge Cox made any remark there in the settlement of that case; just the language, as near, as you can give it.

A. Well, I have already stated to the Senate what took place, and what I wanted in the minutes is what took place.

Q. Did you state particularly to the court what had taken place as you had understood it?

A. I don't think that we had talked the matter over; I don't think we had argued the matter at all.

Q. You just talked it between yourselves?

A. Mr. Forbes and myself were discussing the matter between ourselves.

Q. Not before the court?

A. He was in the room.

Q. But not in his hearing?

A. Yes, he might have been listening to what we were saying; I don't know; he might have been all the time. I know this talk took place; he was in the office, the Judge was in the office, and the talk took place between Mr. Forbes and myself, and the disagreement was as to the main fact in the case—

Q. As to whether they had rested or not; that is the point?

A. As to whether they had rested.

Q. Now, was there anything said by you except you wanted to have in there the fact that they rested, and he claimed that they hadn't rested?

A. Well, I think it was this: I think it was upon the matter of whether he said that that was all their evidence, there is where—upon that point is where I considered he was lame in the case—that the ruling of the court after arguing the question, was undoubtedly correct.

Q. Now, the question comes in, what was there new that the Judge brought out that you had not submitted before him that made the change in Mr. Patterson's mind?

A. I don't know anything about the matter, except the Judge went on and told the clerk what had taken place.

Q. Giving the whole history of it?

A. Giving the whole matter from the beginning to the end of the case.

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Q. You were asked whether or not you wanted the case settled; state what was the reason you did not want the case settled?

A. I had got through with the case; I had no interest in settling any case.

Q. It was not that you were afraid of going up on it,—that it was done wrong?

A. No; if I had been afraid of the case I should never have allowed Mr. Forbes to come in at all, but as I knew that I had beaten him on the case and he made that statement, I said go ahead.

Q. I desire to have an emphatic statement from you, Mr. Matthews, whether or not you were the author of the original of that letter or anything like it? [Showing witness exhibit I.]

A. No, sir; I am not.

Q. You have never written such a letter as that to Mr. Whitney or anything like that.

A. No, sir.

Q. You saw the letter when it was published up there at the time?

A. Yes.

Q. And you know that you are not the author of that?

A. Yes; I know that I am not the author of that.

C. W. ANDREWS

Re-called on behalf of the respondent, testified:

Examined by Mr. ARCTANDER.

Q. Upon being sworn you stated, I believe, that you had known Judge Cox twenty years, fifteen of which you had known him intimately?

A. Yes.

Q. That you had studied in his law office before he went on the bench?

A. Yes.

Q. I will ask you to state Mr. Andrews, whether or not you went along on the train with the Judge from Tyler to Tracy, and the same day from Tracy to Marshall, on the first day of the term of court held in and for Lyon county in the month of June 1881?

A. I did.

Q. I will ask you to state what the Judge's condition was on board the train and when you came to Marshall?

A. He was sober.

Q. Did you go up into the court room after you had arrived on the train there?

A. I did.

Q. Did you see the Judge in going into the court room?

A. Well, I saw him very soon after I went into the court room.

Q. He came in after you did?

A. No, sir; the Judge was in the court room when I went in, and I met him at the table arranged for attorneys within the bar or railing.

Q. You didn't go to the hotel when you came up?

A. No, sir.

Q. What did you do?

A. I went to my office.

Q. Fast or slow?

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A. Well, as to that I can't say; I think I went moderately rapid; I usually travel that way.

Q. And went from there back to the court room?

A. Yes.

Q. How long a time do you think had elapsed from the arrival of the train until the time that you met Judge Cox in the court room there?

A. I think not perhaps longer than five minutes or ten, possibly; the Judge told me that he was going to call court immediately and I went to my office to take some books.

Q. And brought them right up with you?

A. Yes; I went to my office and took them to the court room immediately.

Q. How much further had you to go than the Judge—your office was beyond the court house from the depot?

A. Yes, but not to exceed ten rods, if that far.

Q. Were you any length of time in your office at all, except to gather up your books and go?

A. No, I don't think I could have been more than—oh, I might have been a minnte or two in the office, perhaps two or three; I wouldn't be positive as to just the length of time.

Q. The depot is a little off from the hotel, isn't it; a little short walk?

A. Yes.

Q. How far?

A. The depot from the hotel?

Q. Yes, from the hotel where the Judge stopped?

A. Oh, perhaps thirty rods, forty rods.

Q. Thirty or forty rods?

A. Thirty or forty rods. I should think somewhere from thirty to thirty-five, perhaps.

Q. While court remained in session there during that term, during the whole of that term, how much of the time were you in court, Mr. Andrews?

A. I was in court nearly all the time; I was out but very little.

Q. You stayed the first day, the first afternoon, for instance. What portion did you spend in court of that session?

A. I spent all of the time that first afternoon.

Q. All of the afternoon; the second day what time did you spend there?

A. I don't recollect being out of the court room during that term of court but very few minutes.

Q. During the whole term?

A. Yes; I was in almost constant attendance upon the court.

Q. I will ask you to state, Mr. Andrews, what the condition of the Judge was, as to sobriety or inebriety, during the whole or any portion of that term, in court.

A. Well, he was not drunk to my knowledge.

Q. Well, was he not sober?

A. I thought so then, and do now.

Q. Thought what?

A. That he was sober—well, I didn't think anything about it at the time.

Q. It didn't occur to you?

A. It didn't occur to me that he was drunk.

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Q. Did it occur to you that he was anything else than sober?
A. No, sir.
Q. Did you appear in cases there, before the Judge, that term?
A. Yes.
Q. Did you appear in any cases the first day?
A. Yes.
Q. You were attorney in that case of Bradford against Bedbury, I believe?
A. Yes.
Q. The second day in the evening, did you appear in the case of the State against Farrington?
A. Yes, sir.
Q. State whether or not the Judge, during any portion of the first three days of that term, was incoherent in his speech.
A. No, sir; not that I discovered.
Q. Were you present, and did you hear his charge to the grand jury?
A. Yes.
Q. Have you heard Judge Cox charge the grand jury before?
A. Yes; frequently.
Q. State whether or not there was any difference between this charge as you heard it then, and other charges that you have heard him deliver at other times?
A. I didn't observe any at the time.
Q. Was there any difference in the manner of delivery?
A. No, sir.
Q. Do you remember whether or not the portion of Judge Cox's charge treating of the sale of liquor to minors or habitual drunkards,—a very strong stricture upon the saloon-keepers,—whether that was in at that time?
A. Well, I can't say as to that; my impression now is, that had he omitted that I would have discovered it.
Q. You don't have any recollection of any omission of that kind?
A. I have no recollection of any omission.
Q. Were you present when the decision was made in the Bradford against Bedbury case?
A. I was.
Q. State whether or not, there was any evidence of any intoxication in Judge Cox at that time, or in the manner in which he delivered that decision, or the language in which it was couched?
A. I didn't discover any indications of intoxication.
Q. How did his mind seem to act at that time?
A. Perfectly clear.
Q. You were present when he delivered his decision, and made his rulings in the case of Main as administrator, against the Winona & St. Peter Railroad Company, the second day of the term?
A. I was.
Q. How did his mind act during that period?
A. He seemed to be perfectly clear as far as I could understand.
Q. State whether or not he said anything in delivering his verbal opinion upon the motion for a non-suit in that case,—whether anything came in that was entirely irrelevant or immaterial to the matter under consideration; did he make statements that were irrelevant to the matter under consideration at the time?

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A. Not that I discovered, and I was considerably interested in the case; I paid strict attention during the time it was under consideration.

Q. You were not an attorney in the case?

A. No, sir.

Q. You took a professional, legal interest in it?

A. Yes, sir.

Q. It was an interesting case, containing interesting points?

A. Yes, sir.

Q. I will ask you to state, Mr. Andrews, whether the Judge during any portion of this term and more particularly during the first three days, swaggered either in his walking or sitting?

A. No, sir; I never discovered any indication of that.

Q. Did he ever reel while sitting upon the bench, reel over in any way?

A. No, sir.

Q. State whether or not there was any puffed up appearance in his eyes at any time?

A. Not that I ever observed.

Q. How was business expedited there that term?

A. I recollect distinctly that it was done very rapidly.

Q. And well?

A. Yes; I remember that the attorneys made frequent motions for a recess, and asked some time to be given them to prepare arguments and to get our clients into court. I know that business was expedited as rapidly as I have ever seen the Judge expedite business, or perhaps any other judge.

Q. State whether there was any difference as far as expediting business was concerned in the first three days from the latter part of the term?

A. I recollect this, that there were more frequent recesses during the latter portion of the term on account of the increased and intense heat.

Q. More than in the first part of the term?

A. Yes, sir.

Q. You mean there were more recesses altogether in the latter part of the term than there was in the first three days of the term?

A. Yes, sir.

Q. You give as a reason for it, the heat?

A. I do, because I was interested in a number of cases, Mr. Matthews and I,—criminal cases,—and I made several motions, or asked the court to grant us a recess for a few minutes; we became exhausted, we attorneys.

Q. State whether or not there was anything like from six to twelve recesses a day during the first two or three days?

A. No; there was nothing of the kind.

Q. What was the number of recesses, if you can remember.

A. Well, that is difficult to tell; I think perhaps there might have been two or three in the forenoon, and then the noon recess; I think no more than that; I am very positive that there were no more frequent recesses.

Q. When the Judge went up on the stage after you had seen him there on the table, and he walked up on the stage to open court, Mr. Andrews, state whether or not he had any difficulty in getting up there on the stage,—whether he reeled or staggered or not?

A. Not that I discovered, and I was very near him; I think I would

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have discovered, if there had been any difficulty in getting upon the stage.

Q. Had he any more difficulty in finding what he wanted in the statute book than you have observed at any other time?

A. I did not observe anything of the kind.

Q. Do you remember when he charged the grand jury whether he charged them from the manuscript or a paper that he has the charge printed on, and read to them from that?

A. I cannot say as to that; my recollection is that he has usually used manuscript, or has had one at his command; but whether he did that time or not, I can't say and I sat very near him; I think not much further than from where I sit now to your position.

Q. You noticed nothing different from what you had seen other times?

A. I didn't notice anything different; if there had been anything much different, I certainly should have noticed it.

Q. State whether he had any great difficulty in finding what he wanted in any papers that he wanted to look over before charging the grand jury?

A. Well, I didn't discover anything of the kind.

Q. State whether or not at any time during those first three days his head seemed to settle down between his shoulders in a sagging manner?

A. I didn't discover anything of that kind.

Q. I will ask you to state the condition of the Judge during the first three days taking it now as a whole, so far as his mind was concerned?

A. His mind was perfectly clear, I am positive, during the entire term of court.

Q. No difference in it between the first three days and the latter part?

A. No, sir, for we had some as difficult matters to decide during the first part of the term as we did during the last and we did not, any of us,—I heard no remark about his mind being clouded or his being intoxicated until this little grand jury muddle came around.

Q. That was the first indication that any of you in the court room had about it?

A. Certainly.

Q. Did it seem to be difficult for the Judge to see a point as quick as usual?

A. No, sir.

Q. Do you remember, Mr. Andrews, how it was about the bridge business at that time, when you came there at that time?

A. With regard to the bridge over the Redwood river?

Q. Yes, whether there was only the foot bridge to go over or whether the new bridge was fixed up at the time?

A. To the best of my recollection that bridge was not built until sometime during the latter part of harvest.

Q. The new bridge?

A. Yes, the new bridge; I don't want to swear positively on that——

Q. What is your recollection as to which you walked over?

A. My recollection is that I walked on the plank.

Q. On this plank walk for a foot bridge?

A. Yes, and that I did after the June term of court; I went back to Tyler again where I now reside and I was then residing and my recollection is that after I came from Tyler again I also walked the foot bridge; I think it was two or three weeks after court, or a month; I wouldn't say positive; but I am certain there was no bridge there at the time.

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CROSS-EXAMINATION.

By Mr. Manager COLLINS.

Q. Mr. Andrews, where do you reside now?

A. At Tyler, Lincoln county.

Q. Do I understand that you studied law with Judge Cox?

A. I studied law with Mr. Cox and Mr. Davis when they were partners.

Q. At St. Peter?

A. Yes.

Q. You were speaking a moment ago of the grand jury business; were you one of the attorneys who were present at a meeting of the bar shortly after the resolutions were presented?

A. Yes.

Q. There were a number of attorneys present.

A. Yes.

Q. And a good deal of discussion?

A. Yes, some discussion.

Q. And the discussion, as I understand it, was that a part desired that an investigation should be had, and others proposed that no investigation should be had.

A. An investigation as to what?

Q. Of the charge.

A. Well, I don't understand, and I didn't at the time, that there was any discussion or any suggestion as to the investigation into the matters of the charge against the Judge.

Q. You did not; what was the discussion then,—there was a difference of opinion, was there not?

A. There was a little difference of opinion as to whether the grand jury ought not to be punished for contempt.

Q. There was a difference of opinion as to that, and nothing else?

A. There was some diversity of opinion in regard to that matter.

Q. And nothing else?

A. Well, I didn't catch on to anything else, using the common parlance phrase.

Q Well then, the only difference of opinion between the attorneys, as you understood it, was whether the grand jury had better be indicted, or were guilty of contempt?

A. I understand that that was the matter at issue then.

Q. Now, Mr. Andrews, did not some of the attorneys there, quite a large number, insist that the matter contained in these resolutions should be investigated?

A. I think not.

Q. Will you swear positively that they did not?

A. I will swear positively that I heard nothing of the kind.

Q. Were you there all the time?

A. I think I was.

Q. Who wrote this resolution that has been offered here; do you know that a resolution was offered here, a copy of the resolution which was adopted by the bar on that occasion,—do you know who wrote that?

A. I did at the time, but I have forgotten now.

Q. You were there all the time, were you?

A. Yes; I think I was, to the best of my recollection.

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Q. Now, I understand from your testimony that you went from Tyler to Tracy, and from Tracy to Marshall?
A. Yes.
Q. You changed cars at Tracy?
A. Yes.
Q. Now, where were you during the time you had to wait there at Tracy for another train?
A I can't say whether—
Q. Can you tell me—I beg your pardon for the interruption.
A. I can't say whether I remained at the depot or went over in the village; I very frequently, when I am waiting,—when I am changing cars there, or waiting for trains, I run over to Mr. Main's office or Mr. Brown's; I am rather—I am of the impression that I went over to Mr. Main's that day, and asked him about going over to Marshall.
Q. How long did you have to wait there?
A. Well, I am not certain; perhaps—oh, I can't tell you.
Q. Do you know what became of Judge Cox?
A. I did not.
Q. When did you next see him after leaving the train there at Tracy?
A. Well, I can't say whether I saw him on the train first, or about the depot.
Q. Do you know whether he had any whisky with him on that occasion?
A I do know.
Q. Did you see any in the party on the train?
A. No.
Q. Now, do you know what part of the train the Judge was on from Tracy to Marshall?
A. I recollect of seeing the Judge once in the smoking car.
Q. Once in the smoking car?
A. Yes; that is the only time.
Q. You are positive about that?
A. I am very certain that I saw him there.
Q. Between Tracy and Marshall; do you know whether or not Mr. Sanborn's business car was on that train at that time?
A. Well, I am not certain.
Q. Are you positive that you saw Judge Cox on the train at all?
A. Well, I think I did.
Q. And you think he was in the smoking car?
A. I think he passed through that car when I was sitting across the aisle, nearly opposite Col. McPhail; I think I recollect of Judge Cox coming through the car and speaking to us.
Q. You weren't in the business car, if there was one?
A. No, sir.
Q. Was Judge Cox sober on that train?
A. Well, if he was drunk, I didn't know it.
Q. Did you ever see him drunk?
A. Yes.
Q. Do you make any distinction between a man being intoxicated and a man being drunk?
A. Well, I do make some difference; yes, sir.
Q. Well, on this occasion was he intoxicated?
A. I don't think he was.

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Well, do you think he had been drinking anything, anything in ay of spirits?

Well, I am of the impression that he had been drinking some.

How did you get that impression?

I got that impression from, perhaps, noticing it a little on him.

You noticed it a little on him?

I might have.

Now, he was a little intoxicated, was he?

Well, I couldn't say that he was intoxicated, but I think that he een drinking a little.

You think he had been drinking a little so that you noticed it?

I think he had been drinking a little that day, because I know it.

How did you know it; did you see him drink?

I saw him drink one drink of whisky.

Where was that?

At Tyler.

That was before you started?

Yes.

Did you see him drink any after you left Tyler. A. I did not.

Did you notice that he had been drinking before he took that of whisky?

I noticed that he had drank one glass of whisky or something in resence the evening before.

Well, that wouldn't last until the next day, would it?

I think not.

Then, did you notice in the morning that he had been drinking e you saw him take that glass of whisky in Tyler?

No, I didn't notice that; it was quite early too, when he took that.

It was quite early; well, what time was it?

Well, it was after sunrise.

What time of year was this, I have forgotten, that we are speak- bout; it was May, was it not?

It was in June.

Now, on this train, as I understand, between Tyler and Tracy, or en Tyler and Marshall, you noticed that the Judge had been ing?

Well, I want to be understood that I—well, I am cognizant of the hat he had taken a glass of whisky on that day and the day before, s to whether he drank on the train or in Tracy I am not prepared .

But you noticed his condition on the train?

Well, I cannot say that I noticed that he was intoxicated on the

Well, when did you notice, or where was it that you noticed, he was under the influence of liquor? You say you noticed that as under the influence of liquor. Now, where was that and was it?

Well, I considered him under the influence of liquor from the hat I had seen him drink.

And nothing else?

Yes.

Now, when was it that you noticed it?

I noticed it when he took the liquor.

Immediately afterwards; did you notice after that?

No, sir.

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Q. Didn't notice it on the train?
A. I didn't notice that he acted materially different from what he did at any other time.
Q. Well, did you notice while on the train, Mr. Andrews, that Judge Cox had been drinking?
A. I don't know that his conduct indicated that he had been drinking, particularly.
Q. That wasn't my question. I asked you if you noticed?
A. I don't think I noticed that he had been drinking, further than I knew he had.
Q. You knew he had?
A. Yes, because I saw him.

Senator PERKINS here took the chair to act as President *pro tem.*

Q. Well, you have testified that on that train you noticed that he had been drinking?
A. Well, I noticed it I say from the fact that I had seen him drink it.
Q. Nothing else?
A. That was the only indication.
Q. That was the only indication that you had seen him drink sometime before sunrise.
A. Oh, I might have noticed that the Judge showed some symptoms of drinking that day; I think perhaps I might have noticed that; I won't swear positively that I did; I might or might not; I know that before we left Tyler that morning he took a drink of liquor.
Q. How far is it from Tyler to Tracy?
A. From 26 to 30 miles.
Q. How far is it from Tracy to Marshall?
A. 19 or 20 miles.
Q. It takes you two or three hours to go over?
A. Yes.
Q. Now, you arrived at Marshall about two or three o'clock?
A. I have forgotten the hour the train was due there at that time.
Q. And you went directly to your office and Judge Cox went somewhere else?
A. Yes, sir.
Q. Did he go to the court-room or to the hotel?
A. I can't say.
Q. You didn't reside there I understand?
A. My family were residing there at the time.
Q. Then you didn't stop at the hotel at all?
A. No, sir.
Q. Were you about the hotel with him at that term of court?
A. I don't know whether I was or not.
Q. Did you drink anything with him?
A. No, sir.
Q. Did you see him drink?
A. I don't think I did.
Q. Did you know of his drinking there at all?
Mr. ARCTANDER. Well, I suppose that would be objectionable, Mr. President.
Mr. Manager COLLINS. Why?
Mr. ARCTANDER. Why, if he didn't drink with him, and didn't see

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lrink, his knowing from anybody else of his drinking, would not mpetent testimony.

Manager COLLINS. I am asking him if he knows; of course what ody else told him would not be evidence, and Mr. Andrews knows

PRESIDENT *pro tem.* The question is proper.

Did you know he had been drinking there?

Not to my knowledge.

Did you see him at the hotel when you thought he bad been ing?

Well, I am not certain but what I did; I think perhaps I did.

When was it, day or night?

I think it was in the evening.

What time?

Well, after court adjourned; I cannot say as to the time.

Do you mean after court adjourned,—the evening session?

Yes.

Can you tell us about what time court adjourned on the occasion fer to?

No, sir; I cannot.

You cannot give us the hour?

No, sir.

And you cannot tell us what time of night it was that you saw

No, it was before midnight between ten and eleven, somewhere there.

Between ten and eleven o'clock?

I should say so, in my judgment.

Where was he, in the public room there or in his own room?

I think I saw him in the office.

That would be in the saloon, would it not.

No, sir.

That is adjoining the saloon?

No, sir; it is across the hall from the saloon.

More than once?

I don't recollect of seeing him more than once.

Now, while he was in the court room Mr. Andrews, did you see how any signs of having been drinking?

I can't say that his manners or conduct indicated anything of the

Did you see him when he showed any signs of it?

ARCTANDER. In his appearance?

Manager COLLINS. [to the witness] That is my question; that one I want answered, whether when you saw him in the court and on the bench, doing business at any time, he showed any of having been drinking?

Do you mean under the influence of it?

Of course; I mean just what I say; did you see him when he d any signs of having been drinking intoxicating liquors?

Well, I saw nothing that indicate I that.

I will ask the question if you saw him at any time when he d any signs—

ARCTANDER. I supposed he answered it; he says he saw ng—

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Mr. Manager COLLINS. Let him answer it; he can answer it yes or n.

The PRESIDENT *pro tem* I think the question is a proper one.

The WITNESS. I saw nothing that indicated that he had been drinking when on the bench.

Q. Then you saw no signs of his having been drinking,—when h was upon the bench you saw no signs of his having been drinking.

A. Well, I don't know as to that positively; had I scrutinized hi closely I might have seen something; I do not call to recollection no that I saw signs of his having been drinking.

Q. But if you had scrutinized him closely you might have seen it

A. Probably I might; I won't say as to that.

Q. Were you in his room at Marshall, at Hunt's hotel?

A. No, sir.

Q. I believe Mr. McGowan is the clerk of court there?

A. In Lincoln county?

Q. In Marshall?

A. Mr. McGowan, I think not.

Mr. ARCTANDER. Mr. President, we would like to have five minutes recess for the purpose of talking to the witness.

The PRESIDENT *pro tem.* If there is no objection the recess will be taken at the request of the counsel for the respondent, for five minutes.

AFTER RECESS.

CHARLES BUTTS

Re-called as a witness on behalf of the respondent, testified.

Examined by Mr. ARCTANDER.

Q. Were you present, and in attendance at any portion of the general term of the district court, held in and for Lyon county, in the month of June, 1881?

A. Yes.

Q. What portion?

A. I was there, I think, after the second day—I came the second day in the afternoon,—until the fourth of July; I think I was there one day after the fourth of July.

Q. You came the second day in the afternoon, you say?

A. We were in court at the opening of court at the noon recess; I came in the afternoon upon the afternoon train, and went to dinner, and came up in the afternoon some time; I don't remember just what time in the afternoon.

Q. Were you there in court the whole time during that afternoon?

A. Oh, I can't tell you, I was in and out; I had no cases there, and I was in and out whenever there was a case going on.

Q. On the second day there seems to have been a case of Main against the Winona & St. Peter Railroad Company; I call your attention to that.

A. Who were the attorneys? The attorneys, I understand, were Mr. Lind and Mr. Gale.

Q. Yes.

A. Well, I was there the whole of that afternoon.

Q. Do you remember whether or not you were present or not in court during the evening session of the day during the trial of the State against Farrington?

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A. I was there during the trial of the case against Farrington, whatever time it was. I remember the case and remember something about it. I was in the court room part of the time.

Q. Were you in court the third day of the term?

A. I was in court every day while I was there, several times, probably; I might have been in and out six or eight times.

Q. Not to miss a session there?

A. I don't think I did; I am pretty confident I didn't.

Q. State whether or not the Judge during the second day or third day was intoxicated or not?

A. The second day; the time of the trial against the Winona & St. Peter railroad company, I am very positive he was perfectly sober.

Q. That was the second day of the term; not only sober, you say, but perfectly sober?

A. Yes.

Q. The third day,— do you know anything about his condition on that day?

A. Well, I think he was as well as he was the day before, that is, perfectly sober; when I came there, when I heard that trial, I considered him perfectly sober.

Q. Did you pay any particular attention to what went on in the court room during that trial?

A. I did, particular attention.

Q. What was the reason?

A. Well, the reason was—one reason,—I studied with Wilson & Gale, and it was their case, and I was interested in the case, and then Mr. Lind was a new man, and he opened up the case and rather impressed me in the start, and I asked who it was, and stayed to hear it out.

Q. You say you had studied with Wilson & Gale?

A. Yes.

Q. And you were interested in the case?

A. Yes, of course; I knew they were good lawyers, and I wanted to see good practice.

Q. I will ask you to state whether there was any difference in the conduct, appearance, deportment, language, or manner of Judge Cox during the first two days that you were there, namely, the last half of the second day and the third day, from what it was during the remainder of the time?

A. No, sir, I did not.

Q. You observed no difference at all?

A. No, sir; I did not.

Q. Were you in there at the time in the Main case, when the Judge gave his decision in that case?

A. The same decision you refer to?

Q. Yes.

A. I was there all through the argument and trial of that case.

Q. You heard the motion for non-suit?

A. I heard the motion for non-suit.

Q. Did you hear the decision of the Judge upon that motion?

A. Yes, sir; I did.

Q. What was the condition of the Judge's mind during that trial?

A. Well, I thought it was very clear, because the distinction that was made on the trial was a very fine distinction.

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Q. On that motion, you mean?

A. Yes; on the motion, and Mr. Lind opened the case and then had his evidence, put his evidence in and rested; and the defense, Mr. Wm. Gale for the defense, moved for a non-suit, and stated his grounds; and Mr. Lind stood up to the table, and had a great many books there; he had quite a good many on the table, and said, "I anticipated that motion and am prepared for it," and he commenced to make his argument in defense of his position, and after his argument, Mr. Gale arose and made the reply. I thought when Mr. Lind opened the case and stated it, that he made a very good argument and had a very good case; afterward I changed my mind. After Mr. Gale sat down there was considerable interlocutory talk, and the Judge asked somebody to go out and get his common-place book, and also to get several authorities that he asked for, and stated that he understood the law to be different from what Mr. Lind had laid it down. After they had talked some and he read some little from his common-place book, and also several decisions that he commented upon, and also several that he cited himself and had brought up there, he made the remark that he would have to grant the non-suit, but that the prosecution, the attorney for the prosecution, had made a very able argument and showed himself remarkably well prepared, and Mr. Lind jumped up somewhat excited, and said, "what good will that do my client?" and there was some other talk that they had there, and after that the Judge granted the motion.

Q. Well, in giving his reasons for the decision, did Judge Cox travel outside the record of the case, bring in any irrelevant matter?

A. Oh, he talked about half an hour on the law, and made a great many distinctions as to the question of negligence. The question turned upon the statute providing that railroads should fence their track, and it was purely a matter of negligence, and the defense claimed that there was evidence in the case of contributory negligence and that was the matter in dispute and the matter that was argued. I know that Judge Cox made several distinctions as to the several degrees of responsibility that rested upon the companies——

Q. In proportion to the different responsibilities that they had?

A. Yes, sir; in the matter of negligence, and I know he made quite a long talk.

Q. State whether or not you heard in Judge Cox's decision upon that motion reference to the duty of corporations to passengers, for instance?

A. I know that he made distinctions as to the different degrees of responsibilities as to passengers or whether they were carrying freight or what they were doing.

Q. How was that given, comparative or otherwise?

A. Just comparing the different degrees of responsibility and applying it to the case as to what degree of responsibility there was here; I don't remember the whole case; of course it was a long argument; they probably took two or three hours there in discussion, backwards and forwards.

CROSS-EXAMINATION.

By Mr. Manager COLLINS.

Q. Mr. Butts, where do you reside?

A. Lake Benton, Minnesota.

Q. You did not come up the first day of the term of court?

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A. No, sir; I did not.
Q. But you came up the second day ?
A. I came up on the passenger.
Q. What time did you arrive in the afternoon ?
A. My impression is that the passenger train gets in late for dinner, or did at that time; I know that the passenger started at 10.50; we run to Tracy for dinner and got up to Marshall after dinner at one o'clock; insteadof stopping at Marshall, it stopped at Tracy for dinner and it must have been after one o'clock some time.
Q. The train usually stops at Tracy, so you got up late ?
A. Yes.
Q. Did you go directly to the court room ?
A. No, I went and got my dinner.
Q. Where did you stop ?
A. At Mr. Hunt's, the first hotel, and got my dinner there.
Q. It was the same hotel that Judge Cox stopped at ?
A. No, he stopped at the other hotel.
Q. Are you sure of that ?
A. I don't know about that, but I think he did during the term ; I think he did then, I am pretty nearly positive.
Q. Weren't you in Judge Cox's room in Mr. Hunt's hotel at that term in the evening?
A. He was not at Hunt's hotel while I was there : he stopped at the other hotel, Mr. Bagley's.
Q. Did you see him at Mr. Hunt's hotel?
A. I did, I presume a good many times; I presume he was there.
Q. Did you see him there in the evening ?
A. I may have seen him in and out in the evening, but I don't remember much.
Q. Did you see him drink there?
A. My recollection is that I did not.
Q. Did you see him drink anywhere else ?
A. I think I did.
Q. In the evening, or day ?
A. My impression is that it was in the evening, but I wouldn't swear that it was.
Q. Mr. Butts, as I understand, you got there in the afternoon of the second day; now was this drinking that you speak of during the first three days, or rather during the day that you came and the day afterwards, or was it later in the term than that ?
A. Well, I couldn't tell you that it was but twice at the outside and I wouldn't swear positively that it was twice; I remember once of having seen Judge Cox drink, and at that time it was at the other hotel.
Q. At the Bagley House?
A. Yes, at the Bagley Hotel; there was some beer brought in and I remember that there was some there, and I am pretty positive that Judge Cox brought some of the beer, but I don't remember; there was quite a number there.
Q. Did you stay at Mr. Hunt's all the time?
A. No, sir, I did not.
Q. You left and went to Bagley's?
A. No, sir.
Q. Didn't you leave Hunt's hotel with Judge Cox ?
A. No, sir; my recollection, as I remember, is this, that I came in to

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Mr. Hunt's hotel and got my dinner; after dinner I went up to the court room, and at the court room I met Judge Cox; he said to me, where are you stopping; says I, at Hunt's; he said, you had better come up and stop at the Bagley House, we have got a nice room, a front room, and there is no room at Hunt's, and I went down to the hotel at supper time, and I found I had to take an upper floor, and a very small room, and I asked Mr. Hunt if that was the only accommodation he could give me and he said it was, and then I told him I would go to the other hotel because I could get a good, large room, and I went up to the other hotel; I wouldn't be sure whether it was that evening or the next morning, but now I remember it was on the day after that I went up to the Bagley House, because I remember sleeping one night at Mr. Hunt's, and therefore I think it was not until the next day that I went up to the Bagley House.

Q. After court adjourned in the evening did you spend your time in Judge Cox's room?

A. Some of the time.

Q. What were you doing there?

A. Well, most of the time I spent at Mr. Matthews' office.

Q. But at Judge Cox's room; what were you doing there?

A. Nothing particular.

Q. Playing cards?

A. No, sir.

Q. Drinking? A. No, sir.

Q. Any drinking at all?

A. I drank nothing that I remember of in that term of court, and I have no distinct recollection of drinking at any other place; I might possibly have taken a drink, but I have no distinct recollection of drinking at all at that term of court.

Q. Were you present when the resolutions were discussed by some members of the bar?

A. Yes.

Q. Were there not some members of the bar that desired an investigation on these resolutions?

A. I think we all desired an investigation; I didn't understand there was any question about that.

Q. Didn't some of them insist that the grand jury hadn't any business with it and proposed to dispose of it?

A. We all did.

Q. All insisted on that?

A. Yes.

Q. And some desired an investigation?

A. We all desired an investigation.

Q. I understand that all insisted that the grand jury had nothing to do with the matter, and all desired an investigation?

A. Yes, that is it exactly.

Q. Well, Mr. Butts, how many times have you seen Judge Cox in court while acting as Judge?

A. Well, I couldn't tell you; it was either four or five times.

Q. Four or five different times you mean?

A. Yes, but I conldn't tell you now, that is my impression.

Q. You seen him at Tyler, Marshall, and at other places?

A. I think I have seen him at Benton, and once or twice at Marshall, once at Marshall before this; I am not certainly sure how many times I have seen him.

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Q. Did you ever see Judge Cox intoxicated?
A. I think I have.
Q. Have you ever seen him except at this term of court you speak of?
Mr. ARCTANDER. Do you want to go over this again; this witness has been examined on it before.
Mr. Manager COLLINS. When?
Mr. ARCTANDER. When he was examined under article fourteen; if you want it the second time, however, we do not object.
Q. I will ask you one question; how many times have you seen Judge Cox other than those you have mentioned?
A. Oh, I have seen him quite a number of times in the last two years and I saw him before two years ago, and I saw him in St. Paul several times, three or four, or five years ago.
Q. Well, since he has been judge?
A. Well, I have seen him, passed him on trains.
Q. Frequently?
A. Well, not frequently, but a number of times I passed him on the train.
Q. Did you ever meet him anywhere else but on the train?
A. Well, I can't tell you about that either, I have no distinct recollection about that either.
By Mr. ARCTANDER.
Q. What way did you come that day when you came to the hotel?
A. I came on the train.
Q. Yes, but I mean from the depot over to the hotel?
A. I came afoot with my satchel.
Q. How did you cross the river?
A. I crossed on some planks.
Q. You crossed on some planks laid across the river?
A. Yes.
Q. Was there any bridge there, any driving bridge?
A. Not where I crossed, no, sir; none there nor anywhere within a short distance.
Q. What was the condition of the plank bridge?
A. Well, it was just a single plank laid across the river?
Q. A dangerous institution?
A. The first plank you went down a grade of about going from the top of that [the speakers table] down to the end of that table [the counsels' table] down a plank; just an ordinary plank, and then you walked across on two or three planks until you came to the Bayley House steps and then you followed it right up.

By Mr. Manager COLLINS.
Q. How wide is this river there, this stream?
A. Well, I couldn't tell you that; it was high water then, clear up to the bridge; I couldn't tell you how high it was; the running water was perhaps twenty or thirty feet wide.
Q. A small stream, twenty or thirty feet wide; how deep do you suppose it was?
A. I couldn't tell you that.
Q. Well, as I understand, they had built a temporary foot bridge across it that was two or three feet wide?
A. No; I didn't see anything of that kind.

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Q. Just a single plank clear across there?
A. No; not one single plank reaching across, but a single width.
Q. Are you sure about that?
A. I am very sure about that.
Q. As a matter of fact, was it not three or four feet wide?
A. I am positive about that.
Q. You are as positive about that as you are that there was no wagon bridge there?
A. Yes; I am very positive about that for certain reasons.
Q. What was the reason?
A. It is six or eight feet above the water and the water was running very swift, and I am very dizzy-headed, and I know I stopped and looked around.
Q. To get some other way across?
A. My head is very dizzy, and if it was ten feet I would not be tempted to go across at all. I am very positive about that because if there is anything I know it is that one single thing.

B. F. WEYMOUTH,

Recalled on behalf of the respondent, testified:

Examined by Mr. ARCTANDER.
Q. Judge Weymouth, do you remember of walking down to the depot with Judge Cox, in the village of Marshall, one day in the fall of 1880?
A. I thought it was that time. I remember the fact; I am not certain—that is, I was not certain about the date. I had a conversation with Mr. Sullivan—I thought it was this spring, but after thinking it over and conversing with him I am satisfied it was last spring, when he said it was.
Q. The fall of 1880?
A. Yes; I thought it was the first day of October, 1880, the day after we had a county convention.
Q. Also at the time when you had a special term of court?
A. Yes; that is, there was a term that was adjourned on account of the county convention—that is, nothing done, and this was the next day, I think, that I walked down to the depot with the Judge.
Q. I will ask you to state whether or not you ever walked down to the depot with the Judge, arm-in-arm, more than once?
A. I don't think I ever did.
Q. I will ask you to state whether or not Judge Cox at that time was drunk?
A. I didn't think that he was drunk. I will explain that further: From the appearance of Judge Cox at that time, I judged that he had been drinking pretty freely the night before, but I didn't judge that he was intoxicated at that time at all. He wasn't in good—
Q. Did you talk with him?
A. I was talking with him all the way over. In fact, I walked over with him to talk with him about a matter.
Q. Now, I will ask you to state whether or not at that time, Judge Cox did stagger?
A. Not to *my* knowledge.

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Q. I will ask you to state whether or not you held him up in any way?

A. I don't think I did, [witness laughs] or that there was any need of it.

Q. You had no idea that there was any need of it?

A. No.

Q. Well, you didn't, as a matter of fact?

A. Not to my recollection—anything of the kind.

Q. I will ask you to state whether or not Judge Cox "jabbered" at the time?

A. No, sir; we were walking and talking about a matter which I recollect just as distinctly as if it was yesterday.

Q. Well, was it a quiet talk or was it jabbering?

A. Well, we were talking so that there couldn't anybody hear us. It was a quiet talk we were having, as we walked over there in the street. The only building we went by in going from the hotel to the depot was Mr. Sullivan's office, and we went by on that side of the street; and we were talking about a matter that was a little confidential. I recollect it very distinctly.

Q. At that time you are positive that the Judge was not intoxicated?

A. I had no suspicion that he was; if I had, I should not have talked with him about the thing I talked with him about.

Q. Have you at any other time taken him to the depot?

A. Not to my recollection.

Q. I will ask you if you have taken him to the depot at any other time; whether you have ever done it when he has been intoxicated or drunk?

A. No, I don't think I ever walked with him to the depot at any other time in the world.

Examined by Mr. Manager COLLINS.

Q. When did you first meet Judge Cox on that day?

A. I think that I came into the hotel but a very short time before he had to go to the train. My recollection is that I went home to the farm the night before, and came down in the morning with some of my neighbors that were coming into town, not but a little while before the time that the train went out, and I went in to see Judge Cox, and got there in order to have a conversation I wanted to have with him, and I walked along with him to the depot.

Q. Then you had not seen him for several days, as I understand, until just before you started for the depot?

A. Yes, I saw him the day before just after dinner.

Q. How was he then,—sober?

A. Oh, he was sober, then; and he adjourned court so that myself and Mr. Forbes, and Mr. Patterson could attend a political convention. There wasn't a great deal of business, and I don't remember seeing him again until I saw him next morning.

Q. Well, was it in the morning or in the evening when you saw him again?

A. Well, I am not sure about the time the train went out. My impression is it was at least 11 o'clock in the morning.

Q. I mean the time when you went to the depot with Judge Cox?

A Well, I am not sure, it might have been as late as dinner time or about noon.

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Q. Well, was it not in the afternoon, towards night?

A. No, I think at that time there was a freight that ran down to Sleepy Eye with a caboose; went down about 11 o'clock, then the regular passenger train went out rather late after dinner. I am not sure which train it was we went to; it was either about 11, or after dinner.

Q. Now, you said you thought from appearances Judge Cox had been drinking a good deal the night before?

A. I did; I thought that he showed a little "being off" in his condition.

Q. What were the appearances you speak of?

A. Well, I can't describe them, they were the same that we always observe when a man has drank pretty freely in the night. The next morning he is not in a good nerve; I cannot describe it.

Q. Now, Judge are you certain that the condition was the result of a drinking the night before or of a drinking that morning?

A. I am not certain, no, but I think that I could distinguish the difference between the immediate effect of drinking, and drinking perhaps a little freely the night before.

Q. But he showed signs of having been drinking sometime previous?

A. Yes, as I thought; I thought so.

Q. Judge, have you ever seen Judge Cox under the immediate effects of intoxicating liquors?

A. I think I have.

Q. Have you ever seen him, when in the discharge of his official duties upon the bench, in that condition?

A. Not in a term of court, I think, but I recollect one instance—

Mr. ARCTANDER. Well, never mind, Judge, you need not say.

Q. Then you have seen him?

A. Not in a term of court.

Q. But while he was engaged in the discharge of his duties as judge, you have seen him under the influence of intoxicating liquors?

A. Well, I could hardly say while he was engaged,—perhaps when he *would* have been engaged in it if it had not been for his condition.

Q. He would have been engaged in it if it had not been for his condition?

A. Yes. [Witness laughs.]

Mr. Manager DUNN. We offer to show when and where.

Mr. Manager COLLINS. We will ask a question and ask the privilege of showing when and where this was; and we will state to the Senate that if it was not at one of the times we have alleged in our articles or specifications, we will withdraw the question. It is a matter of course in the discretion of the court, as to whether they will allow this or not. I call the attention of the Senate to the fact that while we were confined, and, in one or two cases, when we attempted to show by more than five witnesses, certain instances of intoxication; we were confined strictly within the rule. The Senate, however, has deviated (and I am not finding fault about it, and I don't know that it is improper) from that rule so far as the respondent is concerned, and has allowed him more than five witnesses upon some of the articles, and some of the specifications under the general articles. Now, what the rule of the Senate will be in that regard, I do not know; whether they will allow us to reopen our case and go further than we are usually allowed in rebuttal, I cannot tell; but I think it is within the discretion of the court to allow us to ask that question, or rather to allow the witness to answer it, and

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especially if his answer is such as I claim it will be, showing intoxication while in the discharge of his official duties at a time and place that we have specified.

Mr. ARCTANDER. Well, I have got so tired of this kind of business that I can't answer it. I will ask one of my associates to answer this thing.

Mr. BRISBIN. The manager himself has stated what is a well recollected fact here, that that matter has been ruled upon. Do I understand that that is denied?

Mr. Manager DUNN. It is a request we are making to the Senate.

Mr. BRISBIN. I was paying very little attention. What is the request?

Mr. Manager COLLINS. He says he has seen Judge Cox under the influence of liquor, while in the discharge of official duties; I wish to ask him to state when and where it was.

Mr. BRISBIN. It is very well understood that there has been an order adopted by this Senate ruling out that character of testimony. I don't care to take up the time of the court by any answer at all; if they want the court to go back on its decision, I have nothing to say about it. I don't think that any answer is required. I decline to go into the merits of the question.

Mr. Manager COLLINS. The Senate has allowed more than five witnesses upon certain articles, to the respondent. Now, whether they propose to confine the State to five witnesses, and to let the respondent have more than five witnesses or not, I cannot say. I do say that the board of managers propose to ask that they be allowed to introduce additional witnesses, as many witnesses upon these different articles, as the respondent has.

We shall ask that because we think we are entitled to it; we ask it with no disposition of "pettifogging,"—we don,t want anything of that sort,—but we think it is nothing more than fair and just to the people of this State that we should make this request. Asking this question at this time will simply save recalling Judge Weymouth here, and save the expense of subpœnaeing and bringing him here again. If his testimony is not permitted now, we shall simply have to subpœna and bring him here in rebuttal. If this question is allowed it will save that trouble.

The PRESIDENT *pro tem.* As I understand, Mr. Manager, you ask to be allowed to make Judge Weymouth your witness for the purpose of asking him this question.

Mr. Manager COLLINS. Yes. sir; we propose to follow this question by asking when and where it was.

The PRESIDENT *pro tem.*. The effect of that is to make the witness your own upon that charge.

Mr Manages COLLINS. Yes, sir.

Mr. BRISBIN. I desire to say a word upon this matter but I shall not argue it fully because I apprehend it is *res adjudicata* as to whether this is a proper cross examination, and it is conceded by counsel that it is not a proper cross examination. Now it is proposed, as I understand, from the suggestions of the Manager last up, to make the witness their own, and under cover of the courtesy and grace of the court—which has been extended to us—to introduce Judge Weymouth, as a witness on their behalf at this time.

Now there is no sense, no propriety, and no legal reason for this; and for this reason, they have *rested their case* on the subject matter to which

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they propose to interrogate Judge Weymouth, and it is not *rebutting evidence*. They have exhausted their right upon that subject matter They cannot reopen their case and prove matters in chief. If it was contemplated proving rebutting matter by Judge Weymouth, for the purpose of avoiding the necessity of the issuance of a subpœna, and bringing the witness here again, then it perhaps might be a proper case for the extension of this indulgence; but that is not pretended. There is nothing in the way of rebutting evidence proposed to be introduced from Judge Weymouth, but it is proposed to produce him as a witness in chief, to re-open their case which has already been closed, except so far as new matter is concerned, which may be introduced by the defense. So there is no rule of evidence which would permit of the extension of this favor.

Mr. Manager COLLINS. Will the counsel allow me to ask him a question. Do you claim my position would not be permissable under the rule that was presented by Senator Macdonald the other day?

Mr. BRISBIN. I don't remember the rule, Mr. Manager.

Mr. Manager COLLINS. Probably the members of the court could tell what the rule is better than I can myself, but as I understand, it had reference to this very thing.

Mr. BRISBIN. With all respect to the court, there have been a great many rules and a great many rulings.

Mr. Manager COLLINS. Senator Macdonald I presume can tell. I am speaking now with reference to the rule in relation to the number of witnesses.

Mr. ALLIS. Mr. President, I would like to be heard a moment upon this point because it is introducing a view into this case which has been several times suggested by the counsel during the progress of this case. We shall want to be heard very fully, if there is to be any such doctrine maintained here as this question implies. The manager now proposes, as has been suggested by my learned colleague, to make this witness his own. In order to do that the testimony which he purposes to introduce must be competent and proper. He speaks as though it were rebutting testimony.

Mr. Manager COLLINS. No, I said it was not rebutting testimony.

Mr. ALLIS. Not rebutting? Upon what principle do you then claim it to be admissible?

Mr. Manager COLLINS. The counsel has asked a question and I state this: that this court adopted a rule in the first place confining the State to five witnesses under each article. When we got through, laboring under the impression that the Senate would adhere to that rule, we rested our case. I think we did attempt once or twice to prove certain articles by more than five witnesses, but we were stopped. Then the Senate adopted an order permitting the defense to have more than five witnesses. Now, is the court going to confine us to five witnesses and permit the respondent to have as many witnesses as he pleases, or will the Senate allow us to introduce an additional number? If it does, it will not confine us simply to our rebuttal.

Mr. ALLIS. That would be allowing you to re-open your case anew.

Mr. Manager COLLINS. It would.

Mr. ALLIS. The Senate has ruled that this is not proper cross-examination,—nearly every day the question comes up before us, and it is about time that it was settled. I understand that the counsel is trying to avoid the ruling of the Senate by the suggestion that he will make this witness his own.

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Mr. Manager COLLINS. He could not be a witness in rebuttal if he were our witness.

Mr. ALLIS. Why not? In rebuttal on the the part of the prosecution.

Mr. Manager COLLINS. Oh, we could, but not with such a question as this.

Mr. ALLIS. I know it is not rebuttal, but that is not the point I am getting at. Now, I understand there is no ground upon which it is particularly claimed to be admissible except under the favor of this Senate, because we have been allowed more witnesses than was allowed to the prosecution. It has not heretofore been my duty to make any observations upon that point before this court, but I cannot see that this court has extended to us any grace in giving to us a greater number of witnesses than to the prosecution. It was a necessity in the case. You can all see that the respondent in this case is substantially proving a negative; that is to say, the respondent is charged with being drunk upon the bench during a certain period of time, say five days during a term of court.

Now, if the prosecution introduce testimony here as to drunkenness on one of those days, or upon one occasion, they have made out a *prima facie* case. Now, it might be, and probably would be, that we could not get a witness who would be able to identify that particular occasion, and disprove the offense alleged to have occurred at that time, so that, we would, in our testimony, have to go through the whole term and show by competent evidence that he was not intoxicated upon any day of the term. That would be our only course in nine cases out of ten, perhaps. It would be very difficult to find a witness who could identify a particular occasion to which the witnesses upon the part of the prosecution had testified; so that we are obliged to produce different witnesses as to different dates during the whole term. Now, the Senate can see at once that under such circumstances it was absolutely necessary that we should have more witnesses than the prosecution, because it is not probable that we could get one witness who was present at every moment during the whole term. It was necessary, proper, and reasonable, for that reason, that the respondent in this case should have more witnesses to prove that he was not intoxicated than the prosecution should have to prove that he was. In this matter the Senate was not extending to us any grace or favor, but simply doing us the least possible amount of justice consistent with the nature of the case. I can't see that the prosecution are entitled to any favor from this Senate because they were not allowed as many witnesses as we necessarily required. Besides that, it was intimated here, during the progress of the case in chief, that when the respondent came to his case he might want more witnesses, and the managers very well knew; it was decided by the Senate that, if necessary, the respondent would be allowed more witnesses than the prosecution; so that there is no excuse whatever upon the part of the prosecution for not introducing, at the time such notice was given, such additional witnesses as they desired, in order to make out their case. If five witnesses were not sufficient to make out their case, they should then have applied for more.

Mr. Manager COLLINS. We did apply for more and they were refused

Mr. ALLIS. Well, the Senate allowed you all they thought was necessary; five witnesses for the prosecution might be as good as twenty for the defense, for the reasons already stated.

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Senator RICE. I wish to ask Manager Collins to withdraw this question at present; we have hardly a quorum.

Mr. Manager COLLINS. The question is withdrawn. Of course it is understood that we shall renew the application hereafter.

Mr. ARCTANDER. I now examine Judge Weymouth upon article ten.

Examined by Mr. ARCTANDER.

Q. Judge, I desire to call your attention now to a special term that was intended to have been held in Marshall in the month of May, 1881, about a month before the general term,—do you remember of any special term being held at that time?

A. Our special term fell the 2nd of May, and the clerk adjourned it to the 12th. I think pursuant to a telegram from Judge Cox. The water had not got down so the roads were running on the 2nd of May, but on the 12th the trains were running regularly.

Q. Now, I desire to call your attention to this 12th day of May. Did you see the Judge soon after the train came in that day?

A. I did in a little while after; I don't know how long; I think I met him first at Mr. Matthews' office, if I am right.

Q. What was the Judge dying at the time?

A. Well, I think I came one way on the street, about the same time he came the other. We went into Mr. Matthews' office and he inquired of him if he had any business for that term for that day; and also inquired of me.

Q. Well, what did he find?

A. I think Mr. Matthews told him that he had no business. I told him that I had none, unless Mr. Forbes, the county attorney, would take up a matter of bail by consent without notice.

Q. Well, from there, where did you go, if anywhere, with the Judge?

A. We went first to the clerk's office to see if there appeared to be anything on the calendar there; and there was nothing there. Then we went up into Mr. Forbes' office, and I asked Mr. Forbes if he was willing to take up that matter of bail (which don't need an explanation), and he said that it was so near the term that he wasn't disposed to grant us any favor. He had previously appeared to be anxious that we should make the motion for bail. But he said it was then so near the term that he didn't want to take it up, and then the Judge asked him if they had any other business and he said they had not.

Q. Do you know whether on the way the Judge met Mr. Jewett so that he had seen all the attorneys that were practicing there at the time?

A. I don't know that. Mr. Jewett is like myself, a good deal out of practice, and I don't know whether he saw him or not. He has got to be an old man and consequently don't do much business.

Q. Well, you went to the clerk's office and saw that there was no business there and then you went to Forbes' office, and the judge found by going around and calling at the leading firms that there was no business?

A. Yes.

Q. What was then the understanding as to whether or not the term should be adjourned?

A. I don't recollect what he said there. We didn't call in the clerk. We generally used to hold the term at Mr. Forbes' at Forbes & Seward's office; we generally held those special terms of court there.

Q. He said then that he would not call any special term?

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A. That he would not, yes.

Q. Now, I will ask you to state whether or not any special term of court has ever been held there in the drug-store of Mr. Wilcox, or anywhere in that store, in the clerk's cubby-hole, for instance, or anywhere? A. Why, no; not what you would call a term of court.

Q, Well, it may have been a special term?

A. No. Why, there wasn't any possibility of holding it there. The office was just like a post-office delivery; a little window in the rear of the store and no room to get at anything. It was the express office.

Q. Now, when the judge came around there to find whether there was any business, I will ask you to state what the judge's condition was as to sobriety or inebriety?

A. He appeared to be perfectly sober. I have no doubt that he was.

Q. Now you afterwards went over to Mr. Wilcox's store at the naturalization of some foreigners?

A. I was there that afternoon sometime; I think, perhaps, 3 or 4 o'clock. I am not sure about the time.

Q, Several hours afterwards?

A. Yes, it was quite a while afterwards.

Q. Did you see the Judge there?

A. Yes. I know that he swore me—he always does—in those naturalizations; he was there.

Q. What was the condition of the Judge as to sobriety or inebriety at that time?

A. I paid no thought about the matter, but have no recollection of thinking that he was inebriated at that time.

Q. You had no idea of it at the time?

A. No, I had not; I have not now. My recollection about it is not very much; I was in there and was sworn as a witness, and went out. I noticed nothing wrong with the Judge, and thought nothing specially about it.

Q. Did you talk any with him there?

A. I don't think I stayed there probably two minutes. I just went in and was sworn as a witness for a friend of mine that wanted to get his land papers, and went right out.

Q. That was Ole Skogan, was it?

A. Yes; he was one that I was a witness for.

Q. There were other parties in the drug store at the time, were there?

A. Yes; there were. I am not sure but I was a witness for another man there that day; I don't recollect now.

Examined by Mr. Manager COLLINS.

Q. Judge, when did you meet Judge Cox that morning?

A. Well, he didn't come up until after dinner, I presume. I think this might have been anywhere between 1 and 2 o'clock.

Q. Now, are you positive that it was between 1 and 2 o'clock—as late as that?

A. Well, no; no further than this: I know that our trains didn't any of them get in there from below until somewhere about noon.

Q. And this was late enough for a man to have come in and got his dinner?

A. Oh, I had had my dinner; but what time it was I couldn't tell.

Q. Did you see Judge Cox drink any that day?

A. Not before the naturalizations were had.

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Q. Not before that? A. No, not until after the naturalizations.

Q. That is, not until after the naturalization of Skogan, you are talking about?

A. I wouldn't say whether I saw him drink or not. I recollect seeing him, but I don't remember whether I saw him drink.

Q. Can you tell whether you drank with him yourself or not?

A. Well, no; I couldn't tell whether I drank with him myself; I think I drank, but whether I drank with him I don't remember. I don't know whether I drank or took a cigar, but it was one or the other. I recollect that.

Q. Now, you went first up to the clerk's office, you say?

A. Yes; after we left Mr. Matthew's office.

Q. The clerk's office was at this drug store, was it not? A. Yes.

Q. Now, you had known Judge Cox to do business there before that, had you not?

A. Oh no, no; nothing that I remember of. There was no sort of facility there to do any business.

Q. Well, you were doing business there that day?

A. Well, the clerk was in back in the express office, and he passed the naturalization papers through the window, and we signed them and the Judge stood up outside and naturalized perhaps half a dozen men.

Q. Well, you were doing business, weren't you?

A. Yes, *that* business.

Q. It was in an inconvenient place?

A. Yes, and it was not called a court.

Q. Now, at the time of these naturalizations, did Judge Cox show any signs of having drank intoxicating liquors? A. Not that I noticed.

Q. Then all these witnesses who have testified that he was there and was drunk are mistaken?

A. I don't know anything about those witnesses.

Q. You only stayed there a moment or two? A. A very short time.

Q. You went right out? A. Yes.

Q. Did you see the Judge after that?

A. I saw him after that some time before night.

Q. Where? A. Well, it was at the time I told you, I thought I took a cigar or a drink.

Q. Did you take more than one? A. No, I don't think that I did.

Q. Where was that? A. I think it was in Mr. Mahoney's saloon.

Q. Can you tell us how many people were naturalized on that occasion? A. No, sir.

Q. Can you tell us who any of them were besides Skogan?

A. I don't know that I could from recollection. I suppose it was the same time that has been talked about when Marx was naturalized, but I don't recollect the fact. I don't think I was in there at the time.

Q. As I understand, you were a witness for Skogan? A. Yes.

Q. And you signed his papers as a witness? A. Yes.

Q. Now, are you positive about that?

A. Well, I am quite confident about it.

Q. Judge, are you positive that you were one of the witnesses to Skogan's naturalization?

A. Well, I wouldn't swear to it, but I believe I was.

Q. If you are mistaken in that, were you in that building at all that day?

A. I don't think I was, unless I went in there to be a witness. Yes, I was in there when the Judge first came in.

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Q. Is this man Skogan, that you are talking about, the one who has been a witness here? A. I suppose so.

Mr. ARCTANDER. We will now recall Mr. Matthews.

Senator ADAMS. Mr. President, I move a call of the Senate; there is not a quorum present.

The PRESIDENT *pro tem.* A call of the Senate is moved, and it will be taken as the sense of the Senate, unless objection is made.

The clerk will call the roll.

The clerk then called the roll, and but twenty members were found to be present.

A list of the absentees was then furnished to the Sergeant-at-Arms with instructions to bring the absent members in.

Thereafter, on motion of Senator Aaker, further proceedings under the call were dispensed with.

On motion of Senator Aaker the Senate then adjourned.

THIRTY-SEVENTH DAY.

ST. PAUL, MINN., Feb. 23, 1882.

The Senate met at 10 o'clock A. M., and was called to order by the President *pro tem.*

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

Messrs. Aaker, Adams, Buck C. F., Buck D., Campbell, Case, Castle, Clement, Gilfillan C. D., Hinds, Howard, Johnson, A. M., Johnson, R. B., Macdonald, McCormick, McLaughlin, Mealey, Morrison, Perkins, Peterson, Powers, Rice, Shaller, Shalleen, Tiffany, Wheat and Wilson.

The Senate, sitting for the trial of E. St. Julien Cox, Judge of the Ninth 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. Henry G. Hicks, Hon. O. B. Gould, Hon. L. W. Collins, Hon. A. C. Dunn, Hon. G. W. Putnam and Hon. W. J. Ives, entered the Senate Chamber and took the seats assigned them.

E. St. Julien Cox, accompanied by his counsel, appeared at the bar of the Senate and took the seats assigned them.

The PRESIDENT. Have the members of the Senate any resolutions before proceeding with the regular order of business?

VIRGIL B. SEWARD,

Recalled as a witness on behalf of the respondent, testified:

Examined by Mr. ARCTANDER.

Q. Mr. Seward, do you remember of a special term of court ordered to be held in Marshall in and for Lyon county about the middle of the month of May, 1881?

A. I do.

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Q. Did you see the Judge there about noon that day?
A. Yes, sir.
Q. Where did you see him,—in whose company?
A. It was very nearly 2 o'clock when Judge Weymouth, M. E. Matthews with Judge Cox came up into our office.
Q. What was his business there at the time?
A. He came up and asked us if we had any business for the special term.
Q. That day?
A. Yes, sir.
Q. What was the answer?
A. We stated that we had not.
Q. Was there anything concluded between the attorneys present and the Judge in regard to whether there would be any special term or not?
A. Judge Weymouth then asked Mr. Forbes, as county attorney, if he was willing to take up the question of bail for a Mr. Queel who had been imprisoned and held to the grand jury. Mr. Forbes stated that inasmuch as it was so close to the regular term he was unwilling to take it up out of its course. They then concluded not to hold any special term at all.
Q. Now, I will ask you to state where special terms were generally held in Marshall, when there was any?
A. Special terms were generally held in our office.
Q. In Forbes and Seward's office?
A. Yes, sir.
Q. I will ask you to state whether or not as long as you have lived in Marshall, any other special terms at all have been held in the drug store of Mr. Wilcox—where this clerk keeps his office, or in his place.
A. No special term has ever been held in Wilcox's drug store, to my knowledge.
Q. Now, I will ask you to state what the condition of the Judge was as to sobriety or inebriety, at the time when he was up there in your office at 2 o'clock that afternoon.
A. I had no reason to think him otherwise than sober.
Q. You had noticed at the time he was sober?
A. I never thought anything of it at the time, but had he been intoxicated, I should have noticed it; that is all.

Examined by Mr. Manager COLLINS.
Q. Mr. Seward, when was that?
A. This was very nearly 2 o'clock; it would not vary, perhaps, five minutes either way, of 2 o'clock, May 12th, 1881.
Q. Have you thought of that matter since?
A. I have.
Q. When did you first think of it after May 12th?
A. I think probably it was the next day. My attention was called to his having been drunk.
Q. Your attention was called to his having been drunk?
A. That is, it was called next day to his having been drunk that day. It was a common report that he had been a little "off" that day.
Q. You say that it was common report that he had been a little "off" that day?
A. Yes, sir.
Q. And therefore you remember the time of day and what was said and who was with him?

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A. I have never had it on my mind as to the occurrence at our office, but I am speaking almost of a single instance on that day; only saw Judge Cox twice during that whole time; that he was then at that term of court. Whether he might have got drunk after that, I couldn't say.

Q. Well I am trying to get at how it is, you tell us it was so close to two o'clock upon the 12th, day of May 1881.

A. I remember that we were in our office,—had come down from dinner,—and just after the mail had been distributed; in other words it was about two o'clock.

Q. Now, is dinner an uncommon thing with you?

A. It has been in grasshopper times; that is, what we call a good square meal.

Q. Were those grasshopper times?

A. It was the "katzenjammen," of grasshopper times.

Q. As I understand you; a dinner is an unusual thing for you?

A. A good square dinner, yes.

Q. Then you had a good square dinner this day?

A. I didn't say that day.

Q. Well, how do you recollect then, that it was on the 12th, day of May, about two o'clock?

A. I recollect that it was a special term, I recollect special term was on the 12th, day of May 1881, I recollect that Judge Cox and Judge Weymouth and Mr. Mathews came up there.

Q. At two o'clock in the afternoon?

A. I stated pretty close to two o'clock.

Q. How do you know it was?

A. How do I know anything? To the best of my recollection.

Q. You say your best recollection is, it was very close to 2 o'clock; how do you know that?

A. Well, there are a great many things we know that we cannot give the exact reason for, that we will swear as positively to as to anything.

Q. You gave a moment ago, a reason for remembering, that you had just come from dinner and that the mail had just arrived.

A. No, you are putting the "just", in too often. I say we had had our dinner; that the mail was in.

Q. How can you tell those things?

A. Only in the way any one testifies.

Q. You have no special recollection about it?

A. I should not be wonderfully surprised if I were mistaken as to a very few minutes.

Q. You say it was concluded that you would have no special term?

A. That is my understanding.

Q. Then as I understand Judge Cox came there to hold a special term and come up into your office, with Judge Weymouth, and he concluded that he would not hold it?

A. I don't know what Judge Cox concluded; I think he made this remark: said he; "Well boys, I don't see any use of holding a term." I don't know what he ordered the clerk afterwards.

Q. Now did you ever know of any other occasion of Judge Cox coming to that town and going around to canvass among the attorneys to see whether he should hold a term of court or not?

A. Yes, sir.

Q. You have known it to happen on other occasions?

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A. I have known it on almost every occasion he ever came up there, on either special term work or work outside.

Q. Have you a court house there?

A. We had not at that time; no sir.

Q. The special terms are usually held at your office?

A. They were at that time,—had been.

Q. Did your office afford any special accomodations over any other place there?

A. No, sir.

Q. I suppose a man could be naturalized down at that drug store and make as good a citizen as if naturalized at your office.

A. Oh, I guess so.

Q. Now, had you seen or did you notice, at that time any indications or signs that Judge Cox had been drinking intoxicating liquors,—at this time he was up in your office?

A. Not the slightest.

Q. You didn't see him after that, that night?

A. I did.

Q. What time?

A. Well, if you will let me state to the best of my recollection, I will do so. It was very near five o'clock.

Q. Well, how do you remember that?

A. Well, to the best of my recollection; it was before I went to supper. We had a supper, not a very good one, but—

Q. Well, I am not particular about the bill of fare. You have nothing to fix that specially in your mind, have you?

A. Nothing except that it was before I went home.

Q. Do you know whether or not Judge Cox stayed in town that night?

A. I do not.

Q. Did you see Judge Weymouth after Judge Cox was in your office that afternoon?

A. Yes, sir.

Q. Was he with Judge Cox the second time you saw him?

A. He was.

Q. Where were they?

A. In the office of M. E. Matthews or Matthews & Andrews.

Q. That you think was about 5 o'clock?

A. It was very nearly 5 o'clock.

Q. Were either Skogan or Marx—you know those men, do you not?

A. No, I do not know Skogan; I know Marx; he was not with me. Patterson, the clerk of the court, was not with me.

Q. Did you see Judge Cox in that drug store that day?

A. I did not.

M. E. MATTHEWS,

Re-called as a witness on behalf of the respondent, testified.

Examined by Mr. ARCTANDER.

Q. Mr. Matthews, I will call your attention to a special term that had been called or ordered on the 12th day of May, 1881. Do you remember that occurrence?

A. I don't recollect the date; I recollect the special term that should have been held about that time.

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Q. Do you remember of having seen Judge Cox that day, about noon?
A. I do; shortly after the train came in.
Q. Where did you see him?
A. I saw him in my office.
Q. What was he doing there?
A. He had no business, I guess, further than inquiring if I had anything to come before the court.
Q. To come before the court at that special term ordered to be held that day?
A. Yes, sir.
Q. Did you have any?
A. I had not.
Q. You so informed him?
A. Yes, I so informed him.
Q. Do you remember whether or not you went with him and Judge Weymouth to Andrews & Seward's office?
A. I don't remember of going; I remember of being in there when they were there.
Q. Do you remember of his being there inquiring about——
A. No, I don't remember that, I remember Judge Weymouth speaking to Mr. Forbes about getting some bail in a criminal case, and Mr. Forbes refused to do it; he said that the time was so near up that he had made up his mind to let the fellow stay where he was.
Q. Do you remember whether there was any special arrangement by the Judge in regard to holding or not holding a session of the court that day?
A. I had talked with Seward and Forbes.

Mr. Manager COLLINS. We object to that. All this testimony, as to what was said there, is improper. The fact is that a man cannot clear himself of any alleged crime by showing what he said to somebody else; for, if he could, no one could be punished. The counsel understands that. It is not proper for them to attempt to bolster up their case by showing what has been said on a certain occasion there in reference to holding a special term of court, or anything else, for the reasons I have given. It is a well known rule that statements made in favor of a party cannot be introdnced in evidence.

Mr. ARCTANDER. The question is whether or not the Judge made any statement as to whether any court would be held that day.

If the President will look at the articles of impeachment in this case he will find that we are charged, at a term of court held in that county, at that date, with having entered upon the discharge of official business while in a state of intoxication. Now, the facts in this matter are, as have already cropped out, that the Judge had ordered a term of court to be held there, but upon going up there he found out there was no business and then in an informal manner, instead of calling court and adjourning it, simply stated that they would hold no court. Now certainly if there was no business, no cases and no court, the Judge was certainly the party to call the court and the party to abrogate the court; —and if he did so it is not necessary that it should appear of record. But he simply concluded, with the attorneys, that there should be no court held, and that was the long and short of it.

The PRESIDENT *pro tem.* Ask the witness if there was any court held there.

Mr. Manager COLLINS. Now, Mr. President and Senators, the counsel

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says that the Judge *abrogated* the court. I hardly think he meant say that the Judge *abrogated* the court.

Mr. ARCTANDER. The term, then.

Mr. Manager COLLINS. Well, you don't mean to say that he abrogat the term. The counsel states that the Judge said he would not hold term of court. Suppose the Judge did say so what has that to do wi the issue here?

Suppose Judge Cox did say that he would not hold court, but afte wards *did* hold court for the purpose of naturalizing these parties, th was a court to all intents and purposes, just as much as if there ha been cases tried there, and the United States laws regard this matter the naturalization of citizens of great importance. Now it is wholl immaterial what Judge Cox said about holding court. The fact is, has been demonstrated, that court was held, and if court was held, th inquiry should be as to whether the Judge, at the time he held th court, was intoxicated, and that is all there is to it. The counsel wi not deny that these men were naturalized, and he will not deny that is necessary to have them naturalized in open court.

The PRESIDENT *pro tem.* The chair will decide that it is immateria as to what Judge Cox said then. You may show whether or not ther was a court held.

Q. I will ask you to state what the condition of Judge Cox was a that time as to sobriety or inebriety?

A. At the time he came into Forbes & Seward's office?

Q. Yes, sir.

A. As far as I could see, he was sober.

Q. Do you know these men, William Marx, and Charles Marx, tha live a little ways outside of Marshall?

A. I do, sir.

Q. I will ask you to state whether or not you have frequently seen those men in town in Marshall, there where you live?

Mr. Manager COLLINS. I object to that; it is wholly immaterial.

Mr. ARCTANDER. Well, I suppose everything is immaterial.

Mr. Manager COLLINS. You don't pretend that it is material?

The PRESIDENT *pro tem.* It is evidently a preliminary question.

Mr. Manager COLLINS. Well, I should think it was; it is so far preliminary that I can't see the purpose of it.

Mr. ARCTANDER. I don't care to argue the question; I don't think there is any use in it.

The PRESIDENT *pro tem.* I can't see what bearing that has upon the question as to whether or not he was intoxicated.

Mr. ARCTANDER. Well, I don't offer it for the purpose of simply showing that. I suppose, there is such a thing in law as laying a foundation by asking a preliminary question; I suppose if I had asked him if he knew Mr. Marx it would also be ruled out as immaterial.

Mr. Manager COLLINS. You did ask that question and we didn't ask that it be ruled out.

Senator GILFILLAN, J. B. Is there any question before the court?

The PRESIDENT *pro tem.* No, I don't understand that there is.

Q. I will ask you to state whether or not you have ever seen this William Marx and Charles Marx in Marshall unless in a state of drunkenness or intoxication?

Mr. Manager COLLINS. Well, I object to that. I object to that for the reason that we are not trying the Marxs. I might say that I wish

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we were trying some humble citizen, instead of a judge of the district court; but we are trying Judge Cox, and the counsel is endeavoring, as he has endeavored all through this case, to try somebody else besides the respondent. It is something I have seen attorneys do hundreds of times. We are not trying the Marxs, and it is wholly immaterial whether the witness has seen them there in a state of intoxication or not.

Mr. ARCTANDER. I had always supposed, with my small knowledge of legal lore, that it would be proper, if a witness should testify to a certain thing, to show that he was blind or drunk, so that he would not be able to see it. I suppose that is perfectly proper and competent testimony.

Mr. Manager COLLINS. Do you propose to show that he was drunk on this occasion?

Mr. ARCTANDER. If you would not interrupt me, I would feel better.

Mr. Manager COLLINS. Well, I would like to have you feel better; you seem to feel badly about something.

Mr. ARCTANDER (continuing). Now, I maintain that you need not have direct evidence to a fact of that kind, but that you may be allowed to bring in testimony which may tend to establish that fact. If I had been allowed to ask this witness the question I first put to him, I would have established that he had seen these parties frequently in Marshall.

My next question would have shown that he had never seen them in Marshall except in a state of intoxication. That would raise a strong presumption that that was their normal condition when in Marshall, and their condition at this particular time. I desire to follow that up, by testimony showing that these men are men of quarrelsome disposition when intoxicated, and if I am allowed to show this it will certainly throw light upon the evidence of the two Marxs in this case.

The PRESIDENT *pro tem.* I will submit that question to the Senate if it is desired.

Mr Manager COLLINS. I do not care to take much time with this matter, but if this Senate is going to wander off to try these Marxs brothers, and to find out whether they are drinking or sober men, it strikes me as being remarkably strange. I call the attention of the Senate to the fact that the counsel claims that because he can show they are in the habit of getting drunk when they come to Marshall, they were drunk upon this occasion in question. I ask the counsel if he takes the position that Judge Cox naturalized a couple of drunken men that day.

Mr. ARCTANDER. I don't see what difference it would make about the naturalization.

Mr. Manager COLLINS. Well, perhaps it wouldn't make any difference, but I notice that the law requires a certain thing of the court, and I certainly think it would be an outrageous proceeding on the part of the court to naturalize drunken men; and I don't believe the Judge did it.

The PRESIDENT *pro tem.* The managers having objected to the question, the matter will be submitted to the Senate, as to whether the objection will be sustained or overruled. Those in favor of sustaining the objection will vote aye as their names are called, and those opposed will vote no. The Secretary will call the roll.

The roll being called, there were yeas 23, and nays 6, as follows:

Those who voted in the affirmative were—

Messrs. Aaker, Buck C. F., Buck D., Campbell, Case, Gilfillan C. D., Gilfillan J. B., Hinds, Howard, Johnson A. M., Macdonald, McCormick,

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McLaughlin, Mealey, Morrison, Perkins, Rice, Shaller, Shalleen, Simmons, Tiffany, Wheat, Wilson.

Those who voted in the negative were—

Messrs. Adams, Castle, Clement, Crooks, Johnson R. B., Peterson.

The PRESIDENT *pro tem.* The question being upon the sustaining of the objection, there were yeas, twenty-three, and nays, six, so the objection is sustained.

CHARLES ANDREWS,

Recalled as a witness on behalf of the respondent, testified.

Examined by Mr. ARCTANDER.

Q. Have you any recollection of a special term that was ordered to be held in Marshall on the 12th day of May, 1881, a little more than a month before the general term there?

A. Yes, sir; I think I have.

Q. Do you remember of seeing Judge Cox there that day?

A. Yes, sir.

Q. What time about, and where?

A. Well, I can't say as to that exactly; I think probably it was in the afternoon. I know he was in our office during that day.

Q. What was he doing in your office?

A. Well, I don't recall to recollection anything special.

Q. Let me call your attenton to the fact whether or not you heard Judge Cox at any time that day inquire as to whether there was any business for that term.

A. Yes, sir; I know that he inquired of Mr. Matthews, and I think we had no business at that term of court.

Q. Did you have any?

A. No sir.

Q. You so informed him?

A. We so informed him.

Q. Was this the occasion you refer to when he was sitting awhile in your office that day?

A. Yes, sir.

Q. About what time in the afternoon was this do you think, as near as you can get at it?

A. Well, I couldn't fix the time.

Q. It was after dinner, after the train had come in that day?

A. Yes, sir.

Q. What was the condition of Judge Cox as to sobriety or inebriety on that occasion?

A. The Judge was sober, as far as I was able to judge.

Q. You had no doubt about it?

A. I had no doubt at the time, and I haven't any now.

Examined by Mr. Manager COLLINS.

Q. Do you know what time the Judge arrived in town that day?

A. My recollection is that he came in on the afternoon train.

Q. What time would that get into town?

A. I can't fix the time definitely, neither can I the time he was in our office.

Q. Well, it was shortly after dinner time, was it not?

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. It was during the afternoon; that is as definite as I can fix it. I
l no attention to those matters at the time.
. Now, how do you fix the time as being the 12th day of May?
. Well as regards that matter, I don't think I know positively in
rd to it, only from what has been talked about it since; and having
ken to others in regard to the date of that special term, I recollect
e circumstances as taking place at that time. I don't think I have
shed my memory from any record or anything that I might have
rred to.
. How long did the Judge stay in your office?
. Oh, I can't say as to that.
. Did he go out alone when he left?
. I don't recollect that either.
. Do you remember whether you went out with him?
. I do not; I think not, however, had I gone with him to any
e in the village I think I would have recollected it. I am not cer-
, however, as to that.

xamined by Mr. ARCTANDER.
will now call this witness upon specification 5 of article 17—the
ial term of court held at Marshall, on the 30th of September, 1880.
. To refresh your recollection, I will inform you that the term I
e reference to is the term at which an adjournment or recess was
n to allow some members of the bar to go to the Republican county
ention.
. I recollect that term. I was present at the term.
. Were you an attorney in any of the matters that w brought
here at that term of court?
. Yes, sir.
. Which one?
. I was an attorney in the case of French vs. Minnick.
. Who were the attorneys on the other side?
. Messrs. Forbes & Seward.
. Was that at the same occasion that Mr. Drew appeared as an at-
ey in the case of McCormick vs. Beasley?
. Yes.
. What time in the day was that court convened?
. In the afternoon, I think.
. Well, how long were you in session before this recess was taken?
. Well, to the best of my recollection, we were not in session but
ort time before the recess. I don't recollect distinctly as to that.
. State whether or not you resumed the business as soon as the con-
tion was over at noon?
Yes, sir.
. This recess was taken at the request of the attorneys, I suppose,
were interested in the convention?
. Yes, sir; I think at the request of Mr. Forbes and myself.
. After resuming business again in the afternoon, was court kept up
day until all the business of the court was disposed of?
. Yes.
. No business was left undetermined or unfinished?
. I think not. I was under the impression that we were through
n everything, and I am now of that impression.
. Now, I will ask you to state what was the condition of Judge Cox

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during either the first or second session of that court that day, as to sobriety or inebriety?

A. I considered him sober.

Q. Have you any doubts about it?

A. No, sir; for I didn't think about it; it didn't occur to my mind.

Q. Was there anything different in his rulings, actions or appearance?

A. No, sir.

Q. Or his conduct or deportment at that time from other times when you knew him to be sober?

A. There was nothing at that time that I discovered to indicate that he was intoxicated or drunk, or under the influence of liquor.

Q. How was the condition of his mind?

A. He seemed very clear.

Examined by Mr. Manager COLLINS.

Q. Mr. Andrews, what time did the Judge arrive in town on that occasion?

A. I presume likely it was on the afternoon train.

Q. And did you proceed to business before the convention?

A. Court was called before the convention, and my recollection is that Mr. Forbes and I requested the Judge to grant us a recess that we might attend the convention just across the street, and we attended the convention, and immediately after court was called again.

Q. You went there after the convention?

A. Yes, sir.

Q. Now, do you know where Judge Cox went during the recess?

A. No, sir, not all the time; I recollect once during that recess of his being in my office; I went to my office a moment or two and Judge Cox went to the office with me; I think I met him on the street,—I am quite certain at the foot of the stairs, or near the stairs leading out from the hall in which the convention was being held at that time.

Q. Now, you went directly to your office?

A. Yes, sir.

Q. Did you see him drink anything at all that day?

A. No, sir.

Q. Nothing?

A. No, sir; not that I recollect of.

Q. Will you swear positively that you did not visit a saloon with him yourself on that day, and before that court was called after the recess?

A. No, sir; I will not swear positively. I might have gone to a saloon with him; I might have seen him at a saloon; I might have been at a saloon myself.

Q. How long was court in session after the recess?

A. I can hardly tell that.

Q. How long were you in session there after recess?

A. We argued some two or three cases.

Q. Was Mr. Drew present?

A. Yes, sir.

Q. And he was an attorney in this McCormick and Beasley case?

A. Yes, sir.

Q. Were you there at that time?

A. I was.

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Q. Who argued it upon the other side?
A. I am not positive as to whether Mr. Forbes or Mr. Seward argued it. I have no recollection as to which of those gentlemen argued it.
Q. Messrs. Forbes and Seward were then in partnership?
A. Yes, sir.
Q. Are they now?
A. I believe so.
Q. You could not tell us then, what time of day the court concluded its business?
A. No, sir; I could not.
Q. Could you tell us how long a recess was had there?
A. Oh, I can hardly tell that; it would be only guess work if I attempted to say.
Q. Can you tell us what time in the day you got through with that term?
A. No; but it was in the afternoon.
Q. Can you tell us what business was done besides these two cases you have mentioned?
A. I don't recollect of any other business.
Q. Are you sure there was no other business?
A. I am not sure; there might have been.
Q. Did you see the Judge after court adjourned?
A. I can't state.
Q. Did the court adjourn *sine die*, or did it adjourn until the next day?
A. I am of the impression that it adjourned until the next day, but I am not positive.
Q. Do you know whether any business was done by the court the next day?
A. I think not; I did not hear of any. I have not since heard of any.
Q. Did you see the Judge the next day?
A. Yes; I saw the Judge the next morning, I believe.
Q. What time?
A. Well, it was when I went down to my office, perhaps about 8 or 9 o'clock.
Q. Now, where was that special term of court held?
A. It was held in Major Blake's office, who was at that time, and I believe is now, justice of the peace—a room over Jim. Williams' hardware store.
Q. That was not held in Forbes & Seward's office?
A. Not the one I have reference to no, sir.
Q. Was that the day the banquet was given to Judge Cox there at the Bagley house?
A. I don't recollect of anything of the kind.

VIRGIL B. SEWARD

Re-called as a witness on behalf of the respondent, testified.
Mr. ARCTANDER. This testimony relates to the same specification as the last witness.
Q. Mr. Seward, do you recollect the special term of court held at Marshall, on the 30th day of September, A. D. 1880?
A. I do.

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Q. At the time they took a recess for the county convention?
A. Yes, sir.
Q. Were you present at that term?
A. I was.
Q. When did the term first open?
A. Between one and two o'clock.
Q. What was done there at first, if anything?
A. I can only state what they told me was done. I left and went over to our office and came back immediately, and there was a recess taken, and they took it so that the politicians might go to that county convention.
Q. Well, did you come back after the recess was over?
A. I did.
Q. After court resumed there in the afternoon what business, if any, was transacted there?
A. I have not looked over the calendar at all, but the only two cases I can remember, I think, were C. H. and L. J. McCormick against Reuben Beasley, and French vs. Minnick.
Q. In that first case, you were attorney on what side?
A. For the plaintiff.
Q. Who was attorney for defendant?
A. M. B. Drew.
Q. In the second case who were attorneys for the plaintiff?
A. Matthews & Andrews.
Q. And you for the defendant?
A. Yes, sir.
Q. Was the business of those cases, whatever it was, transacted upon that occasion that afternoon?
A. Yes, sir.
Q. In what manner was business despatched there that afternoon; were there any delays except that recess for the county convention?
A. There was not.
Q. What was the condition of the Judge during the whole of that afternoon,—I mean, of course, the first portion when you were there before recess was taken, and after recess was taken, as long as you were there in court?
A. From the time the court first convened until it was finally adjourned that afternoon the Judge was perfectly sober.
Q. Did the court finally adjourn that afternoon?
A. That is the way I understand it, yes, sir. I have not looked over the record, but we were through with business, and I have not the slightest doubt but it was adjourned.
Q. That was your accustomed way of doing when you were through with your business,—to adjourn *sine die?*
A. Yes.
Q. State whether or not there was anything in the Judge's appearance, actions, conduct, language, rulings or decisions there at that term that were peculiar or any different from what they had been at other occasions which indicated, in the slightest degree, intoxication?
A. The only real ruling that I can remember that was different was that he assessed terms upon a party and afterwards took them back, that is, abated them.
Q. Why did he take them back?
Mr. Manager COLLINS. Well, I don't know what that has to do with this case.

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Mr. ARCTANDER. I suppose that you will agree that he was drunk because he did take them back.

Mr. Manager COLLINS. Does the witness know?

Mr. ARCTANDER. I think he does.

Q. State what took place there in court on account of which he did abate that order in regard to terms?

A. It was the case of McCormick against Beasley. Our first complaint had been demurred to by Mr. Drew, and was argued at a previous term; and the demurrer sustained without costs, or at least there was nothing said about costs. At this term we had put in another complaint and Mr. Drew had answered, and our motion was to strike the motion out as sham. It was argued by Mr. Forbes; there was no argument made by Mr. Drew at all. Judge Cox struck the answer out with five dollars costs. Mr. Drew called his attention to the fact that on the former argument he had sustained their demurrer without costs, and Judge Cox at once said that he would not hold him to the five dollars. I think that is the only time taking off any terms he had imposed.

Q. Well, there is nothing he did there in connection with that, to indicate that he was intoxtcated in the least, in your mind?

A. Not the slightest.

Examined by Mr. Manager COLLINS.

Q. Do you know what time Judge Cox arrived in town that day?

A. I do not.

Q. What time did you first see him?

A. It was when court was called.

Q. What time was that?

A. I think it was about two o'clock.

Q. Now, was there any business done before the recess was taken?

A. No, sir.

Q. Where was this term held?

A. Over the hardware store of J. B. Williams.

Q. In Mr. Blake's office.

A. Yes, sir.

Q. Now, some of you asked for a recess in order that you might attend the political convention?

A. I don't know that.

Q. Were you present?

A. I was not; I didn't hear it.

Q. Where you present when court took recess?

A. No, sir.

Q. Now, do you know for what length of time recess was taken?

A. Not exactly; I don't know what time it was agreed to take a recess, but I think court was reconvened about four o'clock.

Q. Do you know where Judge Cox was in the mean time?

A. I do not.

Q. You didn't see him?

A. No.

Q. All you saw of him then was after the court convened after the recess.

A. Yes, sir.

Q. Now, at that time, how long did the court continue in session?

A. I think it took from about three-quarters of an hour to an hour.

Q. And then adjourned *sine die*?

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A. Well, that is my understanding of the adjournment. I don't know as I heard the words *sine die* there.

Q. Wasn't there an adjournment until the next morning?

A. To the best of my recollection, no, sir.

Q. Do you know where the Judge went that night?

A. At what time.

Q. That night,—whether he went away from Marshall or not?

A. I don't think he did.

Q. You think he stayed in Marshall?

A. I think so, yes, sir.

Q. Did you see him?

A. I saw him during the evening, yes, sir.

Q. You were with him during the evening, were you not, having a little fun?

A. Well, we enjoyed ourselves anyway.

Q. Where was that,—at a saloon?

A. We were in a saloon, but the most of the time was spent in front of the Winona & St. Peter land office.

Q. You were in a saloon frequently, weren't you, with Judge Cox that night?

A. Oh, no; no I don't think I was any more than twice.

Q. How long did you stay in the saloon on those occasions?

A. From five to ten minutes.

Q. And you say that you and the Judge enjoyed yourselves?

A. I did, and I think the Judge did.

Q. Who else was in the party?

A. It was a democratic party; no republicans were allowed, I believe. There was John E. Maas of Marshall, and some Redwood county boys living in West Lynd township. They had come from over there and had not gone home.

Q. Then I presume you are a democrat from that remark?

A. Oh, I don't know I am sure; if there is a democratic party, I am, yes. [Laughter.]

Mr. ARCTANDER. Mr. President, I have a further witness on this article who has not yet arrived. I expect him to-morrow morning and I desire to call him at that time.

The PRESIDENT *pro tem.* I suppose there will be no objection.

Mr. ARCTANDER. I now desire to call the attention of this witness to article eighteen.

Q. Were you in Marshall during the December term of 1879?

A. I was.

Q. Did you attend during the full term of court there?

A. I did.

Q. You were in court more or less all the time, were you?

A. Yes, sir.

Q. Did you have business there?

A. Yes, sir.

Q. Considerable, or a little?

A. Well, my business had not grown to any great proportions at that time, it was only my first year there.

Q. How much of the time did you spend in court, there during that term of court?

A. All of it comparatively speaking; of course, off and on I would go out.

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Q. What was Judge Cox's condition as to sobriety or inebriety, during the whole, or any portion of that term?
A. He was perfectly sober.
Q. During the whole of the term?
A. Yes.
Q. Do you remember of his giving a temperance lecture one Sunday evening, after the court had adjourned?
A. I remember hearing of it; but I don't go to church.
Q. I ask you whether or not you remember of the occasion of his giving that lecture?
A. Yes, sir.
Q. Of it being brought to your attention?
A. Yes.
Q. I will ask you now to state whether or not you remember of having seen the Judge in your office on the Monday forenoon following that Sunday, with Preacher Liscomb.
A. He was in the office, talking with Rev. Mr. Liscomb, Monday forenoon following the December term of court.
Q. Do you remember what time court adjourned?
A. No.
Q. There was no more court there after that Saturday?
A. Not that I know of.
Q. Now, you say at this time, you remember of his being in your office with the Reverend Mr. Liscomb, on Monday forenoon?
A. Yes, sir.
Q. Is this the Mr. Liscomb who has been down here as a witness?
A. He says he has been down; I suppose he has.
Q. State what the Judge's condition was at that time while he was in your office, as to sobriety or inebriety.
A. I hadn't then any doubts, and I haven't now any doubt as to his sobriety.
Q. Do you remember about what time the Judge left your office that morning?
A. It was in the neighborhood of ten o'clock.
Q. Do you know whether or not the Judge left on the train that day?
A. I do not; I didn't see him afterwards.
Q. You didn't see him after that forenoon at 10 o'clock, in Marshall?
A. No.
Q. Do you know about what time the train left at that time?
A. I think they left in the neghborhood of half-past twelve, I would not be positive of that however.

Examined by Mr. Manager COLLINS.
Q. This occasion was about the Fourth of July; wasn't it?
A. Within six months of it about.
Q. Within six months of it?
A. Yes, sir.
Q. What time was it?
A. It was in the neighborhood of the 10th, of December, 1879.
Q. How long did the term of court last there?
A. It commenced on Tuesday and lasted until Saturday.
Q. Were you in court the last day?
A. I was.

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Q. You say, Judge Cox was perfectly sober?
A. He was.
Q. Do you make any distinction between intoxication and drunkenness?
A. I do not.
Q. If a man is intoxicated he is in your opinion drunk?
A. He is.
Q. If he is under the influence of liquor is he in your opinion drunk?
A. It depends on how much he is under.
Q. Now, won't you define to what degree a man must be under the influence of liquor in order to be drunk?
A. So that the liquor gets the better of him and he cannot perform his duties.
Q. Supposing he hasn't any duties to perform?
A. Well, then, if a man hasn't any duties to perform I think very little would make him drunk.
Q. Then, in your opinion, it does not depend upon how much a man drinks, but upon how much he has to do?
A. I think if I am working all the time that a drop of liquor will not have anywhere near the effect on me that it would if I were doing nothing.
Q. Well, then, it is your opinion that drunkenness consists entirely in whether a man has anything to do, or not?
A. Oh, no; I didn't say that at all.
Q. Well, supposing that a man has no business to perform, to what degree must he be under the influence of liquor, in your opinion, to be intoxicated or drunk?
A. He must be under the influence of liquor, so that in case he *should* have a little business to perform that he would not be able to do it in a proper manner.
Q. Now, do you know where Judge Cox stopped at this term of court?
A. I do.
Q. Where?
A. He stopped at the residence of Wilbur M. Todd.
Q. A printer there I believe?
A. He is now a merchant at Tracy. He has been the agent of Horton & Hamilton's lumber yard; he has also been justice of the peace, and I think at one time was a newspaper editor there.
Q. He didn't stop at Mr. Hunt's hotel at all?
A. Not to my knowledge.
Q. Now, on the night of Tuesday was court held?
A. I think not.
Q. Were you with Judge Cox that evening?
A. I couldn't state now; I presume I was, though.
Q. You don't remember whether you were or not; do you remember of meeting Judge Cox at Hunt's hotel that evening?
A. I wouldn't say I didn't; I presume likely I did.
Q. Do you remember of meeting him at any of the saloons?
A. I think not; otherwise than at Mr. Hunt's bar-room, what we call Hunt's billiard, or bar-room.
Q. Do you remember drinking anything with him there that night?
A. I think not.

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Well, do you mean to say you don't remember it?
I don't remember but I think I didn't drink.
Now, the next day, how was it?
There is no difference between one day and another; he was per-
sober all through that term and not in the slightest degree under
luence of liquor, not to the best of my knowledge.
That was while he was on the bench and while he was off the
?
While he was on the bench, I was in court and I could certainly
was perfectly sober; while he was not on the bench and not in
esence, I could not say.
How was it when he was in your presence?
He was sober to the best of my recollection.
Did you see him drink anything during that term of court?
I might have seen him drink, probably I did, but I wouldn't say

You are positive, are you, that on this occasion, the Judge
l all the time with Mr. Todd?
He stopped there during the term, yes, sir.
How do you know that?
Because I was over there and took meals with him several times.
You went over to Mr. Todd's?
Yes, sir.
And he didn't stop at Mr. Hunt's at any time?
Not until the term was over, no sir.
After the term was over did he go to Mr. Hunt's?
I think I know of his taking a meal of victuals at Hunt's. I
that was Sunday.
Were you with him?
No, sir.
How do you know he ate there Sunday?
I think I saw him come out of the dining room.
This was the Sunday that he delivered the temperance lecture?
The Sunday that it is said he delivered a temperance lecture.
What was his condition at the time he came out of the dining

Sober.
Not under the influence of liquor at all?
Not so that I could see it anyway.
Were they talking about the temperance lecture which Judge Cox
livered the day before?
I think I remember hearing something about his speech or re-

Do you remember of Mr. Liscomb asking Judge Cox why he did
ictice what he preached?
I think I remember that, yes sir.
What did the Judge say?
Well, he said that there were very few men that did practice what
reached.
Didn't Mr. Liscomb tell him, that he was then under the in-
e of liquor?
No, sir.
Are you positive about that?
That is I never heard it.

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Q. You don't pretend to say you heard all that was said?
A. No, sir; but if he had turned around and accused him of being under the influence of liquor I should probably have heard it.
Q. Did Mr. Liscomb and Judge Cox walk out of the office together?
A. I couldn't say that, I don't remember it now; I remember of their being in there and talking about it, and one talking about as loud and sensible as the other.
Q. There wasn't much difference, in your opinion?
A. No, sir; I think they were both perfectly sober.
Q. Then you are willing to admit that Mr. Liscomb was sober, are you?
A. I have never claimed that he was otherwise.

WILBUR M. TODD,

Sworn as a witness on behalf of respondent, testified.

Mr. ARCTANDER. This is on the same article,—Article Eighteen.
Q. Where do you reside?
A. I reside at present at Tracy, Lyon county, Minnesota.
Q. What is your occupation, Mr. Todd?
A. I am a merchant.
Q. Do you know the respondent, Judge Cox?
A. I do.
Q. How long a time have you known him?
A. I have known him since 1873.
Q. Do you remember of his being at Marshall, at the general term of court, in the month of December 1879?
A. I do.
Q. Do you know with whom the Judge stopped during that term of court?
A. Yes, sir.
Q. Who with?
A. He stopped at my house.
Q. Do you remember the occasion of his giving a temperance lecture there on Sunday?
A. I remember the occasion; I didn't hear the lecture.
Q. Did you see the Judge the next day?
A. I did.
Q. At what time?
A. I don't know what time I first saw him, but we took dinner together that day.
Q. About what time was that?
A. Well, sir, to the best of my recollection it was in the vicinity of 11 o'clock. I think the train left at half past 11.
Q. Where was it you took dinner with him at that time?
A. At my house.
Q. Do you know what the Judge did with himself after that dinner?
A. Yes, sir.
Q. What did he do?
A. He walked with himself.
Q. Where did he walk with himself?
A. He walked to the depot.
Q. Did he take the train?
A. Yes, sir.

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Q. And went east, did he?
A. Well, the train took *him*. [Laughter.]
Q. That was that same Monday morning, about half past 11?
A. Yes, sir.
Q. Now, I will ask you to state whether or not, on that Monday, or during that week at all, you took any dinner with the Judge, or any supper with the Judge, at Hunt's hotel, in Marshall?
A. Not that I recollect of.
Q. What do you say?
A. Not that I recollect of.
Q. Well, you are sure you didn't this Monday?
A. I know I didn't that Monday.
Q. He went away that Monday; did he come back that week?
A. I don't think he did.
Q. Did you take dinner at all with him at Mr. Hunt's?
A. I have no recollection of dining at Mr. Hunt's, that week.
Q. Not the foregoing week?
A. The foregoing week I mean. During his stay there, I have no recollection of dining or taking supper at Mr. Hunt's.
Q. I will ask you to state what the condition of the Judge was, as to sobriety or inebriety, while he was there with you during that term of court.
A. Well, I noticed nothing unusual; I noticed no inebriety.
Q. You noticed no signs of inebriety in his appearance or in his action, did you?
A. No, sir.
Q. Did you have any doubts about his sobriety at the time?
A. I have no doubts about it at all.
Q. Now, at this time when he took dinner at your house at about eleven o'clock on Monday forenoon, what was his condition as to sobriety or inebriety?
A. Why it was just the same, I had no thoughts about it at all; we simply ate our dinner and talked about his grip-sack, Mr. Matthews interrupted us, he came and rang the bell while we were eating dinner; I went and asked him in, and the conversation was about his leaving. I had no thought about his intoxication.
Q. Was there any sign of intoxication in his appearance, deportment or conduct?
A. Not that I detected.

Examined by Mr. Manager COLLINS.
Q. Mr. Todd, what was your business at that time?
A. Well, my time was divided pretty well, I was running a newspaper and that occupied most of my time.
Q. Whereabouts from this court room was that newspaper office?
A. It was across a narrow hall
Q. In the same building?
A. Well, the buildings joined; it was not the same building.
Q. Now, during this term of court did Judge Cox drink anything in the way of spirituous liquors in your office?
A. He did not.
Q. Or beer.
A. No, sir.

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Q. Nothing of the kind?
A. No, sir.
Q. Did you drink with him during that term of court?
A. Drink what?
Q. Anything in the way of spirituous liquors?
A. I may have drank a glass of beer, but not to exceed one. I wouldn't swear that I did, or did not.
Q. Did you see him during that term of court, when there were the slightest signs about him of his having been drinking?
A. Not in the least.
Q. Did you, during that term of court, take any meal with him at Mr. Hunt's hotel, or he with you?
A. Not that I recollect of, sir.
Q. Neither breakfast, dinner, or supper?
A. I wouldn't swear that I did; or did not. I have no recollection of it.
Q. Well, upon this Monday that you speak of, did you see Judge Cox until you met him at dinner time?
A. We went on home together; I don't remember where I found him.
Q. You don't remember anything about it?
A. No, sir; I don't.
Q. Do you remember of seeing him at a saloon during that time, at all during that term?
A. No, sir.
Q. Now, have you, at any time, since Judge Cox became Judge, seen him drink?
A. Well—
Mr. ARCTANDER. That is objected to.
Mr. Manager COLLINS. Why, this is the charge of habitual drunkenness.
Mr. ARCTANDER. Well, now, is this cross-examination? Have we asked this man whether he knows anything about the habitual drunkenness of this respondent? have we asked him, except with reference to the single instance that has been placed before him, and as to whether or not he was drunk at that time. Is this to be the rule here that when we put a witness on the stand to disprove the allegations as to habitual drunkenness, as to the specific instances which the State has proven against us, that the managers can then go on in cross-examination and show that he has seen him drunk at some other time, and in that way make out the charge of habitual drunkenness? If that is the rule which is to be adopted by this Senate I want to know it right here, for then I don't want to put another witness on the stand or waste any more time upon it. Now, can anybody claim that it is proper cross-examination of that witness; has he been asked as to whether Judge Cox was a drinking man or not; has he been asked as to whether he was an habitual drunkard? He was simply asked if Judge Cox was intoxicated at that particular time, that is all. Now, the managers say that they can, on cross-examination, ask him if he has not seen him drunk on some other occasion since he has been judge. It is dragging in evidence upon subjects that the witness has not been interrogated about.
I ask that this question be finally settled; that it be submitted to the Senate, and that we have it decided whether or not the managers shall be allowed to proceed in this manner. It seems to me the managers

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ought to have more pride for the record which is made here than to assume such positions as they have, concerning this matter. I should think that their own sense of what is just, of what is law and decency, and their regard for what future history may say of them as lawyers and as men, would be sufficient considerations to end this kind of controversy. But if not, I maintain that it is the right and the duty of this Senate to protect this respondent so that he shall not be judicially slaughtered before you; that he shall not, when he is upon trial for more than his life be tried in the manner in which a town meeting, or a worse than a town meeting, would try him; but according to law and precedent, and in accordance with the rules which this Senate has laid down. I think it is right that we should demand of the managers on behalf of the great State of Minnesota, that they see to it that they do not disgrace her fair escutcheon by proceedings of such a character.

Mr. Manager COLLINS. The gentleman seems to be unduly exercised, because I have felt inclined to quarrel with him a little, especially in his attack upon the board of managers. So far as the reputation of the board of managers is concerned in this case, we are perfectly willing that it shall go down to posterity along with the record which the gentleman from Kandiyohi (Mr. Arctander) has already made.

Now, I understand that this question has been settled. This question was asked two or three times yesterday, and we discovered last night that there was not a quorum present when a question of this character arose. The witness, Judge Weymouth, was asked last night if he had ever seen Judge Cox drunk upon the bench, and he replied that he had. There was no objection to that testimony; there has been none to that class of questions for several days as I understand it, and I think the gentleman is mistaken when he says that this has not been settled. I understand that we have been allowed to ask that question right along, and that we have only been limited when we have attempted to bring out times and places, and that that is the only restriction which has been placed upon us.

I understand that the managers in an impeachment trial are never confined to the strict rules of evidence. The counsel himself has not conformed to the strict rules of evidence. So far as this case is concerned I desire to call the attention of the Senate to the fact that this witness is put upon the stand under the eighteenth article which charges habitual drunkenness. We have a right to examine him under that charge, and this is a proper cross-examination for this reason. The counsel might raise the point that it was not a proper cross-examination if the witness were examined upon any specific article other than this in relation to habitual drunkenness, but so far as this article is concerned, it is well understood that the cross examination is a matter largely within the discretion of the court, and the court frequently goes outside of the rules of evidence which have long been laid down and adhered to by the authorities. This is now getting to be quite common. This examination is all within the discretion of the court, and I apprehend that the Senate is not going to abuse the trust, nor infringe upon the rights of the respondent in any respect whatever. They desire to get at the facts in this case and in a reasonably correct manner.

The PRESIDENT *pro tem.* Does Mr. Arctander desire this question submitted to the Senate? The question asked the witness was whether he had ever seen Judge Cox drunk since he became judge. Mr. Arctander objects to this question as improper cross-examination.

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Senator CROOKS. I move that the Senate now go into secret session.

Which motion was seconded.

The yeas and nays were called for.

The PRESIDENT *pro tem.* Those favoring a secret session will say aye as their names are called; opposed no.

Senator CASTLE. Mr. President, I would say that a request by any respectable number of Senators to have a secret session would always be recognized. I recollect on one particular occasion it was asked for by a single member, and the request was at once granted.

The PRESIDENT *pro tem.* Two Senators have called for the yeas and nays.

Senator GILFILLAN, J. B. Mr. President, I certainly indulge the hope that no one would object to a secret session at any time when one or two or three members desire it. I would like, however, to suggest, before a vote is taken, that if the counsel for the respondent, or the learned managers desire to submit anything farther upon this point by way of argument, that they have an opportunity to do so now, and we can then determine with reference to whether we shall go into secret session.

The PRESIDENT *pro tem.* Have the counsel any desire to debate the question?

Mr. ARCTANDER. Mr. President, I have nothing to say on behalf of the respondent further than this: If you allow this to go on, if you allow practically new charges to be brought forth against the respondent from the mouth of his own witnesses, he will be without a defense. If new matter is brought out from his own witnesses upon cross-examination which he has not been required to meet, and if it is to be counted against him, I say he will have no opportunity to make a defense. The managers claim to have established these charges, and they have rested their case. Such a proceeding is so novel to every lawyer that I suppose it does not need to be more than simply adverted to, to show its utter absurdity from a legal standpoint. If this is to be the rule of this Senate, if this Senate is to allow the managers, under cover of cross-examination, to bring forth new and independent items of proof to establish article 18, and we have no right to respond,—and we certainly do not desire to respond to such matters, because we do not wish to contradict our own witnesses,—I say, if that is to be done, we might as well stop introducing testimony under article 18 altogether, for, perchance, while we disprove one drunk which the managers have proven against us, they might seek to prove three or four others. I say this might happen under such an arrangement. It would have been perfectly fair and proper for the managers to have brought these matters out in the first place, in their own case. They were at liberty, and it was their right and privilege, to bring out every instance of intoxication upon the part of this respondent to make out the charge of habitual drunkenness.

It was their duty and privilege so to do, and they should have exhausted every means for that purpose; but now to come in, and upon cross-examination of our witnesses, to try to bolster up and make a case which they did not have before, or to protect themselves against our attacks as to those drunks which they claim to have proven, by showing new and independent instances of drunkenness, is certainly one of the most outrageous proceedings which has ever been attempted in a court of justice.

Mr. Manager HICKS. Mr. President, the issue here under article eighteen is as to whether the respondent has been, during the past four

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years, an habitual drunkard. In order to prove the allegation, it was the duty of the board of managers to introduce evidence as to individual instances of drunkenness. Now, we maintain that it is perfectly proper for the respondent to produce his witnesses to prove that during those four years, the respondent was not drunk; but, mark you, gentlemen of the Senate, who have asked light upon this matter, what the respondent now asks: He comes here (and it is upon a par with other things that he has asked of the Senate during this trial), he comes and asks to prove to you that he was not an habitual drunkard, by a witness who may swear that he was not drunk on a certain day when that witness may have known him to have been drunk upon every other day during the four years. Now, the fact that Judge Cox was not drunk on a particular day may have its weight upon the point that he was not an habitual drunkard; but one drunk does not make a man an habitual drunkard, and the proving that he was not drunk at a certain time does not show that he was not an habitual drunkard. We have a right to know whether this respondent was an habitual drunkard, from men who have seen and associated with him during those four years.

When he brings up a respectable citizen who has known him during that time, who testifies that he was not drunk at a particular time, we have a right to ascertain whether he has seen him drunk at other times and places, and to ascertain his knowledge of the habits and appearances of the respondent during that period. It has already been shown that the Judge has his peculiar ways, and this Senate has a right to know whether the witness is competent to judge of Judge Cox while in a state of intoxication.

Senator CROOKS. I would withdraw the motion for a secret session.

Mr. ARCTANDER. Mr. President, I claim that the learned manager who has just taken his seat, has either with intent and malice aforethought or unwittingly, perverted this whole question; I don't know which and I don't care which. He says that the question before you, and the question upon which this witness is called, is whether Judge Cox was an habitual drunkard, and that you are entitled to know it from this witness. This witness is called for no such purpose. He is called simply to say whether or not Judge Cox was drunk on a given occasion when the prosecution has endeavored to prove that he was drunk. Now, that is all we are here to meet. We are here to answer these different instances of intoxication which they have endeavored to prove against us, and nothing else. We are here to meet the proof, and nothing but the proof. We are not here to meet the allegations, but the proof, which is before us under article eighteen. We are to meet each one of them individually, if we can, and to meet them all if we can.

Now, we interrogate this witness as to one of those allegations; we do not ask him these questions to prove Judge Cox did not drink.

We called him simply to testify as to whether or not Judge Cox was intoxicated at a certain time. If there is any presumption against us, from the evidence already in, I suppose the presumption must be that the Judge was intoxicated during all the balance of the time. We don't care about their presumptions; we will knock their charges down before we get through with this matter; but we are now only trying to knock down one of the factors in their machinery; that is all we try to do by this witness, and it is all we have asked this witness about.

The PRESIDENT *pro tem.* I understand the eighteenth article does not charge any specific instance of drunkenness, but, upon certain occasions between certain dates.

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Mr. ARCTANDER. I don't care what the article charges. We are no here to meet that article, Sir. We are here to meet the proof introduce under that article. The articles may charge him, but they cannot con vict him, we are not here to answer those articles, we are here to answe the proof that has been adduced against the respondent. He cannot b presumed guilty because he is charged. Now, the proof, and the onl proof adduced is concerning specific instances of drunkenness. We hav asked this witness simply as to whether Judge Cox was drunk at on given occasion, and nothing else. The only way in which we can breal down the testimony on the part of the State under that article, is occa sion by occasion. That it is the only way we desire to break it down I apprehend we have no right to call in witnesses here to show wha Judge Cox's habits were, to show how often he would get drunk, or a to whether he would get drunk at all. I don't suppose that would b proper. We have no affirmative defence to make. We simply have t negative the case which the State has presented against us; and the pro secution cannot now bring in new charges against us.

They have rested their case. They have said "here the State of Min nesota rests; the State of Minnesota has nothing further to bring against this man; we rest upon this," and then it is simply for us to tear down what they have built up, if we can do so; and they have no right then to take new material and build a new edifice with which to crush us. Such a proceeding never was before heard of in the history of juris prudence, and I dare say it will never be heard of again.

The Senate, by the adoption of the order of Senator Castle, gave no tice that the managers would not be allowed to ask when and where the the witnesses have seen Judge Cox drunk; that they could only ask whether the witnesses have seen him drunk before, and how many times; so as to show whether they are competent judges. When that order was adopted, it was stated here upon the floor of the Senate, by the attorneys, that the reason why it was done was because it would be im proper to allow them to show when and where, because that would tend to establish, upon cross-examination, new and independent offences which should have been established in the case in chief. The mana gers have been harping upon that ever since. They have been trying. like burglars at night, to break open that lock, which protects the re spondent. They have been doing it every day, by every witness which has been upon the stand, and this is their last attempt. Here they de sire to do it where it can certainly do them good, where they expect they may bring these matters in, and show that the respondent during his judicial tenure has been intoxicated. I think the matter is plain. upon its face, and needs no comment. This is an attempt upon the part of the managers, you might say the culminating attempt, to break down the barriers and the rules which the Senate has established.

Mr. Manager HICKS. Mr. President, I simply desire to state that we do not ask the question when and where.

Senator HINDS. I offer the following order, and move that it be adopted :

Ordered that where the respondent examines witnesses under article 18, only concerning the specific instances of alleged intoxication testified to by the witnesses on the part of the State, it is not competent on the part of the prosecution to examine such witness concerning any other instances of alleged intoxication of the respondent, or to show on cross-examination that the respondent is an habitual drunkard.

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Senator CASTLE. I second the motion.

The PRESIDENT *pro tem.* You have heard the order offered by Senator Hinds. Are you ready for the question? The roll will be called; those in favor of the adoption of the order will vote aye as their names are called, and those opposed no.

The clerk then called the roll.

The roll being called, there were yeas 22, and nays 6, as follows:

Those who voted in the affirmative were—

Messrs. Aaker, Adams, Buck C. F., Campbell, Castle, Crooks, Gilfillan C. D., Gilfillan J. B., Hinds, Howard, Johnson A. M., Macdonald, Mealey, Perkins, Peterson, Powers, Rice, Shaller, Shalleen, Simmons, Wheat, and Wilson.

Those who voted in the negative were—

Messrs. Buck D., Case, Clement, Johnson R. B., McLaughlin, and Tiffany.

The PRESIDENT *pro tem.* The question being upon the adoption of the order, there were yeas 22 and nays 6, so it is adopted. That will, as I understand, sustain the objection of the respondent.

Examination resumed by Mr. Manager COLLINS.

Q. Now, Mr. Todd, have you ever seen Judge Cox intoxicated?

A. There has been so much difference of opinion here in regard to what constitutes drunkenness and intoxication I don't know as I am competent to judge.

Q. You think you are competent to judge?

A. If I may be allowed to use my own knowledge of the term I can answer.

Q. You said a moment ago that you were not competent to judge?

A. I said there was so much difference of opinion here in regard to what constitutes drunkenness or intoxication; I don't know the difference between drudkenness and intoxication.

The PRESIDENT *pro tem.* I would like to have the witness define his idea of the terms intoxication, drunkenness, and under the influence of liquor.

A. Well, sir, I can illustrate better than I can tell in any other way what I think about it. If I were to go along a road and should see a thing which looked more like a horse than a cow I would call it a horse; if it looked more like a cow than a horse I would call it a cow. If a man has more signs of intoxication than sobriety I would say that he is intoxicated; that is about the best I can do on that question.

The PRESIDENT *pro tem.* Well, when would you call him drunk?

A. Well, I would call him drunk when he began to drool in the mouth.

By Mr. Manager COLLINS.

Q. You would call him drunk then?

A. Yes, anywhere along there.

Q. Suppose he was not able to stand up, would you call him drunk then?

A. Yes; he is past drooling then, I should think.

By Senator POWERS.

Q. Would you call a man drunk if he staggered?

A. Yes, if he staggered very badly.

Q. Suppose his legs were not drunk, and his brains were drunk.

A. If I should discover a change in the man's face; a change in his

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countenance, a change in his eyes, unless I *knew* that it was being caused by being up late nights, or exposure to the cold, I should call it intoxication.

By Mr. Manager COLLINS.

Q. Now, applying those rules have you ever seen Judge Cox intoxicated?

A. I have.

Q. When did you first become acquainted with Judge Cox?

A. It was in the year 1873; I think that was the year; I am certain it was.

Q. Where was it?

A. The first time I ever saw him was at Marshall.

Q. What was he doing up there at Marshall then?

A. He came up there to deliver a lecture.

Q. How long did he stay?

A. Well, I think he came up one day and went back two days afterwards. That is my recollection.

Q. When did you next see him?

A. I think the next time I saw him up there as an attorney in a bastardy case.

Q. When was that?

A. Well, it was a year or two after, I don't know which.

Q. When did you next see him?

A. I don't know, sir.

Q. Can you state when you first saw him after March, 1878?

A. I used to see him quite often; I can't remember all the times.

Q. I understand you to say that during this term, commencing on Tuesday and ending on Monday, that you did not see Judge Cox intoxicated?

A. I don't think I said so.

Q. Well, did you see him intoxicated between Tuesday and the Monday following, at the time he left?

A. No, sir.

Q. You did not?

A. No, sir.

Q. Did you see him under the influence of liquor?

A. No, sir.

Q. Did you see him when he had any signs of intoxication or drinking?

A. No, sir.

Q. You know Mr. M. B. Drew, do you not?

A. I do.

Q. Did you or did you not tell him, in the town of Marshall, on or about a week ago last Monday, that Judge Cox got a little off on Sunday night, referring to the Sunday that he was there?

A. I don't think I have seen Mr. Drew in three months.

Q. Well, you can answer the question.

A. No, sir.

Q. You did not?

A. No, sir.

Q. Nor words to that effect?

A. No, sir.

Q. Did you tell him so at the town of Marshall, on or about the Monday evening following that term of court?

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A. No, sir.
Q. That Judge Cox got a little off on Sunday night?
A. No, sir.
Senator CASTLE here took the chair to act as President *pro tem.*

SAMUEL MATHER,

Sworn as a witness on behalf of the respondent, testified:

Mr. ARCTANDER. This is the same article—article eighteen.
Q. Where do you reside?
A. Yellow Medicine county, at the present time.
Q. What is your business?
A. Well, I am a farmer, generally; I do some other little business besides; I buy and sell cattle sometimes.
Q. Are you acquainted with the respondent, E. St. Julien Cox?
A. I am, sir.
Q. How long a time have you known him?
A. I think it is seven or eight years ago since I first got acquainted with him.
Q. I will ask you to state whether or not you saw him in Redwood county, in the month of January, 1881, during a term of court there?
A. I did, sir.
Q. I will ask you to state whether or not you remember an occurrence, during that term of court, of the jury being out in a criminal case, calling for further instructions from the Judge, in the evening?
A. I do.
Q. What case was that in?
A. State of Minnesota vs. Hawk.
Q. Did you see the Judge that night?
A. I did.
Q. Where did you first see him that night, and when?
A. I first met him on the street in Redwood Falls; that was before supper.
Q. Well, I mean after supper?
A. After supper, I first saw him in his private room at the hotel.
Q. Who were there besides you?
A. I could not tell you all the persons that were there besides me. There were some parties there when I went there that I had no acquaintance with; but I can tell you who went with me. Peter Ortt went with me, and Mr. R. M. Simmons and myself went to his room.
Q. What did you do there after you came in there?
A. Well, a little while after, we commenced to pass away the time at a game of cards.
Q. What was it you were playing?
A. "Bull-doser" they called it,—a new game that I heard of.
Q. How long a time did you stay there and play cards before you went out?
A. Probably not half an hour.
Q. I will ask you to state whether or not you had anything to drink there at that time?
A. We had, sir.
Q. Who brought it there?
A. I brought it there myself.

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Q. What did you drink of?
A. Well, *I* called it whisky.
Q. I mean, what did you drink out of,—a bottle?
A. No sir; we drank out of a tumbler.
Q. Or goblets as you commonly call them?
A. A small goblet.
Q. Did Judge Cox drink that evening while you were in there?
A. Oh, I could not say that. He did not drink over two or three times, I do not think; don't think over twice while we were in there.
Q. If you were drinking from a goblet, it might be a pretty good drink?
A. About as much water as there is in that glass now. (About three table spoonfuls).
Q. I will ask you to state what the Judge's condition was as to sobriety or inebriety at this occasion, or at any time during that evening?
A. I considered him perfectly sober.
Q. You had seen him drink these three glasses there?
A. Yes.
Q. I will ask you to state whether or not that whisky showed in his face or in his actions at all anything different from usual?
A. I did not see any difference in him after he had drank it.
Q. Now, you state you went out from there. Where did you go from that place?
A. Went into a restaurant.
Q. What did you go there for?
A. To get some oysters; we had some oysters.
Q. Who did you meet at the restaurant?
A. I think we met Mr. Geo. W. Braeley there.
Q. Did he sit down and take oysters with you?
A. I believe he did.
Q. There was no drinking there at the restaurant, was there?
A. No, sir.
The PRESIDENT *pro tem.* Right here, I should like to know of these gentlemen, who went to the restaurant; who were with you?
A. Well, the Judge, myself, Mr. Ortt and Mr. Simmons, went from the hotel.
Q. Do you know Mr. Webber, of New Ulm?
A. I do, sir.
Q. Was he in your room at any time that evening, at the hotel?
A. He was in the Judge's room when we went in there, sir.
Q. State whether or not he was there at any time after you had taken your bottle out of your pocket?
A. I don't recollect seeing him there after that. He went away immediately after we went into the room.
Q. You don't recollect seeing him again that evening?
A. Yes, sir; he came in again shortly, inquiring for something, or consulted with the Judge about something; I do not know what it was for, now; but he did not stay there a minute. We were sitting at the card table playing, when he came in a second time. I did not see him after that, that evening; that is, not that night. We went into the court-room when the Judge was called, and I then saw him there.
Q. Have you stated that there was no drinking at the restaurant?
A. None at all, sir.
Q. Now, what happened at the restaurant while you were sitting there and had your oysters?

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A. I believe the sheriff of the county came in for the Judge. He called him out,—said, as I understood, that the jury wanted some further instructions from the Judge.

Q. Well, where did the Judge go?

A. He went to the court room?

Q. Who went with him?

A. Well, I went with him, for one, and I think the sheriff went.

Q. Do you know whether any of the others came in?

A. I do not think they did—no, sir.

Q. Now, you walked with the Judge up to the court room there.

A. I believe I did.

Q. Did you go into the court room with him?

A. Yes.

Q. Did you hear what was going on there—what he did in the court room—instructing the jury, etc. What was the jury dissatisfied about?

A. I was there all the time.

Q. You walked down with him afterwards, did you?

A. Yes, sir; walked back with him.

Q. Now, I will ask you to state what the Judge's condition was as to sobriety or inebriety—as to whether he was intoxicated at this time when you were in the court room with him.

A. I don't think he was, sir. I didn't see any difference in him than when he was at the hotel.

Q. You did not think he was intoxicated?

A. I don't think he was.

Q. Have you any doubt about it?

A. No, sir; I have no doubt in *my* mind about it.

Q. I will ask you to state whether or not upon the coming in of court or at any other time in the court room there, the Judge went over and played on an organ there?

A. Not to my recollection.

Q. Do you remember if an organ was there?

A. I remember seeing one there closed.

Q. You don't remember seeing it open?

A. I do not; no, sir.

Q. I will ask you to state whether or not there was anything different either in his appearance or in his demeanor at this time in court than it was prior thereto, and what it has been at other occasions when you have seen him sober?

A. Not any, sir; I did not see any.

Q. When you went down from the court room with him, you went down to the hotel, did you?

A. Yes, sir.

Q. Did you and your other friends spend any time there during the night with him?

A. I and Mr. Ortt and Mr. Simmons sat in the bar room of the hotel after we went there until after the office closed and the Judge was with us.

Q. Was he sober or intoxicated at that time?

A. Not at all.

Q. He was not intoxicated?

A. No, sir; he hadn't had anything more to drink after we left the hotel only what I stated.

Q. You didn't live in Judge Cox's district?

A. No, sir.

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Examined by Mr. Manager COLLINS.

Q. How long have you known Judge Cox?

A. Well, personally eight or nine years; ever since I lived up in that country.

Q. Now, what business had you down at this term of court?

A. I do my business at Redwood Falls, and I spent most of my time there, sir. I spend more time at Redwood Falls than I do at my own home.

Q. Well, Redwood Falls is in Judge Cox's district?

A. Yes.

Q. Now, when did you first meet Judge Cox at that term of court?

A I could not tell you; I think it was the first day of the term; I believe I was there all through that term of court, sir.

Q. Well, what day of the term was this?

A. That was on Saturday.

Q. Had you been in Judge Cox's room prior to that Saturday, that term of court?

A. I think not.

Q. Did you go there by an invitation or otherwise?

A. By invitation.

Q. The Judge invited you there?

A. Yes, sir.

Q. Have you ever seen Judge Cox intoxicated?

A. Yes, I believe I have.

Q. Won't you give your idea of intoxication; do you make any difference between intoxication and drunkenness?

A. Why, a little so; a man can be what I call beastly drunk, not know anything and not be able to help himself, and a man can be a little intoxicated and probably be able to attend to his business.

Q. Well, do you make any distinction between intoxication and drunkenness?

A. Yes, sir; I make some difference.

Q. Well, what is it?

A. Well, as I stated, I think a man might be intoxicated a little and still be able to attend to his business as well as if perfectly sober.

Q. Well, he might be a little drunk and attend to his business.

A. I think not.

Q. Well, then, what difference do you make between a man being intoxicated and a man being drunk,—when does he become drunk in your opinion?

A. When he can't help himself.

Q. When he is not able to stand up?

A. Yes,—Well he might roll around some, probably.

Q. Somewhat insensible you think? You don't think a man is drunk until he becomes unable to help himself?

A. Well, that is what I should call a man drunk; yes.

Q. Now, as I understand, Mr. Ortt and yourself, and—what was the other man's name?

A. Simmons.

Q. Simmons, Ortt and yourself went down to Judge Cox's room?

A. Yes, sir.

Q. You took a bottle of whisky along?

A. Yes, sir.

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Q. Had Judge Cox any whisky in his room, do you know, at that time?
A. I didn't see any sir.
Q. You don't know anything about it?
A. I don't know anything more about it. I didn't see any.
Q. And you were there about two hours?
A. In his private room, yes, sir.
Q. Now, what time did you go there?
A. After supper.
Q. About seven o'clock?
A. Yes, about seven o'clock; between seven and eight probably; I couldn't say.
Q. Were you invited by Judge Cox to bring that bottle of whisky along?
A. No, sir.
Q. You took it of your own accord?
A. Yes, sir.
Q. Did you leave that bottle there when you went away?
A. I left it there in the Judge's room.
Q. Was there any whisky left?
A. Well, I don't think there was but very little of it left.
Q. Now, did you drink any more than the Judge did,—any more times?
A. Not exceeding three times.
Q. All drink, you four?
A. I believe so; we did, yes, I know we all drank.
Q. Now, you went from there to the restaurant, did you stop at any place before you got there?
A. No, sir.
Q. And you went from there to the court house?
A. Yes, sir.
Q. And you came back to the hotel?
A. Yes, sir.
Q. Did you drink any after you came back to the hotel?
A. I couldn't tell; I wouldn't be positive on that to know whether we drank any after we came back to the hotel or not.
Q. Now, how can you tell us the number of drinks you took in the Judge's room and yet be unable to tell us whether you drank after you got back to the hotel or not?
A. By the time we were there, and my recollection was called to that matter,—has been, recently.
Q. You haven't thought that over until recently?
A. Not until recently, no, sir.
Q. Now, you were in a public bar-room, were you not, when you came back from the court house?
A. Yes, sir.
Q. What time did you get back?
A. That I couldn't tell; probably after eleven o'clock in the evening.
Q. You staid there until 12 or 1 o'clock?
A. After twelve, I think.
Q. Where did you go then?
A. I went home.
Q. Do you know where the Judge went?
A. The Judge went, I presume, to his private room.

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Q. The Judge went away and you went away?
A. Yes, sir.
Q. Was the bar-room closed at that time?
A. Yes, sir.
Q. Closed up then?
A. Well, the same as it is always every night; there was no one in the bar-room, only us four when we were there; they were all gone to bed.
Q. Wasn't the bar-tender there?
A. No, sir; well, he was some of the time, but not all of the time.
Q. Was he there when you went away?
A. That I couldn't tell you.
Q. But he was there some of the time after you went back?
A. Yes, sir.
Q. Now, about what time of the night do you think you went back to that bar-room from the court house?
A. Well, I couldn't tell what time. I should judge it was between ten and eleven o'clock, or it might have been later. I couldn't say.
Q. Now, when did Judge Cox invite you to go to his room that night?
A. Before supper.
Q. When did you get the bottle of whisky?
A. I got it right immediately after supper.
Q. You got it purposely to take there didn't you?
A. Yes sir.
By Mr. ARCTANDER.
Q. You stated something about a bar in connection with the hotel; was there a saloon?
A. No, sir.
By Mr. Manager COLLINS.
Q. Wasn't there a saloon there?
A. No, sir.
Q. By Mr. ARDTANDER. When you speak of the bar-room you meant the office of the hotel?
A. Yes, sir.
Q. There were no liquors sold there?
A. No, sir; none in the hotel at all.
By Mr. Manager COLLINS.
Q. Then you know whether you drank any there or not?
A. No, I don't positively.
Q. If there were no liquors there, how could you drink there?
A. Probably this bottle might have been produced.
Q. Do you remember whether it was?
A. I don't remember positively whether it was or not.
By Mr. ARCTANDER.
Q. You said your attention had been called to this matter of late; how was it so called to your attention about the drinking in that room?
A. Well, by the different parties amongst ourselves in Redwood since this impeachment affair came up.
Q. Since Webber's testimony came out about his drinking?
A. Yes, sir.
By Senator MACDONALD. Will the witness state what is the game that he calls bull-dozer?
A. Well, I don't know as I could tell you about it; if you had a pack of cards here I might instruct you in it if you wished it.

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Q. Did you play for money?
A. No, sir; we didn't play for anything only amusement.
By Mr. ARCTANDER. As the counsel drew out that the witness had seen Judge Cox drunk before at another occasion, I now desire to ask him whether it was after Judge Cox was elected or after he came on the bench.
Mr. Manager COLLINS. Well, I have no objection to that if the counsel will allow me to ask it of all witnesses.
The PRESIDENT *pro tem.* I should hold that he could ask the question, but that if he does you gentlemen could cross-examine to the fullest extent.
Mr. ARCTANDER. As to this witness?
The PRESIDENT *pro tem.* Yes, sir.
Q. Mr. Mather, you said you had seen Judge Cox intoxicated sometime. State whether or not you have ever seen him intoxicated since he was elected Judge?
A. I never have, sir. This was before.
By Mr. Manager COLLINS.
Q. When was Judge Cox elected?
A. I think it is three years ago, or four.
Q. You couldn't tell?
A. No.
Q. Now, when did you last see him drunk?
A. I never saw the Judge drunk but once.
Q. When was it?
A. That was when I first got acquainted with him, in Redwood Falls. It was on an electioneering tour, I believe, that he was up on at the time.
Q. He was drunk then?
A. I thought so, yes; that must have been six or seven years ago.
Q. The question was, if you had ever seen him intoxicated at any other time?
A. No, sir; not to my knowledge.
Q. Have you seen him under the influence of liquor?
A. I couldn't say as I have, sir.
Q. Now, how many times have you seen him since you became acquainted with him?
A. I have seen him, I should say, every term of court that has been held in Redwood Falls, and I saw him one or two terms in Marshall.
Q. How many times would that be?
A. Probably six or eight times during his term of office.
Q. Have you seen him at any other times?
A. No, sir; I never met the Judge at any other times.
Q. How many times did you meet him, from the time you became acquainted with him to the time he was elected Judge?
A. Well, I should say twice or three times.
Q. And once he was drunk?
A. Once I thought he was drunk.
Q. Now, was he intoxicated or under the influence of liquor in the slightest, at either of the other times?
A. I couldn't say as he was; he was drinking.
Q. Will you say that he was not intoxicated; I am not asking you if he was drunk, but will you say that he was not intoxicated at the other times you have seen him?

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A. I should think he was not.
Q. Nor under the influence of liquor?
A. No, sir.
Mr. ARCTANDER. I think that is not the question.
The PRESIDENT *pro tem.* I think on cross-examination, you having gone into the matter of time, the managers can cross-examine to the fullest extent.
Q. You say he was drinking at these times; now, was he under the influence of liquor?
A. I don't think he was, sir; not at any other time.
Q. How much did you see him drink?
A. Not over one or two drinks.
Q. And you saw him take one or two drinks on each of those occasions?
A. Well, at this one particular occasion I saw him drink more.
Q. But I am not speaking of that particular occasion, I am speaking of the other occasions?
A. Well, that was about all.
Q. Have you ever seen him drink since he became Judge except at the time you speak of?
A. Yes, sir.
Q. Where was that, and when?
A. In Redwood Falls and Marshall, both.
Q. What were you doing there at the time?
A. I was on my private business.
Q. And what was he doing?
A. Well, I suppose he was attending to the business of the judgeship, of the circuit.
Q. Was he drinking in a saloon?
A. Yes, sir.
Q. And you have seen him drink how many times do you think at this term of court?
A. Well, I never saw him drink but once at a time.
Q. At about every time you met him you saw him take a drink?
A. Oh, no, no; not every time.
Q. Well, how many times? You say you saw him five or six times?
A. Well, I would say between the intervening of the court, I don't want you to understand that I did not meet him more at the time of the court, because I met him two or three or four or five times a day.
Q. You would meet him and take a drink with him?
A. Generally,—that is not,—when we met occasionally at that time.
Q. Now, who did the treating, you or the Judge?
A. Well, sometimes one, and sometimes the other.
Q. And where was it, at saloons?
A. Yes, sir, generally.
Q. And at his private room?
A. No, sir. Yes, once I believe at his private room.
Q. Did you state a little while ago you never was in his private room before that night?
A. No, I didn't say that.
Q. Where was it you went when you were at his private room on the occasion you first spoke of?
A. I think it was prior to this time I have been testifying to.

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Q. Was it at Marshall?
A. No, sir.
Q. At Redwood Falls?
A. Yes, sir.
Q. What were you doing there?
A. I simply went in to see the Judge.
Q. Did you have a game of cards?
A. No, sir.
Q. Did you have any drinks with him?
A. No, sir.
Q. Did you take any whisky with him?
A. No, sir.
Q. Was there whisky there?
A. I don't think there was; there was some beer there.
Q. You drank the beer?
A. I did, sir.
Q. Did you take it, or was it there?
A. It was there, sir.
Q. How many drinks did you take?
A. One.
Q. How long did you stay?
A. Oh, a few minutes.
Q. Were you ever at his private room at any other time?
A. I think that was all.
Q. Won't you tell us when that was?
A. Well, I couldn't, sir; it was a long while ago; it was about the first time he got on the bench.
Q. Can you tell when the Marshall term was, that you drank with him.
A. It was in the winter of 1881, I believe; no, sir, it was 1880.
Q. Was it in the general term of court?
A. I think it was in the general term of court.

The PRESIDENT *pro tem.* The court will now take a recess until half past two.

AFTERNOON SESSION.

The Senate was called to order at half past 2 P. M., Senator Wilson in the chair as president *pro tem.*

PETER ORTT

Sworn as a witness on behalf of the respondent, testified:

Examined by Mr. ARCTANDER.
Q. Mr. Ortt, where do you live?
A. At Redwood Falls.
Q. What is your business?
A. Cattle dealer.
Q. Do you know the respondent, E. St. Julien Cox?
A. Yes, sir.
Q. How long have you known him?
A. Twenty-two or twenty-three years.

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Q. Did you see him at a term of court held in Redwood Falls in the month of January, 1881?

A. Yes, sir.

Q. You heard the testimony of Mr. Mathers who was just on the stand, did you?

A. Yes, sir.

Q. Were you one of the gentlemen that was in Judge Cox's room that evening, that he testified to?

A. I was.

Q. State whether or not you were one of the gentlemen that played cards there and afterwards walked down to the restaurant with the Judge?

A. I did.

Q. Do you remember of seeing Mr. Braley down there at the restaurant?

A. I do.

Q. Do you remember of Mr. Gale, the sheriff or the deputy sheriff coming after the Judge, to have him go to the court house?

A. I think he did.

Q. You didn't go up with the Judge?

A. No, sir.

Q. Did you see him later?

A. Yes.

Q. Where?

A. At the hotel in the evening.

Q. I will ask you what was the condition of Judge Cox as to sobriety or inebriety during any portion of this time that evening.

A. I considered him sober during that evening.

Q. Did you have any doubts about it?

A. No, sir.

Q. Any difference in his actions or manners than at other times when you had known him to be sober?

A. Not any.

Q. Any difference in appearance?

A. No, sir.

Examined by Mr. Manager COLLINS.

Q. How long had you known Judge Cox?

A. Twenty-two or twenty-three years.

Q. You have seen him frequently I suppose in that time?

A. Yes, sir.

Q. Did you ever see him intoxicated?

A. I have.

Q. Do you make any difference between a man being intoxicated and being drunk?

A. I do.

Q. What is the difference?

A. I consider a man under the influence of liquor before he is drunk. When he gets so that he cannot handle himself the way he wants to, he is drunk; and while he is getting under the influence of liquor and not staggering, I consider him intoxicated.

Q. I suppose he is a man that never does stagger,—you have seen such cases, have you not?

A. I can't call to mind any such cases, yet there may be some.

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Did you ever see Judge Cox stagger?
Yes, sir.
Frequently?
I can't say as I have very frequently.
Did he stagger from the effects of whisky?
I thought so.
Now, you think a man is not drunk until he staggers?
That is my impression.
Well, now you said that a man was under the influence of liquor he became drunk; I asked you if you made any distinction between drunkenness and intoxication; do you make any distinction?
Yes, sir; I accept it as such.
You mean that when a man is under the influence of intoxicating he is intoxicated?
That is what I mean?
And when he is badly gone he is drunk?
Yes, that is what I mean.
Have you any other business besides buying cattle?
Not at present.
Had you formerly?
Yes, sir.
What was it?
Dealing in machinery.
At Redwood Falls?
Yes, sir.
Now, who invited you to Judge Cox's room that night?
The Judge himself.
At the same time that he invited Mr. Mathers?
I can't say whether it was at that particular moment or not; but at or near the same time.
Were you with Mr. Mathers when he got the bottle of whisky?
I can't say that I was with him at the time that he got it.
Did you see any whisky in the room, except the bottle that he here?
I did not.
And you played cards, I suppose, with Mr. Mathers?
Yes, sir.
How long were you in the room?
Oh, we might have been there an hour or two, or something like

And you went from there to the restaurant?
Yes, sir.
You didn't go to the court room?
No, sir.
Now, where did Judge Cox meet you after that?
I have no recollection of meeting him anywhere, only at the after that.
Did you drink anything after you met him at that time?
In the evening?
In the evening, after you left his room?
No, sir.
Did he drink anything in your presence?
Not in my presence.
Was there anything drank that you know of, at the hotel after he back from the court room?

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A. Not that I knew of.
Q. Now, did Judge Cox show any signs or indications of drinking at the time he left the restaurant?
A. I don't think he did.
Q. Are you positive about that?
A. I am.
Q. He was perfectly straight every way
A. He was perfectly straight; yes, sir.
Q. But he had been drinking?
A. He had had these drinks spoken of.
Q. Was there anything left of that bottle of whisky?
A. I think there was.
Q. When was your attention first called to this matter, after it occurred?
A. What are you alluding to?
Q. To this game of cards, and your being with the Judge that night?
A. I don't remember; I can't say that my attention was called to it until I saw a statement of it after the trial had begun here; I think a statement in the papers.
Q. You hadn't thought of it from that time until the time you saw it after this trial had begun?
A. No, sir; I can't say that I did. I might have thought of it, but I don't have any recollection of it, if I did.
Q. You drank at that time?
A. Yes, sir.
Q. You drank as often as the others?
A. Well, I thought I did, yet I wouldn't be positive as to that.
Q. As I understand, all of this drinking that you know anything about, was before the Judge went to the court room?
A. Yes, sir.
Q. And the sheriff called him out of the restaurant and left you there, I believe?
A. I don't remember whether I remained after they left, or whether I went out first, I could not say.
Q. You didn't go to the court room?
A. No, I didn't go to the court room.

R. M. SIMMONS

Sworn as a witness on behalf of the respondent testified:

Examined by Mr. ARCTANDER-
Q. Mr. Simmons, where do you reside?
A. I reside in Renville county, Birch Coolie.
Q. What is your occupation?
A. Farmer.
Q. Do you know the respondent, E. St. Julien Cox?
A. I do.
Q. How long have you known him?
A. Oh, perhaps twenty-two or twenty-three years.
Q. Do you remember the fact of the Hawk trial in Redwood Falls, in January, 1881?
A. I do.

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Q. Do you remember of seeing Judge Cox during that term of court?
A. Yes, sir.
Q. In Redwood?
A. I do.
Q. Where did yon see him?
A. I saw him in his room at the Exchange Hotel.
Q. You saw the gentleman, Mr. Mather, spoken of as partaking in that card party?
A. Yes, sir.
Q. And as walking out to the restaurant with the Judge afterwards?
A. Yes.
Q. That is correct, is it?
A. Yes.
Q. Do you remember of the fact of the sheriff coming after the Judge and notifying him that the jury wanted to see him?
A. I do.
Q. When the respondent was at the hotel?
A. It was in the restaurant.
Q. Did you walk up with the Judge to the court house?
A. No, sir.
Q. Did you see him again that night afterwards?
A. Yes, sir, I did.
Q. Where?
A. I seen him in the hotel.
Q. Did you sit and talk with him for some time afterwards?
A. Yes, perhaps an hour or two.
Q. Now, I will ask you to state what was the condition of Judge Cox as to sobriety or inebriety at any of these times you saw him that night?
A. He appeared straight enough, as far as I could see.
Q. What was his condition as to sobriety, as to being sober or otherwise?
A. Well, I considered him sober.
Q. Did you have any doubts about it at the time?
A. Not at all.
Q. Have you now?
A. No, sir; I have not.
The PRESIDENT *pro tem.* I don't think the members of the Senate could hear that answer.
Q. I asked you whether or not you had any doubts about his being sober at that time?
A, He was perfectly sober I supposed at the time.
Q. You had no doubts about it?
A. I had no doubts.
Q. And you have none now?
A. Not at all.

Examined by Mr. Manager COLLINS.
Q. Mr. Simmons, have you ever seen Judge Cox drunk?
A. I have seen him when I thought he was the worse for liquor.
Q. Have you ever seen him drunk?
A. Well, I don't know as I ever did; that is—
Q. Have you ever seen him intoxicated?
A. I have seen him the worse for liquor.

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Q. Did you ever see him under the influence of liquor so that he staggered?
A. No, sir.
Q. But you have seen him under the influence of liquor?
A. I have seen him one time at Waterville several years ago when I supposed he was pretty well "sot up."
Q. Now, Mr. Simmons, who invited you to go to this room that night?
A. Well, I don't recollect. I had an invitation that Judge Cox wanted to see me to his rooms; I think it was Mr. Northrop.
Q. You went there with Mr. Ortt and Mr. Mathers, didn't you?
A. Yes, sir.
Q. Were you with Mr. Mathers when he got the bottle of whisky?
A. I was not with him when he got it, but he took one there.
Q. Did you see any whisky but that which he took?
A. I did not.
Q. You drank some?
A. I did.
Q. Drank with the rest?
A. Yes, sir.
Q. How long did you stay there?
A. Oh, I was there two or three hours.
Q. How many times did you drink?
A. I drank two or three times.
Q. Did you leave any whisky there in the bottle?
A. I don't know whether I did or not.
Q. And you went from there to this restaurant, as I understand?
A. Yes, sir.
Q. Now, did you drink with Judge Cox anywhere else except in the room, that night?
A. I did not.
Q. Then you didn't drink anything after Judge Cox came back to the hotel?
A. No, sir.
Q. Where were you, from the time that Judge Cox left the restaurant until you met him at the hotel?
A. I think I met him on the street after he came back.
Q. Where were you during that time?
A. I was in the restaurant.
Q. Did you stay in the restaurant all the the time that he was up at the court house?
A. Yes.
Q. And then you went from the restaurant?
A. We went back to the hotel.
Q. What were you doing at the restaurant?
A. Well, eating oysters part of the time.
Q. So was he?
A. Well, he ate his, and went to the court house.
Q. Now, how long after he went to the court house before you met him?
A. Oh, about half an hour.
Q. It might have been half an hour from the time he met you at the restaurant until you met him at the hotel?
A. Yes.

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Q. Now, what were you doing during that time?
A. I don't know, as I was doing anything,—staying at the restaurant. I went directly from the restaurant to the hotel.
Q. Where did you stay that night¿
A. I stayed at Mr. Ortt's
Q. Then you didn't stop at the hotel.
A. I did not. Perhaps it was 1 o'clock or 2 o'clockwhen I left there.
Q. Then you stayed up there talking with the Judge during this time?
A. Yes.
Q. Was there any one present except Mr. Ortt and Mr. Mathes, the Judge and yourself?
A. I don't recollect how many there were there at the time.
Q. Who is that man Northrop? Where does he live?
A. Well, he is dead now, he did live at Redwood.

W. H. HAWK,

Sworn as a witness on behalf of the respondent, testified.

Direct examination by Mr. ARCTANDER.
Q. Mr. Hawk, where do you reside?
A. In Redwood county.
Q. What is your business?
A. Laborer at present.
Q. Were you the clerk of the court of that county up to the time of a year or two ago?
A. Yes, I was.
Q. Were you the defendant in the case of the State against Hawk?
A. I was.
Q. Do you remember the occasion of the trial of that case?
A. I do.
Q. Do you remember the occasion of the jury sending for the Judge, or the Judge coming into the court to give the jury further instructions?
A. Yes.
Q. What time of day was that done?
A. It was done a very few minutes before midnight on Saturday.
Q. Did the Judge come back and instruct the jury more than once?
A. But once, as I recollect.
Q. You were there present I suppose?
A. Of course I was present.
Q. Did you observe the Judge at that time when he was there and gave the jury further instructions?
A. I did.
Q. Do you remember what day it was?
A. On the 8th of January, 1881, as I recollect.
Q. What was the condition of the Judge when he came into the court room, and while he was there giving the jury further instructions,—what was his condition as to sobriety or inebriety?
A. Well, I think he was sober. I don't *think* so, I—I—he was sober.
Q. You have no doubt about it?
A. I have not the least doubt about it.
Q. Was there anything peculiar in his actions at all?
A. Nothing.

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Q. Different from what it had been at other times?
A. Nothing at all.
Q. Now I will ask you to state whether or not you remember an organ standing in the hall?
A. There was an organ in the hall at that time.
Q. Was it opened or locked?
A. I am not positive; no, it was open.
Q. Where you in there when the Judge came in?
A. Yes. sir.
Q. You was in the court room when he came in?
A. I was in there when he came in and remained until after he went out.
Q. Now, did the Judge during any time there, step up and play on that organ in the court room?
A. He did not.

Examined by Mr. Manager COLLINS.
Q. Were you clerk of the court at this time?
A. No, sir; I was not.
Q. You had been clerk before that?
A. I had been clerk.
Q. What were you indicted for?
A. Embezzlement was the charge.
Q. And you say you are a laborer now?
A. Yes.
Q. What sort of a laborer?
A. Anything that I can get to be employed at.
Q. Well, what generally?
A. I am working for a farmer, at present.
Q. What were you doing last summer?
A. Well, I was laboring round town at various kinds of work, and sometimes for the farmers.
Q. Did you ever keep a saloon?
A. I never did.
Q. Or ever tend one?
A. No, sir.
Q. Now, at the time of this trial, you say it was a few minutes before mid-night that the Judge came in?
A. Yes, sir.
Q. How do you know?
A. From the fact that it was.
Q. Well, that is a very poor reason.
A. As the matter was mentioned, spoken of there at the time, as so near mid-night, and as soon as mid-night would arrive it would be Sunday.
Q. Then the matter was mentioned right there at that time?
A. Right there at the time.
Q. That it would very soon be Sunday?
A. Yes.
Q. And that is the reason you know?
A. Yes; that is the way I know.
Q. You say it was within a few minutes of mid-night; how long was the Judge in the court room before mid-night?
A. I couldn't state positively; probably 10 or 20 minutes.

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Q. What was he doing while there?
A. Well, he was in conversation with different parties; that is, until the jury came in.
Q. How long before he went there before the jury came in?
A. The jury came in before the Judge came in.
Q. Now, the jury were in the court-room when the Judge came?
A. I say that is as I recollect.
Q. He came in and went right up and gave them these further instructions, did he not?
A. Yes.
Q. And then what did he do?
A. The jury retired, and as I recollect it, I think he probably talked with parties from five or ten minutes,—I couldn't state as to the exact time.
Q. Now, with whom did he talk there?
A. I am not positive, it may have been the clerk, it may have been the sheriff, it may have been some one else.
Q. You don't know who it was?
A. No, I am not positive.
Q. Now, are you positive that he talked with anybody?
A. Yes, I am.
Q. From five to ten minutes?
A. Yes, from the fact that I was in conversation with parties myself, and he was mentioned at the time.
Q. And then he went away before you did?
A. Yes, sir.
Q. Do you know where he went?
A. I do not.
Q. Where did you go?
A. I went home.
Q. And that must have been after 12 o'clock at night?
A. Yes.
Q. Now, how long have you known Judge Cox?
A. I have known Judge Cox since 1866 or 1867, I am not sure which.
Q. Did you ever see him intoxicated?
A. I think I have.
Q. Do you make any difference between intoxication and drunkenness?
A. That is a question that was never put to me before; I will simply say this, that I never have seen Judge Cox when I considered him in a state that he was incapable of transacting business.
Q. Have you ever seen him so that he would stagger?
A. I never did.
Q. Now, will you tell us the distinction you make between intoxication and drunkenness, if any?
A. Well, I am not able to do it.
Q. Did you observe him closely that night?
A. I did.
Q. What for?
A. As the natural consequence of the present circumstances, having interests at stake as I had.
Q. What?
A. Having the case on hand, I naturally would.

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Q. Would you observe him more closely than you would any one else?

A. I certainly would.

Q. Why?

A. Simply because he was the ruler, or had control of the court.

Q. Would you observe him more closely than you would any other Judge presiding there?

A. No, not a particle.

Q. Weren't you observing particularly what he said, more than his actions, and what rulings he was making?

A. No; I don't know,—of course it was my business to watch his actions pretty closely and to note them.

Q. And you did watch his actions very closely and note them,—it was your own case?

A. It was my own case.

Q. Now, what did he say?

A. Well, I can't call to mind now exactly what he did say.

Q. Can you tell us anything about it?

A. I can simply say that he instructed the jury.

Q. Can you tell us what he instructed the jury about?

A. Yes.

Q. Well, what was it?

A. I believe I can.

Q. What was it?

A. The jury could not agree.

Q. Go ahead and tell us what he said?

A. I don't know as I can call to mind now.

Q. Can't call it to mind?

A. What they wanted instruction upon.

Q. And it was your own case; you were indicted and being tried there and you observed him closely, but you cannot tell me anything that he said or what the instructions were about?

A. I can't call to mind just now; I ought to but that point escaped my mind; it was a matter I never cared anything about.

Q. Well, you got out of the scrape and that was all you cared anything about?

A. I am not out of the scrape yet.

Q. Ain't you? I thought you were.

Mr. ARCTANDER. I don't know, Mr. President, whether it would be fair to permit the last witness to leave the stand without first making an explanation. The State, I suppose, will attempt to cast upon this witness the odium of bearing under an indictment there for embezzlement, at the time. I will ask leave to have this witness, if he desires, make a statement of the circumstances of that matter.

Mr. Manager COLLINS. That is nothing more than fair and we do not object to it; you can call him if you wish.

The PRESIDENT *pro tem.* There will be no objection if the witness desires.

Mr. ARCTANDER. [To the witness] You can go on the stand and explain if you wish to; I don't care about it.

The WITNESS. Perhaps it will be well enough. I received that money for safe keeping from another party, and I entrusted it for safe keeping to the hands of another individual, but when the money was called for from me I could not get it of him.

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Q. And that is what you were indicted for?

Senator D. BUCK. Let me ask the witness whether he was acquitted or found guilty?

A. The jury disagreed; there were eleven for acquittal and one for conviction.

Mr. ALLIS. What was the last part of the answer?

The WITNESS. The jury disagreed.

Mr. Manager COLLINS. I don't know how he knows eleven were for acquittal.

Mr. ARCTANDER. We always manage to know that up in the country.

By Mr. Manager COLLINS.

Q. You were clerk of the court at the time of the alleged embezzlement, were you?

A. Yes.

Q. As a matter of fact a judgment had been entered against a certain party?

A. Yes.

Q. Who was that party?

A. I forget the parties now.

Q. You forget the names of the parties; how came the money in your hands?

A. He simply left the money in my hands in order that they might buy that judgment, as he told me for another party,—buy the judgment from the judgment creditor, the man owning the judgment, if he could be found; they didn't know where he was at that time, and they wanted to look him up, and buy the judgment from him.

Q. Did they leave the amount of the judgment with you?

A. The whole amount; I figured up the judgment myself.

Q. You discharged the judgment?

A. I did not.

Q. But you took the money?

A. I simply received the money as an individual and not as an officer at all.

Q. But you gave a receipt for it?

A. I gave a receipt at his request.

Q. Did you give a receipt as clerk of the court?

A. I did; that is the one mistake I made.

Q. Yes, I should think you did; as I understand the full amount of the money was paid in to you on the judgment?

A. Yes.

Q. And you gave a receipt as clerk of the court?

A. I gave a receipt; the matter was talked over between us.

Q. But you gave a receipt as clerk of the court, didn't you?

A. Yes.

Q. Now, who was this man that paid the money to you?

A. Archibald Seward.

Q. How did he pay the money to you and expect you to get a discount off when he paid the full amount?

A. He didn't expect me to get a discount off; he simply placed the money in my hands, to hold the money, and he had engaged another individual to look up this matter,

Q. He had engaged another individual?

A. Yes.

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Q. How was the judgment creditor there? You say Seward was the judgment debtor?

A. No; Seward was not the judgment debtor. This Mr. Seward had bought land against the judgment debtor.

Q. Land that was owned by the judgment debtor?

A. Yes, but I forget who the judgment debtors were.

Q. But this judgment was a lien upon the land?

A. Yes, that is how Seward came by the money; he was acting for another party.

Q. But the money was paid in to you?

A. Yes.

Q. And you did not discharge the judgment?

A. No, sir.

Q. Now, what did you do with the money?

A. I left the money in the hands of another party?

Q. Who was it?

A. Bishop Gordon.

Q. Who was he?

A. A man living in Redwood Falls.

Q. Did you take a receipt for it?

A. No, sir.

Q. Take a note for it?

A. No, sir; I did not; simply entered it on a private account between ourselves.

Q. How much was it?

A. $712.14.

Q. Where is Bishop Gordon?

A. He is in Redwood Falls, I understand.

Q. And you loaned him the money?

A. I did not loan it to him; I simply placed that money in his hands for safe keeping?

Q. What was his business?

A. He was in the machinery business, and he is now.

Q. And you placed the money in his hands for safe keeping?

A. Yes, sir.

Q. And you did not take any receipt from him that time?

A. I did not; I was his office clerk at that time.

Q. You were a clerk in his office, in his business?

A. Yes.

Q. And you have never been able to get the money back from him?

A. I never have.

Q. Did the fact appear in the course of your trial that you placed that money in the hands of Bishop Gordon?

A. No, I did not; they made such—their evidence was so weak, in fact, that as soon as they got through examining their witnesses I proposed to rest the case and get rid of it. I didn't bring in any evidence in rebuttal.

Q. But you didn't tell that you had placed the money in the hands of Bishop Gordon for safe keeping?

A. Not in the trial, but the plaintiffs in the action, the county attorney, had admitted that; they were satisfied that Gordon had the money.

Q. You say the jury disagreed; has the case ever been tried since?

A. It has not.

Q. It is still pending?

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A. I have never been able to get a trial; I am ready for trial at any time.

Q. When was this case tried?

A. January, 1881.

Q. You were present in 1882, at the term of court?

A. Yes, sir, I was.

Q. Has there been a term of court since January, 1881?

A. There have been two.

Q. Regular terms of court?

A. Yes, sir.

Q. Were you present ready for trial?

A. Yes, sir.

Q. Why was not the case ready for trial?

A. That is more than I can tell.

Q. Was there any reason given?

A. Nothing in particular. Well, the last January term it was not ascertained that we were going to have a term of court until a very few days before the time for that court, and finally Judge Lochren, or whatever his name is, came up there. Well, as a natural consequence, having only one er two days' notice from the time I heard there was going to be a term of court, I didn't propose then to have the matter for trial. We had already agreed to have the matter postponed.

Q. It was agreed to have the matter postponed, but your case is still pending in Judge Cox's court?

A. Yes, sir.

By Mr. ARCTANDER. Do you know whether or not Judge Cox ever tries a jury case the second time; presides at a case the second time?

Mr. Manager COLLINS. I object to that.

Mr. ARCTANDER. It seems to me, Mr. President, this ought not to be gone into—these insinuations and perfidious remarks which are thrown out here, so as to make it appear that these witnesses are in the hands of the Judge. I think it is right if we can show by this witness that it is a matter of practice in the court of Judge Cox that cases are never tried by him the second time for then it will appear that it will make no difference whether this man has a case there or not.

Mr. Manager COLLINS. Well, let that be shown by the record.

Mr. ARCTANDER. That is the way to show it, is it?

Mr. Manager COLLINS. Yes; that is the proper way.

Mr. ARCTANDER. To show by the record that Judge Cox does not try a case more than once; is that record evidence?

Mr. Manager COLLINS. Of course it is record evidence, and the record of the court ought to show it.

The PRESIDENT *pro tem.* You may ask this witness whether he knows Judge Cox ever tries a case twice or not?

Q. I will ask you to state if you know whether or not Judge Cox ever tries a case the second time?

A. He declined to try my case.

Mr. Manager COLLINS. That is not an answer.

Q. Well, he declined to try your case?

The PRESIDENT *pro tem.* Answer yes or no.

The WITNESS. I don't know any further than that.

Q. I will ask you to state whether or not it is a fact that the reason why your case was not brought up at the June term was because Judge Cox declined to sit in the trial?

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A. It was.
Mr. Manager COLLINS. He declined to sit, did he?
A. He declined to sit.

GEORGE W. BRAYLEY,

Sworn as a witness on the part of the respondent, testified.
Examined by Mr. ARCTANDER.
Q. Mr. Brayley, where do you reside?
A. Redwood Falls.
Q. What is your profession or occupation?
A. I am in the banking business.
Q. A banker there?
A. Yes.
Q. Are you acquainted with Judge Cox?
A. Yes, sir.
Q. How long have you known him?
A. Since 1871 or 1872.
Q. Do you remember, Mr. Brayley, of having met Judge Cox at Redwood Falls on the evening of the 8th of January, 1881.
A. Yes.
Q. You heard the statements made here by the witnesses, Mr. Ortt, Mr. Simmons, and Mr. Mather?
A. No, sir; I was not in at that time.
Q. In what company did you meet the Judge that night, and where?
A. I was in to Mr. Bunce's restaurant, talking with Mr. Bunce; Judge Cox came in there with Mr. Ortt and Mr. Mather, I think, for some oysters, and asked me if I would not join them with my oysters, and I did so.
Q. You sat down; and do you remember anything occuring there, with regard to the Judge being called away?
A. I think that some one came in there and called him out, for the purpose of a jury; there was a court pending there at that time.
Q. You didn't go up with him to the court house at that time?
A. No, sir.
Q. I will ask you to state, Mr. Brayley—you sat down and talked with the Judge, and had quite a little chat with him in the restaurant?
A. Yes; we were there some little time; we had to wait for the oysters to be prepared.
Q. And then you ate them before he went away?
A. Yes, sir; I think we did; he might have got up and left before we got through.
Q. I will ask you to state what was the condition of Judge Cox as to sobriety or inebriety, that evening, when you met him.
A. I saw nothing out of the way with Judge Cox, that evening, but that he was perfectly sober and proper.
Q. Perfectly sober and what?
A. And proper in his manner in every way.
Mr. ARCTANDER. That is all on this sub-division of the article.

CROSS-EXAMINATION,

By Mr. Manager COLLINS.
Q. Have you ever seen Judge Cox intoxicated, Mr. Brayley?

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A. That is a question that would be hard, perhaps, for me to answer; I don't know that I ever have.
Q. You don't know that you ever have?
A. No, sir.
Q. Well, why is it hard for you to answer?
A. For this reason,—I don't know what you would call intoxicated.
Q. Well, using your own judgment as to that?
A. I have seen Judge Cox when I thought he had been drinking.
Q. But you don't think you ever saw him when he was intoxicated?
A. I never saw Judge Cox when I called him drunk.
Q. Well, when do you call a man drunk; in what condition must he be?
A. He must be so that when he goes along he must be reeling along on the streets,—stumbling around, throwing up here and there, and having the general appearance of being drunk,—a sot.
Q. Then a man in order to be drunk in your opinion, must stagger and throw up?
A. Yes.
Q. Did you ever see a man drunk who never did throw up?
A. I can't say but what I have.
Q. Then that man couldn't get drunk, could he?
A. I have seen men that was staggering around on the street and did not throw up and vomit and that kind of thing.
Q. Well, were they drunk in your opinion?
A. Certainly.
Q. Did you ever see a man who was drunk and never staggered?
A. No, sir; for I would not have any way of judging whether or not the was drunk.
Q. You say you couldn't tell whether or not he was drunk, because he did not stagger?
A. Oh, no; I don't say that is the only reason, that I could tell a man was drunk.
Q. Well, tell us how you judge a man to be drunk, Mr. Brayley?
A. Well, I have told you in two ways?
Q. What other ways?
A. If I see a man make a fool of himself and I knew he was not a fool, that would be another way, perhaps.
Q. That would be another?
A. Yes.
Q. Now, have you ever seen men drunk who did not stagger, did not vomit and did not make fools of themselves?
A. I don't know that I did.
Q. Did you ever hear of men who did neither and yet were drunk?
A. Oh, I might have heard of a great many things and still not see it.
Q. Well, I ask you if you ever heard of such a state of affairs as that?
A. I have heard that Judge Cox was drunk when I did not see him.
Q. Well, did you ever know of a man who neither staggered, threw up or made a fool of himself and yet was very drunk?
A. Not of my own knowledge.

FRANKLIN ENSIGN.

Sworn on behalf of the respondent, testified.
Mr. Manager HICKS. There is in possession of the Secretary the de-

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position of R. A. Jones, which the counsel on both sides are desirous of examining. We desire the permission of the court, to obtain from the Secretary the deposition of Mr. Jones for the purpose of examining it. I think there can be no objection on the part of the Secretary,

Senator GILFILLAN, J. B. Has it been opened?

The SECRETARY. No, sir.

Senator J. B. GILFILLAN. Then it is proper that the court should order that it be opened.

Mr. Manager HICKS. It was received yesterday.

The PRESIDENT *pro tem.* I understand that the Secretary simply desires that the record should show that he was directed to deliver the deposition. The clerk will open the deposition and let either party see it.

By Mr. ARCTANDER.

Q. Where do you reside?

A. Redwood Falls.

Q. What is your occupation?

A. Clerk of court of Redwood county.

Q. How long have you been clerk of court?

A. Since the 4th, of January 1881,

Q. Were you present in court during the proceedings in the trial of the State against Hawk?

A. Yes, sir.

Q. Were you present the night when the jury came in to get further instructions?

A. Yes; I was not in the court room when the jury came into the room; I was in the court room when the instructions were given.

Q. When the instructions were given?

A. Yes, sir.

Q. And you were not in when the jury came in, when the Judge came in?

A. No, sir; I was at my hotel, and had gone to bed; the sheriff came to waken me up, and he had before that reported to the Judge that the jury wished for further instructions, and came to wake me up, so that it occurred that the jury came into the court room and the Judge was also present when I got up into the court room.

Q. Where did you find the Judge when you came into the court room; what was he doing?

A. Well, my impression is that he was in his seat; he was rather waiting for me. I was a little behind.

Q. Did you afterwards hear him instruct the jury, after you came?

A. Yes.

Q. Did you afterwards see him; did he have a talk with you after that in the court room; any conversation with the other gentlemen present there?

A. Not with me, unless it was relating to my work.

Q. Did you hear him converse with other parties in the room?

A. No, sir; not to my recollection, for as soon as the court adjourned, as soon as the instructions were given that the jury required, the court was adjourned, and I went to my hotel and went to bed.

Q. You didn't wait for the Judge to go down?

A. No, sir.

Q. What, in your judgment, was the condition of Judge Cox as to sobriety or inebriety at this time?

A. I considered that he was sober.

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Q. You have no doubt about it?
A. No, sir; I have no doubt.

CROSS-EXAMINATION.

By Mr. Manager COLLINS.
Q. Mr. Ensign, how long have you known the Judge?
A. I have known him personally since the 4th of January, 1881.
Q. Have you ever seen him intoxicated?
A. Not to my knowledge; not that I was sure of.
Q. Have you ever seen him when you thought he was intoxicated?
A. I don't think I can say that I have.
Q. Have you ever seen him when you thought he was under the influence of liquor?
A. That is a broad question to answer; I think from my knowledge of the Judge since, that I could not say that I have seen him when he was under the influence of liquor or drink.
Q. How many times have you seen him since that 4th of January?
A. I couldn't tell, it was a good many times.
Q. Where, at Marshfield?
A. At Redwood Falls.
Q. Now, you say that when you got there the Judge was there?
A. The Judge was already in the court room.
Q. How long were you there when he was present?
A. That evening?
Q. Yes.
A. Well, my impression is it could not have been more than ten or fifteen minutes, and it was just about five minutes before 12 o'clock when I took my seat at my desk.
Q. You noticed that particularly, did you?
A. Yes, I had my watch to go by; we also had a time piece in the court room.
Q. So that you know by your time-piece and your clock that it was five minutes to twelve?
A. Yes.
Q. You got there before the Judge gave the instructions to the jury?
A. Yes.
Q. You stayed ten or fifteen minutes and when you went away the Judge was in the room?
A. My impression is that he was.
Q. What hotel did you stop at.
A. The Commercial.
Q. Was that the same one that the Judge stopped at?
A. No, sir.
Q. How many times have you seen Judge Cox in the last year since the 4th of January, 1881?
A. I have seen him at different times; of course, I was present all the time during tbe term of court which lasted several days, and also during the following general term of court?
Q. That lasted several days?
A. Yes; that lasted several days and I have seen him since then.
Q. What is that?
A. I have seen him since then also.

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Q. How many times,—in the first place, did you see him between January and June 1881?

A. Yes, sir.

Q. How many times?

A. Well, that is prety hard to tell,—but I can remember once positively.

Q. Where was that?

A. It was on the train coming from Sleepy Eye to Redwood Falls in May of that year, 1881.

Q. Was he coming from Sleepy Eye to Redwood Falls to that term of court?

A. Not there.

Q. When did you see him between January and June and the commencement of this trial, or, rather, between June and the time those articles of impeachment were presented.

A. That is a pretty hard question for me to answer; I think I saw him once or twice after that.

Q. Can you tell where?

A. If at all, it was at my office or at the court house, or at Redwood Falls as he was coming to and returning from other terms of court held at other places.

Q. And then you think that within and during the year 1881 you saw him four or five times?

A. Oh, I presume I did; I couldn't say positively as to that.

Senator ADAMS. I desire to ask the witness a question. I wish to know whether, at any time, he ever saw Judge Cox on the bench intoxicated so as to be incapacitated by virtue of that intoxication from the proper discharge of his duties as Judge?

A. No, sir, I have not.

By Mr. Manager COLLINS. He said he never saw him intoxicated at all, in answer to my question.

Senator ADAMS. I did not so understand his answer to your question.

Mr. Manager COLLINS. That was his answer, that he had never seen him intoxicated.

Mr. ARCTANDER. The witness speaks so low that he cannot be heard plainly.

A. L. GALE,

Sworn as a witness on behalf of the respondent, testified.

Examined by Mr. ARCTANDER.

Q. Where do you reside?

A. In Redwood Falls.

Q. What occupation, if any, had you in the month of January, 1881?

A. Sheriff.

Q. Sheriff of Redwood county?

A. Yes, sir.

Q. Do you remember of the case of State against Hawk, at that term, January, 1881?

A. Yes, sir.

Q. Do you remember of an occasion after the jury being sent out of their sending for the Judge to get further instructions?

A. Yes, sir.

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Q. Do you remember of notifying the Judge of that matter?
A. I think I did notify the Judge myself.
Q. Well, do you remember of the Judge coming up into the court-room and how?
A. Yes.
Q. Do you remember of his being there,—were you there while he was there; you came there before he did in other words?
A. Yes, sir.
Q. You said that you were in the court-room when the Judge came in there?
A. I can't say that I was.
Q. You are not certain about that?
A. No, sir; I had to notify the jury and the Judge and the clerk of the court, and I don't recollect whether I was there just before or just after he came in; about that time, no doubt.
Q. It was either just before or after?
A. Only a few minutes intervened anyhow.
Q. Well, you were in the court-room while the Judge was there, were you not?
A. I was, sir.
Q. And until he left?
A. I think I was.
Q. Did you hear him instruct the jury?
A. Yes, sir.
Q. Did you hear him talk to other parties in the room afterwards?
A. Yes, the general conversation; I think he and I had some conversation about the next days proceedings; we generally did.
Q. Now, I will ask you to state, Mr. Gale, what his condition was as to sobriety or inebriety at that time?
A. I saw nothing in his conduct that would indicate to me that he was in any way intoxicated or under the influence of liquor at that time.
Q. You say you saw nothing in his conduct; did you see anything in any way about him—his appearance, language, or anything?
A. I did not, sir.
Q. You had no doubt about his being sober?
A. No, sir.
Q. Do you know whether or not the Judge played on the organ or piano in the court room at that time?
A. I have no recollection of his playing there.
Q. You know it was there?
A. I am satisfied that the organ was there from certain circumstances; there was a troupe to play there that night, and they could not have the court room, and they were to play; for some reason or other the organ was left in the court room. I think there is no doubt about that, sir,—that the organ was there, and that he would have played on the organ if he got a chance.
Q. Was there anything peculiar in the Judge's actions or his deportment that night?
A. No, sir.

CROSS-EXAMINATION,

By Mr. Manager COLLINS.
Q. How long have you known Judge Cox?

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A. I was not on speaking acquaintance or speaking terms with Judge Cox until January, 1880. I had been in his court as a juror.

Q. January, 1880?

A. January, 1880.

Q. Then you became sheriff?

A. I became sheriff.

Q. Are you sheriff now?

A. No, sir.

Q. Now, Mr. Gale, have you seen Judge Cox intoxicated?

A. I have never seen Judge Cox intoxicated to that extent that it would prevent, or in any way interfere with, his business.

Q. You have seen him intoxicated, have you?

A. I don't think that I have.

Q. Now, you never had seen him intoxicated so that it would interfere with his business?

A. I have seen him under the influence of liquor, no doubt, for I have known of him drinking it.

Q. You have seen him under the influence of liquor to what extent.

A. Well, sir, I don't know that I can say to what extent; you mean how much?

Q. Yes; to what extent was he under the influence of liquor; that is did he stagger; was it indicated in his speech, or how was it indicated?

A. Simply from the fact that that I knew he had drank some liquor.

Q. How do you know it, did you see him drink liquor?

A. Yes; or beer, if that is what you call liquor.

Q. And you only knew he was under the influence of liquor from the fact that you had seen him drink?

A. I don't think that at any time I have seen him so under the influence of liquor that if I had not seen him drink it——

Q. You would have known it?

A. I would have known it; that is just what I wish you to understand.

Q. Now, you say you think he came into the office before you did that night?

A. I say that I think he came; there could be only a few minutes intervening between the time that I notified him that the jury were ready to come in and the time that we were all in the court room.

Q. Did you notify him that night?

A. I think I did, either myself or my bailiff.

Q. Where did you find him?

A. My impression is that I found him at Mr. Bunce's restaurant; at any rate I knew that he was there; either my bailiff told me or I went there myself; at least, I went there.

Q. No liquor kept there?

A. No liquor kept there; just an eating house.

Q. What is your present business?

A. I am engaged in no business at present.

Mr. ARCTANDER. Mr. President, we will have to call all these witnesses again; I bring this in a little awkwardly, perhaps, but I desire to group them.

Senator MC DONALD. Mr. President, while there is a lull in the proceedings, I would like, in order to test the sense of the Senate, to

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move that we have an evening session. I understand that there are some twenty-five witnesses yet to be examined, and if we expect to get through to-morrow evening, we had better have an evening session to-night. If we attempt to hold an evening session to-morrow night we may have considerable trouble in getting a quorum, but we can have one to-night without difficulty.

Senator D. BUCK. I second the motion; the adjournment to be until eight o'clock this evening.

The PRESIDENT *pro tem.* It is moved and seconded that when the evening hour for adjournment arrives the Senate take a recess until eight o'clock. As many as are in favor of the motion will say aye; the contrary minded, no; it is adopted. There will be a session this evening, beginning at eight o'clock.

SAMUEL WHALEY,

Sworn as a witness on behalf of the respondent, testified.

Examined by Mr. ARCTANDER.

Q. What is your occupation? A. I am an attorney.

Q. Where do you reside? A. I am in St. Paul at present.

Q. Are you acquainted with Judge Cox, the respondent? A. I am.

Q. Were you present at the supplemental proceedings before Judge Cox, at Marshall, on the 7th day of November, 1878?

A. I was there.

Mr. ARCTANDER. I desire to state that this is upon article 17.

Q. You say that you were present there at the proceedings?

A. I was.

Q. Were you one of the attorneys in that case appearing before the court?

A. I was not an attorney of record; I assisted in taking the examination and in conducting it.

Q. You assisted in conducting the examination before him in the supplemental proceedings?

A. Yes, sir.

Q. That was the proceedings in what case; do you remember the case?

A. It was the Cleveland co-operative stove company against Robinson & Maas, and other parties; there were others.

Q. Now, I will ask you to state whether or not you recollect the occurrence there of the sheriff being sent for to amend his return during those proceedings?

A. I do.

Q. Do you remember the fact of his coming there?

A. Yes, sir.

Q. When was that that the sheriff came, what part of the day was it when he came and amended his return?

A. Well, I should say it was some time about seven o'clock or half past seven in the evening.

Q. Seven o'clock or half past seven in the evening?

A. After supper.

Q. Had you convened any before that afternoon?

A. There had been a session in the afternoon; yes, sir.

Q. The Judge came up that day, did he?

A. I think so.

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Q. On the noon train; now in this session in the afternoon what was done, was there any business done?

A. My recollection is that there was an objection taken by some attorney opposed to my side of the case, that the return of the sheriff was not sufficient, in that it did not state that he had exhibited to the parties upon whom it was served, the signature of the Judge, and that an adjournment was had for the purpose of procuring the attendance of the sheriff who was at Tracy.

Q. An adjournment until evening?

A. Yes, sir.

Q. Well, in the evening when the sheriff came there did you proceed with the case?

A. The return was amended and we proceeded with the case.

Q. What was done that evening?

A. Well, there was a good deal of talking and then we commenced and I examined several witnesses.

Q. Do you remember what witnesses you had upon the stand that evening?

A. I say several witnesses but I may be mistaken in regard to that; I think upon reflection that Mr. Robinson was the only one who was examined that evening.

Q. Were rulings made by the Judge in the course of the evening upon the points or objections raised?

A. This Mr. Robinson was not one of the defendants, and there was objection taken that he could not be brought in and under that order—and I suggested to Judge Cox—

Q. Well, I don't care to know what the rulings were; I simply want to know whether he made any rulings or decisions upon objections or motions made there?

A. He did.

Q. Have you appeared before Judge Cox since that time.

A. Yes, sir.

Q. At other terms of court?

A. Yes, sir.

Q. How many terms of court?

A. Two terms at Marshall, and I saw him once on the bench at Shakopee.

Q. Held a term at Shakopee?

A. Yes.

Q. You have practiced before him since, and have had cases before him too?

A. Yes.

Q. I will ask you to state what Judge Cox's condition was as to sobriety or inebriety that evening?

A. Perfectly sober.

Q. How was he that afternoon?

A. He was just the same.

Q. No difference in his condition?

A. No difference that I could see.

Q. State whether or not the Judge during this evening's proceedings, or at any time during them, spoke in a dull, drowsy way, or less quick than usual?

A. He did not; he spoke a good deal quicker than I expected to hear him; it was the first time I had ever been before him, and he spoke

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very quickly indeed, and his mind acted rapidly and he anticipated points that I intended to make, and I was surprised at it.

Q. At the clearness of his mind?

A. Yes; his mind acted very rapidly.

Q. Was his face unusually flushed, or more so than on other occasions when you have seen him since?

A. I have no recollection of his face being flushed; it seemed perfectly natural.

Q. Any unusual glare in his eyes?

A. I saw none.

Q. It has been stated here that the attorneys on both sides asked for recesses several times during the evening, but the Judge refused them; I desire to ask you whether or not that is a fact?

A. Well, it may be that there were recesses asked for by the attorneys on the opposite side; I was endeavoring to shove the case on, and I think, perhaps, there may have been some recesses asked for by the other parties; they were desirous, of course, of having delays in a matter of that kind.

Q. But your side did not ask for any?

A. I did not, but it may be that there were some; I don't remember of any.

Q. If I understood you aright, you had no doubt about the Judge's sobriety at that time?

A. Not a particle.

CROSS-EXAMINATION,

By Mr. Manager COLLINS.

Q. Mr. Whaley, where did you study law?

A. In this city, sir.

Q. Admitted to practice here?

A. Yes, sir.

Q. Where are you pricticing now?

A. I am not practicing now.

Q. Have you practiced at any other place except St. Paul?

A. Yes, sir; in Montana?

Q. How long since you came from Montana?

A. I have been back here since the ninth or tenth of September, I think.

Q. Have you practiced in any other place in the State except St. Paul. I mean by that, have you—you have been in other places, but have you had an office in any other place?

A. No, sir.

Q. Now, you say you weren't an attorney of record in this case?

A. No, sir.

Q. Who did you represent there?

A. The circumstances arose in this way; the suit was brought by Weymouth & Forbes and I went from here representing St. Paul creditors and when I went out there, I was asked to assist in this case by attorneys and the representative or agents of these other creditors.

Q. Weymouth and Forbes,—did they take any part in that examination?

A. I think they were both there; I know that Judge Weymouth was and I have a recollection that Mr. Forbes was.

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Q. You commenced the proceedings in the afternoon?
A. That is my recollection of it sir.
Q. And had you ever seen Judge Cox before?
A. I never had.
Q. Now, how long were you engaged in the proceedings that evening before this recess was taken?
A. I don't remember definitely as to the time; it was not a very long time, not an extended session.
Q. Who raised the point that the sheriff's return was insufficient?
A. My recollection is that it was Judge Gove, who represented some of the parties who were brought in under supplemental orders.
Q. Were you managing the case for the creditors, or was this firm of Weymouth & Forbes managing the case?
A. Well, I think they looked as much to me to conduct the examination as anyone else.
Q. Well, the motion was made immediately after you got there that afternoon?
A. Well, my recellection serves me this way: Judge Weymouth, I think, had a motion, made a motion, before the Judge to direct the sheriff to sell these goods. They were then under attachment, and of course they wanted them sold. I think that motion was denied, and then this objection was made and an adjournment had.
Q. This return was the return of the sheriff; the sheriff had made a return upon this order upon Robinson & Maas, in the supplementary proceedings?
A. Yes, upon Robinson & Maas, and other parties.
Q. And the sheriff had executed the order by delivering a copy but had failed to state in his return that he had exhibited the original?
A. That he had exhibited the signature of the Judge or the original; yes sir.
Q. Was that a sheriff's return, or was it an affidavit?
A. Well, I think it was a return; I would not be positive about that.
Q. You don't remember enough about it to know whether it was an affidavit or a sheriff's certificate?
A. I do not remember the character of it but I know that objection was taken.
Q. And then they sent for the sheriff?
A. Yes.
Q. Now, how long a time was a recess taken for; what time in the afternoon did you take that recess?
A. I think it was somewhere between half past three or four o'clock.
Q. What did you do during the recess?
A. I think I went to the office of Mr. Williams, who was the clerk of court and examining some attachment papers or confessions of judgment; there were a great many creditors and I think I was making a record of what there was there.
A. Anything else?
A. Then I think after that, although I have not given it any thought, I went up to the Marshall house where I was stopping with Mr. Parkinson, the traveling agent of the Michigan stove company.
Q. Did you meet Judge Cox during that recess?
A. I don't remember.
Q. Did you drink with Judge Cox that day?
A. I think after eleven o'clock at night that we did drink together.

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Q. After eleven o'clock at night; you did not drink before eleven o'clock?
A. I am not sure; I don't remember.
Q. You are not sure but that you did?
A. I don't remember.
Q. Mr. Whaley, didn't you drink with Judge Cox before supper that night?
A. I have no recollection of it.
Q. Will you swear positively that you were not and that you did not drink several times with him?
A. No, sir; I wouldn't swear that I did not.
Q. Now, after supper you met there?
A. Yes.
Q. Were there any signs about Judge Cox of his having been drinking,—any signs whatever?
A. I saw none; I don't remember of any; it is possible I saw them but I don't remember.
Q. Now, in whose office were you when you went down there?
A. In this city?
Q. Yes.
A. In the office of John B. & W. H. Sanborn.
Q. Did you have any conversation with John B. Sanborn after you came back about that affair?
A. I do not remember.
Q. Did you tell John B. Sanborn within two days after you came back from Marshall, on that occasion, in this city that Judge Cox was drunk?
A. I do not remember to have done so.
Q. Will you swear positively that you did not?
A. I will not.
Q. Now, Mr. Whaley, when did you leave that town?
A. Leave Marshall?
Q. Yes.
A. It was a little while, within a week, before Christmas.
Q. This was the week before Christmas?
A. No, sir; this was in the first week in November.
Q. Did you stay there all the time?
A. Yes, sir; stayed there for over six weeks.
Q. You were there on this business?
A. Yes.
Q. Did you see Judge Cox during that six weeks, after that day?
A. I saw him at the general term of the district court there; I think it was commenced about the 5th, or 6th, of December that year.
Q. You stayed until after that?
A. Oh, yes.
Q. You were in the employ of the creditors all the time?
A. Yes, sir; I was in the employ of Messrs. Sanborn; they were the attorneys of the creditors.
Q. You were in Messrs. Sanborn's office all the time?
A. Yes.
Q. Now, Mr. Whaley, have you ever seen Judge Cox intoxicated?
A. Well, I wouldn't say, I say, that I saw Judge Cox intoxicated before this trial commenced.
Q. Before the trial or the supplemental proceedings?

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A. Before the impeachment trial?

Q. You wouldn't say that you ever saw him intoxicated or drunk before these proceedings commenced?

A. No, sir.

Q. Have you ever seen him under the influence of liquor before these proceedings commenced?

A. I never saw him when the influence of liquor was perceptible to me.

Q. How many times had you ever seen Judge Cox before these proceedings commenced?

A. I saw him at these supplementary proceedings, at the general term, 1878, in Marshall, and the corresponding term in 1879, and I saw him sometime between Christmas and New Year's, in Shakopee, in 1878.

By Mr. ARCTANDER.

Q. You said Mr. Parkinson was there representing the creditors in that case; was there anybody else?

A. Mr. Langworthy was there and a Mr. Gillett.

Q. Mr. Langworthy was there?

A. Yes, sir.

C. H. LANGWORTHY.

Sworn as a witness on behalf of the repondent, testified:

Examined by Mr. ARCTANDER.

Q. Mr. Langworthy, where do you reside?

A. In Minneapolis.

Q. What is your occupation?

A. I am a commercial traveler.

Q. What business did you have in 1878?

A. The same business.

Q. A traveling man; whom do you travel for?

A. The Empire Stove Works, of Milwaukee.

Q. Did you see Judge Cox in the month of November, 1878?

A. I did.

Q. How long have you known Judge Cox?

A. I have known the Judge since 1875 or 1876.

Q. You said you saw him in the month of November, 1878; how did you come to see him at that time?

A. Well, I was interested in a suit between the Clevelend Co-operative Stove Co. and Brand & Co. and several others, the Biddle Hardware Co. in supplemental proceedings against Robinson & Maas.

Q. Up at Marshall?

A. Yes.

Q. And you represented some of the creditors?

A. I supposed I represented when I went into it, the whole concern; the case was commenced in the name of the Cleveland Co-operative Stove Co.

Q. But virtually for all the others?

A. Yes, we were all interested in it.

Q. Any other interest? A. Yes.

Q. How much was the matter that your firm represented?

A. My firm was $1,625.00.

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Q. And the other firms that you represented at the same time?
A. Well, the Biddle Hardware Co. was some $1,500.00.
Q. Oh, I mean only the gross amount?
A. Oh, the gross amount was about eight or nine thousand dollars.
Q. Well, how did you come to see Judge Cox in connection with this business?
A. Well, I went for Judge Cox.
Q. You were first up at Marshall, were you not?
A. Yes; commenced proceedings there and I went down for him, and to get him to come up. I went down to get an order.
Q. To get an order from him, and to get him to come up?
A. Yes.
Q. Did you see the Judge up there at Marshall soon after he arrived?
A. I was with him all the time, nearly.
Q. You were with him all the time, nearly?
A. Yes.
Q. Stop at the same hotel?
A. Yes; and was frequently in his room.
Q. Now, what was first done there in the afternoon; I desire to call your attention to the afternoon particularly, its being more than one, the day when the sheriff was required to amend his return?
A. Well, we went over to Todd's office, and a session was held, and there was some difficulty about the papers, some objection made, and the Judge said the papers were incorrect in some way, I forget exactly now; I know we had to send for the sheriff to Tracy in order to get him to amend the paper; he did so; then we adjourned.
Q. For what purpose?
A. To wait until the sheriff returned.
Q. What time did you adjourn to?
A. We adjourned until six or half past six.
Q. After supper?
A. Yes.
Q. Well, when you came back at the recess hour, do you remember who came down there first, the Judge or you?
A. I think the Judge and I came together.
Q. The Judge and you walked down together?
A. Yes; that is my recollection of it.
Q. To Todd's office?
A. Yes.
Q. Was the office open when you got down there?
A. No, sir, it was not.
Q. Whom did you find down there?
A. The sheriff was trying to get in but could not.
Q. The deputy sheriff?
A. Yes; he had to send for the key or go himself, I don't remember which.
Q. Was Mr. Maas around there?
A. Mr. Maas was there; I saw him a few minutes afterwards; it was dark at the time, about the time that the door opened, or at the time; in fact, I think he was on the bridge with us.
Q. You think he was on the bridge with you before you reached the office.
A. Yes.
Q. The bridge is right near the office door, is it?
A. Yes.

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Q. I will ask you to state whether or not, at this time, when the Judge came down there with you to the office, and you saw the Judge there, he said to the deputy sheriff, "God damn you, why don't you open that door," or words to that effect?

A. No, sir; I never heard him make any such remark.

Q. I will ask you to state whether he said to the deputy sheriff, "open that door, or I will smash it in?"

A. I didn't hear him say it, or anything of the kind.

Q. Well, how far were you away from him?

A. I was close to him.

Q. As close as you two are there,—the reporter and you, [about 3 feet?]

A. Yes.

Q. In going over the bridge, or anywhere down there did the Judge embrace anybody?

A. No, sir.

Q. Now, when the door was opened what was done, Mr. Langworthy?

A. Why, we went in, and the Judge opened court and commenced proceedings.

Q. Did the sheriff come there and fix the papers?

A. Yes; the papers were all right then.

Q. And what did you do after the papers were fixed up?

A. Went on with the case, examining some witnesses, and the attorneys were arguing and fighting one another, as usual in a case of that kind; nothing occurred particularly more than at any other time.

Q. Well, is it a fact that the Judge did not get along with the business that night,—that very little business was done?

A. Business was all done that was attempted, except the arguments between the attorneys; that was the only interruption of the business.

Q. I will ask you to state whether or not it was a fact that the attorneys on both sides, at several times, or sometimes there asked for recesses, and the court refused them there that evening.

A. I don't remember of any recesses being asked for.

Q. How late did you work that night?

A. A little after 9 o'clock; about a quarter past nine.

Q. Now, how long were you in there in the afternoon, about?

A. About half an hour,—perhaps I might have been in there longer, talking.

Q. Now, I will ask you to state, Mr. Langworthy, what the condition of the Judge was, either during the afternoon, or during that evening session that you have had reference to now, as to sobriety or inebriety.

A. Judge Cox was perfectly sober.

Q. On both occasions?

A. All that day.

Q. Did you walk up with him to the hotel afterward?

A. I did.

Q. Do you know Chas. Andrews, an attorney there, with a dark face, dark complexioned?

A. Yes, sir.

Q. Did you see him in Judge Cox's room in the hotel that evening?

A. I did.

Q. What business did he have there, if any?

A. He had some case, wherein he had made a blunder in his papers, and he wanted to correct them.

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Q. He had some papers, wherein he had made a blunder, and he went with some papers to the Judge?
A. Yes; he wanted to amend his papers.
Q. This supplemental proceeding was finally determined by the Judge?
A. Yes; he wanted to amend his papers.
Q. This supplemental proceeding was finally determined by the Judge?
A. There was a receiver appointed.
Q. In the final proceedings your firm were beaten, were they not?
A. The case is not fully decided yet.
Q. Well, they were beaten by him?
A. Oh, yes, the Cleveland Co-operative had the whole thing in their hands; I was not on record, or my attorneys were not on record, and they withdrew from the case and left me where I could not do anything.
Q. And the case has been appealed since?
A. Well, a portion of it; I cannot tell you exactly how it is myself; Judge Sanborn has the case now; it is rather a mixed up affair.

CROSS-EXAMINATION

By Mr. Manager COLLINS.
Q. For what concern were you traveling at that time?
A. Brand & Co., of Milwaukee; the Empire Stove works.
Q. Are you now traveling for them?
A. I am traveling for them now, and we are going to open a branch concern here.
Q. You say you went for this order; where did you go from?
A. From Marshall.
Q. To what place?
A. To St. Peter.
Q. And then got an order, and came back to Marshall and had it served?
A. Yes.
Q. What officer served it?
A. The sheriff, I believe.
Q. What is his name?
A. Hunter.
Q. What is the deputy sheriff's name?
A. Hunter.
Q. A brother?
A. Yes.
Q. Do you know which is sheriff, and which is deputy?
A. Yes.
Q. What is the given name of the sheriff?
A. Now, the given name—I think it is John Hunter.
Q. John Hunter?
A. Yes, I think so.
Q. Which was it you met that night; the sheriff, or the deputy sheriff?
A. I think the deputy first, and the sheriff came afterward.
Q. But the deputy was there when you were there, trying to get in?
A. Yes.
Q. When the recess was taken, Mr. Langworthy, where did you go?

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A. In the afternoon?
Q. Yes.
A. I went to the hotel.
Q. With Judge Cox?
A. Yes.
Q. Did you go to his room?
A, I am not positive whether he was in his room that afternoon or not.
Q. Do you know where he was?
A. Yes.
Q. Where?
A. In the office of the hotel.
Q. Drinking?
A. In the billiard saloon?
Q. Drinking?
A. No, sir.
Q. Were you met in any other saloon with Judge Cox, that evening?
A. No, sir.
Q. Then you weren't drinking with him?
A. I was in the billiard saloon, after supper, and I did take a drink with him.
Q. Any one else with you?
A. Yes, sir.
Q. Mr. Whaley?
A. I think he was.
Q. Did you take more than one drink?
A. Before supper?
Q. Yes.
A. No, sir.
Q. What time was that; just before supper, or soon after that you came up from the office.
A. I should think we had our drink about half past five o'clock.
Q. Do you know where Judge Cox was the balance of the evening?
A. He was in the office.
Q. You staid there all the time?
A. In the hotel; we staid in there or walked around outside.
Q. And you were with him?
A. I don't think he was away from me half an hour at a time.
Q. And you didn't drink anything or see him drink except that one time?
Q. No, sir; he didn't take another drink; I asked him to take another drink but he wouldn't do it.
Q. Were you playing billiards?
A. I was not.
Q. Did he?
Q. I think he played one game of billiards.
A. With whom?
A. I don't recollect.
Q. It was there, at the hotel?
A. Yes.
Q. After supper did you drink anything?
A. We drank nothing after supper, until just before we retired.
Q. Where was that drink taken?

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A. At the same place.
Q. As I understand you don't know that Judge Cox drank anything at all, except this one drink?
A. That is all I saw him drink.
Q. Until bed time?
A. That was all I saw him drink, sir; we had a smoke.
Q. You said that you didn't see the deputy sheriff, or didn't hear Judge Cox talk to the deputy sheriff at that time?
A. He didn't talk with him while I was down there in that way.
Q. Were you there with him all the time?
A. I think I was.
Q. From the time he left the hotel until you got back to the building?
A. It was a short distance only, a three minutes walk.
Q. You were with him all the time?
A. Yes, sir.
Q. And you are positive there was nothing of that kind said to him by a sheriff?
A. I never heard nothing of the kind until I read it in the papers.
Q. Mr. Langworthy, how long have you known Judge Cox do you say?
A. How long have I known Judge Cox as Judge?
Q. No, sir.
A. Or, how long have I known E. St. Julien Cox, which do you mean?
Q. How long have you known him?
A. That gentleman there? [Pointing to respondent.]
Q. Yes.
A. I have known him since 1875 or 1876.
Q. Where did you first get acquainted with him?
A. I got acquainted with him first in Austin.
Q. Did you ever see him intoxicated?
A. I have.
Q. Do you make any distinction between intoxication and drunkenness?
A. I make a distinction in the degree of intoxication.
Q. Certainly in the degree of intoxication, but is there any difference, in your opinion, between a man being drunk and being intoxicated?
A. No, sir.
Q. Not at all?
A. No, sir; only the degree.
Q. How is it with reference to being under the influence of liquor?
A. I think when a man takes one drink of liquor he is under the influence of it.
Q. No matter whether he shows it or not?
A. It is immaterial.

J. E. MAAS,

Sworn as a witness on behalf of the respondent, testified:

Examined by Mr. ARCTANDER.
Q. Where do you live?
A. Marshall, Lyon county, Minnesota.

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Q. What is your business?
A. I am attending a hardware store.
Q. Were you a member of the firm of Robinson & Maas?
A. I was.
Q. In the year 1878?
A. Yes.
Q. Were you one of the defendants in the case that has been mentioned here in the supplemental proceedings?
A. I was.
Q. Do you know Judge Cox?
A. I do.
Q. How long a time have you known him?
A. Since the fall of 1878.
Q. Did you see Judge Cox up at Marshall there upon the supplemental proceedings on November 7th, 1878?
A. I did.
Q. Do you remember when you saw him first on that day?
A. I saw him in the afternoon.
Q. What time about?
A. I should think about between 2 and 3 o'clock.
Q. The same day that he came up?
A. Yes, sir.
Q. Where did you see him?
A. I saw him in Todd's office.
Q. Bill Todd's office.
A. Bill Todd's office.
Q. Now, at that time was there any session of these proceedings there?
A. Yes, sir.
Q. In the afternoon?
A. Yes.
Q. Was it long or short?
A. It was short.
Q. What was there done at that time?
A. They opened court, and they wanted—some of them wanted—some papers changed, and they sent for the sheriff to come up from Tracy to amend them.
Q. Did you adjourn after that had been determined on?
A. We did.
Q. Until what time?
A. Until after supper, at six or half-past six.
Q. After supper, did you see the Judge then?
A. I did.
Q. Where?
A. On the bridge.
Q. Who did you see with him?
A. Mr. Langworthy.
Q. Was the deputy sheriff there or afterwards during that evening any time before you got into the room?
A. He was.
Q. Was he there when you first came in?
A. He was there, a little ways from there, to open the door of the office.
Q. When you came there? A. Yes.

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Who came there first, you or the Judge, or Mr. Langworthy ?
he Judge and Mr. Langworthy were there when I came there.
he deputy sheriff was some distance away trying to open the

es, sir.
Vas it a cold night or otherwise ?
was a disagreeable dark night.
Vas it dark that evening ?
was quite dark.
ould you see a man's face any distance ?
ou couldn't see it four feet off.
ouldn't see it four feet off?
ot distinctly.
o as to recognize features, I mean ?
es, sir.
ow, at this time when you came down there and the Judge and
thy were there and the deputy sheriff, state whether you ever
y language upon the part of the Judge like this "God damn
don't you open the door ?"
did not.
What did the deputy sheriff do after you came there ?
think when he couldn't open the door he went to Mr. Todd's
d got the key.
the meantime you stood there and waited?
es, it may be possible that some more came a few minutes after-
would not be certain as to that.
ow, when the office was opened you went in and proceeded with
ness, did you?
es, sir.
he sheriff filed papers?
es.
fter that had been done, what did you then do?
hey went on with the business; the lawyers had some arguments
d then Mr. Robinson was examined as a witness.
r. Robinson was examined; what time did you adjourn in the

ome time after 9 o'clock.
id business go right straight along, with the exception of the
t of the lawyers?
es.
will ask you to state whether the Judge was intoxicated that
session, or any portion of it.
don't think he was.
ave you any doubt about it?
have not.
ou have no doubt that he was not intoxicated at that time?
o, sir.
will ask you to state whether or not you saw any difference in
arance, action, demeanor, conduct, or language that evening
at it was in the afternoon when you first met there?
don't think there was.

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CROSS-EXAMINATION.

By Mr. Manager COLLINS.

Q. You first met Judge Cox in the fall of 1878?

A. Yes.

Q. Where?

A. The first time I ever met him was in the office of Mr. Todd, that afternoon.

Q. You never had seen him before?

A. No, sir.

Q. Had you ever seen him since, until you came to this trial?

A. I have.

Q. How many times?

A. I couldn't state as to that.

Q. A number of times.

A. Yes.

Q. Have you ever seen him intoxicated?

A. I think I have.

Q. Do you make any difference between intoxication and drunkenness. A. Yes.

Q. Won't you tell us what the difference is?

A. I think a man is drunk when he is incapable of doing business.

Q. You think him drunk when he is incapable of doing business?

A. Yes; through the influence of liquor.

Q. How far incapable, slightly or wholly incapable?

A. Even partially incapable of doing business.

Q. Well, now, won't you tell us to what extent a man is drunk, in your opinion, when he is intoxicated?

A. If a man has drank a few glasses of liquor he may be intoxicated and still be all straight and do his business up right.

Q. Now, if he has drank a few glasses of liquor he may be intoxicated; would you have it show on him in order to make him intoxicated?

A. To make him what?

Q. To make him intoxicated; must it show upon him in order for him to be intoxicated, in your opinion?

A. Well, it might show it sometimes, and it might not.

Q. Then, in your opinion, if he drank a few glasses, no matter whether it showed it or not, he was intoxicated?

A. That is what I understand.

Q. And when he gets further along so that he is incapable of doing business he is drunk? A. In my opinion.

Q. You say he might be? A. In my opinion.

Q. You say that you have seen Judge Cox intoxicated or drunk, which was it?

A. I have seen him under the influence of liquor.

Q. Have you ever seen him drink?

A. No, sir.

Q. In what way did he show that he was under the influence of liquor.

A. I knew that he had drank because I drank with him.

Q. When was that?

Mr. ARCTANDER. I object to that.

Q. Well, was it on this occasion?

A. No, sir; it was not.

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Q. Did you see him drink on this occasion?
A. I did not.
Q. Were you in a saloon with him?
A. I was not.
Q. As I understand there was a recess there from about four o'clock until after supper?
A. Yes.
Q. What time after supper?
A. Six or half past six.
Q. What time of the year was this?
A. It was in November.
Q. And it was so dark that you couldn't tell a man four feet off?
A. You couldn't distinguish his features; you couldn't know, you might say, whether he was white or black.
Q. Then you wouldn't know the man unless he spoke?
A. You might recognize the man.
Q. How would you recognize him unless you could see the face or unless he spoke?
A. Why, you could see the face.
Q. You could see the face?
A. That is, you could see the features,—the general—I don't know how to express it.
Q. Do you mean the general outline of the man; how do you know that it was Judge Cox, if you would simply see his general outline?
A. Oh, I heard him talk; Mr. Langworthy and he talked together.
Q. And you recognized them from their conversation did you?
A. Yes, in one sense.
Q. Could you see their faces?
A. I was close enough to them, and when they came up I saw who it was.
Q. Now, you testify that at this time when you saw them in November, at six o'clock, it was so dark that you couldn't see a man's face four feet off?
A. I didn't say so.
Mr. ARCTANDER. That you couldn't recognize his features?
The WITNESS. I didn't say that; that you couldn't distinguish his features; you could recognize them, but you couldn't distinguish them; what I mean by that is, that you couldn't tell whether there was anything unusual in his features at the time; that is what I mean.
Q. You couldn't tell whether his face was flushed or not; you could see his face, but it was so dark you couldn't tell whether it was flushed or not; that is what you mean?
A. Yes.
Q. Oh, I misunderstood,—how long were you engaged in that hearing that afternoon?
A. Until shortly after 9 o'clock, I think.
Q. And were you positive that Judge Cox showed no signs of having drank anything?
A. I didn't say so.
Q. Well, is that a fact?
A. I couldn't say whether he drank or not, because the first time I saw him was that evening.
Q. Well, did he show any signs of having drank any?
A. I don't know, because I didn't pay any attention to it.

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Q. Didn't pay any attention to it?
A. I didn't think anything about it.
Q. Well, he was pretty quick and active in his manner, was he not?
A. He was.
Q. And inclined to rush things?
A. He was.
Q. What business did you say you were in?
A. I am working in Mr. William's, in the hardware store, in Marshall.

Senator POWERS. Are you a native of this country?
A. I am not.
Q. What country?
A. I am German.
Q. Not very familiar with our language?
A. I am, I think.

Mr. ARCTANDER.

Q. The manager asked whether there was any signs of the Judge having been drinking at that time; you said you didn't see any; I will ask you to state now, whether you noticed any signs there at the time of his having been drinking?
A. Well, I did not.
Q. Well, why didn't you at that time?
A. Because I didn't think anything about it.

CHARLES ANDREWS

Recalled as a witness on the part of the respondant testified.

The PRESIDENT *pro tem.* Is this under the same article?

Mr. ARCTANDER. This is specification one of article seventeen.

Q. Mr. Andrews do you remember of an occasion of a supplemental proceeding in the case that has just been mentioned here—I cannot remember the title of it—in November 1878?
A. In regard to the Robinson & Maas matter?
Q. Yes.
A. I do.
Q. Do you remember of seeing the Judge any time during those proceedings?
A. Yes, I remember of seeing him, of having seen him during that evening.
Q. During that first day?
A. Yes.
Q. When did you see him first?
A. I saw him first very soon after—well, it was directly after dark, after I left my residence and went to my office.
Q. After supper?
A. Yes, after supper, then I saw him again perhaps as late as 11 o'clock.
Q. Where did you see him the first time?
A. At Mr. Todd's office.
Q. Did you have any talk with him there?
A. No, sir.
Q. You were in there in the evening?
A. Yes, sir.

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Q. Did you stay there?
A. I stayed there a short time.
Q. Now, where did you see him next that evening?
A. I saw him next at the Merchant's hotel.
Q. At what time, do you say, about?
A. I think perhaps it was as late as 11 o'clock.
Q. Where did you see him, at the Merchant's hotel that night?
A. I saw him in his room.
Q. Did you see anybody else in his room that time?
A. Yes, I recollect of Mr. Langworthy being in his room.
Q. Did you have any business with the Judge that night?
A. I did.
Q. What was it?
A. It was to obtain an order to show cause, that was my business at Mr. Todd's office.
Q. You came down there to see him, and found him occupied and then called at the hotel?
A. Yes, sir; I went to Mr. Todd's office to get the order and saw the Judge was engaged and then I called at his room in the evening at about 11 o'clock.
Q. You desired to lay before him papers to obtain an order to show cause?
A. Yes.
Q. Did the Judge look over your papers?
A. He did.
Q. Did he give you your order?
A. He did not.
Q. Why not?
A. He told me my papers were manifestly incorrect.
Q. He refused to give you the order?
A. Yes.
Q. Did you go back and examine into the matter?
A. Yes.
Q. Did he tell you wherein they were incorrect?
A. He did.
Q. Did you go back to the office and examine into the matter?
A. I did.
Q. You found they were incorrect?
A. I satisfied myself that they were incorrect, decidedly so.
Q. I will ask you what was the condition of Judge Cox as to sobriety,—of course you can't judge much about it at Todd's office, but at this time when you met him at his room at eleven o'clock?
A. It didn't occur to me that the Judge was drunk or under the influence of liquor, and if he had been, I should certainly have noticed it.
Q. It didn't occur to you that he was drunk or under the influence of liquor?
A. No, sir.
Q. How was his mind acting?
A. He seemed to be rational and exercised as good judgment as at any other time when I have met him.
Q. Was there any difference in his appearance or conduct, or actions, or language at that time than when you knew him to be perfectly sober and had been with him yourself?

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A. I think not; it didn't occur to me at that time that there was anything wrong with the Judge; I was not examining it.

Q. You had no idea that there was anything wrong with the Judge?

A. No, sir.

CROSS-EXAMINATION.

By Mr. Manager COLLINS.

Q. What time of night do you say this was?

A. The second time that I mentioned?

Q. Yes.

A. Well, it was perhaps, from ten to eleven.

Q. And Langworthy was in his room?

A. Yes.

Q. Did they have anything to drink there that you know of?

A. Not that I saw; Mr. Langworthy was sitting on a lounge at the left of the door as you went in; the Judge was sitting on the side of his bed; there was a small stand on the side of the room at the head of the Judge's bed, and a chair somewhere in the room; I know I took a chair and went up to the side of the Judge's bed, he sat on the side of the bed, and gave him my papers and told him what I wanted, and he examined them.

Q. Did you go back again that night?

A. No, sir.

Q. How do you fix the time?

A. As to the time of night?

Q. Yes?

A. Well, I fix the time only in this way, that I usually remain in my office as late as ten or eleven o'clock, sometimes much later, and I think that evening, the Judge held court perhaps as late as 9 o'clock, and I will add right here that in regard to its being between 10 and 11 o'clock, is only a mere matter of supposition; I think it was as late as ten, and perhaps as late as 11 o'clock, but that is only guess work; I won't swear positively as to that; it might have been as early as nine.

Q. How do you fix the date of this affair?

A. I don't fix the date.

Q. You don't fix the date?

A. No, sir; only by the circumstance of the case they had under consideration.

Q. You know that it was by the circumstance that they had that Robinson and Maas matter under consideration?

A. Yes; I know that it continued three days; I know that.

Q. Did it continue three days?

A. Yes, I think it did.

Q. And the trial day?

A. And I think I was in Farrington Hall the third day, and heard them make their arguments in the case.

Q. Can you tell us what that case was about, or give us the names of the parties; was it the Cleveland Co-operative Stove Company vs. Robinson and Maas?

A. Robinson and Maas were the defendants, and I am of the impression that that is the name of the plaintiff.

Q. It was a case of supplementary proceedings?

A. Yes.

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Q. And they had the hearing that you refer to, and they tried it the next day, and the third day they adjourned to a hall, and there they had some argument?

A. Yes, I think they took some evidence the second day at Mr. Robinson's residence.

Q. What makes you think that?

A. From some remarks that my partner, Mr. Jewett, made at that time; I was then a partner of Mr. E. B. Jewett.

Q. Did you see the Judge at Marshall the next day?

A. I did.

Q. And saw him the third day?

A. Yes, I am very sure I saw him on the third day in the hall.

Q. Are you sure, Mr. Andrews, that this was the evening of the first day that you got the order?

A. I am very certain, I know it from this fact; I went to the hotel when Judge Cox came to town. I went there for the purpose of getting him to sign my order, and he seemed to be very busy, washing himself, and getting ready for his dinner, as I understood it, and I deferred talking to the Judge until a later occasion; then I went over to Mr. Todd's office in the evening. I found him very busy, and at the suggestion of Mr. Jewett we remained in our office, and I went into the Judge's room again after court adjourned.

Q. Now, Mr. Andrews was that order dated that you got there, that order to show cause?

A. Was it dated?

Q. Yes? A. Not that day.

Q. Was it dated the next day?

A. I think it was dated before he left the village.

Q. When did you get the order, the next day or the day after?

A. I think I got the order the next day.

Q. Are you positive about that?

A. I am not, no, sir.

Q. Now, where did you get that order; where did he sign it?

A. I think he signed it in our office.

Q. Now, can you give us the title of the case?

A. I cannot, and I expected that question would be asked in cross-examination and I have been trying to call to recollection the name of my client and I can not do it.

Q. You don't remember the name of the other party?

A. No, sir.

Q. Can you tell us what it was about?

A. It was an order to show cause why an attachment might not be dissolved and set aside, a writ of attachment on the property of Dave Stafford of Tracy.

Q. You set up in your affidavit to dissolve that it was the property of Stafford of Tracy,—so that that affidavit might be identified; I want to identify that affidavit if I can in any way?

A. I set up that the property had previously been sold to some one else, belonged to some one else.

Q. Well, to whom did it belong?

A. Some of his creditors and I won't attempt now——

Q. Some of Stafford's creditors?

A. Yes.

Q. Was Stafford a client of yours?

A. No, sir.

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Q. Was he the other party?
A. He was the defendant whose property had been attached by, I think, a Chicago firm.
Q. You were the attorney for the plaintiff, were you?
A. I was acting under and pursuant to the orders of General Seaborn, in regard to that matter, and had it been a scheme of my own, I would recollect more distinctly all the minutiæ in regard to the matter.
Q. Where are the papers filed?
A. I presume likely they are court records of Lyon county, if we ever consummated anything that was competent to become a court record.
Q. And in this affidavit that you presented there among the papers you say that Stafford's name appeared?
A. Yes.
Q. And that is all you can remember about it?
A. Yes.
Q. And that is all you can remember about?
A. Those are the names that I recollect; I recollect a great deal about the proceedings.
Q. What was the nature of the property that you attempted to get released?
A. Hardware.
Q. Was it any property of this Robinson and Mass?
A. No, sir.
Q. It was a different affair?
A. Most certainly; yes, sir.

Mr. ARCTANDER. Mr. President, as we are to have a night session and the labor imposed upon counsel is somewhat severe I would ask, as an indulgence for a recess, for ten minutes.

The PRETIDENT *pro tem.* Certainly.

AFTER RECESS.

Mr. ARCTANDER. We will now call, as the remaining witness, upon article fifteen James Morgan.

JAMES MORGAN,

Sworn as a witness on behalf of the respondent, testified:

Examined by Mr. ARCTANDER.
Q. Mr. Morgan, where do you reside?
A. In the town of Custer, Lincoln county, Minnesota.
Q. What is your business?
A. Farming.
Q. Do you know the respondent, E. St. Julien Cox?
A. Yes, sir.
Q. How long a time have you known him?
A. I have known him since 1862, August, 1862.
Q. Since August, 1862?
A. Yes.
Q. That was the New Ulm massacre?
A. Yes, sir.

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Q. Did you see the respondent at the general term of court held in and for Lyon county in the month of June, 1881?
A. Yes.
Q. What days of the term was it?
A. The first day and the second day.
Q. Did you see him in court?
A. Yes.
Q. Were you present in court when he charged the grand jury?
A. Yes.
Q. Were you present any time in court during the second day; and if so, what portion?
A. I was there in the forenoon.
Q. The forenoon of that day?
A. The forenoon of the next day I left and took the train and went home.
Q. In what position did you sit towards the respondent; give us your facilities for observing him?
A. Well, I was right in front of him, probably half way across this room.
Q. Half way across this room in front of him?
A. Yes.
Q. Was he sitting upon the stage?
A. Yes.
Q. And you down on the floor? A. Yes.
Q. You have known the respondent somewhat intimately during the years that you have known him?
A. Yes.
Q. Where did you live before you moved up to the town of Custer?
A. I was living in Blue Earth county, eight miles east of New Ulm, at that time.
Q. Eight miles east of New Ulm, in Blue Earth county?
A. Yes.
Q. Now, I will ask you to state what was the condition of Judge Cox as to sobriety or inebriety at that time, on the first day of the term when you were in court?
A. I considered him all right.
Q. I mean as to sobriety; was he sober or otherwise?
A. Well, I never saw him otherwise than sober.
Q. You never saw him that day otherwise than sober?
A. No, sir; not that I could see anything wrong.
Q. You could see nothing out of the way at all?
A. No, sir; nothing.
Q. Had you any doubt about his sobriety at that time; about his being sober?
A. I did not.
Q. And the second day, what was his condition as to being sober?
A. Just the same as far as I could see.

CROSS-EXAMINATION

By Mr. Manager COLLINS.
Q. Mr. Morgan, have you ever seen Judge Cox drunk?
A. I did not.
Q. Never saw him drunk?

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A. No, sir, I never did.
Q. Did you ever see him intoxicated?
A. No, I don't know that I have.
Q. Did you ever see him under the influence of liquor?
A. No, I did not.
Q. You have seen him often.
A. Yes, I have.
Q. How many times do you suppose you have seen him since you first got acquainted with him?
A. Well, I couldn't tell how many times; it is so long a time, but that fall of '62 I saw him very frequently.
Q. During the fall of 1862.
A. Yes, and I saw him probably two or three times during the winter passing through; he was a Captain of the company of the First Mounted Rangers and he was stationed at New Ulm and I was up once or twice during the winter and I saw him and then I had not seen him for quite a period of time.
Q. How many years after that?
A. I guess—63 the winter of 1863; I was coming down to Fort Snelling to be enlisted in the Second Cavalry, and we saw him there in St. Peter then.
Q. Well, when did you next see him; let us get on to that?
A. I don't know that I saw him after that until after we came out of the service.
Q. Well, when was that?
A. That was—64 and—65.
Q. Now, how many times have you seen him sincethen?
A. Well, I can't tell; he was up—the recollection that I have got of him, after I came out of the service is that I saw him up in New Ulm once or twice, especially, I remember the time when the Winona & St. Peter Railroad Company came in there and there was quite an excursion came in there, walking up to the town coming from the east.
Q. Now, go ahead and tell us when else you have seen him; that is once?
A. Then I don't know as I saw him—I don't remember, probably I did, because I was up in New Ulm frequently but I don't remember of any particular time that I saw him in New Ulm except that time; I am pretty positive of the time because I talked with him and I don't know as I have seen him then until after he was elected Judge.
Q. Well, how many times since then have you seen him?
A. Well, I guess I saw him most every time he has been up there holding court.
Q. Well, how many times will that be?
A. Well, I remember once I was on the grand jury and another time I was on the petit jury, and this time last June.
Q. At the Lyon county term do you mean?
A. Yes.
Q. Were you serving on that jury?
A. Not that last time, the term of court we had—the last June term; but the winter before that I was on the petit jury, and before that, it was in the summer time I believe, I was on the grand jury.
Q. Well, how was it at this Lyon county term, when was that?
A. This last one.
Q. Yes, the Lyon county term that you have testified to?
A. That was last June.

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What were you doing there?
I went up on business.
And you got there the first day of court?
Yes.
Did you have any business there in court?
I didn't.
You got there the first day of the court at what time?
I went into the court room right away after dinner; they were to open court.
Had already opened court?
No they were not open; they were already for the sheriff to holler and then he addressed the grand jury; well I left the court room, and I stayed there about an hour; I left and attended to my business and came back a little while before they adjourned.
In the evening?
Yes, in the evening and the next morning I went there and I most of my time; I done all of my business that time so that I could go home.
And the next morning you were in court most of the time?
Yes, the forenoon.
Now, Mr. Morgan, did you ever drink with Judge Cox?
Yes, I did, once.
Drink with him once? A. Yes.
Not more than once?
That was all.
Was that at this term of court?
Yes.
Where was that?
In Marshall.
Whereabouts in Marshall?
At the Merchant's Hotel.
Was he stopping at that hotel?
I rather think he was.
When was it; what time of day?
It was in the morning.
The first or second day?
It was the second day.
Before court convened?
Yes.
Before breakfast?
I rather think it was after breakfast; very soon after breakfast.
Did you see him drink more than once there?
I did not.
Did you drink with him more than once?
I did not.
What did he drink?
I can't tell what he drank; I know what I drank.
What did you drink?
I drank a glass of beer.
And you don't remember what he drank.
No, sir; I do not.

ALEXANDER. I will now call a witness under article eighteen.

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F. V. HOTCHKISS,

Called as a witness on behalf of the respondent, testified.

Mr. ARCTANDER. This witness is called as to the charge to the jury in the Tower case, testified to by Mr. Wallin.

Examined by Mr. ARCTANDER.

Q. Mr. Hotchkiss where do you reside?
A. Redwood Falls, Redwood county, Minnesota.
Q. What is your occupation?
A. Blacksmith.
Q. Do you hold any official position?
A. I do not now.
Q. Did you hold any in June, 1880?
A. Yes, sir.
Q. What was it?
A. I was chairman of the Board of county commissioners for four years prior to last January.
Q. Do you have any recollection of a case of the board of county commissioners of Redwood county against Amasa Tower, that was tried there in the month of June, 1880, at Redwood Falls, in Redwood county?
A. Yes.
Q. Did you take any interest in that case, particularly?
A. Yes, sir; I did.
Q. What was that case about?
A. It was for defalcation.
Q. County treasurer?
A. Yes.
Q. A considerable amount?
A. Eleven hundred dollars about.
Q. And the suit was brought by the county against him, and his sureties to recover that amount?
A. Yes.
Q. Were you present in court during the whole of the trial of that case?
A. With the exception of two hours.
Q. When were the two hours in the case had?
A. Between one and three o'clock.
Q. Was that the day in which the case was afterwards given to the jury?
A. Yes.
Q. Were you present Mr. Hotchkiss in the evening session of court when that case was given to the jury.
A. I was.
Q. During the whole of it?
A. Yes.
Q. The time that the Judge charged the jury?
A. Yes.
Q. And that the arguments were made?
A. Yes.
Q. How did you sit in the court with reference to the Judge; explain to us so that they can see what facilities you had for observing the Judge

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A. Well, I sat about twenty feet from the Judge.
Q. At the lawyer's table?
A. No, sir; just outside the bar.
Q. Facing the Judge?
A. Yes sir.
Q. Was he sitting on the platform?
A. Yes.
Q. And you lower down?
A. Yes.
Q. What was the condition of Judge Cox—how long have you known him?
A. I have known Judge Cox since 1869.
Q. What was the condition of Judge Cox, as to sobriety or inebriety, at this evening session, or at any time during the day, if it was the same?
A. I should say that he was perfectly sober.
Q. State whether or not there was anything peculiar or different, either in his appearance, his actions, his language, or his deportment during that evening session, from what it had been during the balance of the trial?
A. Nothing.

CROSS-EXAMINATION.

By Mr. Manager COLLINS.
Q. Mr. Hotchkiss, did you ever see Judge Cox intoxicated?
A. Yes, sir.
Q. Did you ever see him drunk?
A. Yes.
Q. Do you make any distinction between intoxication and drunkenness?
A. I do.
Q. What distinction?
A. Well, I claim that a man may take several drinks of liquor and not be intoxicated. I claim that a man is intoxicated when he has drank liquor enough to make a difference in his appearance or manners.
Q. And when he is drunk?
A. And when he is drunk he has got to be in a condition that he has lost control of his mind or body.
Q. Either one?
A. Either one.
Q. Mr. Hotchkiss, do you know of Judge Cox drinking during the trial of the Amasa Tower case?
A. I do not.
Q. You did not see him?
A. I did not.
Q. And know nothing about it?
A. No, sir.
Q. Do you understand that question is to any time during the trial of that case, during the recess, or at any time?
A. Yes.

D. L. BIGHAM,

Sworn on behalf of the respondent, testified:

Examined by Mr. ARCTANDER.
Q. Where do you reside?

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A. Redwood Falls.
Q. How long have you resided there?
A. Since March, 1868.
Q. Have you held any official position in that county?
A. Yes; I have; two.
Q. What were they?
A. County surveyor, and county superintendent of schools.
Q. Do you know the respondent, E. St. Julien Cox?
A. I do.
Q. Do you remember the trial in Redwood county, in the month of June, 1880, of a case between the county commissioners of that county, and one Amasa Tower?
A. I do.
Q. Were you present in court during the trial of that case?
A. I was present during a portion of the time.
Q. What portion of the time were you present?
A. I was present part of both days, but more especially the last day.
Q. During the last day were you present in the evening session when the court charged the jury?
A. I was; I was not present during the entire session, but I was present during the charge.
Q. You were present during the charge to the jury?
A. Yes.
Q. You were not present then when the court first opened?
A. No, sir; I was not.
Q. How did you sit there with reference to the court, so as to show us what facilities you have for observation?
A. Well, I should say I sat in the audience, I should think about thirty feet from the Judge.
Q. The Judge sitting up on the platform?
A. Yes.
Q. Were you facing him?
A. Yes.
Q. Did you observe him any?
A. Yes.
Q. Now, I will ask you to state, Mr. Bigham, what was the condition of Judge Cox as to sobriety or inebriety during that session when you were there.
A. I didn't see anything out of the way; I didn't see but what the Judge was perfectly sober; there was nothing that I could see.
Q. You had no doubt at that time but that he was perfectly sober?
A. No; of course my mind was not directed to that particular thing, but I saw nothing at that time to indicate that he was not sober.
Q. State whether or not you saw anything peculiar or different in his actions, appearance, language or manner at that time from what you had seen previously when you had seen him in court?
A. No, sir; I saw nothing different.
Q. Mr. Bigham, do you know a lawyer by the name of F. L. Morrill?
A. Yes.
Q. Did he reside at Redwood Falls, until lately?
A. Yes, removed away from Redwood Falls during this winter some time.
Q. And moved to Minneapolis?
A. Yes.

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How long did he reside there?
My recollection is that he resided there about two years, or per-
little longer; I think a little longer.
Have you stated how long you resided there?
Yes, I resided there between fourteen and fifteen years.
Do you know,—this question simply calls for an answer yes, or
Bingham,—what this Mr. Morrill's general reputation is for truth
acity in the community in which you live?
do.
What is it, good, or bad?
Bad.

CROSS-EXAMINATION.

r. Manager COLLINS.
You say that Mr. Morrill's reputation is bad; you have heard it
d, I suppose?
Yes.
Whom have you heard speak of it?
heard Mr. J. D. Bunce.
What is his business?
He is now running a restaurant; Wm. P. Dunnington——
What is his business?
He is receiver of the United State land office.
Who else? A. Wm. B. Harriet.
What is his business?
Register; well, he is the receiver and Dunnington is the register.
Who else? A. I have heard Mr. Hays, the post-master.
Who else? A. I have heard Mr. Warner.
What is his business?
He is clerk in the land office.
nd who else? A. I have heard Mr. George Bunce.
What is his business?
He now resides in St. Peter; I believe he is traveling.
He is a traveling man?
think he is a traveling man at the present time.
What was his business at the time he lived there?
He ran a hotel part of the time, and part of the time a grocery.
saloon?
o, sir; a grocery store.
id he keep a saloon when he was in the hotel? A. No, sir.
Who else? A. H. D. Baldwin.
What was his business?
awyer.
ive us another one?
Ir. Wallin.
He is a lawyer?
es, sir.
nyone else?
don't think of anybody else now.
How large a place is that town?
edwood Falls?
es.
bout 1,200.

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Q. When did you hear Mr. Bunce talk about it?
A. Mr. Bunce had a case in court in which Mr. Morrill,—
Q. When did you hear Mr. Bunce talk about it; that is the question?
A. I heard him talk about it a number of different times, within the last two years.
Q. What did he say?
A. He said that Mr. Morrill was, a two-faced man.
Q. What else did he say?
A. That in a case where he was interested he took fees on both sides.
Q. Anything else?
A. I don't remember anything else particularly.
Q. That is all you heard Mr. Bunce say—what did Mr. Dunnington say,—there is one thing I will ask was that not since the impeachment case commenced?
A. No, sir; prior to that.
Q. What did you hear Mr. Dunnington say?
A. In conversation with Mr. Dunnington repeatedly, more especially relative to politics I have heard him discuss Mr. Morrill a good many times.
Q. Well, what did he say?
A. Well, he said that Mr. Morrill was a man that could not be trusted.
Q. Anything else?
A. Well, he related circumstances in connection with a gentleman living in Watertown that knew Mr. Morrill while in Wisconsin who stated that he bore that reputation in Wisconsin, where he came from.
Q. Anything else.
A. I cannot say anything else.
Q. Now, was Mr. Dunnington talking about anything else except politics at this time?
A. Yes.
Q. And he said that Mr. Morrill was not a man that could be trusted?
A. Yes.
Q. And that somebody told him that in Watertown he had that same reputation?
A. That he had the same reputation in Wisconsin where he come from.

Mr. Manager COLLINS. He said that Mr. Dunnington told him that Mr. Morrill was a man that could not be trusted, and that he had that reputation in Wisconsin where he came from. (To the witness.) Is that what he said?

A. Yes.
Q. What else did he say?
A. I don't remember any other conversation that we had.
Q. You were talking about politics at the time?
A. Yes.
Q. What did Mr. Herriott say at that time?
A. I heard him say very similar to the same thing.
Q. You were talking about politics to Mr. Herriott?
A. Yes.
Q. Was it anything similar that Mr. Herriott said?
A. Yes.

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What was it?
Mr. Herriott related a circumstances in connection with the Pres-
church where Mr. Morrill acted in a manner that dissatisfied
ch very much.
s that all he said; that is surprising; I never knew a church to
isfied; was there anything else?
don't know.
ow, Mr. Herriott said that Mr. Morrill was a man that couldn't
ed?
es.
He had heard his reputation in Watertown?
es.
nd there was a matter in which the Presbyterian church was in-
in which his conduct dissatisfied them?
es.
nything else?
don't think of anything else.
What did you hear Mr. Hayes say?
Mr. Hayes—it was relative to politics.
What was it he said?
heard Mr. Hayes state at one time, Mr. Morrill, when he came
ed to get the nomination for county attorney on the republican
nd he found out he couldn't get it and he said he wouldn't be a
te and the same time went over to Lamberton, to a democratic,
es convention, and accepted the nomination there.
Mr. Hayes said that Mr. Morrill had been a candidate for county
and got defeated and said he would not accept a nomination,
n went over to a democratic convention and accepted a nomina-
re?
es.
What else did Mr. Hayes say of Mr. Morrill?
don't know as I can tell everything.
Well, tell us one thing that he said?
have told you one thing.
Well, tell us another?
don't remember of any other circumstance; I cannot recollect
ing else.
Is there anything else that you can recollect of what Mr. Hayes

No, there is nothing.
Now when did Mr. Hayes say that?
He said that about—very soon after Mr. Morrill accepted the
tion on the ticket.
After he accepted the nomination; was it a people's ticket or a
atic ticket?
It was a peoples ticket run by the democrats.
Was it successful?
No, sir, it was not.
When was that; give us the year, if you can?
That was 1879.
Now, what did Mr. Warner say—the clerk in the land office?
I cannot recollect Mr. Warner's words.
Well, can you tell us about what they were; I don't want the
words?

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A. Mr. Warner was present at the conversation Mr. Dunnington and I had.

Q. The conversation that you have related here?

A. Yes; he was present at the conversation, and joined in it.

Q. Well, what did he say?

A. I can't recall his words.

Q. Can you tell us whether he agreed with Mr. Dunnington?

A. Yes, he agreed.

Q. Did he agree with Mr. Dunnington or Mr. Harriott, or both?

A. Well, I think the conversation that I had with Mr. Harriott was not at the same time that I had with Mr. Dunnington; he was not present at that conversation.

Q. Well, did he agree with the conversation that you had with Mr. Dunnington?

A. He did.

Q. And he said that Mr. Morrill couldn't be trusted, and he had that reputation down in Wisconsin?

A. Yes.

Q. Well, can you tell us anything else that Mr. Warner said?

A. No, I cannot.

Q. Well, now, what did Mr. George Bunce say?

A. Mr. George Bunce was connected with a certain suit. Mr. Bunce was running a grocery store there at one time, and Mr. Morrill, in behalf of certain firms, foreclosed on them, and at the same time was Mr. Bunce's attorney, and he related circumstances in connection with the case, and stated wherein Mr. Morrill had misrepresented the situation to him, and had secured a fee out of him.

Q. Well, what else; anything else?

A. Well, I don't know that I can recollect anything else.

Q. Mr. Bunce stated that at one time Mr. Morrill was his attorney; he had misrepresented certain things to him, and had secured a fee out of him?

A. Yes, sir; at the same time he was acting in behalf of Mr. Bunce's creditors.

Q. And that is all that Mr. Bunce said?

A. Yes.

Q. What did Mr. H. D. Baldwin, the attorney, say?

A. Mr. Baldwin, at one time, was a partner of Mr. Morrill, and after dissolution with Mr. Morrill, stated that Mr. Morrill could not be trusted.

Q. Anything else?

A. Well, I don't think of anything else now.

Q. That is all that he said; that Mr. Morrill could not be trusted?

A. Yes.

Q. Now, when did he tell you that?

A. He told me that this winter.

Q. Was that before or after these impeachment proceedings?

A. After these impeachment proceedings commenced.

Q. How came he to tell you again?

A. Mr. Baldwin and I are very good friends, and in conversation with him, in his office, one day, he told me that.

Q. He told you simply that Mr. Morrill could not be trusted?

A. Yes.

Q. Now, Mr. Alfred Wallin, what did he say to you?

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r. Wallin and I have had conversation relative to Mr. Morrill, a
ıy times, and he has often made the remark that Mr. Morrill
y and could not be trusted.
ıything else?
ıat is the substance of it.
ow, what was he talking about; politics or the law?
oth.
ıything else that he was talking about?
, sir; not that I remember.
ow, Mr. Bigham, when did Mr. Wallin tell you that; fix a

ell, the first time I ever heard him make a remark of that kind
ıe fall of 1879.
hat was he talking about then—politics?
t that time he was.
ow, when else, at what other times?
number of times since that.
ecently?
ell, I have heard him so talk as late as last fall.
hat was he talking about then—politics?
, sir.
aw?
es, sir.
ow, can you give us the names of any other men in that town
t community that you have heard speak of Mr. Morrill?
cannot; 1 have heard other men speak of him, but I cannot give
ıes.
hat did these other men say?
cannot recollect.
ou cannot recollect what they said?
, sir.
ow, Mr. Bigham, how far did you sit from Judge Cox the night
ıave been talking about?
bout thirty feet, I should judge.
ou sat in the audience, and it was in the night, I understand?
es, in the evening.
nd you were not there except on that time?
was in court a great many times during the two first days of
or in fact during the entire term, for that matter, but I was not
ll the time.
id you ever see Judge Cox intoxicated?
es, sir; I have.
ow long have you known him?
have known him since 1869.
o you make any distinction between intoxication and drunken-

es.
ave you ever seen him drunk?
o sir; I never have.
hat is the distinction you make?
think that when a man is drunk he has lost either control of his
body, one of the two; a man may be under the influence of
nough to show it slightly, be slightly intoxicated and not be

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Q. Well, if he is intoxicated what is his condition, in your opinion; that is his condition when you would call him intoxicated?

A. Well, he has had enough liquor to stimulate him, and to make his mind probably act quicker than it otherwise would, and shows it in his face somewhat.

Q. How is it about his staggering?

A. When a man staggered I should consider him drunk.

Q. You would consider him drunk?

A. Yes, sir.

Q. And you have never seen Judge Cox in that condition?

A. No, sir.

SAMUEL STICKLE.

Sworn on behalf of the respondent, testified.

Examined by Mr. ARCTANDER.

Q. Mr. Stickle where do you reside?

A. Redwood Falls.

Q. What is your occupation now?

A. My occupation is when I find a man drunk on the streets to take him to the calaboose.

Q. You are village marshal there?

A. Yes, sir.

Q. You have been a merchant there?

A. Yes.

Q. And have been court commissioner of that county?

A. Yes.

Q. How long have you resided there?

A. I have resided there since June 1868.

Q. Do you know Mr. Morrill that used to live there who moved to Minneapolis last fall?

A. I do.

Q. How long did you know him while he lived there?

Q. I have known him three, or perhaps four years; three years certainly.

Q. Was he related to you,—in any way connected with you?

A. He is not a blood relation; his wife's mother and my wife are cousins.

Q. You held very friendly relations with him there, have you not?

A. Yes.

Q. Occupy the same office with him there?

A. I did for a while.

Q. Do you know what his general reputation is in the village of Redwood Falls, for truth and veracity?

A. Yes.

Q. What is it, good or bad?

A. It is bad.

CROSS-EXAMINATION,

By Mr. Manager COLLINS.

Q. Who have you ever heard, Mr. Stickle, speak of his reputation for truth and veracity?

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eard Dr. Flynn once.
he living at Redwood now?
s.
hat did he say about him?
lon't know as I can give the exact words, but the import was
ntegrity as a lawyer was greatly at fault.
ything else?
ell, we had some conversation, but I don't recollect the words.
hen was this?
was some time last summer or fall.
mmer or fall of 1881?
s.
w, tell us another man whom you have heard talk about him.
ave heard Mr. Hotchkiss.
e gentleman who was on the witness stand?
s.
hat did he say about him?
lon't think I can illustrate it, without saying that he was guilty
l cussedness.
at is what Mr. Hotchkiss said?
at is about what it meant; it was not exactly in those words.
ilty of general cussedness; when was it?
ell, it was in the last six months.
hat were you talking about?
lking about F. L. Morrill.
know; but what particular subject; you were talking about
what subject were you talking about?
lking about his reputation.
ny one else? A. Yes.
ho else?
ive me time to think.
rtainly.
es; I have heard Mr. Bunce,—Mr. J. D. Bunce.
hat did Mr. Bunce say?
ell, he said he would perjure himself.
ow, what was he talking about?
ell, he was talking—I don't—I often heard him say that, but
usually talking about Morrill and his law suit that he was
with.
at was the law suit that Mr. Bigham has testified to?
es.
here Mr. Bunce claimed that he had secured a fee from him
was acting for his creditors?
es.
nd you were talking about that subject when Bunce said that he
rjure himself?
ell, at times we were, and at other times he would bring the
p himself.
at is, the subject of Morrill?
es.
ow, who else have you heard talk about him?
have heard the Methodist preacher.
hat is his name?
is name is Pemberton.

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Q. Rev. Mr. Pemberton?
A. Yes, sir.
Q. What did he say about it?
A. He said it would be hard work, or something to this effect,—that it would be impossible to give Morrill a good reputation under oath.
Q. When was that?
A. That was lately, within the last week.
Q. You were talking about this impeachment case?
A. Yes, at that time.
Q. Who else have you heard talking about it?
A. I have heard Mr. Jerry Tiffany.
Q. What was his business?
A. Well, I don't know of anything, unless I should put him down as a gentleman.
Q. He has no special business?
A. I don't know what his business is.
Q. What did he say about Morrill?
A. Well, he said—if I recollect precisely what he said, he said that he was a damned liar.]Laughter.]
Q. Anybody else?
A. I don't recollect.
Q. When was that?
A. That was about the time Morrill left Redwood Falls; sometime I think it was in October, but I am not positive about the date.
Q. What were they talking about, what were you and he talking about?
A. Well, Mr. Tiffany had come to me to inquire if Mr. Morrill had left some papers. If my recollection is correct it was a note he had left with Mr. Morrill for collection and had carried it off, and he thought perhaps he might have left it with me and that is the way that the conversation got started.
Q. And during that conversation he said that Morrill was a damned liar?
A. Yes.
Q. That was along last October, October, 1881?
A. Yes, about that time.
Q. Was there anything said at that time by Mr. Tiffany about Mr. Morrill promising to leave that note?
A. No, sir.
Q. How came he to make the remark that Morrill was a damned liar?
A. I don't know; but he had told him something that he had not done, I don't know why.
Q. Something that he had not done; now who else have you heard talk about it?
A. Well, I have heard my brother, Mr. C. C. Stickle.
Q. What did he say about him?
A. Well, he says that he had misrepresented about some things.
Q. Anything else, that he said?
A. Well, I had so many conversations with him that I don't know that I could particularize any particular one.
Q. You say that your brother said that he misrepresented about some certain things; did he tell you about what things?
A. It was something in regard to business that he had with Morrill.

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ow, what else did your brother say about him; of course I ect you to give the exact words, but the substance of them?
don't know as I could give it in the precise words.
ell, can you give us the substance; I don't ask for the precise nd don't expect them?
ell, the substance is, that Mr. Morrill had deceived him in bus-nsactions.
hen did he tell you that?
hat was soon after Morrill had left and came to Minneapolis.
ow, who else have you heard talk about it?
don't know as I can tell; it is general talk.
ou cannot tell the name of any one else, can you?
heard a conversation one day this week.
etween whom?
etween a man by the name of Bager and one named Boyer.
hat did they say?
ne words they said were, they were talking about the case and ,—it was something like this, that if Coleman was impeached shame that Morrill was not impeached too.
Coleman was impeached it was a shame that Morrill was ached; is there anything else that you can remember?
hat is all that I remember.
ow; can you remember any other persons who have talked is man Morrill?
don't bring any to mind.
n you tell anything they have said; you cannot tell the persons, tell anything that has been said?
ot anything further.
ow large a place is Redwood?
my recollection serves me there were about a thousand at the us.
his man Flynn is a practising physician?
es.
hat is the business of Mr. C. C. Stickle?
heard him say to-day, that it would be hard work for him to his business is.
r. Bager, what is his business?
e is a blacksmith.
hat is Mr. Boyer's business?
e is a laborer.
r. Bunce keeps a restaurant, doesn't he?
es, sir.

JOHN H BOWERS,

s witness on behalf of the respondent, testified.
ined by Mr. ARCTANDER.
ou are the Judge of probate of Redwood county?
am.
re you a practising attorney?
am.
o you reside in Redwood Falls now?
do.
ow long have you resided there?
early four years.

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Q. Do you know one F. L. Morrill, who was practising law up there at Redwood Falls, and who went away from there last fall?

A. Yes.

Q. How long has he lived there?

A. A little over two years, I believe.

Q. A little over two years?

A. Yes.

Q. This same Morrill that has appeared as a witness in this prosecution?

A. I don't know; I suppose so. It is the same Morrill that lived there at least.

Q. There is only one Morrill who has lived up there, as an attorney?

A. That is all.

Q. Do you know what his reputation is for veracity and truth in the community in which you live at Redwood Falls?

A. Yes.

Q. What is it, good or bad?

A. It is bad.

Q. Do you know what his reputation is in that community for honesty?

Mr. Manager COLLINS. I object to that; a witness can not be impeached by asking him such a question as that; it must be confined to the question of truth and veracity. A dishonest man may be a truthful man.

Mr. ARCTANDER. I am somewhat in doubt about the matter myself; but this court has been so liberal in allowing almost everything that I thought it might let that in too.

CROSS-EXAMINATION

By Mr. Manager COLLINS.

Q. Judge Bowers, will you state whom you have heard talk about Morrill?

A. I heard Squire Johnson for one.

Q. What is his business?

A. He keeps a small grocery and bakery and he was a Justice of the Peace there, at the time.

Q. A grocery and bakery; what do you mean, a saloon?

A. No, sir.

Q. Just a small grocery?

A. Yes, sir.

Q. What did he say about it?

A. It was in regard to some papers that Morrill had—he allowed him to look at some papers that he had on file and he told me that Morrill had taken one, abstracted it from the files, and he knew that he had taken it from his, afterwards returning it, when the use for it was over and that he should not trust him again to examine papers unless it was done in his presence.

Q. Squire Johnson said he had taken a paper and that he knew he had taken it because he afterwards returned it?

A. He said he missed the paper just after Morrill had examined the papers, and after they came to settle the case up—it was a note, I think—Morrill returned the papers.

Q. Returned the papers?

A. Yes.

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/hat else?
hat was all that he said, and that he would not trust him again
papers unless it was under his own supervision.
ive us the name of another man?
/illiam B. Herriott?
/ho is he?
he receiver of the United States Land Office.
/hat did he say?
have had several conversations with him; the first time he told
more from hearsay,—that he knew a man who was intimately
ed with him, who said that his reputation was very bad where
from, that he was an inveterate liar or something like that.
RCTANDER. That he was an inveterate liar?
es, sir; or something to that effect.
hat was something that some other man had told Herriott?
es.
le didn't pretend to know anything about it himself?
o, sir.
/hat else did he say?
/ell, I don't know that he expressed an opinion at that time;
had not been there very long at that time; he expressed an
that he was not a reliable man but I don't know whether he
d it from his own knowedge or not.
o, sir; I don't remember.
/hat else did he say about him?
ince this trial commenced we have had another conversation.
nce this impeachment trial?
es.
/hat did he say then?
le said that Morrill had deceived him and had gotten him to
ote with him by deceit.
nything else?
/ell, I don't remember that he said anything more in regard to
onesty except to tell me all the circumstances about this mat-
there was some matters mentioned that would imply dis-

hat he was dishonest?
es.
re you giving us the exact words that he used?
o, sir, I am giving you the substance of it.
nd the substance was that Morrill had deceived him by getting
ign a note?
/ell, I guess I can give you the exact words; he went in and
that Mr. Commodore Stickle and he desired to go into a little
and it would please Mr. Stickle if he would go on the note;
efused at the time but could not go to see Mr. Stickle and final-
gn it, but stated that if he had seen Mr. Stickle he would not
n trapped into the matter and that Morrill had not told him the
out it at all.
nd what else did Mr. Herriott say?
think the other matter they were talking about was a little mat-
ioney.
little matter of money?
30

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A. Yes, that Mr. Morrill held as a sort of treasurer of a library association up there.

Q. What did he say about it?

A. He said he didn't think it could be obtained from him.

Q. Now, who else have you heard talk about Morrill?

A. William P. Dunnington.

Q. Who is that?

A, That is the register of the land office.

Q. What did he say?

A. He said something that Morrill had said and laughed, and as near as I can remember, he said that he was the biggest liar he had ever heard, or something.

Q. Dunnington said so last summer and fall?

A. Last summer and fall.

Q. That Morrill was the biggest liar he had ever heard on earth?

A. Yes; I can't remember the words.

Q. What were you talking about at that time?

A. Oh, we were talking about politics.

Q. And this was a remark that Dunnington made in connection with some conversation on politics?

A. I was trying to think of that, when I supposed that I was going to be called on this matter, and I cannot remember positively, though it was in regard to some matter in regard to politics.

Q. Was it not in connection with this matter of Morrill's running for county attorney on the People's ticket?

A. No, it was not for that; he run for county attorney over two years ago, and it was supposed he was wanting something again last fall, but this was in regard to State politics, and something that Morrill had claimed that he assisted in.

Q. Who else do you claim you heard talking about it?

A. I heard Mr. Bunch—B-u-n-c-h, not Bunce, the one that has been mentioned, but Bunch, B-u-n-c-h, a furniture dealer.

Q. What did he say about it?

A. He was telling me about—it seems to me was more than a year ago—in regard to some matters that Mr. Morrill owed him about, and had been promising him it, and also about getting Mr. Bunch a loan, and had kept him along, and he said that he thought he was not trying to do the right thing; and he said he had spoken to Mr. Stickle, who was a friend of Mr. Morrill's, and Mr. Stickle told him he began to hardly believe him any more.

Q. Mr. Morrill owed Mr. Bunch, and this conversation was in regard to that indebtedness?

A. Yes.

Q. And Mr. Bunch thought Mr. Morrill had not done as he ought to?

A. Not only that he had promised to pay him, but he had got into his credit and into his confidence, by telling him he could get him a loan.

Q. Get him some money?

A. Yes.

Q. And on the strength of that had gotten into his confidence, and then had not done as he agreed to?

A. I don't know as he used that money lever to get the credit first or not; I don't understand that.

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'ou don't understand that?
'o, sir.
nd he had spoken to Mr. C. C. Stickle about it, and he said that
I hardly believe him himself?
Ie told him he had begun to cease to believe Morrill himself.
'ow, who else?
Ir. Paxton.
'hat did he say about it?
can't remember exactly, what Mr. Paxton said; I think I have
'ral cenversations with him; he was clerk of court at that time
and I held offices together and he was mentioning about his
to be a man utterly devoid of truth.
'id he say he was a man utterly devoid of truth?
Ie didn't say it in these words; I can't remember what he said.
'ou can't remember what he said; well, did he say the substance

think he did.
'hen was that?
'hat must have been a year ago, along in the spring or summer

nyone else?
lfred Wallin.
'hat where they talking about, Paxton and you, what were you
ton talking about?
can't remember, sir.
'as it a difficulty between Paxton and Morrill?
'o, I can tell you something about it, it was a very small matter;
of us had used Mr. Paxton's buggy and had contributed or inten-
ontribute—I paid my share to Mr. Morrill—he had spoken to
rill about it and Morrill admitted having it; but told him that
ot collected from C. C. Stickle yet—Mr. Stickle was of the party
axton said he believed that Morrill had collected it; he didn't
e was telling the truth to him and he said he proposed to ask
kle sometime about it, in order to satisfy himself.
nd that led to the remark?
don't remember whether it was on the same occasion or not.
'ho was the next man you heard talk about it?
heard Mr. Wallin.
'hat did he say?
heard Mr. Wallin say, so often and spoke about his being a
t you could not depend on what he said, a good many times,
nnot say any particular times; I remember, one occasion of his
ie into his office and showiag a number of affidavits which had
de by himself, Mr. Paxton and Mr. Wallin in which, Mr. Mor-
sworn to a lie or else Paxton and Wallin both had.
'allin said you could not depend on what Morrill said?
hat was the inference I drew from his remarks, nearly fifty

'ell, did he say that, or is that your inference of it
'ell, he generally talked of him as a man who could not be relied

hese affidavits were made in the course of legal proceedings?
'es; two of them had been before the Supreme Court and another
iem was ready to go.

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Q. And Wallin and he got into a difference, each making affidavits?
A. Yes.
Q. And Wallin either lied or Morrill did?
A. Yes, but Paxton corroborated Wallin in this.
Q. And there was a direct lie between them?
A. Somewhere; yes.
Q. Now, was not all this matter a difference that arose between Wallin and Morrill as attorneys engaged upon different sides of the same case?
A. They were; yes, sir.
Q. Now, who else have you heard talk about it?
A. I heard Charles King.
Q. What is his business?
A. He is a commercial traveler.
Q. What did he say?
A. He said,—I think he is; he has made his headquarters at Redwood Falls, and I think the family is there yet.
Q. What did he say?
A. This was in regard to a case against Bunce brothers.
Q. The same case that has been talked about?
A. I think not; if I understand it, the case that has been talked about, is a case against J. D. Bunce; but this was an attachment which he commenced against these brothers, and he said that Morrill came and told him that they were about to break up, and he didn't believe it, and that since then he had become satisfied that he had deceived him about the matter, in order to get the case, and that he felt that he had been misled by Morrill.
Q. Mr. King said that Morrill told him that these men were about to break up, and he was satisfied now that he had misled him, and that they were not breaking up?
A. He said to me, I think, that if he had not employed Morrill, he would have got along better, if he had had nothing to do with the case.
Q. That he would have got along better?
A. I cannot give you the words, because I never expected this.
Q. Who else have you heard talk about it?
A. I don't remember now.
Q. Who else?
A. Well, I heard Mr. Commodore Stickle speak of him in a way, not exactly to say that he didn't believe him, but to say how he had treated him in regard to some business proceedings.
Q. Mr. Stickle, who has been on the witness stand here?
A. Yes.
Q. He has been here as a witness, has he?
A. He is in the room.
Q. He has talked to you about it?
A. About Morrill?
Q. Yes; what did he say about Morrill?
A. Well, that would take some little time for me to tell.
Q. It was a long story, was it?
A. Tolerably long.
Q. Well, did he pronounce him a liar?
A. Well, not in those words; you could not infer anything else.
Q. You couldn't infer anything else?
A. Nothing, except that he was utterly dishonest.

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nything else than that?
han that he was dishonest; I can't see the distinction; it was in
some business matters.
business transaction?
es.
as it not a difficulty about some land?
o, sir.
sale of some land?
o, sir; I can tell you.
hat was it about?
ne first he came to me about was a matter in which I had been an
against Mr. Stickle and Mr. Morrill was his attorney in settling
ote, and he came to me—we had to settle this matter by his
n order upon some men that he had left goods with in Dakota;
ls he came to me to ascertain if I had written to them not to
of these moneys over, and I told him I had not, and he then
he thought Mr. Morrill had done so and that at either that
on another occasion told me of the fact of Morrill's holding a
ainst him and after getting his pay on the note, Mr. Stickle
at he had paid the note—he took the note to Mr. George W.
s collateral for a loan.
RCTANDER. That Morrill did?
es; I can't remember what else he said, but he stated that he
ndeceive the people where he had gone, in regard to him; there
siderable talk.
ow, can you tell me anything else that you have heard said?
bout Mr. Morrill?
es.
cannot remember any other conversation; I remembered that
a good many talk in a manner which would indicate, to me,
could not be relied on.
hat he was dishonest?
o, that his word could not be relied upon; this matter of dis-
I think never came up until since he left there or about that

ow, can you tell me any of those people or can you tell me
ey said?
ot their exact words, no, sir.
an you tell me the substance of it?
have told you the substance as I remember it; I was not
hunting up these matters and I just took them as I happened to
em.
Have you now told, Mr. Bower, all upon which you base your
nt that his reputation for truth and veracity is bad?
have told all I can remember;—no sir, there are a great many
hat have occurred of which there is a faint remembrance but
pressed so firmly on my mind that I can testify to them,—a faint
sion.
Well, these are the most of it?
These are all I can testify to.
Well, these are the principal things?
Well, I suppose they are, because I remember them.
Ir. ARCTANDER.
There are several other parties that have been speaking of him
names or the particular occasions, you cannot remember?

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A. I have heard him spoken of by other parties, talking between themselves and cannot remember what they said, I did not take heed.

Q. So these are not the only persons whom you have heard talking about him?

A. Well, I heard his testimony as read in the newspaper, somewhat discussed in the stores in a manner which would indicate that it was not—

Q. Didn't take any stock in it?

A. No, sir.

By Mr. Manager COLLINS.

Q. What testimony was that?

A. It was in regard to the testimony that he gave here before the court.

Q. As to what case?

A. As to this case of impeachment.

Q. I know, but as to what particular part of the impeachment, what article.

A. As to his general testimony.

Q. And that was discussed as found in the newspaper, was it, in the stores?

A. Yes.

Q. Now, who said it was untrue?

A. I can't remember; it was in a hardware store; I cannot remember who were there except the proprietors; I just stepped in.

Q. Who said it was untrue?

A. I don't remember.

Q. Was it stated there that it was untrue?

A. No, sir; I don't think it was.

By Mr. ARCTANDER.

Q. You said that it was not stated that it was untrue; what was said in regard to it?

A. I can't remember; I can only remember the impression that it left on my mind.

Q. What was that?

A. The impression was that they would not take his testimony as sufficient evidence to convict a man.

Mr. Manager DUNN. Well, nobody would.

Mr. ARCTANDER Well, I agree with you, I don't think anybody would.

The PRESIDENT *pro tem.* The Senate will take a recess until 8 o'clock. P. M.

EVENING SESSION.

The Senate convened at 8 o'clock, P. M., and was called to order by the President *pro tem.*

GEORGE W. BRALEY

Recalled on behalf of the respondent, testified:

Examined by Mr. ARCTANDER.

Q. You have testified before, I believe, that you were a banker in Redwood?

A Yes, sir.

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Q. How long have you lived in Redwood?
A. Since 1871.
Q. You represented that district in the House I believe this last session of the legislature?
A. Yes, sir.
Q. Do you know a lawyer by the name of F. L. Morrill, who lived in Redwood Falls until last fall, when he moved to Minneapolis?
A. Yes, sir.
Q. How long a time did he live in Redwood Falls?
A. I couldn't fully state, but I should think, perhaps, nearly three years; it might not have been more than two, but I think it was between two and three.
Q. Do you know what his general reputation in the village of Redwood Falls is for truth and veracity?
A. Yes.
Q. What is that reputation, good or bad?
A. It is not very good.
Q. Well, what is it, good or bad?
A. I consider it bad.

Examined by Mr. Manager COLLINS.
Q. Who have you heard talk about his reputation?
A. I don't know as I could detail to you just who I have heard talk about it. It is the general talk.
Q. The general talk you say?
A. Yes, sir; or has been.
Q. Well, can you tell any person who has talked about it,—any one person.
A. Why, I presume that I might name some persons.
Q. Name one, Mr. Braley.
A. I could probably answer the question by saying I could name less that had *not* talked about him.
Q. Well, won't you name one who *has* talked about him?
A. Well, I should have to name some persons who have already been named.
Q. Well, name one?
A. Well, I would name Mr. Stickle.
Q. The witness Stickle?
A. Yes.
Q. What did he say about him?
A. I don't recollect just what he said about him. It was a general conversation, as people came into my bank there.
Q. Well, what did he say about him?
A. Well, I should say that Mr. Stickle said, he had beat him out of some money or tried to, or something of that kind.
Q. Mr. Stickle said he had either beat him out of some money, or had tried to? A. Yes.
Q. By Mr. ARCTANDER. This is C. C. Stickle that you have reference to?
A. Yes.
Q. What else did he say?
A. I couldn't tell you all he said.
Q. Well, give us some remarks?
A. He might have said he was *going* for him; I don't say whether he did or not; I think he did, though.

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Q. Who was going for him,—Mr. Morrill going for Mr. Stickle, or Mr. Stickle going for Mr. Morrill?

A. Well, I suppose he was going for Mr. Morrill. I didn't see the chase.

Q. Well, what else did he say?

A. Well, really I don't know but he *did* go for him.

Q. Well, I know, but what did he *say?* I am not asking you whether he went for him but what he *said?*

A. I think he said he was going to telegraph for Morrill to come right straight back to Redwood.

Q. When was this?

A. I couldn't tell you the date, but it was since he left or about the time he left.

Q. Well, who else did you hear talk about him?

A. I heard Mr. J. D. Bunce.

Q Well, what did Mr. Bunce say about him?

A. I believe he said he was a damned liar, and that he wouldn't believe him under oath.

Q. Are you sure now that he said that?

A. Well, I should be just as sure of that as that he said anything.

Q. Now, when did he say that?

A. Well, it was one evening when I was in there.

Q. When was it?

A. I couldn't give you the date.

Q. Can you tell us what month it was?

A. No; I couldn't tell you that, because it was something that is talked of there frequently, and I didn't spend much time over those matters.

Q. Well, who else did you hear talk about it?

A. I am rather inclined to think I have heard Mr. Philbrick.

Q. What is his business?

A. He is a merchant.

Q. What did he say about him?

A. I couldn't tell you just what he said; we are a little particular up there, what we say about one another.

Q. I should think so. What did he say; could you tell?

A. I don't remember now just what he said. The fact of it is, it was a general talk, as people came in there; they knew Mr. Morrill, had done considerable business with him, and I with him; and when they came in there on business with me, that subject was brought up by nearly every one that came in; I don't say every one, but *generallg* after he left and came away from there.

Q. Well, you can't tell me what Mr. Philbrick said, can you?

A. I don't know as I can.

Q. Now, can you tell me what any other man said about him?

A. I, of course, don't state the exact words, but the substance. The general substance of what they said was, that they didn't think much of him; didn't believe him.

Q. But you can't tell anyone who said so?

A. I just told you that Mr. Bunce said so for one.

Q. Yes; who else?

A. I think Mr. Stickle gave that inference to me.

Q. Well, can you give us any other names?

A. Probably that was the conversation with Mr. Philbrick, or similar to that.

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Well, anyone else?
nswer.)
ow, wasn't a good deal of this conversation about his honesty,
s paying his bills?
believe I heard Thomas King, a farmer, come in there one time
about the matter.
What did he say about him?
His conversation was something in relation to a note. He
he was on a note. I can't tell you the words he used or the ex-
s that he gave, but as much as to say he didn't believe anything
an.
ow, wasn't the amount of this conversation about his honesty,
rom some business transaction that these men had had with him
he was unable to pay his debts, and things of that kind?
o, no, I don't think that he was owing anything there particu-

ou don't think he was?
don't think he was to any extent; he might have been a little
that he contracted himself, personally.
ow, can you tell what anybody else said about him?
think I have heard G. P. Green talk about him some.
What is his business?
He is a gentleman.
Hasn't he any business?
No, sir; I don't know that he has. He has a farm, but he lives
and rents his farm.
What did he say about him?
think he said like this: that he never thought that Mr. Morrill
urn out in the manner he had since he had went away from

When did he say that?
Since he left.
an you tell when?
couldn't give any date particularly, any more than I know,
e went away from there.
Now, can you think of anyone else?
I am rather inclined to think that Fayette Robinson did.
What is his business?
He is a farmer, but he lives there in town.
What did he say about him?
He said like this: Said he, "Don't you let that man have that
on the note that my name is on;" said he, "I believe he is a

He said that he didn't want to let Mr. Morrill have the money on
e that he had signed?
Exactly.
That he believed that he was a rascal?
Yes, sir.
Anything else he said?
He might have said something else.
Well, did he say anything else?
I presume he did. I don't know that he used the word "rascal,"
came in there and carried that inference to me.
Now, can't you give us anyone else?

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A. I guess I have given you about enough.
Q. Well, can't you give us any one else?
A. I guess I have heard Mr. Dahlgran speak of it.
Q. What is his business?
A. He is a farmer and a mechanic.
Q. What did he say?
A. He said he had deceived him in getting his name on to a note.
Q. Morrill had deceived him?
A. Yes, sir.
Q. Now, what were these notes that these men were talking about.
A. Well, to explain what these notes were would take some little time.
Q. Well, were these notes signed by Morrill?
A. They were signed by Morrill and others.
Q. And on them Morrill got money, did he?
A. I suppose he did, he didn't get it of me.
Q. Do you know whether he got money or not?.
A. I have been told he did.
Q. Is he owing the money still.
A. I think most probably he is, because they are not due.
Q. Then do you know how much they were?
A. Yes, sir,
Q. How much?
A. $500.
Q. $500 that Morrill got on a note signed by other people?
A. I don't know how much money he got; I can tell you about the note if you will let me go on and tell it just as it was.
Q. Well, I would like to know whose note it was?
A. Well, sir, Mr. Morrill came to me one time and asked me if I would loan him $500 on ten good names. I asked him who the names were. He named over some parties and I told him I would do it. He went and procured some of the names, but when he came back he didn't have the ones that he had promised to get, and I told him I couldn't let him have the money. I found out that some of the parties that had signed that note were afterwards sorry that they had done it, and they requested me not to let him have the money. The note was running to me, but when he came back for the money, I told him I was a little short,—which I am sometimes,—that I couldn't spare it, and would rather not let it go. He said he had got to come to St. Paul very directly and it was a great disappointment to him that he didn't get the money. I told him I was sorry for him and would be glad to help him out, and he asked me if I wouldn't endorse the note over, so that he could use it somewhere else. I did so "without recourse;" I was told that the notes came down here and went to Ball & Lamberton in the lumber business; then I was told they went into the German American Bank in St. Paul, and I suppose they are there now, but I don't know.
Q. You say the notes are not due?
A. No, sir; they were to run for two years.
Q. When was that note drawn?
A. Some time last summer.
Q. Can you tell me who signed this note with this man Morrill?
A. Yes, sir, some of them; I don't know but all of them by thinking.
Q. Who were they?

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A. There was Mr. — there is a little more to that perhaps; I asked Mr. Morrill what he was going to do with the money.

He said that he and Commodore Stickle was going into a little speculation; and he said Commodore Stickle was going on the note. I considered that Commodore Stickle was a pretty good man to have on the note, and that was one of the inducements to let the money go on the note. I thought if he was going into a speculation, it must be a pretty good speculation; and I learned afterwards that Commodore Stickle didn't know much about this speculation. Commodore Stickle was one of the signers of the note; Mr. Herriott, the receiver of the land office, was one of the signers; Mr. Dahlgan was one; Fayette Robinson was one; O. B. Terrill was one. I think there were eight or ten names on the note.

Q. Was Mr. King one? A. No, sir.
Q. Mr. G. P. Green? A. No, sir.
Q. Mr. J. D. Bunce? A. No, sir.
Q. Mr. Philbrick? A. No, sir.
Q. Mr. Dunnington? A. No, sir.
Q. Mr. Baldwin? A. No, sir.
Q. Mr. Bigham? A. No, sir.
Q. Mr. Boyer? A. No, sir.
Q. Mr. Tiffany? A. No, sir.
Q. Mr. Hotchkiss?
A. No, sir; I think not.
Q. Dr. Flynn?
A. No, sir. He said he would get Dr. Flynn, but he didn't get him.
Q. Now, how long was this before he went away?
A. That must have been as early in the season certainly as September; and I should think it might have been in August.
Q. And he went away when?
A. He left up there about the time the extra session of the legislature commenced.
Q. That was the 11th, day of October?
A. Well, I don't say he left that day, but about that time.
Q. This note you say was signed in August and he left in October. Now these names he got on the note were of respectable citizens weren't they?
A. Yes.
Q. Now, will you explain how it is that a man of bad reputation for truth and veracity can get ten of your respectable citizens up there to sign a note with him?
A. Just like this, and as I undertook to say to you, that this thing has all come out since he went away.
Q. Then his reputation for truth and veracity was not bad at that time?
A. When he first came there it was not,—we didn't know him.
Q. When he got the note signed, how was it?
A. I don't think they understood him then.
Q. He had lived there two or three years, but his reputation for truth and veracity was not bad at the time he got the note signed there?
A. It might not have been so generally known. I think some people understood him at the time, and wouldn't sign the note with him.

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Q. They did refuse?
A. People that he promised to get to sign that note refused to sign it.
Q. Did they refuse to sign on account of his reputation for truth and veracity.
A. I never asked them why they refused to sign.

F. ENSIGN

Recalled as a witness on the part of the respondent testified.

Examined by Mr. ARCTANDER.
Q. I believe you stated on your former examination that you were clerk of the district court of Redwood county?
A. Yes, sir.
Q. How long have you resided in Redwood?
A. Since the third of January, 1881.
Q. Have you lived in Redwood county prior to that time?
A. Yes, sir, about seven or eight years.
Q. Did you know, while he lived at your place, a lawyer by the name of F. L. Morrill, that moved away last October some time, to Minneapolis?
A. Yes, sir.
Q Do you know what his general reputation is in the comm unity in which you live as to truth and veracity? Answer yes or no.
A. Yes.
Q. What is that reputation, good or bad?
A. It is generally bad, so far as I have heard, recently.

Examined by Mr. Manager COLLINS.
Q. Now, Mr. Ensign, who have you heard talk about this?
A. Well, I have heard general conversation in my office very often without paying particular attention, when conversation has been going on between other persons, and when I myself was not a party to the conversation; and it is difficult to recall names.
Q. Could you give us any names?
A. Well, I—I don't think I could.
Q. Could you give us what they said?
A. I could give you the substance of what the conversation was about at different times.
Q. Well, what was it?
A. As to his honesty and his manner of conducting his business.
Q. Well, what was it they said about his honesty?
A. Well, his honesty was called in question.
Q. How; what was said?
A. As to different transactions in financial matters.
Q. That is, whether he paid his debts or not. He was accused of not paying his debts, wasn't he?
A. Well, that was one thing; and not refunding money, where money had been placed in his hands.
Q. Who was it that said he had not refunded money that had been placed in his hands?
A. It is very difficult for me to recall names.
Q. Can you tell us one person who said that Mr. Morrill had not refunded money that had been placed in his hands?

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A. Well, I think I have heard members of the Library Association speak with reference to it.

Q. Well, who was it?

A. Well, I think I have heard Mr. Bowers speak of that.

Q. A witness here?

A. Yes, sir.

Q. What did he say?

A. Well, that is the conversation that I have heard—I am not a member of that society myself,—and it is only what I have heard about it.

Q. Well, tell us what Mr. Bowers said?

A. There was money placed in his hands, and he had been asked for it and had not paid it over or delivered it.

Q. Well, now that was all Mr. Bowers said, was it?

A. Well, about *that*, I think it was.

Q. Now, what else did he say?

A. Well, I think I have heard Mr. Bowers say that he was a "crank."

Q. What else did he say?

A. I can't recall anything else he said.

Q. Can you tell me what other people said?

A. No, sir; I can't recall names.

Q. Can you tell me what they said?

A. I have heard a good deal of conversation among different persons in relation to this note business that has been spoken of.

Q. Now, you have heard about that note business?

A. Not very much, but I have heard some about it.

Q. You have heard that there was a note of that kind that Mr. Morrill obtained ten signatures to?

A. I don't know how many.

Q. Do you know how many signed it?

A. I know the persons, but I don't know as to whether they signed it, by only what I have heard. I never saw the note.

Q. Now, will you tell me something else that you have heard said about Mr. Morrill?

A. Well, I have heard,—I don't like, for my part, as an individual,—I don't calculate to say anything against other people in my private conversation. I have overheard and had conversations with other persons with reference to his political standing, and his standing as an attorney, and his standing in the church, and other things.

Q. What did they say about his political standing?

A. As to politics, it was always difficult to determine just where he stood. Some claimed he was a democrat, and some claimed he was a republican.

Q. Yes; there are lots of us in that fix.

A. That it was so difficult to determine his principles, that it was not known, and could not be definitely determined.

Mr. ARCTANDER. It seems to me it is about time for me to object to this kind of cross-examination. The counsel invites every kind of talk about this party, while he should limit this witness to what has been said about his truthfulness.

Mr. Manager COLLINS. I have asked him what he has heard said about Mr. Morrill?

Q. Now, won't you tell us what else was said about Mr. Morrill?

Mr. ARCTANDER. I object to it unless it is limited to the question of his truthfulness.

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Q. Well, limit it to his truthfulness, and tell us what was said about his truthfulness.

Mr. ARCTANDER. Or untruthfulness.

Mr. Manager COLLINS. Or *un*truthfulness.

A. My knowledge is simply the impressions I have received from conversations that I paid but very little attention to,—only the general tenor of the conversations.

Q. Well, what was said about his truthfulness or his untruthfulness, and who said it?

A. Well, I can't tell you; I can't give any names.

Q. Now, didn't you get this impression from what was said about him politically, and as an attorney, and his connection with the church?

A. Those were some things, those were parts; and the idea seems to have been with reference to things in general; not one thing.

Q. But things in general? But you can't tell us a word that you ever heard said about his truthfulness?

The PRESIDENT *pro tem.* The witness has already stated so.

Mr. Manager COLLINS. I believe he has.

By Senator CAMPBELL.

Q. I understood the witness to say that he heard his reputation for truth and veracity questioned *recently.* I would like to know how recently?

A. More particularly since he went away from Redwood Falls.

Q. Was it since he testified in court here?

A. It was before that, that I have reference to.

Q. Since this impeachment proceeding was instituted?

A. Well, since it first began, but not with reference to that.

F. B. HOTCHKISS,

Recalled as a witnsss on behalf of the respondent, testified:

Senator CAMPBELL. I would like to ask the witness who has just left the stand if he ever heard Mr. Morrill's reputation questioned until about the time he left Redwood—if that is what he desired the court to understand?

Mr. ENSIGN. Yes, sir.

Q. Not while he was a resident of Redwood?

A. Not particularly then.

Mr. ARCTANDER then proceeded to examine Mr. Hotchkiss.

Q. I believe you stated you resided a considerable length of time in Redwood Falls?

A. Thirteen years.

Q. Your business there is a blacksmith?

A. Yes, sir.

Q. Do you know this Mr. Morrill, that has been spoken of here tonight?

A. Yes, sir.

Q. Do you know what his reputation for truth and veracity is in the community in which you live?

A. I know what his reputation is among certain individuals and classes.

Q. Well, what his general reputation is?

A. His *general* reputation? Well, yes.

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Q. Well, what is it, good or bad?
A. Well, it is not very good.

Examined by Mr. Manager COLLINS.
Q. When did you hear it talked about?
A. Well, it began to be talked about along about the middle of last summer.
Q. Who talked about it?
A. Well, it was parties that had business relations with him in some cases.
Q. What did they say?
A. Well, some said that he was a liar and dishonest.
Q. Who said that he was a liar?
A. Mr. Samuel Stickle.
Q. The witness here?
A. Yes, sir.
Q. Who else?
A. Mr. Commodore Stickle.
Q. That is a brother?
A. Yes, sir.
Q. Who else?
A. Mr. George W. Braley.
Q. That is the witness?
A. Yes, sir.
Q. Who else?
A. Well, I can't name a great many persons.
Q. You can't name many who said he was a liar?
A. These three that I mentioned didn't all say that he was a liar.
Q, Well, that was my question?
A. Mr. Samuel Stickle.
Q. Mr. Samuel Stickle said he was a liar.
A. Yes, sir.
Q. Who else said he was a liar?
A. Well, I don't know of anybody else who was as positive as that.
Q. Now, what did they say about him?
A. Well, Mr. Commodore Stickle said he was a scamp.
Q. Well, what did Mr. Braley say?
A. Well, Mr. Braley said he had procured money from him under false pretences.
Q. You never heard of any prosecution for that did you?
A. No, sir.
Q. Well, who else talked about his truthfulness?
A. Well, among his political associates I have heard some of them remark that he was not reliable.
Q. Not reliable in politics?
A. Yes, sir.
Q. Well, who else have you heard talk about the truthfulness, or untruthfulness of Mr. Morrill?
A. Well, his religious associates I have heard speak of him in rather a doubtful manner.
Q. Did they say he was a liar?
A. Well, not so positive as that.
Q. But they questioned him a little?
A. Yes, the trouble was he was quite a prominent member of the

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church and quite prominent among them as a temperance man. All at once he developed into—among the persons who like to "sweat the cat" a little; and of course that didn't set very well with his brethren.

Q. You mean by "sweating the cat," that he liked to drink a little?

A. Yes.

Q. And his religious associates found fault with him about that?

A. Yes, sir.

Q. Well, did they say he was a liar because he drank a little?

A. Well, no, not so positive as that.

Q. But they found fault with him?

A. They found fault with him as not living up to his professions.

Q. Now, have you heard anyone else speak of his truthfulness or his untruthfulness?

A. Well, in a general way I have heard people conversing in regard to the matter, and rather questioning his integrity and truthfulness.

Q. Well, who were they, and what did they say?

A. Well, for instance, I have heard Mr. Wallin.

Q. Alfred Wallin?

A. Yes, sir.

Q. The lawyer? A. Yes, sir.

Q. What did he say about him?

A. Well, he said he was not reliable.

Q. He was talking about professional matters, wasn't he?

A. Well, I wouldn't say. The conversation might have been in regard to his professional relations with him.

Q. Or political?

A. They have been mixed up somewhat in that way,

Q. It might have been about his professional relations or his religious relations?

A. Yes, sir.

Q. Or might have been abont some money matters?

A. Well, I think not.

Q. You think it was about his professional relations or his political relations?

A. Yes, sir.

Q. Anybody else that you have heard speak of his truthfulness or his untruthfulness?

A. Well, I have heard Mr. Herriott make the remark that he was a shyster, and a man that was not, in his estimation, reliable.

Q. Well, how did he mean reliable?

A. Well, he had some relations both religiously and politically.

Q. Oh, that were religious and political?

A. I presume so.

Q. Well, now about the only man as I understand, you ever heard say he was a liar, was Mr. Stickle?

A. Yes, sir. Mr. Stickle said at the time the remark he says I made was made; but I don't think I made it in exactly that way. I meant to convey the idea that he was indiscreet.

Q. Then you think Mr. Stickle is mistaken when he says that you put Mr. Morrill down as untruthful?

A. Oh, he didn't say that.

Q. I don't remember what he did say.

A. He said that I made a remark that he was guilty of general cussedness.

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Q. Well what was the remark that you made?

A. Why, it may have been that, but at any rate it was intended to convey the idea that he was indiscreet; my business relations with Mr. Morrill have always been satisfactory.

Q. You were not among the ten men that signed this note, were you?

A. No, sir; I was not.

The PRESIDENT *pro tem.* I would like to ask the counsel if they desire to examine into the general morals and honesty and religious beliefs and political standing of this man, or simply to ask as to his truth and veracity.

Mr. Manager COLLINS. The counsel, no doubt, designs to enquire into the question of truth and veracity, and I certainly know that is my desire.

The WITNESS. I presume likely it would be a proper thing for me to do, in behalf of Mr. Stickle, to state what the conversation was that brought out this remark of his that he was a liar. He accused this Mr. Stickle of taking $500 out of his safe, and appropriating it to his own use.

Q. Who? Mr. Morrill?

A. Yes, sir; Mr. Stickle was telling me about that, and he made the remark that he was a liar.

C. C. STICKLE,

Sworn as a witness on behalf of the respondent, testified:

Examined by Mr. ARCTANDER.

Q. Mr. Stickle, where do you reside?

A. Redwood Falls.

Q. What is your business?

A. I can hardly tell you now; I haven't any business.

Q. What is that?

A. I have no business.

Q. Living on your money?

A. Well, it may be,—what I owe.

Q. Well, you have been a merchant in town?

A. I have been; yes, sir.

Q. You are a retired merchant?

A. Well, I can hardly say I have retired; I am trying to get a living yet.

Q. How long have you lived at Redwood Falls?

A. About 12 years.

Q. Do you know F. L. Morrill that has been spoken of here?

A. I do sir.

Q. You are related to him in some shape, are you not,—he married your niece, didn't he?

A. He married a niece of my wife.

Q. You have always sustained very friendly relations towards Mr. Morrill, haven't you?

A. Well, *nearly* always.

Q. You have helped him along a great deal there?

A. Yes, some.

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Q. Mr. Stickle, do you know what the general reputation of Mr. Morrill is in the village of Redwood Falls, as to truth and veracity?
A. Well, I must say I have heard more about it here than I have heard before.
Q. Well, I didn't ask you where you had heard the most; I asked you what his general reputation up there was for truth and veracity, if you know it?
A. Well, it is not very good; not *very* good.

Examined by Mr. Manager COLLINS.
Q. What have you heard said about it there?
A. Well, I haven't heard anything in particular said about him. What I speak of is my own relations with him.
Q. Your opinion is that he is not truthful?
A. Well, in some things he is not.
Q. What do you mean by that?
A. Well, in business relations.
Q. Well, how? Did he promise to pay a debt and not do it?
A. Well, he will promise to pay when he can't do it.
Q. Now, he promises to pay when he can't do it; does he ever promise to pay when he can, and then not do it?
A. I don't think he does.
Q. You say you have heard more about his bad reputation here than you have up home?
A. I have.

JACOB TIFFANY

Sworn as a witness on behalf of the respondent testified.

Examined by Mr. ARCTANDER.
Q. Where do you reside?
A. Redwood Falls.
Q. What is your business?
A. Machinery.
Q. Agricultural machinery?
A. Agricultural machinery.
Q. How long have you resided there?
A. Four years last fall.
Q. Do you know Mr. Morrill that has been spoken of here?
A. Yes, sir.
Q. Do you know what his general reputation at Redwood Falls is for truth and varacity?
A. Yes, sir, something about it.
Q. What is it, good or bad?
A. Bad.

Examined by Mr. Manager COLLINS.
Q. Mr. Tiffany, who have you heard talk about it?
A. Well, it is generally talked, all through the town there.
Q. Who have you heard talk about it?
A. Well, most everybody there.
Q. Give me a name?
A. I have heard Mr. McKay for one.

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Q. What is his business?
A. Groceryman.
Q. What did he say about him?
A. He said he ran off with the public library money.
Q. Anything else?
A. He said he was a bad pill, and so on.
Q. Anything else?
A. Nothing particular with him.
Q. A "bad pill;" now you think that is something that affects his reputation for truth and veracity, do you.
A. It would affect mine if I should run off with library money.
Q. Your reputation for truth and veracity.
A. I think so.
Q. Now, who else have you heard talk about him?
A. I have heard Mr. Dunn.
Q. What is his business?
A. He is a Methodist preacher.
Q. What did he say about him?
A. He said he was a bad member.
Q. What church did Mr. Morrill belong to?
A. He belonged to the Methodist,—that is, I guess he wasn't in full membership.
Q. I thought he was a Presbyterian?
A. Well, he pretended to be a Methodist *there*.
Q. Well, what else did Mr. Dunn say about him?
A. Well, he said he didn't want to give his full opinion to me about him, but he says, "You know what it is." And I wouldn't work with him in the same house about a year ago, I guess.
Q. What else did he say?
A. I don't recollect what else.
Q. Who else have you heard talk about him?
A. I have heard several talk about the note business up there.
Q. What did they say about the note business?
A. I heard Mr. Hitchcock there say that he lied to him,—told him that such and such men was going on the note, provided he would go on; and that he had found out the men never promised him.
Q. Who else did you hear talk about it?
Senator CROOKS. I shall have to insist that the witness speak to the court.
The PRESIDENT *pro tem.* I don't know how to cause him to talk any louder.
Senator D. BUCK. Certainly we can't hear over here more than one-half what the witness says.
The PRESIDENT *pro tem.* I think if Mr. Collins should go over in the back part of the room and ask the questions, the witness would talk to him.
Mr. Manager COLLINS. I have no objection to going over there. I would as soon go there and put the questions.
Mr. Manager COLLINS then left the usual seat assigned to the managers and took his position on the opposite side of the Senate chamber and continued the examination of the witness.
Q. Now, who else have you heard talk about that?
A. I heard Judge Baldwin.
Q. What did he say?

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A. He said he had lied to him.

Q. What about?

A. They were in partnership business and he sold out his share of the books; there were three partners. He sold out his share of the books, and had collected some money, and he claimed he hadn't collected it, and used it himself, and did not give any account of it; but said that it was not collected.

Q. Who else have you heard talk about him?

A. I overheard a conversation between James McMillan and Aleck Small.

Q. What did they say?

A. Aleck Small was buying a coat from him, and he thought he was charging him too much for it; and he said he had sold one of the same kind to Mr. Morrill for the same price and he couldn't throw off any because Morrill had "skipped" and hadn't paid for the coat, and that he would have to charge Small a good price to make it up. [Laughter.] He said Morrill had lied to him, and had promised to pay him in a week, and it was then six weeks, and he hadn't paid it yet.

Q. Now, who else did you hear talk about it?

A. Well, I heard most everybody there; I can't tell any particular one, but it was a general talk.

Q. Well, give us the names. You said most everybody, but you have only given us a half dozen names, in a place of several hundred inhabitants.

A. There was George Bunce.

Q. What did he say?

A. He said he swindled him out of nine hundred dollars. (Laughter.)

Q. What else did he say?

A. He said he hoped the folks would find it out; that he knew it, and Morrill knew it, but that it was not generally known. He said he hoped the folks would find Morrill out.

Q. Anything else?

A. Oh, we had quite a long talk about it, but I don't remember all that was said.

Q. Can't you tell us anything more that was said at that time, or any other time?

A. Him and I had a conversation about his trying to beat me out of five dollars.

Q. Who was that?

A. Morrill tried to beat me out of five dollars.

Q. Did he try to?

A. He did.

Q. You and Mr. Bunce were talking about it?

A. Yes.

Q. And Mr. Bunce said he had swindled him out of nine hundred dollars?

A. Yes.

Q. Well, now I ask you if you could tell us what anybody else said I am talking now about his reputation for truth and veracity?

A. I don't remember particular individuals.

Q. Do you remember what they said?

A. Oh, I can remember some things that were said, but I don't just recollect it, who said it now.

Q. Well, tell us what they were?

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A. I recollect once talking to this same preacher, Mr. Dunn, about his pretending to be a temperance man, saying that he never drank a drop,—and then go into the back door of a saloon and drink, and come out and ask the Lord's blessing on it; would go in the back door and get his whisky and then come out and go to church.

Q. Is that what you said or what the preacher said?

A. The preacher said he understood he did that.

Q. Well, you told the preacher that he did, I suppose?

A. Well, I couldn't very well help it because I *seen* him. [Laughter.]

Q. How happened you to be around about that time?

A. The back door of the saloon and back yard of my place of business, where I keep my machinery, is right close together, and I have to go across once in a while in hot weather for a glass of beer myself. [Laughter.]

Q. Well, now can you tell us what anybody else has said?

A. I have heard old man Bunce up there say some things about him too.

Q. What did he say?

A. He said he was a regular thief and liar.

Q. Well now, who was that?

A. That is old man Bunce,—that is George Bunce's father.

Q. Can you tell us what anybody else said?

No answer.

Q. I will ask one more question. You said, in answer to a question by the counsel, that Mr. Morrill's reputation for truth and veracity is bad. Won't you explain to the court what you mean by a man's reputation for truth and veracity—what do you understand that to mean?

A. I mean that he will lie.

Q. Anything else?

A. Nothing particular, except that he will lie and "truck" off things that don't belong to him and not pay for them,—that's all. [Laughter.]

Q. Well then, if a man is dishonest you understand that his reputation for truth and veracity is bad?

A. I think so, yes.

By Mr. ARCTANDER.

Q. You think a man won't steal unless he will lie too?

A. Well, sometimes a man can't tell the truth; he will tell a lie to make some fun. He is one of that kind.

GEORGE W. BRALEY

Recalled as a witness on behalf of the respondent testified.

Mr. ARCTANDER. This is under article eighteen.

Q. Mr. Braley, there was a trial of a case testified to by Mr. Morrill as having taken place in the June term, 1880, at your term of court, in which one, Mary Luscher was plaintiff and one Braley, defendant. Were you the defendant in that case?

A. I was.

Q. Do you remember the trial of that case.

A. I do.

Q. I will ask you to state whether or not you were in court during the whole of the trial of that case at that June term, 1880?

A. I don't think I was during the whole term.

Q. No, during the whole of the trial of the case?

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A. I think I was; I might have been out fifteen or twenty minutes or something like that, but then I intended to be there the whole of the time.

Q. Do you remember of an evening session during the trial of that case while court was in session?

A. I think that we had two evening sessions.

Q. Well, were you present at the evening sessions?

A. If we had any evening sessions I was there.

Q. Now I will ask you to state whether or not there was any difference in either the appearance, conduct, manner, behaviour or language of Judge Cox during any portion of that trial from what it was during other portions of the trial?

A. I don't know as there was particularly.

Q. Was there any difference in either his appearance, behaviour, his conduct, or his language at that trial, or any portion of it, from what was usual?

A. Not under similar occasions.

Q. This trial was during the hot weather, wasn't it?

A. Yes, sir.

Q. I will ask you to state the condition of Judge Cox as to sobriety or inebriety during this trial or any portion of it?

A. I should consider him sober.

Q. You had no doubt about it, had you?

No audible answer.

Q. How is that?

A. No, I didn't have any doubt.

Q. I will ask you to state whether or not it is a fact that he was any more vivacious, or talkative during any portion of that trial than during others while you were proceeding with it.

A. He had some conversation with one of the attorneys and I think it was Mr. Morrill,—I can't say certainly. Mr. Morrill was my attorney and I think he got out of patience with him for some questions that he was asking of him. He acted to me like a man that was kind of disgusted at the questions and the points that Morrill was making.

Q. That hardly answers the question whether he was any more talkative than he usually was?

A. I don't think he was unless when he was talking to Morrill.

Q. When he was disgusted with him?

A. Yes.

Q. When he talked to him was it in the nature of small talk or rebuking him and telling him not to go on any further with any such nonsense or anything of that kind?

Mr. Manager COLLINS. I think it is better to ask what was said.

Q. Do you remember what he said to him?

A. I don't think I can tell you what was said

Q. Can you tell the substance?

A. I wouldn't want to undertake to. It is some time ago, and all I recollect about it is that they had some talk and cross-fire back and forth between them.

Q. Nothing that sounded improper or indecorous upon the part of the Judge.

A. No; sir.

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Examined by Mr. Manager COLLINS.

Q. During that trial did you see Judge Cox at any time drinking intoxicating liquors?

A. Yes, I saw Judge Cox when I *knew* he had drank some.

Q. During that trial?

A. Yes, sir.

Senator CROOKS. Please repeat the question.

Mr. ARCTANDER. He asked the witness, if, during that trial there was any time that he knew Judge Cox had been drinking and saw any indications of his having been drinking intoxicating liquors.

A. Judge Cox told me at the time he was there that he was troubled with the kidney complaint, and I know that I went down with him or we did go down and he got something to drink, I think once or twice.

Q. During the trial of the case?

A. Yes, sir.

Q. How many times do you think you drank with him?

A. I have forgotten whether I drank with him at all or not, I presume I did though—

Q. I understood you to say you went down?

A. Yes, I went down with him. I wouldn't swear that I did or did not drink.

Q. You knew that he drank?

A. Yes, sir.

Q. How many times?

A. Not more than twice I don't think.

Q. Where did you go?

A. Well, I think we went down to O'Hara's saloon.

Q. What time in the day was that?

A. I guess it was about noon at one time and one time when they adjourned for supper.

Q. Were you down during the evening at any time?

A. No, sir; not to my knowledge I don't remember.

By Mr. ARCTANDER.

Q. When you say you saw him drink two times, do you mean you saw him drink two times in succession or at two different times?

A. At two different times.

Q. One glass at a time?

A. That is all.

By Senator CROOKS.

Q. Now, I want to ask you a question; you were there during this trial?

A. Yes, sir.

Q. You were interested?

A. Yes, sir.

Q. In your best judgment, under your oath here, was Judge Cox drunk?

A. No, sir, I don't think he was.

Q. Incapacitated for doing his duty?

A. No, sir.

Q. On accouut of taking two drinks?

A. No, sir.

Q. Or more?

A. No, sir.

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A. L. GALE,

Sworn as a witness on behalf of the respondent, testified:

Examined by Mr. ARCTANDER.

Q. Mr. Gale, you were the sheriff in June, 1880, of Redwood county, were you not?

A. Yes, sir.

Q. Do you remember of the trial of the case of Luscher vs. Braley?

A. Yes, sir.

Q. Were you in attendance upon court during the trial of that case?

A. Yes, sir.

Q. Every session?

A. I think I was.

Q. State the condition of Judge Cox as to sobriety or inebriety during that trial?

A. So far as I could see I saw nothing to indicate that he was in any wise under the influence of drink.

Q. Did you see anything different either in his appearance, his actions or his conduct at that time from any other time during that term when you attended?

A. During my two years?

Q. Yes.

A. Please repeat the question.

Q. Well, say this term, for instance,—did you see any difference either in his manner, or in his appearance, or in his conduct, during this trial, or any portion of it, from other trials that took place at that term?

A. Any *difference* in his appearance?

Q. Yes, any difference in his appearance, or conduct.

A. No, sir; no, sir.

Examined by Mr. Manager COLLINS.

Q. Did you see him drink during that trial?

A. I don't think I did sir.

Q. Did you see him drink during that term of court?

A. I don't think I did sir.

Q. And you say you saw nothing about him to indicate that he had been drinking at all?

A. I don't think I did sir.

W. H. HAWK.

Recalled as a witness on behalf of the respondent testified:

Examined by Mr. ARCTANDER.

Q. Mr. Hawk, were you present and in attendance upon court, during the trial of the case of Luscher vs. Braley at the June term of court, in 1880?

A. A good part of the time.

Q. Were you present at the evening session?

A. Yes, sir; at the evening sessions I think I was present during all of the trial, I was present at each and every evening session of the trial.

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Q. I will ask you to state what Judge Cox's condition was during either of those sessions as to sobriety or inebriety?
A. In my opinion he was sober.
Q. Have you any doubt about it?
A. None at all.

Examined by Mr. Manager COLLINS.
Q. Do I understand you were present during all that trial?
A. At the evening sessions I think I was. I think there was two, there might have been three evening sessions.
Q. Was there anything done at these evening sessions?
A. Nothing more than the ordinary proceedings in the trial of a civil action.
Q. Can't you tell us what was done?
A. Who testified, who was examined and who were the attorneys? Yes, Baldwin and Morrill and I think Mr. Miller, of Beaver Falls, but I wouldn't be positive, Baldwin and Morrill were on one side and Wallin and Faxon on the other.
Q. Do you know what was done upon either of these evenings you were present?
A. There were witnesses examined, sir.
Q. Could you tell who they were?
A. Mary Luscher, Godfrey Luscher and others; I can't state all the witnesses. I was present a part of the time during the day time.
Q. Now, was that at the time you had your trial?
A. No, sir.
Q. Was it a subsequent term of court or before that?
A. Before that.
Q. Was it before or after?
A. After,—excuse me,—it was in the June term after.
Q. Did you see Judge Cox drink any during that term of court?
A. I did not.
Q. How far did you sit from him?
A. Going out and in the court room I sat in various positions in the court room.
Q. During the evenings that have been talked about?
A. Well, I couldn't exactly name the seat I occupied.
Q. How far were you from him?
A. I couldn't have been over thirty to fifty feet.
Q. And you sat there as any other spectator?
A. Yes, sir.
Q. By Mr. ARCTANDER. Did you mean that your trial was in January after this case?
A. I think it was. No before. My trial was before that.
Mr. Manager COLLINS. I understood you to testify it was before?
Mr. ARCTANDER. [To the witness]
Q. Well, I wish you would consider that and see. You can probably remember, by thinking over, who was clerk of court at the time.
A. I have got that somewhat mixed.
Q. Well, what is your impression as to whether it was the June before, or the June after your trial?
A. I guess it was the June after, and still I wouldn't be positive.
Q. You think it was the June after?

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A. I think so; I wouldn't be real positive. I have got that matter mixed.

By Mr. Manager COLLINS.

Q. When was your trial.

A. My trial was in the June term, 1881.

Q. And when was this trial?

A. It was either the June before or after.

Q. And you don't know which?

A. I have got the matter mixed; I couldn't state positively now.

GEORGE H. BREWSTER,

Sworn as a witness on behalf of the respondent testified.

Examined by Mr. ARCTANDER.

Q. Where do you reside?

A. Mankato, Minnesota.

Q. What is your business?

A. General agent for the McCormick harvesting machinery company.

Q. Are you acquainted with the respondent, E. St. Julien Cox?

A. Yes sir.

Mr. Manager COLLINS. What article is this under?

Mr. ARCTANDER. It is under article eighteen.

Q. Were you interested in a case in Redwood county, at the June term of court, 1880?

A. I was.

Q. Was that the case of Thorp vs. Brewster?

A. It was.

Q. There was only one such case on the docket that year, was there?

A. There were two cases on the docket, I believe.

Q. Was there more than one tried that term?

A. One was dismissed and the other tried.

Q. Were you present during the trial of that case?

A. Yes, sir.

Q. The case that was tried?

A. Yes, sir.

Q. Were you present at the dismissal of the other case?

A. No, sir; I was not.

Q. There was no trial in that case?

A. No; that was dismissed on motion of the attorneys, and I was not present in the court room at the time.

Q. Without any trial?

A. Without any trial.

Q. How long a time have you known the respondent?

A. Well, I can't state exactly; some four or five years.

Q. Were you present in court during the whole of the trial of that case?

A. I think I was the most of the time; I might have been out a few minutes at a time, but the most of the time I was present.

Q. I will ask you to state what was the condition of Judge Cox as to sobriety or inebriety, during that trial, or during any portion of it.

A. I considered him sober.

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Q. Had you any doubt about it at the time?
A. I hadn't at the time, and I have none now.
Q. I will ask you to state whether or not the respondent, during the course of that trial at any time, acted as if he hadn't control of his mind.
A. I don't know as I understand the question.
Q. Did he, during any part of that trial, act as if he had lost control of his mind?
A. No, sir.
Q. State whether or not his language, during any portion of that trial, was incoherent to a greater or smaller degree.
A. No, sir; it was not.
Q. Not at all?
A. Not at all.
Q. Who were your attorneys there?
A. W. L. Coon and M. S. Wilkinson.
Q. Were they both present during the trial?
A. Yes, sir.
Q. I will ask you to state whether or not it is a fact, that it seemed to take considerable argument to get the respondent to comprehend the points raised by your attorneys in the case?
A. I didn't think so; I thought he was very quick to rule on every motion that was made, and on all points.
Q. I will ask you to state whether or not it is a fact that Mr. Wilkinson, during that trial, often had to re-argue, re-state, and reiterate his motions and points, before the Judge could understand them?
A. No, sir.
Q. That is not true, is it?
A. That is not true.
Q. You are not a drinking man, I believe?
A. No, sir.

Examined by Mr. Manager COLLINS.
Q. Where do I understand you reside?
A. Mankato, Minnesota.
Q. You were there during all the term of court?
A. No, sir; I think not. I was there from the first day until Tuesday evening of the next week, some eight or nine days.
Q. During that term of court did you at any time see Judge Cox when you thought he had been drinking?
A. No, sir; I did not.
Q. You were in court all the time, I suppose, or during the greater part of the time?
A. No, sir; I was not in court except during the trial of the case in which I was personally interested, except I think a few minutes in the case in which Luscher and Braley were the parties.
Q. You were not in court except during a few minutes during that trial?
A. During that trial.
Q. When was that?
A. That was in the afternoon of the last day. I was there because they expected my case to be called on, and I was waiting.
Q. Have you ever seen Judge Cox intoxicated?
A. I have.

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Q. Have you ever seen him drunk?
A. I don't know the difference between intoxication and drunkenness, myself.
Q. You call a man who is intoxicated drunk?
A. I do.
Q. You may state whether or not you have seen Judge Cox frequently drunk?
A. I don't think I have more than twice in my life.

By Senator CROOKS.
Q. During the time that Judge Cox presided at that term of court was he sober, as a Judge, sitting on that bench at that time?
A. I thought so.
Q. You have no doubt of it.
A. I have no doubt of it.
Q. No reason to doubt it.
A. No, sir.

W. L. COON,

Sworn as a witness on behalf of the respondent, testified:

Examined by Mr. ARCTANDER.
Q. Mr. Coon where do you reside?
A. Mankato.
Q. What is your profession?
A. A lawyer.
Q. What? A. A lawyer.
Q. Are you the gentleman that was referred to by Mr. Brewster as one of his attorneys in the case of Thorp vs. Brewster?
A. I am.
Q. Were you as such attorney present and in attendance upon the district court in and for Redwood county, at the general term of court, 1880?
A. I was.
Q. Were you as such attorney present and in attendance during the whole of the trial of the case of Thorp vs. Brewster?
A. I was.
Q. Were you also present when the other Thorp vs. Brewster case, was dismissed?
A. I was.
Q. Now, please state what was the condition of Judge Cox as to sobriety or inebriety during the trial of this case, or any portion of it?
A. So far as I could judge, he was perfectly sober.
Q. Have you any doubt about it?
A. Not a bit.
Q. Have none, now?
A. None, now.
Q. At the time when this other case was dismissed, I would like to find out what proceedings there were in connection with that?
A. That case, like the other, had been commenced before a justice of the peace at Walnut Grove, in which I had defended, and we had taken an appeal from the decision of the justice against us, or at least against Mr. Brewster. The case that was dismissed was such that Judge Cox

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onsider that the complaint that was in, or the pretended com-
as of any force or effect whatever; and so stated on the first
gave Mr. Thorp until the next morning at 9 o'clock, to inter-
mplaint, if he could get up one. At 9 o'clock the next morning
no complaint in, and upon motion on our side, the case was
l.
ıe motion was first made upon the original complaint, the first
ppose?
es, sir.
ıd the judge held the complaint to be fatal, but gave him leave
amended complaint the next morning?
es, sir.
uring the time when that came up the first or second day, what
e Cox's condition as to sobriety or inebriety?
ber.
w, I will ask you to state whether during the trial of this
. Brewster case—in which I understand you and Senator Wilk-
re engaged, on one side,—he was sober?
es, sir.
o you know where Mr. Wilkinson is now?
only know from hearsay that he went to Montana two or
eks ago.
will ask you to state whether during the trial of that case Judge
ered under any excitement whatever?
one that I saw; and no indications of it.
will ask you to state whether or not he seemed to have lost con-
s mind to any degree?
t anything that I saw.
will ask you to state whether or not during that trial his lan-
ıs in any way incoherent?
ot a bit of it.
will ask you to state whether or not his ideas were broken and
ıected than usual?
ot a bit of it.
will ask you to state whether or not it is a fact that it took con-
arguing to get him to comprehend the points of the attorneys
se?
ot at all, sir; he was very quick to comprehend.
will ask you to state whether Mr. Wilkinson in that case often
l, had to re-argue, re-state and reiterate his motion or his

ot a bit of it.

ined by Mr. Manager COLLINS.
ow long have you known Judge Cox?
wenty years or more.
id you, during that term of court, see Judge Cox drunk?
saw him drunk once; possibly twice. Certainly once, but I
ertain as to more than that.
Where was that?
n a saloon.
Were you with him?
was in the room at the time.

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Q. Did you drink with him?
A. I did not.
Q. Did you drink with him at all while you were there?
A. No, sir.
Q. Have you ever seen Judge Cox drunk?
A. I have seen him twice in my life; or twice since I have known him, when he was somewhat under the influence of liquor; but not so as to disable him from doing business.
Q. You have known him intimately, and seen him lots of times I suppose?
A. I have seen him a great many times.
Q. You live only ten miles from him?
A. Ten or twelve miles—such a matter. He lives at St. Peter and I at Mankato.
Q. You have seen him twice in your life slightly under the influence of liquor?
A. Yes, sir; but never so he could not transact business correctly.

By Senator MEALEY.
Q. How many years have you been acquainted with Judge Cox?
A. Twenty years or more.

By Senator CROOKS.
Q. I will ask the witness, in that long acquaintance of twenty years or more,—you have known him very well—do you consider him an habitual drunkard?
Mr. ARCTANDER. That question has been ruled out on the other side.
Senator CROOKS. I will withdraw the question.
Mr. Manager COLLINS. Let him answer.
Q. Do you consider Judge Cox an habitual drunkard?
A. I do not know whether I am capable of answering that question.
The PRESIDENT *pro tem.* You can say what he is in your opinion.
A. Well, if I am to form an opinion from anything I have *seen* him do, it is one thing; if I am to form an opinion from what I have heard somebody else say, then it is another thing.
Q. What do you know about it?
A. I have seen Judge Cox, or as he was called before he was elected Judge,—E. St. Julien Cox,—I have *seen* him drink very few times. What I know about his drinking is hearsay mostly.
Q. Of your own knowledge, you don't consider him an habitual drunkard?
A. No, sir; what I know of that is from hearsay.

The PRESIDENT *pro tem.*
Q. You are not a drinking man yourself?
A. No, sir; I drink sometimes a glass of beer or something, but—

Mr. Manager COLLINS.
Q. You have heard a great deal about it, haven't you?
A. Yes, sir.

Mr. ARCTANDER. There is one other witness, I desire sworn, so that he can draw his pay.

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CHAS. V. EVERETT,

called and sworn, and took the witness stand.
ICTANDER. I don't care to ask the witness any questions. I ow that I have any more witnesses to bring forward to-night. I can easily get through to-morrow.
ESIDENT *pro tem.* Do you think you can get through with lence by to-morrow evening?
ICTANDER. I have no doubt about it.
ESIDENT *pro tem.* It is now about 16 minutes of 10. What is ure of the Senate?
r CROOKS. I move we adjourn.
ESIDENT *pro tem.* That will be considered as the sense of the nless objection is made.
nate then adjourned.

THIRTY-EIGHTH DAY.

ST. PAUL, MINN., Feb. 24, 1882.

enate met at 10 o'clock A. M., and was called to order by the .

ll being called, the following Senators answered to their names: . Aaker, Adams, Buck C. F., Buck D., Campbell, Case, Castle, Gilfillan C. D., Hinds, Howard, Johnson, A. M., Johnson, F. I., ld, McCormick, McLaughlin, Miller, Morrison, Peterson, Rice, Shaller, Tiffany, Wheat, Wilkins and Wilson.
nate, sitting for the trial of E. St. Julien Cox, Judge of the dicial District, upon articles of impeachment exhibited against he House of Representatives.
rgeant-at-Arms having made proclamation,
anagers appointed by the House of Representatives to conduct to-wit: Hon. Henry G. Hicks, Hon. O. B. Gould, Hon. L. ns, Hon. A. C. Dunn, Hon. G. W. Putnam and Hon. W. J. Ives, he Senate Chamber and took the seats assigned them.
Julien Cox, accompanied by his counsel, appeared at the bar of te, and took the seats assigned them.
ESIDENT *pro tem.* Are there any motions or resolutions to be y the Senators before proceeding to the regular order of busi-

GEORGE ANDREWS

a witness on behalf of the respondent testified.

ned by Mr. ARCTANDER.
here do you reside?
ankato.
o you know Judge Cox, the respondent?
es.

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Q. How long have you known him?
A. About ten years.
Q. What is your occupation?
A. I am in the music business at present.
Q. Music business?
A. Yes, sir; a music store.
Q. Were you, in the year 1881, of the Andrews Family of Bell-Ringgers?
A. Yes.
Q. Were the Andrews Bell Ringers at Redwood Falls during the term of court there in June 1880?
A. They were.
Q. I will ask you to state whether or not you remember a performance by the Bell Ringers during that term of court for which the court adjourned its evening session?
A. Yes, sir.
Q. Did you see Judge Cox that night?
A. I did.
Q. Did you see him before the adjournment in the first place?
A. Yes, sir.
Q. Did you see him after the court had adjourned, and where?
A. At the Methodist church, where the entertainment was being held.
Q. Did you talk with him there?
A. I did.
Q. Did you see him after the performance?
A. I did.
Q. Where? A. In the hotel.
Q. The hotel parlor?
A. Yes, sir.
Q. I will ask you to state what was Judge Cox's condition as to sobriety or inebriety on this evening, or any portion of it?
A. I did not notice anything that would show intoxication.
Q. Did you have any doubt about his sobriety at that time,—about his being sober?
A. No, sir; I didn't think anything about it at the time, nor have not since, but I think he was sober, as far as I could judge from conversing with him and seeing him what time I did.
Senator HINDS. Under what article is this testimony being introduced?
Mr. ARCTANDER. Under article eighteen,—the evening of the Bell Ringers at Redwood Falls.

CROSS-EXAMINATION.

By Mr. Manager COLLINS.
Q. Mr. Andrews, how long did you say you had known Judge Cox?
A. I have known him, I say, about ten years.
Q. Have you ever seen him intoxicated?
A. Yes; I think I have, slightly.
Q. To what extent—to what degree?
A. Well, to a degree that he would show it a little in his conversation.
Q. Have you seen him more than once in that condition?
A. No; I don't remember of more than once.

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w many times have you seen Judge Cox in the last ten years?
ll, two or three times a year; probably not that many times,
ten years; in the last four or five years, I have.
v, Mr. Andrews, I believe you are a brother of Mr. Charles
vho has been on the witness stand?

v, tell us what you and Judge Cox talked about on this even-

I cannot; different topics,—about the entertainment, the
a few things, just as people naturally would.
l you met him at the church before the entertainment com-

v, do you know whether or not there was a session of the court
evening?
; I think there was.
s it held before or after the entertainment?
ore.
l you think they got through before the entertainment com-
o you?

ı are positive about that?
n not positive that there was a term held; no, sir; but I know
ıdge and several of the lawyers came in rather late.
l before the entertainment commenced?
, sir; we held the programme until they came.
l sort of waited for them?
s.
w long a conversation did you have with him at that time?
ın't remember just what was said at that time; just a few pass-
ts before the entertainment; I was busy.
a matter of fact you were busy; your entertainment was de-
rder to wait for the court and the lawyers, and you had but
emarks?
ery few remarks before that time.
ything more than just speaking to him?
, I remember that he and Mr. Wilkinson, I believe, came in
nd I complimented them at the door, and as I passed up I
n if they would not sit further forward, further in front, and
they preferred seats where they were.
ıat do you mean by complimenting them at the door?
giving them complimentary tickets.
l then they went up and took seats, and then you asked them
uldn't sit further forward?
s, sir.
w, was there further conversation?
before the entertainment.
w long did the entertainment last?
out an hour, I think, or an hour and a half.
d then you went directly to the hotel?
s, sir.
ere you met Judge Cox?
s.

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Q. In the sitting room?
A. Yes, sir.
Q. Was there any bar connected with the hotel?
A. No, sir.
Q. Did you meet Judge Cox anywhere else, except in that sitting room, that night?
A. No, sir.
Q. Did you drink with him at all?
A. No, sir; I did not.
Q. Did you talk with him after the entertainment?
A. Well, I was not in the parlor more than five minutes, although my brothers were there during the evening; I went out in about five minutes.
Q. You stayed only a few minutes?
A. Yes.
Q. Who was in the parlor besides you and Judge Cox?
A. Several of the people that belong to the hotel, and my brother.
Q. Quite a number of people?
A. Yes.
Q. How many do you think?
A. Seven or eight.
Q. What was being done when you went in there?
A. Just talking and conversing.
Q. Was this Mr. Whitney along at the time?
A. Whitney?
Q. Yes; do you know him?
A. No, sir; I do not.

By Mr. ARCTANDER.
Q. You said that you left the parlor and Judge Cox in there?
A. Yes, sir.

EDWARD ANDREWS,

Sworn as a witness on behalf of the respondent, testified.

By Mr. ARCTANDER.
Q. Where do you reside?
A. At Mankato.
Q. You are a brother of the witness last on the stand?
A. Yes, sir.
Q. And also a member of the family of Bell Ringers that were in Redwood Falls in June 1880?
A. Yes, sir.
Q. Do you remember of an occasion at which your company performed at Redwood Falls during the session of the court there.
A. Yes.
Q. Do you remember of the court adjourning so as to allow the court and lawyers to go over and hear you that night?
A. Yes, sir.
Q. Did you see Judge Cox that night?
A. I did.
Q. What time of night?
A. I saw him before the entertainment; I saw him, I think, about six o'clock.

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the hotel?
s.
d any talk with him?
s; I asked him if he was going to have a night session; to hold
ssion, and I think he said he would possibly have to hold a
ion, but would probably be through in time for the entertain-
well as I can remember, that is what he said.
d you see him later in the evening?
s, I saw him after the entertainment.
d you see him at the entertainment to speak with him?
aw him lock—no, not to speak to him; I was up behind the
; that time.
ell, after the entertainment—where did you see him then?
aw him at the hotel.
the parlor?
the parlor? Yes, sir.
r how long a time?
ell, I was with him there I should judge one hour and a half,
y not that long.
d you converse with him there?
es, sir.
hat was the Judge's condition as to sobriety or inebriety that

think he was sober; at least I did not notice that he was not.
id you have any doubt about his sobriety.
o, sir; I have not.
ave none now?
o, sir; none whatever.

CROSS-EXAMINATION.

Manager COLLINS.
ou are a brother of this Charles Andrews that has also testified

es.
ow long a conversation did you have with Judge Cox, at six

think but a few minutes, as I met him out in the porch of the

id you meet him anywhere else, except at the porch of
l?
o, sir; I possibly might have met him to speak to him, but not
any conversation with him.
ou just exchanged a few remarks with him at that time?
es.
nd then you didn't see him again to speak with him until after
rtainment?
o, sir; I did not.
What were you doing in the parlor there that evening?
Well, we were talking. I believe the Judge came up to have
usic, and there was no instrument, no organ or piano at the hotel,
ink those were the circumstances of the case; at least we didn't
y music.
ust staid there and talked?
es.

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Q. How long have you known Judge Cox?
A. Well, I have known him ten years or more.
Q. Have you ever seen him intoxicated?
A. No, sir, I never have.
Q. You have seen him frequeutly in the ten years.
A. Yes, sir.
Q. How often do you think?
A. Well, at one time, I saw him every day about; seven or eight years we lived very close to Judge Cox.
Q. At St. Peter?
A. Yes.
Q. And you saw him every day?
A. Very nearly that for a period.
Q. For how long a time?
A. For about a year and a half.
Q. I suppose you saw him about St. Peter, and about the streets there nearly every day?
A. Nearly all the time.
Q. That was how many years ago?
A. I think that was about five or six years ago; I won't be certain.
Q. How often have you seen him since then?
A. Well, possibly twice a year; I have forgotten.
Q. And you never saw him under the influence of liquor in the slightest degree?
A. Not that I noticed; he might have been drinking, but not that I would notice that he was drunk.
Q. Well, do you make any difference between a man being under the influence of liquor, and drunk?
A. Well, possibly I might; I might know that he had been drinking possibly by the scent of his breath, or probably being a little free in conversation, or something of that kind, and yet not noticeable in his walk or appearance.
Q. Do you make any difference between intoxication and drunkenness?
A. Well, I don't know that I do; possibly there is a slight difference; I might say that a man was slightly intoxicated, and yet scarcely be noticeable.

GEORGE OWEN,

Sworn as a witness on behalf of the respondent, testified.

Examined by Mr. ARCTANDER.
Q. Where do you reside?
A. Mankato.
Q. What is your occupation?
A. The teller of the First National Bank.
Q. How long have you been such teller?
A. Two years.
Q. You were such teller of that bank, then in the summer of 1880, were you?
A. I was.
Q. You may state whether or not your bank had the management,

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ıting of the building that has been occupied, and used, and
the Clifton House, Mankato?
:s, sir; that is, we control two-thirds of the interest of the

ur bank has had the rental of it and collected two-thirds of

s, sir.
ıte whether or not you were the party who kept the accounts
ntal business?
nade the entries on the cash book.
will ask you to state whether or not the Clifton House was
ıring the summer of the year 1880?
:an tell you the times for which we have rereived rent; I have
ct of the accounts, [producing paper.] On March 22d we re-
ıalf month's rent for the Clifton House,—twenty-five dollars.
hen did you receive the next rent?
ıe next rent as a hotel was October 1st, fifty dollars for the
October.
)ber 1st the same year.
:s.
tween the month of March and the month of October, there
ıg received by you for rent?
)t as a hotel.

CROSS-EXAMINATION,

nager COLLINS.
hat do you mean by saying that no rent was received as a ho-

ell, there was rent on the,——there was one room rented to
oint of insurance. May 15th we received "Clifton House room,
lso "July 15th Clifton House room $5.00;"—that was to cover
f insurance, that the building should be occupied.
) keep it occupied?
:s.

FREDRICK BOEHMER,

as a witness on behalf of the respondent, testified.
ned by Mr. ARCTANDER.
here do you reside?
reside at Mankato.
hat is your business?
am occupied in the hotel business in Mankato.
hotel clerk?
:s, sir; I am assistant clerk and steward of the Mankato House.
hat was your occupation in the first part of the year 1880?
ı the first part of the year 1880 I was employed by Mr. Miner
the Merchants hotel in Mankato, in the general management of

that where you are now?
have changed since then; I am now at the Mankato house but
I was at the Merchants.
he first part of the year?

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A. I was there at the Merchants at that time with Mr. Miner Porter.
Q. But in the first part of the year, before March, where were you?
A. Oh, I was at the Clifton House.
Q. In what capacity?
A. I came to Mankato in the first place in 1878, and was employed by Mr. W. G. Foster at the Clifton House, when it was run under the management of Foster. Finally Foster took a partner and then in the latter part of the year Foster withdrew out of the house, and then it was Bunnell & Davy and the house was leased in 1878, the fourth day of March on two years time, and as near as I can recollect the house was closed March 4th 1880, after breakfast, under Bunnell & Davy.
Q. Were you clerk at that time?
A. No; I had left a few weeks before that and gone over to the other house, because I knew they were going to suspend business.
Q. But you were there in February until a few weeks before they quit?
A. Yes.
Q. You know they closed up the house March, 1880?
A. Yes; I am positive of that fact; I know that as a fact.
Q. When was the house opened again?
A. It was opened sometime in October, by Mr. Ingram, the man there at the present time.
Q. I will ask you to state whether or not the Clifton House was run at all in the month of June, 1880?
A. It was not at all, as a hotel, by anybody.
Q. Do you remember whether it was boarded up?
A. The house was locked up; it was used occasionally on some small occasions; they used to have such like as ice cream parties; they were selling sewing machines there on one or two occasions; part of it was used on certain occasions, but it was not used as a hotel by anybody whatever.
Q. In the month of June, 1880?
A. No, sir.

CROSS-EXAMINATION,

By Mr. Manager COLLINS.
Q. It had been occupied as a hotel for a long time prior to March 5th, 1880, had it not?
A. It had been—previous to that you mean.
Q. For how many years?
A. It had been occupied previous to that, for a good many years.
Q. And has been occupied since; been occupied since October, 1880?
A. Yes.
Mr. ARCTANDER. This is under article eighteen.

W. C. DURKEE,

Sworn as a witness on behalf of the respondent, testified:
Q. Where do you reside?
A. In Mankato.
Q. What is your occupation?
A. Clerk of the court there, at present.
Q. Clerk of the District Court?
A. Yes.

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ow long have you been such Clerk of the District Court?
, I am clerk thirteen years altogether.
e you acquainted with the respondent, E. St. Julien Cox?
s; somewhat.
ow long have you known him?
ıce 1860 or 1861; twenty years.
u served in the army with him?
s, sir; a short time in the 2nd Minnesota.
ıd have known him since 1860 or 1861?
s, sir.
ıd seen him frequently?
, sir; not very frequently, not very often.
ease repeat that answer?
, not very frequently.
ere you present in the June term 1880 in Mankato, when a
as brought up, a matter of mandamus in the matter of one
against the City of Mankato?
s, sir; I was there when the matter was brought up at one time.
ıd heard in court?
es, the final argument of the matter; I don't remember whether
en up before.
what time was that with reference to the term of court which
x held—Judge Cox held that June term of court, did he not?
don't think he held that whole term; I was not present that
lerk—I was sick,—except the first day and the last day or next
t day.
ıe first day, the last day and the next to the last day?
es, sir.
ıdge Cox was there that time?
e was there the last part of the term and heard this mandamus;
in the latter part of the term.
ho appeared for Mr. Guenther?
ıdge Porter and Mr. Severance, I think.
r. Severance for the city, and Judge Porter for Guenther?
hat is my recollection, sir.
ou were in the court room when this matter was argued and
l?
was, sir.
o you remember what day it was with reference to the close of
, that the matter was brought up?
am not absolutely certain, but still I am quite positive that it
day preceding the last.
he day preceding the last of the term?
es, the 7th day of June; the court adjourned on the 8th.
hat time on the 8th?
bout noon; the records show that; I was not there that day.
ut you say you were present when the matter was taken up and

was not acting as clerk; I was simply there that day.
Ir. Mead, your deputy clerk was acting and you were simply
the court-room?
es.
What was the condition of Judge Cox as to sobriety or inebriety
ime when that mandamus matter was heard?

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A. Well, he was perfectly sober, so far as I noticed.
Q. Perfectly sober so far as you noticed; you had no doubt about it at the time?
A. I didn't think about it, I don't think, at the time.
Q. You saw no indications of anything else?
A. No, sir; not that day, none whatever.

CROSS-EXAMINATION,

By Mr. Manager COLLINS.
Q. Mr. Durkee, have you ever seen Judge Cox intoxicated?
A. I have not, to my recollection; I cannot mention or think of a time when I ever saw him intoxicated.
Q. Have you ever seen him under the influence of liquor?
A. I say I cannot recollect a time that I ever saw Judge Cox intoxicated or drunk.
Q. Have you ever seen him under the influence of liquor?
A. Well, I can't say that I have; I have seen the Judge when I thought I could tell from what I knew of him, that he had been drinking the night before, or some other time, recently.
Q. You thought from his appearance he had been drinking just a little while before you saw him?
A. No, sir; what I mean is when the Judge would come into the court perfectly sober, I could tell from his looks;—it looked as if his hair pulled a little or his eyes—
Q. The Katzenjammen?
A. Yes, sir.
Q. Was that his condition on this day?
A. I think not.
Q. Did you observe him closely?
A. I did not, I never thought of course of anything of this kind.
Q. Didn't pay much attention to him?
A. Not particularly.
Q. Did you say, that Mr. Severance was one of the attorney's?
A. Yes, sir.
Q. And he was arguing the case?
A. Yes.
Q. Do you know, Mr. Durkee, whether or not there was any argument on that case that day at that term of court?
A. I do not.
Q. And were you there the next day?
A. No, sir.
Q. But you were there the day of the evening that the court adjourned?
A. Yes, sir; for a little while.
Q. For how long?
A. A little while, for an hour or two.
Q. Did they commence and conclude the arguments in the case while you were there or before you appeared?
A. I can't say about the commencement of it; I have some idea that they had it up previously.
Q. Do you know whether they had finished it up while you were there?
A. Yes, because I remember Judge Cox asked if they had any more

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es—it was about evenly balanced, but he should decide it a
ay if they had no more authorities to present; it was finally
ed.
you know whether Judge Cox went home that day?
lo not.
ien you don't know who closed the term, whether it was Judge
n or Judge Cox?
ie term was closed by Judge Dickinson; court adjourned from
the 19th: Judge Dickinson afterwards closed the term.
dge Cox was not there on the 19th?
ot to my knowledge; I don't know from personal knowledge
left Mankato.

GEORGE W. MEAD,

on behalf of the respondent, testified.
. ARCTANDER.
here do you reside?
ankato, Minnesota.
ou are Judge of Probate of Blue Earth county, I believe?
im, yes, sir.
ate whether or not you were, in June 1880, the deputy clerk of
ct court?
es.
d you, during the term that Judge Cox held in June 1880, in
, act as clerk?
lid, sir.
you remember a matter being brought up at that term of
Mankato, in the nature of a mandamus proceeding in the case
her against the City of Mankato, for the purpose of having costs

es, sir; I have a recollection of that case having been argued at

you remember who were the attorneys that appeared at the

idge Porter appeared for Guenther, and Mr. Severance for the

what time, with reference to the close of the term, was that
rought up, Mr. Mead?
hat matter was argued the day prior to the day of the adjourn-

Then did you adjourn the next day?
see by referring to the minutes, that we adjourned at 11:45 the

hat time in the day was this brought up, this mandamus, the
re?
was in the forenoon, sir.
Vere you present there during the argument?
was; yes, sir.
ow, state what was Judge Cox's condition as to sobriety or ine-
that time?
saw nothing about Judge Cox that would lead me to suppose
was otherwise than sober at the time.
35

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Q. You had no doubt about it at the time?
A. No, sir.
Q. No doubt in your mind that he was otherwise?
A. No, sir; not at the time.
Q. And you have none now?
A. No, sir.
Q. You are a practicing attorney now?
A. I have never practiced a great deal; I have been admitted.
Q. Yon are an attorney at law?
A. Yes, sir.
Q. State whether or not Judge Cox, during the argument of that matter, gave several contradictory opinions, several in a few minutes, one contradicting the other.
A. I can't say now, that he did, or that there was anything peculiar or particular about the statements that he made in regard to any points that were raised; no, sir.
Q. You don't recollect of anything?
A. No, sir.
Q. The last day of the term you were there, too?
A. I was there the last day of the term.
Q. What was the condition of the Judge the last day, and up to the time of adjournment, as to sobriety or inebriety?
A. I saw nothing to indicate otherwise than sobriety.
Q. The last day was the day on which the case of the State against Nuticia Weller was tried?
A. Yes.
Q. That was all that was done that forenoon?
A. No, sir; there was a little matter when court first convened early in the morning; there was another, I think there was, now; it was the disposition of another case, the case of Mark vs. Baker.
Q. The Judge just continuing the case?
A. Yes; continuing the case over the term.
Q. On account of the sickness of the plaintiff's wife?
A. Not the plaintiff's wife, but the wife of the defendant.

CROSS-EXAMINATION,

By Mr Manager COLLINS.
Q. Mr. Mead, was that Guenther case brought up more than once?
A. No, sir; unless, possibly, it might have been that the mandamus was made returnable at nine o'clock, and it was barely possibly that the court being otherwise occupied at that time, it was postponed until afternoon; it is barely possible that something of that kind might have occurred.
Q. Then it was not under discussion more than once?
A. Yes, sir.
Q. Then Judge Severance is mistaken when he said twice?
A. Only once to my knowledge.
Q. Only once to your knowledge?
A. Only once, and the thing was finally determined on that day prior to the argument, so I don't know as there could be more than one argument.
Q. What were you doing during the argument?
A. I was in the court room.

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'hat were you doing?
wasn't doing much of anything.
tting at the clerk's desk?
es.
acing the court so that you could see his face?
art of the time; it is barely possible that I was at the clerk's
tinually, still I would not say that I was.
)id you observe his rulings?
would not say positively that I observed everything minutely
e Judge's rulings in that matter.
an you tell us one of his rulings?
o, sir; I could not, because it is like this,—the matter at the
not impress me as anything very peculiar, and consequently I
charge my memory with anything that was transpiring there,
anything particularly.
'ou didn't charge your memory with it?
'ot as to particular expressions that he might have used, or that
ave been made by other parties.
[ow long have you known Judge Cox?
nly personally since that term of court.
[ave you ever seen him under the influence of liquor?
'o, sir.
'ot in the slightest?
'o, sir.
[ave you seen him often since that term of court?
'o, sir; not very often.
[ow many times?
'ell, only when he has been at Mankato; how many times I can't

)o you think more than twice?
)h, possibly two or three times, since that term; perhaps more,
know.

EVERETT P. FREEMAN

as a witness on behalf of the respondent, testified:

ined by Mr. ARCTANDER.
Ir. Freeman, where do you reside?
Iankato, State of Minnesota.
What is your profession?
Lawyer.
Are you the county attorney of that county?
Yes.
Were you so in the summer of 1880?
Yes; and have been for the last four years. I have been prose-
ttorney of that county now four years in all.
Do you know the respondent, E. St. Julien Cox?
Yes.
How long have you known him?
I have known him twenty years.
Were you present on the last day of the term of court held in the
of June, 1880, by respondent in the city of Mankato?
I was present June 8th, 1880.

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Q. The last day was June 8th, was it?
A. I was prosecuting a case for the State that day.
Q. The case of the State against Nuticia Weller?
A. Yes.
Q. Did the case occupy the whole forenoon?
A. We commenced the case in the forenoon, empanelled the jury, tried the case, and the court charged the jury, and they retired, all in the same forenoon.
Q. State that over again, Mr. Freeman.
A. I say on the morning of June 8th, 1880, we commenced on that criminal case, the jury were empaneled and sworn, the evidence was introduced, the attorneys made their arguments and the Judge charged the jury, and the jury went out, and returned, all in the same forenoon.
Q. Were you present at the hour of adjournment?
A. I was.
Q. State what the condition of Judge Cox was as to sobriety or inebriety during that forenoon, or any portion of it?
A. He was perfectly sober.

CROSS-EXAMINATION.

By Mr. Manager COLLINS.
Q. Who defended in that case?
A. A. R. Pfan.
Q. Have you ever seen Judge Cox under the influence of liquor, Mr. Freeman?
A. I have not seen Judge Cox under the influence of liquor since 1863.
Q. Have you seen Judge Cox frequently since then?
A. Since he has been Judge of the Court I have not practiced in his district. The only times when I have seen him as a Judge is when he has exchanged with Judge Dickinson.
Q. But before that, after 1863?
A. In 1863, '64 and '65 I may have seen him considerably then, but I don't recollect of seeing him under the influence of liquor since he was commander of the cavalry, in New Ulm, I think it was.
Q. Have you seen him frequently between 1863 and the time he was elected Judge?
A. Not a great deal; he used to come up there occasionally, and I heard a great deal of him by report, but not of my own knowledge.
Q. Never drank with him?
A. Well, possibly I may have drank a glass of beer with him; I don't either affirm or deny on that.

MR. ARCTANDER. We desire to have Mr. Maxwell sworn. We do not desire to offer him in evidence. He was present on the last day; but as the evidence as brought out shows that what Mr. Severance has testified to, took place not the last day, but the day before the last, we do not care to burden the record with his testimony, but simply desire to have him sworn.

Mr. Manager COLLINS. I would like, Mr. President, to ask Mr. Durkee and Mr. Mead, the gentlemen who were just upon the stand, a few questions before they leave the court room.

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WM. C. DURKEE.

)k the stand.

Manager COLLINS:
'. Durkee, will you examine the records of that term of court
.ve them here, and I understand you have, and see if there is
d there whatever of the case that has been talked about, that
her against the city of Mankato?
ere is no record of it whatever.
that the recollection of the witnesses as to the time that trans-
im ply their remembrance or recollection of it?
at is the case as far as I am concerned.
ere is nothing recorded in your books to show?
ere is no record whatever.

GEORGE W. MEAD.

)k the stand.

Manager COLLINS.
. Mead I will ask you the same question; have you any record
he date on which the case was argued?
, sir; it was not a matter I desired to make any record of,
matter of the argument on the question of costs.
ur recollections of the day are not refreshed in any manner by
d?
, sir.

ARCTANDER.
)u have a record showing that the order to show cause in that
is business was returnable on the 7th, have you not?
s, sir.

F. IBBERSON,

a witness on behalf of the respondent, testified.
CTANDER. This witness is introduced under article eighteen.
. Ibberson, where do you reside?
:epy Eye.
hat is your business?
uggist.
) you know the respondent, E. St. Julien Cox?
lo, sir.
)w long have you known him?
ven or eight years.
vill ask you to state, Mr. Ibberson, whether or not you recollect
Cox being at Sleepy Eye one Monday immediately subsequent
m of court in Brown county, in the month of May last year, on
) Beaver Falls to hold court there?
lo, sir; he was on a trip west either to Redwood or to Beaver.
e Monday after the term of court at Brown county?
mediately subsequent to the term in Brown county.
d you see Judge Cox during that Monday?
lid, sir.
d what time of day?

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A. It was in the forenoon; I don't know the hour exactly; I should judge somewhere from nine to ten o'clock.

Q. What was his condition then as to sobriety or inebriety?

A. Judge Cox, sir, was perfectly sober.

CROSS-EXAMINATION,

By Mr. Manager COLLINS.

Q. Mr. Ibberson, whereabouts in Sleepy Eye did you see him?

A. I saw him in my store.

Q. What was he doing there?

A. The Judge came in and said he wanted some money to pay his bills, and I said all right how much do you want, and he told me and I gave it to him.

Q. Anything else done there?

A. No, sir, nothing else.

Q. Did he drink anything there?

A. No, sir.

Q. Did he drink anything in that town to your knowledge?

A. No, sir, not to my certain knowledge.

Q. You didn't see him drink?

A. I did not, no, sir.

Q. Do you know of his drinking anything?

A. Only by hearsay.

Q. You didn't see him?

A. I didn't see him.

Q. Didn't see him under the influence of liquor; now, on Monday, I understand this was?

A. This was on Monday, and I took the trouble to hunt up the dates; I think it was the 23d of May.

Q. When was it that you took the trouble to hunt up the dates?

A. It was after I was subpœnaed.

Q. This was the 23d of May, 1881?

A. Yes.

Q. And you took the trouble to hunt up the dates?

A. Yes; I knew about the time, but I wanted to know just the date.

Q. Well, how did you happen to get the date; how did you know that the date was Monday the 23d of May?

A. I know that it was on Monday, and I could guess within a week whether it was the 23d or the 30th.

Q. You know it was Monday; will you tell us how you know it was Monday?

A. I can simply tell you in this way: on Sunday, I don't usually go down to my store, and I was only a short time in my store when Judge Cox came in, and I knew he was in town, or had been in town two or three days previous.

Senator CASTLE. You had known of his being in town for two or three days before that?

A. I believe he was, sir; that was the report.

Q. That he was in town two or three days before this?

A. Yes.

Q. Then he was in town Sunday, was he?

A. Yes.

Q. And Monday morning?

A. Yes.

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ı't he arrive in town on the train that day?
Monday?

sir; I think not.
are positive about that?
l as positive about that as I can about anything.
you see him on this Sunday?
l not, sir.
you see him on Saturday?
l not.
ı't see him at all?
ln't see him, sir; three or four days previous to that, I be-
him; I don't know whether it was the day he arrived there
Eye or not, I am not positive.
you did see him there four days previous?

was early Monday forenoon?
was in the forenoon of Monday.
you remember it because you had not been at your store
fore?
isely.
you tell me any other day that Judge Cox has been in your
ppose he has been in there frequently?
but I couldn't tell you the dates; I don't know anything
ı.
you tell me the day of the week?
sionally the Judge has been passing through, and would drop
:e hands, and say how do you do, and go on about his busi-

, tell me the day of the week that he was ever in your store
r time than this?
ink he was in my store about Monday; I think about three
s before that he was in the store.
ıt day of the week was that?
n't tell you really, or truly,—it was about Wednesday or
[think.
you tell me any other day of the week that he was ever in

I don't know at this particular time.
you say was in the forenoon?
was in the forenoon.
ut what time in the forenoon?
ut nine or ten o'clock, I should think.
ıt time does the train go to Redwood?
you mean in the evening, or when?
vhat time did it go at that time?
something; I have forgotten the minutes.
you see Judge Cox from the time you first met him until six
he evening?
d not.
you know nothing about his condition?
dn't see him from that time afterward.
you ever see Judge Cox under the influence of liquor?
ver did.

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Q. But you have seen him in Sleepy Eye a good many times?
A. Yes.
Q. And elsewhere, also?
A. And in New Ulm, also.
Q. For how many years have you seen him?
A. For seven or eight years.

WILLIAM SENCERBOX,

Sworn as a witness on behalf of the respondent, testified:

By Mr. ARCTANDER.
Q. Where do you reside?
A. In Sleepy Eye.
Q. What is your occupation?
A. I am a jeweler.
Q. State whether or not you saw Judge Cox in the month of May, 1881, during the week that he had a term of court in your county, in New Ulm?
A. Yes, sir, I did.
Q. You saw him that week? A. Yes.
Q. What day of the week was it that you saw him that time?
A. During the term of court?
Q. In New Ulm, when he had had, in the first part of the week, a term of court there.
A. I saw him Thursday; I believe it was the 19th day of the month.
Q. Do you remember what business Judge Cox did with you that day?
A. Yes, sir; he bought a watch of me.
Q. Did you see him the next Monday?
A. Yes.
Q. Thursday, when you saw him, was in the evening?
A. When I saw him?
Q. When he bought the watch in the evening?
A. It was in the morning, somewhere towards noon.
Q. Now, on Monday; did you see him?
A. Yes, I did.
Q. At what time?
A. Between two and three in the afternoon; I think about 2:30.
Q. What was his condition as to sobriety or inebrity at that time?
A. He was sober, to the best of my knowledge.
Q. Was he in your shop at that time?
A. Yes, he was in the shop.
Q. You had no doubt of it at that time?
A. None in the least.
Q. Did you see him afterwards on that Monday?
A. I would not be positive, but I think I did see him afterwards, possibly an hour or two hours.
Q. Anything different with him then?
A. I did not notice anything different about him; I believe, if my recollection serves me correctly, that he was a little distance off.
Q. You didn't see anything particular then?
A. No, sir.
Q. But at the time he was in your shop he was perfectly sober?

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he was not two and a half feet from me then.
ou have any conversation with him, at that time, about his
hat day to Beaver Falls to hold court?
't remember that I had any conversation with him about
retty positive it was the day he left.
was that?
positive it was the day he left.
are positive it was the day he left?
because I did not see him afterwards.

CROSS-EXAMINATION,

anager COLLINS.
do you fix this day?
with reference to the first day; it was Thursday, I know
entry on my books.
do you know that from an entry on your books?
mes to a date of the sale of the watch; I keep a record of all
I sell, and on that day there appears an entry that I sold
e Cox.
you saw him the following Monday?

ou see him between those dates?
I believe I did; I saw him go by the shop; I sit facing the
he might have gone by there.
t; well did he; don't you remember?
't remember positively, that he did; I certainly saw him

long do you say you have known him?
e known him about ten months; that was the date of our
e,—from that time.
ou ever see Judge Cox under the influence of liquor?
not say that I have; I have seen him when I was positive he
, but not under the influence of liquor.
have seen him when you were positive he had a drink; when

was Thursday.
drank with him yourself that day?

many times? A. Once.
t the only time you ever saw him, when you knew he had

't think I ever saw him at any other time.
drank with him at any other time?
ir,
saw him on Thursday, and you think you saw him between
next Monday; when did you see him the next Monday?
wing Thursday?

him in the shop.
do you know that it was Monday?
I don't know as I could tell, particularly, how I know it
; I am positive of that however.
he ever in your shop, at any other time?

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A. No, sir; except that Thursday before.

Q. Can you give the name and the day of the week when any other man was in your shop about that time, during that month?

A. Yes, sir; Mr. Ibberson was in there.

Q. When was that?

A. That was on Thursday.

Q. The same day?

A. The same day with Judge Cox.

Q. Was he in there with Judge Cox?

A. Yes, sir, he was; I wouldn't be positive whether he was or not; I think he was, however.

Q. Did he go and drink with Judge Cox?

A. No, sir; he did not.

Q. Now, can you give me the name of the day of the week that any other man was in there that month?

A. Not that I can recall distinctly now.

Q. How long were you with Judge Cox or in his company on this Thursday?

A. Possibly, I was with him five minutes, not exceeding ten anyhow.

Q. You were in your shop and of course you went somewhere to get a drink?

A. Yes.

Q. How long were you with him on the following Monday?

A. He was in the shop; I couldn't state exactly the time that he was in there. It was not very long, however.

Q. About how many minutes?

A. Fifteen minutes possibly.

Q. What time of the day was it?

A. Between two and three o'clock.

Senator WHEAT here took the chair to act as President *pro tem.*

FRANKLIN ENSIGN,

was re-called as a witness on the part of the respondent, and testified.

Examined by Mr. ARCTANDER.

Q. You are the gentleman who testified yesterday?

A. Yes, sir.

Q. Clerk of court of Redwood county?

A. Yes, sir.

Q. Do you remember of the occasion when Judge Cox came up to Redwood Falls on the train last May, to go over to hold a general term of court at Beaver Falls; were you on the train with him from Sleepy Eye to Redwood Falls that day?

A. Yes.

Q. Were you in the same car with him?

A. Yes, I was.

Q. This was last year, 1881?

A. It was in May, 1881.

Q. Did you speak to Judge Cox on the way up?

A. Yes.

Q. Sit in the seat with him?

A. No, sir.

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ow many feet from him?
ell, that I can't remember, but he was, —— I can't remember re I sat, myself in the car. I never try to remember such things.
ell you remember that you noticed him going up and of talking n too?
es.
will ask you to state whether or not he was in a stupid doze on there going up, his head thrown back, his mouth open, and his posed very much?
o, sir, not to my knowledge.
tate whether or not he was more communicative or talkative than

don't think he was
lave you stated what his condition was at that time? state what lition was at that time as to sobriety or inebriety.
ly opinion is that he was sober.
ou had no doubt of it at that time?
o, sir.
nd have none now?
o, sir.

CROSS-EXAMINATION,

r. Manager COLLINS.
o you know Mr. Pierce, the attorney?
o, sir, I do not.
o you know Mr. O. P. Whitcomb, the former State Auditor?
es, I have met him.
Was he on that train?
don't remember now of seeing Mr. Whitcomb, he might have that train and I not to have remembered it.
But you don't know Mr. Pierce?
No, I do not.
How do you know this was the time that Judge Cox went from Eye to Redwood Falls to hold a term of court?
Not Redwood Falls. He was going to Redwood Falls, but it was a term of court at Beaver Falls.
How do you know that it was at that time?
Because I was on the train with him.
You were on the train with him, but is that proof conclusive to at he was going out there to hold a term of court,—because you the train with him?
Not necessarily; because I know a term of court was to be held, ing the next Tuesday, and I knew by some conversation with the that that was the purpose for which he was going up.
What day of the week was this?
Monday.
What time in the day?
In the evening; it was the train going from Sleepy Eye to Red-Falls, which is in the evening.
It leaves Sleepy Eye when?
At that time my impression is that it was 5 o'clock or after; I after 6 o'clock in the evening.

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Q. Can you tell us how many people there were in the car that you were in?

A. No, sir; I cannot.

Q. Can you tell us any one who was present there—any person except Judge Cox and yourself?

A. I don't remember that I knew of any other person that I was acquainted with, any other person except Mr. Whitcomb, and I don't remember of his being in the car, and I don't remember of being acquainted with any other person that was on the train.

Q. You were in the same car with Judge Cox?

A. There was only one car on that train, to my knowledge.

Q. Now, Mr. Ensign, won't you tell the Senate what kind of a car you were in; was it an ordinary passenger car?

A. I think it was.

Q. As a matter of fact was it not a car that was divided right in two in the middle?

A. No, sir; I think it was an ordinary passenger car.

Q. An ordinary passenger car?

A. Yes.

Q. How many passengers were there aboard?

A. I don't know.

Q. Do you remember of any drunken men on board?

A. No, sir.

Q. You are sure there was no drunken man on board who vomited all over the car?

A. I certainly don't remember of any such instance.

Q. You would have remembered it if it had transpired there, would you not?

A. I think I would.

By Mr. ARCTANDER.

Q. You are not a drinking man yourself?

A. No, sir, I have not drank anything, either beer or intoxicating liquor of any kind for about fifteen years.

MATHEW OFFERMAN,

Sworn as a witness on behalf of the respondent, testified:

Examined by Mr. ARCTANDER.

Q. Where do you live?

A. Redwood Falls.

Q. Do you know Judge Cox?

A. Yes.

Q. How long have you known him?

A. I have known him since 1870, the fall of 1870.

Q. Do you remember of meeting Judge Cox at the depot, one Monday night in May, 1881, the day before he was going over to Beaver Falls to hold court?

A. Yes.

Q. Where did you meet Judge Cox that night?

A. I met him at the depot as he got off the train at Redwood Falls, as he came out of the car.

Q. Did you take him off anywhere?

A. No, sir.

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Q. Did you drive him off; did you have your horse there?

A. When he came out of the car I shook hands with him and asked him if he wouldn't ride up town with me, and he said he would.

Q. And you took him up to the hotel in your buggy?

A. Yes, I had my horse and buggy standing there.

Q. Where did you drive him to?

A. To the Exchange hotel; I asked him where he wanted to go and he said to a hotel, and I asked him to what hotel, and he said to the Exchange hotel, so I took him there?

Q. And you took him there.

A. I took him there and he stepped out.

Q. And you went home?

A. Well, I drove around town.

Q. What was Judge Cox's condition at that time as to being sober or drunk.

A. He was perfectly sober, so far as I could judge; I couldn't see anything in him that was out of the way.

CROSS-EXAMINATION

By Mr. Manager COLLINS.

Q. What time of night was this, Mr. Offerman?

A. It was just about at that time I think the train comes in, about eight o'clock, at that time.

Q. Was it dark?

A. No, sir; it was not.

Q. It was in the summer season I believe?

A. It was in May.

Q. What were you doing out there with your horse and buggy?

A. Well, generally, I take a ride out every night, mostly in the summer.

Q. Didn't you know that Judge Cox was coming that night?

A. Yes, sir.

Q. Didn't you drive out to meet Judge Cox?

A. No, sir, not particularly.

Q. What is your business there?

A. I keep a saloon.

Q. Oh! a saloon! I didn't know but what you were a gent's furnishing-roomkeeper.

A. No; I keep a saloon and I am not ashamed of it either.

Q. In your opinion Judge Cox was perfectly sober?

A. Yes.

Q. Did you ever see Judge Cox drunk?

A. No, sir; I never saw Judge Cox drunk, not while he was elected Judge.

Q. Not drunk since he was elected Judge?

A. No, sir.

Q. I asked you if you ever saw him drunk?

A. That I couldn't really say, that I ever saw him drunk; it is pretty hard to tell.

Q. You cannot say that he was really drunk; it is pretty hard to tell when a man is drunk?

A. It is pretty hard to tell when he is drunk.

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Q. Have you ever seen him when he was under the influence of liquor?
A, Oh, yes, I have seen him.
Q. And to what extent?
A. Oh, not very bad.
Q. Able to stand up?
A. Oh, gosh! yes. [Laughter.]
Q. Well to what degree was he under the influence of liquor?
A. Well nothing very bad.
Q. Well, do you know how many drinks he had taken at the time?
A. That is pretty hard for me to tell; if I should have to keep a record of every man that would take a drink, I would have a great big book, you know.
Q. Could you tell how many drinks he had taken at the time you saw him?
A. No, I could not.
Q. And you say he drove up to the hotel; did you see him again that evening?
A. No, sir, I did not.
Q. How long have you lived in Redwood?
A. Ever since the spring of 1870.
Q. Do you know Mr. S. L. Pierce, a lawyer?
A. Not that I know of?
Q. Do you know Mr. Whitcomb who was State Auditor?
A. Yes, I do.
Q. Did you see him that night?
A. Not that I remember of.
Q. Don't remember of seeing him come out of the car?
A. I may have seen him, but——
Q. Now, tell us about how many passengers were on the train that night?
A. No, I couldn't; when I ride out at night that way I don't look after passengers.
Q. Do you know Mr. Ensign a witness who was on the stand?
A. Yes.
Q. Did you see him there that night?
A. No, sir; I didn't.
Q. Now, where was Judge Cox going?
A. He was going over to Beaver to hold a term of court.
Q. How do you know that?
A. Well, Billy McGowan, the clerk of the court at Beaver Falls, was in town looking for him, and he said he expected Judge Cox up that night and was waiting for him to come in and take him over to Beaver; he had a team there to take him over.
Q. That was last May? A. Yes.
Q. You are sure about that?
A. Yes.
Q. How do you know that it was last May?
A. I know that about as well I know that this is the day it is.
Q. That this is the day it is?
A. Yes.
Q. How do you know that?
A. Well, I can tell that, about as well as I can here.

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can tell that it was last May just as well as you can tell this
of February ?
there is a term of court established there at such a day.
, there is a term of court ?

ere never but one term of court held there ?
two terms.
terms a year ?

n was the other term ?
etime in September; I think.
do you know this was last September ?
nk I ought to know the difference between Spring and Fall.
do you know that it was not last May?
nk I remember a little about it.
do you know that it was not a year ago last May?
nk that question a little foolish; a man ought to know about

the Judge was sick that night, was he not,—looked sick?
sir; he did not, to my remembrance.
n't he look sick when he got off the cars, didn't he complain
g sick?
sir, he didn't say a word about sickness.
n't he sick that night, to your knowledge?
that I know of.
n't you see him the next morning?
I did not.
you see McGowan the next night?
sir, not that I know of.
n the Judge didn't look sick, or complain of being sick?
to me.
n't he say that he was well?
l, that I couldn't say either; he was just the same as the
ays is.

TANDER. Mr. President, I will say that we have only three or
sses remaining to be examined; three of them have just come
norning train, and the other has not yet arrived. I have no
here at present with whom I have conversed. I would there-
r an adjournment now until after dinner, at which time we
ose up our evidence.
nager HICKS. I would simply suggest—I don't know as the
r the respondent is aware of the fact—that the deposition of
Jones, of Rochester, has been received. I suppose it might
l be read now as any time. I desire to call the attention of
l to the matter so that it may not be forgotten.
TANDER. I am very much obliged to you, sir; we will, how-
our own time to introduce it.
ESIDENT *pro tem.* What is the pleasure of the Senate?
BUCK, D. Mr. President, it seems to me, if there are no more
to be offered just now, that we might as well ascertain at this
t is to be the length of the adjournment to be taken following
of the case for the defence, so that the members may know
to be done. I would like to hear from the managers as to

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whether there has been any arrangement or understanding as to whether they will introduce any evidence in rebuttal and how much. This is a very proper time to make this inquiry, especially before we adjourn this evening. This matter can be got through with to day, so that some of the Senators might be able to return home and it would be a great accomodation to them.

I would ask the counsel for the respondent whether they can get through with the witnesses to day.

Mr. ARCTANDER. I can have my witnesses here at half past one, if the Senate would desire an earlier session.

Senator BUCK, D. Yes, but this can be arranged just as well, in the interim. I would like to hear from the managers as to what they desire.

Mr. Manager HICKS. In answer to the question by the Senator, I desire to say that the Board of Managers have consulted upon this matter, and we have not been able to determine fully as to the precise number of days that we shall need; we ought to have at least three or four days, and, if it were possible, a week, if that time could be extended to us; and for this reason: the Senate will understand that in trying this case, we practically try it, to a large extent, without a client; that is, while the State is our client, the people in the State occupy a very large area of the country, and the minute facts which are necessary to the proper conduct of a cross-examination, and the introduction of proper rebuttal testimony have necessarily come to us in the shape of letters and conversations with parties before the witnesses were put on for the defence, and therefore minute matters we have not been able to cross-examine upon as we would like to do; and for the same reason, it would take us longer to ascertain just what facts we can rebut than it would if we had a client here to consult with, from day to day. Anything less than a week would probably hamper us, and yet the Board of Managers feel that they ought to take the very shortest possible time, that this trial may be concluded as soon as possibly, but we certainly ought to have at least until Wednesday or Thursday of next week.

Senator BUCK D. Let me ask the Manager if he can state to the Senate about how long, in his opinion, the prosecution will be in introducing their evidence in rebuttal. If we commence next Wednesday, can they introduce it during the remainder of the week?

Mr. Manager HICKS. I feel satisfied from the conversation that we have had at a meeting of the Board of Managers, held yesterday, that if we can have four or five days to obtain this evidence, we can put the evidence in in one day, or in a day and a half, at the farthest; that is, two days of the time of the Senate. I feel satisfied from our view of the case, of what ought to be rebutted, that if we can have four, five or six days in which to prepare, if we can get here, say Thursday morning, that we can get the rebuttal evidence in on Thursday and Friday without any difficulty, and perhaps in one day.

Senator BUCK C. F. I move, Mr. President, that when the Senate adjourn, it adjourn to meet next Monday at 10 o'clock.

Senator MACDONALD. No; make it Thursday.

Senator POWERS. What hour, Senator?

Mr. Manager HICKS. Mr. President, I would ask the Senator to withdraw that motion, until the Board of Managers can have an opportunity, during the noon recess, to consult further as to the interval proper for a recess. Upon the coming in of court in the afternoon, we shall be able to announce the result of that conference. Of course we understand that it is necessary as short as possible.

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The PRESIDENT *pro tem.* Does the Senator withdraw the motion?

Senator BUCK, C. F. Yes.

Mr. ARCTANDER. I have another witness that I might take up at this time.

A. C. FORBES

Called as a witness on behalf of the respondent testified.

Senator POWERS. Mr. President, perhaps in this connection, as it may influence the managers a little and it may influence our votes in reference to our adjournment, it might be well to ask the respondent, or his counsel, if they will require an adjournment after the case rests on the part of the State, to prepare their arguments, or anything of the kind, and if so, how much time.

The PRESIDENT *pro tem.* Perhaps that matter can be settled when the other matter is settled this afternoon.

Senator POWERS. Well, this we can determine now just as well as then.

Senator MACDONALD. The managers desire to consult about this matter.

Mr. ALLIS. Of course, Mr. President it would be necessary before the defence proceeded with the argument, to have some time after the testimony is all in.

Mr. ARCTANDER. This is under specification five, of article seventeen.

Q. Mr. Forbes, I desire to call your attention to a special term of court held on the 30th day of September, 1880, at Marshall, Lyon county, Minnesota, on the occasion when court adjourned, or took a recess, to enable you and some other attorneys to go to the republican county convention; do you remember that occasion?

A. I remember the occasion.

Q. Were you present at the term of court both before it took a recess and afterwards?

A. Yes sir; I was.

Q. Until the term was finally adjourned?

A. Yes, sir.

Q. Were you present and did you take part in the argument of the matters brought up there?

A. Yes, sir. I argued a motion in the case of McCormick against Beasley.

Q. Your partner, Mr. Seward, argued the motion in the case of French against Minnick?

A. Yes, sir.

Q. That case of McCormick against Beasley was one in which Mr. Drew was an attorney?

A. Yes.

Q. What was the condition of Judge Cox as to sobriety and inebriety at that term of court?

A. I think Judge Cox was sober at that time.

Q. Had no doubt about it?

A. No, sir; not at that time at all, nor since.

Q. I now call your attention to article 18. Do you remember being in St. Peter with Mr. Drew, a lawyer, so called, from Marshall, on the

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third of November, 1879, for the purpose of arguing a motion in the case of Noyes Bros. & Cutler against Aldrich; I think a motion to dissolve an attachment. Do you remember the occasion?

A. Yes, sir; I remember that occasion.

Q. Do you remember the time you met Judge Cox on the street when you came down there?

A. Yes, sir, I do.

Q. I will ask you to state whether or not Judge Cox, when you met him on the street, stated "G—d d—n you, have you got any more divorce cases down there?"

A. I think he did not.

Q. What was it he stated?

A. Well, we met Judge Cox, that is, Mr. Drew and I came down on the train the evening before, and were looking for him in the city, and we were both at the corner of the Nicollet House, and we looked across the street in that direction and I said "There is the Judge." And I think the Judge saw me about the same time and he walked back towards me and Mr. Drew was with me; and he says: "Halloo! Old Divorce, how are you?" I think those were the words.

Q. You had had considerably many divorce cases up there?

A. Yes, sir; we had quite a number at that time; eight or ten.

Q. Now, at this time, did the Judge proceed to hear your arguments, and decide the matter?

A. We went into the hotel, and I think the Judge and I went up stairs into the little front room to see what business we had. Mr. Drew did not go up there with us, and I told him our business was to argue a motion to vacate an attachment against Noyes Bros. & Cutler, against Aldrich & Howson. Mr. Drew followed us up and then we asked the Judge if he would hear the motion there, and he said, no, he would hear it at his office in the court house; and the motion was argued and determined there.

Q. I will ask you to state what was the condition of Judge Cox as to sobriety and inebriety at this time?

A. I will state that in the morning of that day, I saw no indications whatever upon Judge Cox. I think towards afternoon Judge Cox had drank some.

Q. But he wasn't intoxicated in the afternoon, was he?

A. I couldn't say that he was intoxicated, but I could see that he had been drinking some; at least I thought so.

Q. At the time you met him in the forenoon, what was then his condition as to sobriety?

A. I think he was perfectly sober in the morning.

Q. The case was disposed of, wasn't it?

A. Yes, sir; the attachment was vacated.

Examined by Mr. Manager COLLINS.

Q. Did you drink any with the Judge yourself that day?

A. No, sir, I did not.

Q. Do you know whether he had drank any during that morning?

A. I do not know; I didn't see him drink any.

Q. You think he was perfectly sober?

A. Yes, sir; that is my opinion.

Q. I will ask you to state whether or not you ever saw the Judge drunk?

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A. Yes, sir; I think I did.
Q. How long have you known him ?
A. I have known him since July, 1878.
Q. By Mr. ARCTANDER. You have testified to some drunks here before on the part of the prosecution have you not ?
A. I think so.

By Senator CASTLE.
Q. Mr. Forbes, I didn't get the scope of your testimony exactly. You stated that in the morning he was sober and in the afternoon you thought he was under the influence of liquor; when was it that this motion was argued ?
A. In the morning.
Q. What was the Judge's condition at the time and during the argument of this motion with reference to sobriety ?
A The Judge was sober.
Q. During the whole of it ?
A. Yes, sir. The order was signed in the afternoon, but the Judge had passed upon it. We got the written order in the afternoon.
Q. But it was determined in the morning ?
A. Yes, sir.

By Mr. Manager COLLINS.
Q. At the time he signed the order, is not the time you think he had been drinking ?
A. No, sir; because we staid there until evening. We couldn't get a train until next morning at seven o'clock.
Q. What was his condition when he signed the order ?
A. Well, then I could notice some indications of drinking. That was in the afternoon.
Q. But you say he had determined the matter in the morning and the order was written up afterwards, and the Judge signed it in the afternoon ?
A. To explain that; Mr. Drew, I think procured Mr. Davis to write the order vacating the attachment, and brought it to the Judge, and the Judge signed it, after a little interlineation at the bottom by Mr. Drew.

Mr. ARCTANDER. There are three witnesses that I desire to call and have sworn in order that they may get their pay, that I do not care to examine as I consider their testimony would be cumulative to the testimony already in.
The three witnesses referred to, viz ; D. M. Thorp, J. F. Snyder, and E. Johnson, then came forward and were duly sworn.
Mr. ARCTANDER. I have no further witnesses to examine now.
On motion of Senator Macdonald the senate then took a recess until 2 o'clock P. M..

AFTERNOON SESSION.

The Senate met at 2 o'clock P. M., and was called to order by the President.
Senator MILLER. Mr. President, perhaps it would be well if the managers would inform the Senate now, what time they desire us to adjourn to,

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Mr. Manager HICKS. Mr. President, the board of managers will endeavor to be ready to proceed with their rebutting testimony on Wednesday evening next, if the Senate should see fit to make an order for an evening session at that time, and be prepared to continue from that time to the close of the case.

Senator D. BUCK. I would enquire of the managers if they could not be ready te proceed on Tuesday evening.

Mr. Manager HICKS. The only difficulty we find in the way of that is the fact that one or two places will have to be visited which require two days to go and two days to return, and we cannot use Sunday for that purpose.

Senator D. BUCK. Cannot some of the managers look after the evidence and others attend to the management of the case?

Mr. Manager HICKS. Yes, we shall have to make that arrangement in any event. That is the understanding.

Senator CASTLE. Col., how would Wednesday morning do? The only objection I have to an adjournment is just this, that we have already adopted a resolution that our pay goes on when we are away, during the interregnum of the sessions;—

Mr. Manager COLLINS. Rescind the resolution.

Senator CASTLE. And it is not with good grace that any of us should favor a long adjournment. Of course I do not feel disposed to throw any obstacle in the way of the board of managers, to allow a reasonable time to procure the attendance of their witnesses, but I would like to have the managers, after consultation, indicate the least possible time that they can, with justice to themselves and their case, be able to proceed.

Mr. Manager HICKS. Mr. President, I deem it due to myself and to the board of managers to say this: I have consulted with the gentlemen who have conducted the examination of the witnesses and those who are to speak upon the close of the trial, and have deferred to their judgment as to how short a time they could be prepared,—if they could be prepared on Tuesday morning. I have told them that I thought I could get the witnesses here upon one point by that time, but they seem to be of the opinion that that would be too short a time. I have urged that idea very strenously and have endeavored to show them that we could do so, bnt that suggestion does not appear to be satisfactory.

Senator CASTLE. You say you have suggested Tuesday morning?

Mr. Manager HICKS. Yes, sir. When I say that the board of managers feel that they ought to have until Wednesday evening, that is the opinion of the gentlemen who have conducted the case. I have urged a little earlier time, but they do not seem to be satisfied that I have given sufficient assurances that we would be ready at that time to proceed with the examination of witnesses.

Senator POWERS. Mr. President, we gave the respondent in this case over a week to get ready, and I believe there is something of a feeling that the managers have been restricted somewhat more than we have seen fit to restrict the respondent, and now, if on the plea of economy, we restrict them in getting ready for a final effort in getting their witnesses here, I think it will be in rather bad taste. I would go as far, I guess, as most people in the interest of economy, but sometimes it is not wise to economize where there are great principles of justice and of right and wrong at stake. I therefore move, that when the Senate adjourn this afternoon or to-night, it adjourn until Wednesday night at eight o'clock.

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MILLER. I second that motion.

CASTLE. Mr. President, with reference to the motion, it
: that it would be singularly unwise to adjourn to any evening;
ɔe just one day thrown away. We have not had an evening
ice this trial commenced, when we have adjourned to an even-
the purpose of holding an evening session; and I think past
e will justify us in the conclusion that we would hardly be
ve an evening session, for the reason that it would be taken as
of course that Wednesday evening would mean Thursday
I think we had better make it Wednesday morning or Thurs-
ing.

MACDONALD. If we make it Wednesday evening we shall have all the members here Thursday morning.

CASTLE. With reference to the matter of adjournment I con-
ely in the remarks of the Senator from Fillmore (Senator
Further, I know, as a lawyer, that it is not infrequently econ-
me to have an adjournment sufficient to enable the attorneys
and arrange the testimony, because they can generally put it
eater facility and less loss of time. It is suggested by some
ere that we change the hour to Wednesday afternoon at two

WILSON. That would be a better time, it seems to me.

D. BUCK. I think so too.

CASTLE. While I feel that we ought to allow all parties a fair
ny of the managers feel convinced that they would be able to
ieir testimony by that time, I should feel like making that
I would like to get through with this matter as soon as possi-
nly because it would be for the interest of the State, but be-
nany of us it is a great sacrifice to be compelled to stay here.

nager HICKS. Mr. President, I firmly believe, and I am will-
rk night and day, to accomplish it, because I know we ought
hat we can have witnesses here on Wednesday afternoon, at
2. That is my individual belief in the matter.

ADAMS. Mr. President, I am glad that the conclusion of the
: manager coincides so nearly with my own. I think that this
of adjournment may just as well be settled upon a reasonable
. When we review the history of this impeachment trial, I
irprised that the people of the State have been complaining
rial has been drawn out and delayed almost interminably, that
been conducted with more expedition, as well upon the part
nagers as upon the part of the respondent. It will be remem-
t on Tuesday of this week, the counsel in chief for the re-
(Mr. Arctander), announced that on to-day the evidence to be
l on the part of tne respondent would close. With all due
: that portion of the legislature represented by these honorable
, I see no reason why Tuesday at least, sometime during the
i may make it at 2 o'clock or 8 o'clock in the evening, if you
hould not be indicated as the time when we resume the farther
tion of this case.

ssuredly, upon the notification which was given upon Tuesday
eek, by the counsel in chief for the respondent, the State has
le and sufficient knowledge of the fact that on to-day their tes-
ould close, and that during the interregnum, they could sum-
tever witnesses they should deem proper by way of rebut-

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tal; and there is no just reason why this case should be prolonged; it neither answers the demands of justice nor satisfies the people of the State.

If we propose to proceed with the case and dispose of it in a reasonable time, I would be in favor of meeting again on Monday, because, gentlemen, as I have said to you time and again, I am very much in the condition of a certain actress when she said "she was completely broken up!" I am broken up, for this reason: I can not go home, take up my business from to-morrow, go on with it Sunday, Monday and Tuesday, and lay it down Wednesday; if I am called upon to treat a case of surgery, a case of protracted fever, I must decline to serve,—as I have done time and again since this court was convened.

I cannot lay down my business and take it up again, as can the honorable managers and the counsel for the respondent or any of the legal gentlemen here. They can prepare their cases at home, at night, in their own room; I cannot do it. My business is a practical one, requiring personal effort, personal observation, both day and night. I am as anxious as any gentleman upon the floor of this Senate chamber, as any member of this court, to have this case disposed of as soon as possible, with due regard to the majesty of the State, represented by its counselors, and the interests of the respondent in this case.

There is no reason why this court cannot resume its labors on Monday night, or, at the very latest, on Tuesday. We have been reviled and abused, already, and,—probably it has escaped the attention of the Senators,—it is charged that we are squandering the public money, without rendering *quid pro quo*. This is true, in certain instances, but it is not true of the honorable managers, neither is it true of the respondent. We have failed upon several occasions, to have a quorum; circumstances prevented it, business prevented it. Prevented it why? There are Senators on the floor of this Senate chamber who do not believe that this court has the right or the power to compel attendance, and the attendance thus far has been voluntary upon the part of the members of this court.

Now, we are receiving five dollars a day,—that does not pay my expenses,—perhaps I am more extravagant than some men would be,—but five dollars a day is no adequate compensation to me; nor does it pay Senator Hinds, Senator Buck, Senator Castle, Senator Perkins, nor the honorable managers and a great many other gentlemen upon this floor. If it were a question of pay (and that seems to be the great question, and has been from the commencement of this trial,) it certainly has not influenced me; I have heretofore ignored the question of finance, but, as I say, I have business to attend to—

Senator HINDS. (interrupting). Mr. President, what is the question of discussion?

The PRESIDENT. In regard to the time when the Senate should adjourn.

Senator ADAMS. I am speaking to that question, Senator Hinds. I believe you have occupied about four times, as much time upon the floor of this senate chamber as I have, since the commencement of this trial; and I think I now have a right to occupy a portion of the time. I am speaking to the question now before this Senate,—the question of adjournment. Possibly gentlemen of an asthetic legal mind may conceive my remarks not to be logical or pertinent, but they are addressed to the question before this Senate, notwithstanding; and if I had occupied as

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much time on the floor of this Senate chamber since the commencement of this court of impeachment, as the honorable Senator from Scott, [Senator Hinds] he would have a right to interpose an objection now. I have not done so; I have a right to be heard, and I propose to maintain my rights. I know what they are; I am talking to this question of adjournment. I am opposed to adjourning over Tuesday because there is no valid reason, no logical or legal reason, why this court should adjourn longer than that time. If there are any such reasons I would be pleased to have the gentleman point them out that we may understand why this body is compelled to adjourn until Wednesday at an additional expense of five hundred dollars to the people of this State, when it can convene as well on Monday or Tuesday. If it is a question of economy, let us stand strictly by the principle; if it is a question of expediency, that is a very different issue. I desire to give the honorable managers all the time——

Senator D. BUCK. I rise to a point of order; this is not debateable. I dislike very much to interrupt the Senator, but it seems to me his remarks are not in order.

Senator ADAMS. The question of specific adjournment not debateable? The Senator had better consult the rules governing the action of judicial bodies.

Senator D. BUCK. I insist upon having the question of order determined.

Senator ADAMS. That is all right. I presume you had your say before I came in; but I am going to close in just a moment.

The PRESIDENT. The chair must rule that the Senator from Dakota (Senator Adams) is in order.

Senator ADAMS. Now, Mr. President, I am in favor that when we adjourn we adjourn to meet, at the very latest, on Tuesday night at eight o'clock. I move to amend the motion to adjourn until Wednesday night at eight o'clock, that when this court adjourn, it adjourn to meet at eight o'clock on Tuesday night,—by that means saving to the people of this State about five hundred dollars.

The motion was seconded.

Senator CASTLE. Mr. President, I move an amendment to the amendment. That we adjourn to meet on Wednesday at half-past two o'clock P. M.

The PRESIDENT. The question, then, will be upon the amendment to the amendment.

Senator POWERS. Mr. President, I think it will not be necessary for me to take more than a moment's time to state what I desire; but what I want to say is just this: that since this discussion has commenced I have been talking with one of the managers, and he tells me that they ought to have at least a week.

Senator CROOKS. Why don't the managers tell us all so then?

Senator POWERS. They are trying hard to be prepared by Wednesday, and they say that is as soon as they feel they can get ready and do justice to this important case. I should be willing, on that account, to give them time.

There is another reason why I think we shall not waste our time if we take until Wednesday night,—the trains do not come in so that we can get here, after Tuesday, until Wednesday night,—but I was going to say that we have been attending here a long time; I think I have not missed a roll-call, when I have not been within a few feet of the door, any way,

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and I have tried to give attention to the proceedings; I have reported for myself, and I have read, and it would be all that I could do, reading all the way home on the train, all day Saturday and Sunday, and until Wednesday night, to classify the testimony and get so that I could vote intelligently, understandingly and satisfactorily to myself upon these separate articles as they will be taken up *seriatim*. We have a general knowledge, I presume, all of us, of the evidence that has been given here, so that if the general vote of guilty or not guilty were to be taken—

Senator CASTLE. I withdraw my amendment.

Senator D. BUCK. Mr. President, if it is in order, I will renew it.

Senator POWERS, (continuing.) I was going to say that if we work very steadily and industriously, we shall not be able to get the testimony arranged so that we can vote upon these articles separately and give a reason to ourselves why we vote as we do, and that is a reason why I wish to sanction the request of the managers, that we adjourn until Wednesday night at 8 o'clock.

Senator GILFILLAN, J. B. Mr. President, I would like to ask of the honorable managers, how much time they would expect probably to consume in the introduction of testimony.

Mr. Manager COLLINS. We think two or three days. There is some difference of opinion between the managers as to when we shall meet. Mr. Manager Dunn thinks we ought to have a week; Mr. Manager Hicks thinks we could be ready to proceed in two days; I was inclined to the opinion that should we meet here about Wednesday night we could be sure to have witnesses here, although we will not have them all here, nor can all of the board of managers be present at that time.

Senator GILFILLAN, J. B. You think, then, you could put in your testimony next week, should you commence Wednesday afternoon or evening?

Mr. Manager COLLINS. Yes, sir; I think there is no doubt about that.

Senator GILFILLAN, J. B. That being the case, Mr. President, I should feel like appropriating next week for the benefit of the managers to put in their testimony, and let them commence in the week when they prefer; perhaps, for instance, they would rather have until Wednesday or Thursday to get ready to introduce their testimony than to have any less time.

Senator CASTLE. I don't think that would amount to anything. Suppose they did not get their testimony in by Saturday night, we should give them all the time they wanted.

Senator GILFILLAN J. B. If they are satisfied with Wednesday night, I am ready to vote.

Mr. Manager DUNN. Mr. President, my name was mentioned, I believe, by Senator Powers, in connection with this question of adjournment. As a lawyer, managing a case for a client,—and, unfortunately, having no client,—my judgment is that this Board of Managers ought to have at least one week to prepare for the rebuttal evidence in this case; but still there are reasons which have actuated myself and other members of the Board of Managers in shortening the time to what has already been suggested. I state, with a firm conviction of its correctness, that it will be almost impossible to prepare for the rebutting evidence in this case, within the space of two or three days, and get our witnesses here. We have undertaken to say that we will try and be prepared here by next Wednesday night, with some testimony, and will endeavor to keep the Senate occupied from that time onward until we

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shall be through with our side of the case. Whether it will take two or three days, or any other time, to submit it, of course no one can tell; but we apprehend it will not take longer than that.

Senator D. BUCK. If it is agreeable to the managers I will withdraw my motion.

The PRESIDENT. The question is upon the motion that when the senate adjourn it adjourn until Wednesday night at eight o'clock.

Senator ADAMS. Mr. President, my motion was to amend by making it Tuesday night at eight o'clock.

The PRESIDENT. Does the Senator wish a vote upon that motion?

Senator ADAMS. Yes, sir.

The PRESIDENT. The question, then will be upon the amendment offered by Senator Adams,—that when the senate adjourn it adjourn until Tuesday night at eight o'clock; is the senate ready for the question? The clerk will call the roll.

The roll being called there were yeas 2, and nays 26, as follows:

Those who voted in the affirmative were—Messrs. Adams and Shaller.

Those who voted in the negative were—Messrs: Aaker, Buck, D., Campbell, Case, Castle, Clement, Crooks, Gilfillan, J. B., Hinds Howard, Johnson, A. M., Johnson, F. I., Johnson R. B., Macdonald, Mc Laughlin, Miller, Morrison, Perkins, Peterson, Pillsbury, Powers, Rice, Tiffany, Wheat, Wilkins and Wilson, So the amendment was lost.

The PRESIDENT. The question now recurs upon the motion of Senator Powers that when the Senate adjourn, it adjourn until Wednesday night at eight o'clock.

Mr. Manager HICKS. One moment, Mr. President. If the Senate will allow me one word, I will make a statement which I deem it my duty to make on behalf of the State and the Senate, and it is this: The witnesses we shall bring here first, will have to arrive here, if they come on Wednesday at all, on the noon train, and the Senate can just as well listen to them in the afternoon, if it will sit, as to wait until evening. If the train is on time, it will arrive here at about one o'clock in the afternoon, and the witnesses would have to remain here all the afternoon in any event.

Senator CASTLE. Then I will renew my motion to meet at half-past two on Wednesday.

After some informal discussion, Senator Castle withdrew his motion.

The PRESIDENT. The question, then, is upon the motion that when the Senate adjourn it adjourn until Wednesday night at eight o'clock. The clerk will call the roll.

Senator CASTLE. I don't think it is worth while to call the roll on that.

Senator ADAMS. I call for the yeas and nays.

The roll being called, there were yeas 29, and nays 1, as follows:

Those who voted in the affirmative were—

Messrs. Aaker, Buck D., Campbell, Case, Castle, Clement, Crooks, Gilfillan J. B., Hinds, Howard, Johnson A. M., Johnson F. I., Johnson R. B., Macdonald, McCormick, McLaughlin, Mealey, Miller, Morrison, Perkins, Peterson, Pillsbury, Powers, Rice, Shaller, Tiffany, Wheat, Wilkins, and Wilson.

Mr. Adams voted in the negative.

So the motion prevailed.

Senator POWERS. Mr. President, just one word; you may call it under the question or privilege, if you choose: some of us have been here

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a number of times when there was no quorum. Now, if every Senator who voted aye, on this question of adjournment, will regard that as a pledge of honor to be here, we can have a session, and work well Wednesday night.

JOHN B. RUSSELL

Sworn as a witness on behalf of the respondent, testified.

Examined by Mr. ARCTANDER.

Q. Mr. Russell, where do you reside?

A. Lake Benton.

Q. What is your occupation?

A. I keep a hardware store.

Q. Are you acquainted with the respondent, E. St. Julien Cox?

A. Yes, sir; I have been acquainted with him since 1874.

Senator GILFILLAN, J. B. What article is this under?

Mr. ARCTANDER. This is under the 18th article.

Q. Are you acquainted with Thomas George, of Lake Benton?

A. I am, sir.

Q. State whether or not you were in St. Peter with Thomas George, in the month of February, 1881?

A. I was, sir.

Q. Did you stop over night at the Nicollet House?

A. I did.

Q. You stopped in the same room with Mr. George, did you?

A. I did, sir.

Q. State whether, at any night when you stopped there with Mr. George, the respondent slept with you.

A. He did, sir, one night.

Q. Only one night?

A. Only one.

Q. Now, I will ask you to state whether or not you on that night helped the respondent into bed?

A. I did not, sir. I never helped him or assisted him to bed in my life, at any time. That was the only night he ever slept with me. I never assisted him to bed.

Q. I will ask you to state whether or not he laid with his clothes on that night.

A. He did not; he undressed himself; he laid his clothes on a chair by the bed.

Q. He undressed himself, did he?

A. Yes, sir.

Q. Did you lift him up on the bed?

A. No, sir; I went to bed first, and laid at the back side. I asked him which side he preferred to sleep on, and he said he didn't care. I told him I would sleep on the back side. I undressed first and got into bed, and he undressed after I did, and got into bed himself, without any assistance whatever on my part, of any kind.

Q. Now, I will ask you to state what the condition of Judge Cox was that night, as to sobriety or inebriety. Was he intoxicated?

A. He was not.

Q. You are positive of that?

A. I am positive of that fact. I was at his office from about some-

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wheres between six and seven o'clock, until between ten and half past ten, and we went from there to the Nicollet House to our room. I invited him to come and sleep with me.

Q. What was the reason you invited him to come and sleep with you, instead of his going home?

A. There was a good deal of snow on the ground, and that night it was blowing quite hard, and I says, "Judge, you had better come and sleep with me to-night; it is quite a ways to your house." "Well," he says, "I don't know but I will," and we then went to the Nicollet House and went right straight up to bed.

Q. State whether or not the Judge groaned, and acted as if he was about to be strangled, or have a fit there, during the night?

A. Well, that I couldn't say. I went to sleep shortly after I went to bed, and didn't wake up until morning. He didn't disturb me any, I slept all night. I never heard anything as far as I was concerned.

Senator CASTLE. Let me ask the witness a question; we couldn't hear. Where was this?

The WITNESS. At the Nicollect house in St. Peter.

Senator POWERS. When?

The WITNESS. Sometime in February, I couldn't state the exact date, for I didn't charge my mind with it; but it was the only time the Judge ever slept with me in my life.

By Mr. ARCTANDER.

Q. And you remember he was fully undressed?

A. He was fully undressed; that I am positive of,—just as positive as I am of sitting here in this chair this minute.

Examined by Mr. Manager COLLINS.

Q. You say you are a hardware merchant?

A. Yes, sir.

Q. You know Mr. Thomas George, do you?

A. I do sir.

Q. How long have you known him?

A. I have known him some four or five years. I knew him in New Ulm. I was station agent at the depot there for four years and a half. I knew him there while in town, and he moved up to Lake Benton after I was there about a year and a half and has been a resident there since.

Q. When did you arrive in town that day?

A. Which town do you mean?

Q. St. Peter.

A. I arrived in town,—I couldn't say the day nor the date, but I was up here to St. Paul; Mr. George was up here, and we went to St. Peter together, and got snowed up there. We stayed there, I think, from Friday until the next Tuesday, but I couldn't be positive.

Q. Which day of the week was this?

A. I think it was Sunday night, but I couldn't swear to it, because my mind is not sufficiently charged with the fact. I didn't charge myself with it at the time.

Q. Where did you meet Judge Cox that day?

A. I met him at his office. I went up there to see him on business.

Q. On Sunday?

A. Yes, sir.

Q. You went up to his office to see him on Sunday, on business?

A. Yes, sir; I was sitting in the room at the hotel, and saw him pass

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by, going to his office, and I wished to see him, so I followed him a few minutes afterwards and went up and saw him.

Q. You couldn't wait until the next day, I suppose?

A. Well, I expected to get out of St. Peter just as quick as I could get out.

Q. Did you make any effort to find him on Friday or Saturday?

A. I did not.

Q. You went up there, and stayed at his office, during what time?

A. From between 6 and 7 o'clock until about half past ten.

Q. And then went directly to your room?

A. Yes, sir.

Q. Did you drink anything with Judge Cox that evening?

A. We drank, I think, two of these small tin cups full of beer, in his room.

Q. Did he send out and get the beer?

A. I couldn't say whether it was two or three.

Q. Did he send out?

A. Yes, sir; he sent a boy and got the beer.

Q. How much beer did he get?

A. I couldn't be positive, because I don't recollect, but I think it was either three or four bottles; but we didn't drink it all.

Q. You drank, you say, two or three tin cups full?

A. I couldn't state positively whether it was two or three, but it was somewhere about that.

Q. And you went from there to what place?

A. From there to the Nicollet house.

Q. Directly?

A. Yes, sir.

Q. Didn't go to any saloon?

A. No, sir.

Q. Now, you are positive, are you, that on this night the snow was very deep, and that it was blowing very hard?

A. Yes, sir; I am positive of it for the simple reason that I was snowed up there and could not get out; and for the further reason that on Saturday I walked from the Nicollet house to the depot of the Winona & St. Peter railroad, and I had a hard time getting there.

Q. How far is that from the hotel?

A. It must be over a mile. I couldn't say positively, but it is at least a mile.

Q. You know the snow was deep and blowing that night, because you walked out to the depot the day before?

A. I walked out to the depot the day before, and I recollect its blowing that night.

Q. So you invited the Judge to go to your room and stay with you?

A. I did.

Q. Was Mr. George in bed when you got there?

A. He was in bed. There were two beds in the room; he occupied one bed, and I occupied the other, during the time I stayed there.

Q. Now, did you ever see Judge Cox drunk?

A. I couldn't swear that I did. While I was agent at New Ulm, Judge Cox used to be up there, and we took a good many social glasses together, but I couldn't swear that I ever saw him so drunk but what he could attend to his business, at any time.

Q. You have seen him under the influence of liquor?

A. I have.

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Q. You say that you and the Judge are in the habit of taking social glasses together?

A. That is, we have taken a good many social glasses of liquor and beer together; but I can't swear that I ever saw the Judge drunk, in my life.

Q. Have you talked this matter over any with Mr. George?

A. I have not spoken to Mr. George since he was up here. I was on my way to Winona on the next day after he gave his testimony here, and read the Pioneer Press in which his testimony was given, and I was perfectly thunder-struck when I saw it; for I couldn't believe my eyes, that a man could swear to any such thing as that, when it was, positively, not so. It is certainly not so, in any sense of the word.

Q. You were not drunk yourself, that night?

A. No, sir; I was not drunk: I never was drunk but once in my life.

Q. I never saw a man who would admit that he was drunk.

A. Well, sir, I was drunk once in my life. That was quite a number of years ago. At present I am a total abstainer.

Q. Well, I should think you had better be. Were you under the influence of liquor at all while you were in St. Peter, at that time?

A. I never took over two or three glasses of beer, at any one time. I was under the influence of liquor. Any man that takes a glass of liquor or beer is under the influence of liquor, to a certain extent, certainly.

Q. You were not intoxicated at all?

A. I was not intoxicated, no, sir.

Q. How long have you been a total abstainer?

A. Well, several months.

Q. About how many months?

A. Well, I couldn't state positively; it is five or six.

W. F. BEDBURY

Sworn as a witness on behalf of the respondent, testified:

Examined by Mr. ARCTANDER.

Q. Where do you reside?

A. At Marshall, Minnesota.

Q. What is your business?

A. Traveling salesman.

Q. Do you know Mr. Drew?

A. I do.

Q. Do you know the respondent here?

A. I do.

Q. State whether or not in the month of August, 1880, you saw Mr. Drew and the respondent together, in Mr. Matthews' law office, in Marshall?

A. I saw them in there,—both of them together,—sometime about that time.

Q. Have you seen them more than once there?

A. Never but one time.

Q. At this time was there some talk between you and the Judge about a dog?

A. There was.

Q. It is that dog story to which I wish to call your attention.

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A. Well, I had a dog that I thought considerable of, that I had been puffing up, to the Judge, considerable. I understood that the Judge had a half brother to him, that he paid fifty dollars for. The Judge had never seen my dog previous to that time, and I suppose I had "set" the dog up pretty high to him. When the Judge came in he saw the dog and he says, "Whose dog is that? Come here," [Witness snaps his finger and thumb together as indicating.] "Charge!" The dog didn't pay any attention to him. The Judge said that was "the h—l of a dog;" wanted to know who owned the dog. "Well," I says, "you needn't mind that dog, that dog belongs to me." He made the remark, "that was a d—d pretty dog to be talking about as I had,—the qualities of the dog," and talked dog considerable, pro and con,—what the exact words were I couldn't state.

Q. Well, I will ask you to state whether or not Judge Cox was at that time, intoxicated or drunk.

A. I didn't think he was.

Q. I will ask you to state whether or not his talk at any time, was as if he was conversing with the dog, taking it for a rational being, and getting mad because it couldn't answer him.

A. Nothing only merely told him to charge, and snapped his finger, and told him to "come here." The dog paid no attention to him whatever.

Q. The dog was used to having only one master?

A. That's the idea.

Q. Now, was there anything foolish in the Judge's talk there?

A. I saw nothing that I thought was foolish in it. The Judge and I have always been very familiar,—more especally on sporting matters,—he is quite a hunter, and I am myself.

Q. Now, did he "go for you" for having such a "d——d fool of a dog," in any other way than as you have stated?

A. Not in any other way that I can remember in any shape or form.

Q. Did he "warm it to you pretty lively," in any form, shape, or manner?

A. Well, he made considerable fun of me.

Q. Just made fun of you?

A. Rather ridiculed my dog.

Q. When he talked there, was there any signs of nonsense in what he talked?

A. Well, it was a sort of mixture—sort of an amalgamation,—sort of sense and nonsense in with it.

Q. In a joking manner?

A. The whole conversation I took as a joke; as rather trying to run on me a little about my dog.

Q. Nothing in that conversation indicating to you that he was intoxicated?

A. Not anything at all.

Examined by Mr. Manager COLLINS.

Q. Mr. Redbury, have you ever seen Judge Cox intoxicated?

A. No, sir.

Q. How long have you known him?

A. Since 1877.

Q. Have you ever seen him under the influence of liquor?

A. I think I have.

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Q. Was this one of the occasions when you have seen him under the influence of liquor?

A. That was one of the occasions.

Q. He was under the influence of liquor at that time?

A. I thought he was slightly under the influence of liquor.

Q. Now, will you explain to the Senate why you say he was not intoxicated, if he was under the influence of liquor?

A. Well, my version of the word "intoxication" is far different from the term "under the influence of liquor."

Q. Won't you give us your version of the word "intoxication?"

A. The word intoxication means "madness to frenzy," as I understand it; that is Webster, I believe.

Q Judge Cox, you say, was not intoxicated so that he was frenzied?

A. Oh, no.

Q. That is what you mean to say?

A. Yes.

Q. In your opinion, a man is not intoxicated until he is frenzied?

A. Oh, no, not by any means.

Q. Don't you agree with Webster, or do you find fault with Webster?

A. Oh, I think there is kind of a go-between. I think I can tell when a man is under the influence of liquor so that it affects him, from his general appearance.

Q. But you don't think a man is under the influence of liquor until he is maddened to frenzy?

A. Well, I think he would have to be pretty full.

Q. Well, about how full?

A. Well, that would be owing to circumstances. Some men have larger capacities than others. I could take a drink sometimes that would make me pretty drunk; at other times I could hoist in a good many, and they wouldn't make me drunk.

Q. What do you mean by a man being pretty full?

A. Well, all he can carry comfortably.

Q. Would he have to lie down to carry it?

A. Oh, no; he could not carry it very well, if he was lying down.

Q. Now, isn't a man intoxicated, in your opinion, if he staggers?

A. I don't think he is intoxicated,—if I understand the definition of intoxication right,—when he staggers;—I don't think he is intoxicated, —I think he is drunk.

Q. When he talks senseless?

A. When he talks senseless, I should say he is badly under the influence of "budge."

Q. Of what?

A. Whisky.

Q. Now, if a man is so badly under the influence of liquor as to be unable to attend to business, in any degree, is he, in your opinion, intoxicated?

A. I should think he was drunk.

Q. You should think he was drunk?

A. I should.

Q. Now, you say you have seen Judge Cox drunk at one other time, or rather, under the influence of liquor?

A. Yes, I have.

Mr. ARCTANDER. He didn't say he was drunk.

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The WITNESS. Well, he changed the question.

Q. And he was under the influence of liquor upon this occasion?

A. Yes, sir. I won't swear positively, my friend, that he was under the influence of liquor, because I hadn't seen him drink a drop, but my impression was that he had been drinking some.

Q. Have you had any conversation with Mr. Drew about this affair since Mr. Drew testified here?

A. Nothing special. I was into Mr. Drew's office the other day and he asked me what I was going to testify in that case. I told him I was going to testify to what I knew about it, and what I didn't know, I wasn't going to say anything about. That's the only conversation I have ever had with him.

Q. Did you not, at that time, tell Mr. Drew that you had seen Judge Cox drunk on two occasions, and that was one of the occasions?

A. No, sir.

Q. Or words to that effect?

A. No, sir; I said I had seen Judge Cox under the influence of liquor, and that was one of the occasions. Those were my words.

Q. Was any one present besides Mr. Drew?

A. I think there was somebody in the office, but I can't tell who it was.

Q. Has he a partner?

A. He has, I think; his brother.

Q. Was it his brother who was present?

A. No, sir; his brother is at Minneapolis.

By Mr. ARCTANDER.

Q. You stated, I believe, that in your opinion a man was drunk when he was under the influence of liquor to an extent so as not to be able to attend to his business, as well as at other times?

A. I did.

Q. Was Judge Cox in that condition at the time?

A. He was not.

Mr. ARCTANDER. Mr. President, I desire to swear the respondent, for the purpose of identifying a certain book.

E. ST. JULIEN COX

Sworn as a witness on his own behalf, testified:

Examined by Mr. ARCTANDER:

Q. Judge Cox, what is this book? [Handing it to the witness.]

A. It is a record of the business done at chambers, in my office, since I have heen elected Judge, and up to the first day of November, 1881.

Q. Are the entries there in your hand-writing?

A. They are.

Q. Were they made on or about the time at which you transacted the business?

A. They were, sir.

Q. The index that is in there,—is that in your hand-writing,—made by you?

A. Yes, sir.

Q. As you went along; is there anything in that, of business done at special terms, or at general terms, or is it all office business?

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A. It is intended to be *exclusively* office business. I think, perhaps, in the year 1880, there may be one or two cases taken from special term, that got in there by mistake.

Q. That only has reference to your business as Judge, has it?

A. Exclusively.

Q. Your judicial business, at chambers?

A. Yes, sir.

Mr. ARCTANDER. Mr. President, we shall now offer this book in evidence under article 18.

Mr. Manager COLLINS. We object to it, upon the ground that it is immaterial and irrelevant. I don't know, Mr. President and Senators, under what rule of testimony the gentleman intends to offer this book in evidence. He seems to have laid the foundation that is prescribed in the statutes for the admission of account-books. I apprehend that this is not an account-book, and just why this book should be offered in evidence, or what it tends to prove, I cannot understand. If a record, kept by a respondent in a case of this kind, or any other case of a criminal nature, can be introduced in evidence, any man accused of crime, even the worst criminal, can manufacture testimony for himself. There could be no doubt at all of that fact, if this would be testimony of anything. Exactly what it is intended to be testimony of, I cannot understand.

Mr. ARCTANDER. Mr. President, I do not, of course, expect the Senate to admit this in evidence, without an explanation on my part of the purpose for which it is offered. It has already appeared, from the testimony of the respondent that this is a record of all the business that he did at his office or at chambers,—taking it outside of his regular duties at special and general terms. We offer it under this article for a two-fold purpose. It has appeared, in his testimony, that these entries were made at or about the time at which the matters were under consideration; it shows entries made through four years, almost every day,—at least every day when he was at home and at his office, doing business,—and it shows by comparison, (and that is one of the purposes for which I offer it,) that notwithstanding the fact that the handwriting of the respondent, which is already in evidence, which is admitted to have been, and, as the managers have pleased to call it, a drunken handwriting, during the great majority of the time of these four years which this book covers, almost every day in the year, at least every day when the respondent has been home, and made entries in this book, that he was not intoxicated.

We propose to show that fact by a comparison of the entries of this book with the signature of the Judge already in evidence.

But we offer it for another purpose: we are charged here with habitual drunkenness under article 18, and I take it that it is laid down in the books, and is undisputed authority to-day, that to make out habitual drunkenness you must show drunkenness to such an extent that the party, the majority of the time, is prevented on account of his drunkenness, from attending to his business pursuits. Now, if we can show by this book,—and it is proper testimony in this respect,—that every day when this respondent was at home, he has transacted business, and the handwriting in which that business is recorded shows that it was done in sober moments, shows that he properly performed his business, day out and day in, during these four years, I say that that everlastingly destroys the

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theory maintained by the managers, the theory of habitual drunkenness; —for it shows facts that are incompatible in their nature with the theory of habitual drunkenness, and it is for that purpose that I offer it. It is for a two-fold purpose. To show the different dates, and the different things that were done upon those dates, and the manner in which those things were entered. It shows in the back of the book an index, well kept of all the cases contained in it. I say it is impossible that the man who has done that,—who has kept such a record,—who has acted as that record shows he has, — could be an habitual drunkard. And it is for those purposes that I offer it,—for whatever it is worth. I claim it would be competent evidence to rebut any presumption that the State may have raised from the evidence they have produced before you, in regard to several of these drunks, upon the part of the respondent.

Mr. Manager COLLINS. Exactly what the gentleman claims, or why he seeks to introduce this——

Mr. ARCTANDER. I desire to answer a further point made by the Manager, and it is this: That if such a book could be introduced, any criminal could manufacture testimony and introduce it in his own favor. Now, I take it for granted, that the gentlemen are at perfect liberty to examine that book and see whether it bears upon it the ear-marks of fabrication,—whether it is a book made up for the purposes of this trial or not,—and to cross-examine the respondent upon it to the fullest extent. I am perfectly willing that they should do that; but I maintain that wherever we leave behind us acts or facts in writing, whether written on paper or on stone, they become something more than mere declarations; every entry is an act and a fact which may be introduced in testimony before you. It is not a declaration made by a criminal, nor by anybody else. This is a book which stretches out over the whole period of this respondent's term, made before any voice or whisper was raised in regard to his impeachment. The book is here and shows for itself; it shows that it is no manufactured evidence. And if it bear upon it the ear-marks of fraud, or of being manufactured for the purpose of this case, the managers could show that fact, and it would re-act to our damage. But I say I dare the managers to take the book and prove the claim that it is fabricated by the respondent, or that there is any room there for fabrication at all.

Mr. Manager COLLINS. As I understand the nature of this book,—I have not had time to examine it,—it seems to be a record kept by Judge Cox (he has so testified) of the cases he has had under consideration at Chambers. I suppose it embraces cases where *ex parte* orders have been made, such as for the issuance of writs of attachment,—where attachments have been vacated,—perhaps where writs of *habeas corpus* have been made returnable,—and things of that character. Now, I would like to have anyone tell me how we could disprove anything that is contained in that book. The fact is, as he testifies, that the entries were made at *or about* the time. He has attempted to introduce it, by following precisely what the statute points out as a foundation for the introduction of account books, and we do not think, without statute, any account book could be introduced in evidence. Having laid what we call the foundation for the introduction of an account book, he attempts to introduce here a diary; it is really an official diary kept by Judge Cox! How are we to disprove it? We do not expect to be able to take up that book and show by any ear-marks about it that it is fab-

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ricated; I don't know that I would be justified in saying that it was fabricated, I don't think I could truthfully say so, I don't suppose it is, I don't suppose it would be of sufficient importance to fabricate a book of the kind, but I simply say, it has nothing whatever to do with this case. And if that class of evidence were admissible, no matter who were on trial, it could be introduced, and a criminal might be shielded from the consequences of his crime.

Now, it may be possible they could show by this book, that on a certain day, when we allege Judge Cox was drunk at New Elm, he did certain business at St. Peter; and the counsel wants us to take this book, in his handwriting, with these entries, made as the Judge states, at *or about* the time of the occurences, to disprove the allegation that he was drunk at St. Peter! That would be the idea of it. I say that it is immaterial, irrelevant and inadmissible.

It is inadmissible for another reason: It is not possible to contradict a single thing there is in it. Are we to hunt up all these attorneys, and find out from them whether during the past four years, Judge Cox has granted a writ of attachment upon a certain day, or a certain order upon a certain other day?

Mr. Manager DUNN. If we are, we want more time to rebut.

Mr. Manager COLLINS. Yes; as the learned manager suggests, if we are, we want more time to rebut. It would be impossible to contradict that book, if we should stay here for the next two years. I never heard of anything of that kind being introduced in any case,—a private diary,—either by an officer or an individual.

The PRESIDENT. The question is, shall the objection be sustained?

Mr. Manager COLLINS. (To Mr. ARCTANDER.) Do you claim that the law provides for the keeping of a book of that kind?

Mr. ARCTANDER. No, sir.

I desire to call the attention of the Senate to the fact that this book shows, among other things, the date when the case of Brown against the Winona & St. Peter Railroad Company was settled before him, and what he did at that time.

Mr. Manager COLLINS. The counsel proposes to show that the Judge was not drunk at the time when the case of Brown against the Winona & St. Peter Railroad Company was settled, because, under that date, there appears an entry in this book; and the Lord only, knows when it was written: that is a sample of the testimony he offers here.

The PRESIDENT. The question is, shall the objection made by the counsel for the State be sustained? The clerk will call the roll. Those voting aye will vote to reject the book; those voting no will vote that it be received in evidence.

The clerk then proceeded to call the roll.

Senator POWERS, (when his name was called:) Mr. President, I don't look upon this as a matter of much importance either way. I vote aye.

The roll being called, there were yeas 15, and nays 9, as follows:

Those who voted in the affirmative were—Aaker, Campbell, Gilfillan, J. B., Howard, Johnson, F. I., Johnson, R. B., Macdonald, Pillsbury, Powers, Shaller, Tiffany, Wheat, White, Wilkins and Wilson.

Those who voted in the negative were—Adams, Castle, Clement, Crooks, Johnson, A. M., McLaughlin, Mealey, Morrison and Rice.

So the objection was sustained.

Senator CASTLE. Mr. President, as there were two purposes for which

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that book was offered, perhaps I ought to explain my vote. I have some doubts about the general ground upon which it was offered, but I have no doubts whatever about the special ground. I think the Senator from Hennepin (Senator Gilfillan) and myself agree, that the book would be competent for certain purposes, but not for the general purpose for which it was offered. I voted on the theory that it would be competent for certain purposes but not competent perhaps for the purpose for which it was offered.

Mr. ARCTANDER I now offer this book, without any regard for what purpose it is offered,—without particular reference to articls 18.

Mr. Manager DUNN. Well, we raise the same objectson, without argument.

The PRESIDENT. The book is again offered. The counsel states for general purposes, as the chair understands, and not for any special purpose, and the counsel for the state objects.

Mr. Manager COLLINS. There is a more serious objection to it now than before. As I understood, the book was offered before, generally, for general purposes.

Mr. ARCTANDER.. It was offered for a specific purpose.

Senator CROOKS. Do I understand it is now offered under any particular article ?

Mr. ARCTANDER. Not now, under any particular article.

Senator CROOKS. You offered it before under article 18 ?

Mr. ARCTANDER. Yes; now we do not offer it under any.

Mr. Manager DUNN. It is evidence in no sense whatever.

The PRESIDENT. The chair would sustain the objection raised by the counsel.

Senator ADAMS. I ask that the question be submitted to the senate.

Senator CASTLE. Mr. President, there does not seem to be very much business, and it is possible that this matter may cut some figure in the case,—I would like to hear the opinion of some of the Senators upon the subject,—I might, perhaps, decide it differently from what I think now I would,—I move that we go into secret session for the purpose of considering the question.

The PRESIDENT. Senator Castle moves that the Senate go into secret session. That will be taken as the sense of the Senate unless objection is made.

Senator POWERS. Before the Judge leaves the stand I would like to ask him to explain the statement that he made here, that the entries were made "at or about the time" of the dates in the book; I would ask him to explain what he means by that.

The WITNESS. By that answer, I mean this, sir: That in many cases I would not make an order, or sign an order until it was first entered into that book. I rarely let an order go out of the office, of any kind or character, until it was entered in that book, at the date of making the order.

Senator POWERS. So that, almost always—

The WITNESS. The making of the order, the granting of the decree, the allowance of the petition, the granting of a motion upon a hearing, was similtaneous with the entry in the book.

Senator POWERS. Now, what proportion of the orders were entered in that way; nine-tenths, nineteen-twentieths?

The WITNESS. I do not know of a single instance, sir, where the order was not entered immediately at the time of making it.

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: POWERS. Then you might say that the entries were made *at*
?

ITNESS. Yes, sir; I wish to be so understood,—that they *were* at

r MACDONALD. I would like to ask counsel for the respondent
any more witnesses to examine.
ICTANDER. No.
ınager COLLINS. I would like to ask the witness one question.
ill you tell me if there is an entry in that book of your signa-
ı that writ of mandamus in the Long case?
ITNESS, (to Mr. Arctander.) Hand me the book, sir. (The book
led to the witness.) What is the title of that case?
ınager COLLINS. Albrecht vs. Long.
ıat not being either chamber business or court business of any
re is no entry of it; but there is of the case of Albrecht against
Long. On June 1st the case was settled and a new trial denied.
ıen that entry is not in that book?
'hich entry, sir?
he acceptance of service.
hat would have been the act of a private individual, and there-
ourse, not an official act.
was not an official act?
ot in the least.
ou say that was not an official act?
ot an official act, in the view I take of it.
ou did not sign that officially, I believe?
signed it officially, sir, but it was under the command of the
e Court that I signed that. I had no liberty of action except
ion, and that was the reason that I declined at first signing that
I intended to resign before making a false return.
low, it *was* an official act?
n one sense of the word, yes, sir.
nd you signed it officially?
ot in my official capacity at chambers, nor as a judge of the
ting *as* a judge.
low, Judge, do you sign orders for writs of attachment, or papers
ind, elsewhere than at your office?
never have, sir.
ou never have?
lo, sir.
ever have signed anything of that kind except at your office?
don't think I have ever signed a writ of attachment in my life,
ny circumstances, *anywhere;* I never knew a Judge had to sign

lave you ever approved a bond, and directed a writ to issue up-
iling of the affidavit?
es, sir.
lave you done it at any other place than at your office?
es, sir.
low, then, when did you make the entries in that case?
never made them at all.
hen this does not show that class of business?
t shows the business that is done in my office, at Chambers, sir.
nd such as the settling of cases?

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A. Not necessarily, sir. When I grant divorces I enter them in that book. You will find 70 or 80 or 120 cases in there, I think.

Q. Well, that class of business, and such class of business as the settling of cases?

A. Yes, sir.

Q. Then there is a great deal of business you do, that you make no record of in that book?

A. Well, there is some, but very little.

Q. By Senator GILFILLIN, J. B. This contains, then, only chamber business, as transacted in your office?

A. That is all.

Q. At St. Peter?

A. Yes, sir.

Q. And it does not contain chamber business which you may do elsewhere?

A. No, sir.

Q Nor does it contain the orders for the issuance of attachments or *ex parte* orders.

A. At chambers, yes.

Q. At chambers?

A. Certainly, at chambers, in my office.

Q. But not that which is not done at your office?

A. No, sir; I don't think there is a single instance where I have approved a bond, or allowed an attachment to issue,—where it has been done away from my office,—that is found in this book, sir.

Q. I believe you stated you made it an invariable rule to make these memoranda before you allowed the decrees to go out of your office?

A. Almost always, sir; for I have a memory that is very singular; I am very apt to forget a man's name when it is almost before me, and unless I am having the paper right before and get the name down into the book, I am apt to forget it, sir. I wouldn't trust myself to write a strange man's name down five minutes after I have seen it. Allow me to look one moment at that book to see if there is a single instance during the last year.

Senator POWERS. Since I gave my vote on this question, it seems to me that there have been explanations made which have a weight on my mind and which would perhaps on some other persons'; and if the book was made out, as the Judge says, at the time, it seems to me there would be considerable important evidence there; that we might learn at any rate, something about whether the beok was drunk or not; and with the permission of the Senator from Washington,—

Senator CASTLE. I withdraw for any other motion.

Senator POWERS. I move that it be recived. I think the question has assumed a new form, so that the chair will not regard it as a matter which the Senate have already had under consideration.

The PRESIDENT. The chair will state that the last decision made upon the admission of the evidence was merely upon the strength of the vote which the Senate had just given; and as there is a disposition on the part os the Senate to reconsider its action, the chair withdraws its ruling and submits the question to the Court.

Mr. Manager DUNN. Mr. President, I should like to ask the counsel for the respondent upon what ground he bases the introduction of that book, what he intends it shall prove, or what light it shall throw on this case, as I have not heard any ground stated for its introductton, as to

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;e against this respondent. If there is any reason for it I would ;ar it stated.
RESIDENT. The chair would state that there has been a motion fore the court.
r WILSON. The question is upon sustaining the objection.
RESIDENT. The chair withdraws its decision, and submits the to the court. The question is upon the objection raised by the for the State.
r WILSON. I desire to state my reasons for the vote which given. I dislike, while the roll is being called, to make a and I prefer to say what I have to say, now.
r CAMPBELL. We haven't any right to debate it as I under- this time. I object, unless we go into secret session.
r WILSON. I disclaim any desire to debate it. If you prefer, I until I am called upon to vote.
RESIDENT. The question is upon sustaining the objection by sel to the reception of the book. Those who vote aye, vote to e book; those who vote no, vote to receive the book in evidence.
r GILFILLAN, J. B. I would like to ask the counsel for the res- if there is any ground upon which they claim the book to be le as evidence, and if so, to state that ground.
RCTANDER. I think, Senator, I have already stated why I claim issible. It is evidence that may be worth something, to go to at the respondent performed his duties properly, all the way these four years,—not touching upon his terms of court, not in ate life, but in his life outside of court,—that he performed his and acted in a manner that would be incompatible with the f habitual drunkenness. That is the purpose for which it is

or GILFILLAN, J. B. Now, I would like to inquire, farther, if any rule of evidence, principle of law, or statute, which makes nce of any such thing.
or CROOKS. In this case?
or GILFILLAN, J. B. In any case. We have a statute relating to books, but this is not an account book.
or CROOKS. I don't understand we are going according to the evidence, but that we are getting at the facts in the case.
PRESIDENT. The question is upon the objection of the counsel State. Those who vote aye, vote to sustain the objection and to e book; those who vote no, vote to overrule the oblection and to the book in evidence. The clerk will call the roll.
clerk then proceeded to call the roll.
tor ADAMS, (when his name was called.) Mr. President, I wish ain my reasons for the vote which I shall cast upon this question. er the introduction of the record kept by the Judge of a court as a private record is admissible or not under the rules of law, I am yer enough to decide, that not being my station; but the question this court is the question of specific drunkenness, at times and and under certain circumstances, and, upon the 18th article,—of al drunkenness. Now, I desire the members of the court to bear ct in mind. I don't care whether this evidence comes in under ict rules of evidence or not, yet I do claim, and I believe that easonable member of the court will agree with me, that if these the proceedings had at each separate, specific term of the court,

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have been made a matter of record, and this book offered in testimony to-day, that that book itself will furnish this Senate the best evidence that can possibly be produced as to the condition of the respondent at the time when these orders were entered.

Writing is not a mental quality. It is purely mechanical and every man who has ever been intoxicated at all, knows the extreme difficulty with which an intoxicated individual can write his name. Now, if this record should show a uniformity in the entries, made at the various terms of his court, with the same chirography, the same formation of letters, the same strict reference to grammatical construction, legal language, punctuation, tautology, and all the matters that go to make up a record, and that these principles are carried out throughout that volume, you cannot, in my opinion, have a stronger argument in relation to the question of drunkenness or sobriety upon the part of the respondent. Hence, I say it becomes a valuable article of testimony to this court. A man may be drunk, and still retain sufficient mentality to converse reasonably; but, as writing is a mechanical effort, directed solely by the brain, and guided by the nervous system, it is controlled entirely and absolutely by the amount of stimulation which that brain has received. Now, then, as a means of testing that question, you have no better way in my opinion, than to bring in the writing of the respondent during those times. Hence I shall vote Aye, Mr. President, on this question.

The CLERK. That is to exclude the book.

Senator ADAMS. I mean I vote No. I vote not to sustain the objection; I mean to vote to admit the record in evidence.

Senator CASTLE, (when his name was called) : I decline to vote.

Senator GILFILLAN, J. B. I insist that the Senator shall vote.

Senator CASTLE. I vote Aye.

Senator GILFILLAN, J. B., (when his name was called.) Mr. President, I desire, also, to explain why I shall vote to sustain the objection. The first reason is, that I know of no rule of law, either common or statutory, that makes it evidence of anything; so that it is both incompetent and immaterial. I vote Aye.

Senator A. M. JOHNSON, (when his name was called.) Mr. President, I voted to admit the book, when the other vote was taken, now I shall vote not to admit it, and the reason why I shall do so, is because article eighteen charges the respondent with being an habitual drunkard, and an habitual drunkard, as I understand the term, is a man who has drank so excessively as to incapacitate him for doing business. If there is system and method in that book, it shows he was not incapacitated to do business, and it would, therefore, be competent and proper, under article eighteen; but I cannot see how it could apply to any other article; it would be incompetent and irrelevant under any other charge against the respondent. Under article eighteen, however, I think the book ought to have been admitted. I vote Aye.

Senntor MEALEY, (when his name was called.) Mr. President, as the explanation of votes seems to be the order of the day, I want to say a word in regard to the vote I shall give. The respondent is here charged with habitual drunkenness. What constitutes an habitual drunkard is a question upon which probably no three senators will agree. I think the counsel for the respondent remarked, that there was a theory, or that it was the opinion of some men, that a man to be an habitual drunkard, must be incapacitated for business half of the time, or more. I have heard a great many men express themselves that they would designate habitual

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ess such an amount of intoxication as would incapacitate a
usiness more than half of the time. The senator from Hen-
nator Gilfillan) says he knows of no rule of law by which this
ble. Now, I do not care whether there is any rule of law or
we are not governed strictly by law,—I look upon this body as
iom the ordinary courts; we can take greater latitude if we
We are here to get at the bottom facts, and that is what I de-
ive at.

this book is of such a character as to show that Judge Cox
entries contained in it, day after day, and it may be, at the
that men have sworn before this court that he was drunk,—
s a beast,"—if the language used is proper, grammatical, the
ng legible, and all those things,—to my mind it is testimony;
tainly seems to me it is legitimate testimony under article 18.
ohnson just remarked that he voted for it before, because he
t applicable to article 18. It is now offered, as I understand,
it can apply to article 18 just the same now as when offered
lence, believing it to be competent testimony, or rather some-
t should, or may have some weight upon our minds in decid-
natter, I vote No.

WILSON (when his name was called:) I guess, now, I have a
nake a speech. (Laughter.)

against the admission of this testimony, upon the last vote
aken, and shall do so now, because, if this book were in evid-
e us. I do not see that it could cut any figure at all, either as
hat Judge Cox was guiltless of the offence alleged against him
ese several articles or under the general charge, of habitual
ess.

nere is no man who would claim that an habitual drunkard
lrunk or incapacitated for doing business the whole of his time.
great many men whom I call habitual drunkards, who have
ods of sobriety. My idea of an habitual drunkard is a man
ndulged in spirituous liquors until his appetite has become so
it all the moral force he possesses, *at times*, will not deter him
ulging too freely in ardent spirits, and "getting over the dam."
r a man, by frequent indulgence in intoxicating liquor, has lost
ntrol, I call him an habitual drunkard. When a man cannot
rom home, and stay away any length of time without consort-
lewd women, I consider that he is a man who is an habitual

r CROOKS. I call the Senator to order; that is not a subject
ssion in this case.

r WILSON. I am not referring to any particular case now, but
y ideas of what is an habitual libertine and what is an habitual
.

uppose (and I will it take as admitted, for the sake of the ar-
that this book is proper; that all the entries in it show that
e made by a temperate man; that the grammatical construction
ntences is perfectly correct, and that everything is done in de-
d order. That does not prove that Judge Cox was not drunk,
e ninth article, or the fifteenth article, or that he is not an habit-
kard. And I cannot see, for the life of me, why this is offered
ice here; I cannot see that it can cut any figure at all.

vil engineer were charged with drunkenness while in the dis-
0

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charge of his duties, you might just as well introduce in evidence his grade books, his profiles, and other memoranda, to show that he was a temperate man, as to introduce this book to show that Judge Cox is a temperate man. It does not cut any figure at all, and would not have, it seems to me, any influence with any one. It is not proper evidence: it cannot be, under the rules of law, or under the rules of common sense: and I vote Aye.

The roll being called, there were yeas 18, and nays 5, as follows:

Those who voted in the affirmative were—

Messrs. Aaker, Campbell, Castle, Gilfillan J. B., Howard, Johnson A. M., Johnson F. I., Johnson R. B., Macdonald, McLaughlin, Pillsbury, Rice, Shaller, Tiffany, Wheat, White, Wilkins and Wilson.

Those who voted in the negative were—

Messrs. Adams, Crooks, Mealey, Morrison and Powers.

The PRESIDENT. The questisn being upon sustaining the objection, there were yeas 18, and nays 5, so the objection is sustained.

Mr. ARCTANDER. Mr. President, I simply desire to say, in order that this matter may go right upon the record, that neither the respondent nor his counsel have at any time claimed, taking the strict construction of law and the strict rules of evidence, that this would be competent testimony, probably, except by analogy; but, with the view that the Senate has taken heretofore,—whenever there was any question,—to give full latitude and scope to the prosecution to show everything they possibly could, with an evident desire to allow everything to come in, and not to be governed by the strict rules of evidence, that they have established the precedent ——

Senator CAMPBELL. I raise the point of order.

Mr. ARCTANDER. It was simply with that view that the question was raised. I simply wanted to explain our position.

Senator CAMPBELL. Well, there is no question before the Senate.

The PRESIDENT. Are there any further questions to be asked the Judge?

Mr. ARCTANDER. That is all.

Seuator CASTLE. Mr. President, I desire to make a motion with reference to this book. Perhaps I differ with the majority of the Senate; I think I differ with the counsel for the respondent and the managers. I desire, however, to go upon the record as nearly right as I can. I voted to sustain the objection to the introduction of this book upon this last vote, and I did so because the general purpose for which it was offered was certainly more objectionable, as was stated by one of the honorable managers, from a purely legal standpoint, than when offered under article 18.

I move now that the book be received in evidence for the purposes of reference to those particular charges of drunkenness, if any there be, that occurred upon the time or times when chamber business was transacted before the court; that is, those particular items, the book may be received in evidence upon. I suppose, as a matter of fact, the book is in evidence now, for anyone to look at whenever he has a mind to, but then we are considering this subject from purely a legal standpoint.

It seems to me that upon those items the book would be material. In one instance there was an important case tried which went to the Supreme Court, where the question was as to the competency of the party, when performing certain acts, to-wit: making a will and transacting other business; the court permitted the presumption of incompetency

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ed, by showing the diary of the party made at the time of transaction.
nmered down, the logical, the physical, and the intellectual nkenness, is to render the individual, to a greater or less de-petent; for, if he be as competent as when sober, no injury d I think the rule ought to be the same in the case at bar, the case to which I have referred. The particular case to ve reference was a case in which Senator Gilfillan was a coun-I believe he knows all about it.
lso say, while I am up, it seems to me that the book is com-certain extent, under article 18; and for the very reason suggested by the senator from Goodhue (Senator Wilson.) r says you could not with propriety introduce the notes, and acts of a civil engineer to determine the question of ency,—that is the effect of his statement,—he says *drunken-* I say all there is of drunkenness is competency or incompe-

are how drunk a man is, if he possesses his normal compe-ll respects, then he is committing no crime or offense ex-st himself and his physical, moral and intellectual nature. a moment. A man is charged, on account of drunkenness, an incompetant engineer. Now, would it not be competent that connection, the doings and the transactions of the man, period within which he is charged? Take it with reference e Superintendent of Schools. It might be charged that the dent of schools was not competent to discharge the duties of He presents his book, containing memoranda of his various s and doings as a school superintendent,—showing that on a e he visited a certain school, on a certain other date, a certain ol,—the condition in which he found the school and what he premises. Would not that be competent evidence? Would he kind of moral evidence that the human mind would natu-tably and properly consider?
reference to the transactions of a lawyer,—which is germain to judge: I am a collecting lawyer and I am charged with ss. I take my books; I make my entries. When I write a erning a collection, I enter it; when I bring an action, I enter I try the case, I enter that; when I make the collection, I enter I pay over the money, I enter that. Now, would not those material and competent evidence upon the question of my ss at those times?
s me that there is the very best of grounds for saying that nce to these special occasions, if any there be, the book would ent evidence. Therefore, I move Mr. President, that the en-in this book be received in evidence.
SIDENT. The chair must suggest that the gentleman is speak-order. This is a rather latitudinal day, but the chair would if it is desired by the Senators to make speeches, it would be into secret session.
"Question."
ESIDENT. The question is upon the motion of Senator Castle.
nager COLLINS. If there is a disposition to compel the mana-he respondent to hunt up these items, we certainly shall not do on't know what items in this book will refer to any of these

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charges; we do not know anything about them; and we would be obliged to take the time of the Senate to hunt them up here, and to put the respondent on the witness stand and cross examine him about them.

Now, the entry in this book, concerning the item which the counsel for the respondent has referred to, was made, according to the testimony, twenty-one days before the case was settled. And this is the character of these entries, or of the entry to which counsel has called attention, and which we are to be compelled to hunt up here and to produce witnesses upon, and to go all over this ground again. What time have we for this? Is it desired, this afternoon, to take the time to cross examine upon all these points, to find when these entries were made, to ask how it can be explained that the case which was settled on the 26th of July was settled, as appears according to this book, upon the 5th? I apprehend not.

Senator CAMPBELL. Mr. President, I still insist that there is no question before the court. The book has been offered, for certain purposes by the respondent; the managers objected, and the objection was sustained. The counsel for the respondent have not offered it for any other purpose.

The PRESIDENT. The motion of Senator Castle is to admit it for another purpose.

Senator CAMPBELL. My point is that Senator Castle cannot move, until it is first offered by the respondent. It was not re-offered by him.

The PRESIDENT. The chair is of the opinion that it is competent for any Senator to make a motion that the book be received; that it is not necessary that the proposition should come from one of the counsel. The proposition to receive anything in evidence may come from any member of the court.

Senator GILFILLAN, J. B. Does the chair hold that it is competent for the court to introduce evidence?

The PRESIDENT. Not to introduce evidence, but to move that certain evidence be received.

Senator GILFILLAN, J. B. Can that be done except when certain evidence is offered?

Senator MACDONALD. For instance, we could offer the deposition of Dick Jones.

Senator CAMPBELL. Certainly, we might move that it be done.

The PRESIDENT. The chair presumes that any proposition made by any member of the court is entitled to consideration, and that any Senator can make any motion he chooses relative to matters pending, and it is for the court to determine whether the proposition shall be acceded to.

Senator WILSON. Mr. President, I do not believe that it is competent for a member of the court to make such a motion any more than it would be competent for me to make a motion to receive the deposition of Dick Jones, which has not yet been offered. This court can only receive such evidence as is offered.

Senator CASTLE. Mr. President, I only care to have this matter fairly represented. If any Senator has any doubt about the manner in which this matter comes up, if the counsel for the respondent will offer the book for the purposes I have indicated, I will ask that it be received; in in the meantime I will withdraw my motion.

Mr. ARCTANDER. We don't care for its being offered at all, if we can't have it offered in the proper way.

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IDENT. Does the chair understand Senator Castle to with-
otion?
ROOKS. I object; I second that motion.
ASTLE. No, sir.
ILFILLAN J. B. Mr. President, there is nothing pending up-
o base such a motion. There is no evidence being offered.
then can be made with reference to any supposed evidence.
thing for the Senate to act upon.
IDENT. The chair is of opinion to the contrary. Senator
moved that the book be received for certain purposes; the
entertain his motion.
ILFILLAN J. B. No; the motion was not, that the book be
it that certain entries,—or, rather, certain *uncertain* entries,—
. We don't know what they are, nor whether, in fact, there
ries.
ASTLE. No; the motion was that the book be received for
s of evidence upon certain points.
IDENT. The Clerk will call the roll upon the motion.
AMPBELL. I would ask the chair to state the proposition.
IDENT. The question is upon the motion of Senator Castle
ok, or that certain portions of the book be received in evi-
certain points which the Senator has stated. Those voting
receive the book, in accordance with the motion; those vot-
to exclude the book.
ILFILLAN. I would like to hear the motion.
IDENT. The reporter will read the motion.

ORTER, (reading:)

ook be received in evidence for the purposes of reference to those par-
es of drunkenness, if any there be, that occurred upon the time or
chamber business was transacted before the court; that is, those par-
, the book may be received in evidence upon.

ILFILLAN, J. B. "That is, those particular items,"—that
offer of the motion. That does not offer the book. I would
w what items are offered, before voting.
IDENT. The chair is unable to state the items which the
poses to offer. The clerk will call the roll.
being called, there were yeas 7, and nays 13, as follows:
ho voted in the affirmative were—Messrs. Adams, Castle,
aley, Morrison, Powers and Simmons.
ho voted in the negative were—Messrs. Aaker, Campbell, Gil-
. Howard, Johnson, A. M., Johnson F. I., Johnson, R. B.,
, Shaller, Tiffany, Wheat, White and Wilson.
IDENT. There is no quorum present voting.
CAMPBELL. Mr. President, I move a call of the Senate.
IDENT. The clerk will ascertain the absentees. The sergeant-
ll close the doors, and see that no Senator passes out until
s under the call are dispensed with.
again being called, the following Senators answered:
Aaker, Adams, Campbell, Castle, Crooks, Gilfillan J. B., How-
on A. M., Johnson F. I., Johnson R. B., Macdonald, McLaugh-
, Morrison, Powers, Shaller, Simmons, Tiffany, Wheat, White,
n.

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On motion of Senator Macdonald further proceedings under the call were dispensed with.

Senator ADAMS. Mr. President, there being no quorum present,—

The PRESIDENT. There appears to be a quorum present.

Senator ADAHS. I wish to offer this resolution.

Senator MACDONALD. What have we done with that book?

The PRESIDENT. Senator Adams offers the following resolution :

Senator CAMPBELL. I would like to know what was done with the resolution :

The PRESIDENT. The chair would state that there was no quorum present, voting upon it.

Senator CASTLE. Mr. President, I desire to have the vote, so far as it went, of record.

The clerk then read the resolution offered by Senator Adams, as follows :

Resolved, That during the adjournment of this Court, viz.: from February 24, to and including March 1, 1882, no *per diem* shall be paid to any member, officer or employee of this Court, and the Secretary is hereby directed to make the pay-rolls in accordance therewith.

Notice of debate was given.

So the resolution laid over under the rules.

Mr. Manager HICKS. Mr. President, I desire to ask the court——

The PRESIDENT. The chair would state, before any further business is taken up, that the motion made by Senator Castle is still undisposed of, for the reason, that when the roll was called upon the motion, there was no quorum; and that, a quorum being present, the question is still pending. The chair will now put the quession. Those voting aye, vote to receive the book, or certain portions of it; those voting no, vote to reject it.

The roll being called, there were yeas 7, and nays 14, as follows :

Those who voted in the affirmative were—Messrs. Adams, Castle. Crooks, Mealey, Morrison, Powers and Simmons.

Those who voted in the negative were—Messrs. Aaker, Campbell, Gilfillan, J. B., Howard, Johnson A. M., Johnson, F. I., Johnson R. B., Macdonald, McLaughlin, Shaller, Tiffany, Wheat, White and Wilson.

So the motion was lost.

Senator CROOKS. Mr. President, if there be no further business, I move that the Senate do now adjourn.

Mr. Manager HICKS. Mr. President, I desire, at this time, while there is a quorum present, to ask leave of the Senate to recall, upon cross-examination, one of the witnesses,——

The PRESIDENT. The chair will state that there is a motion pending to adjourn.

Senator CROOKS. I will withdraw that motion.

Mr. Manager HICKS. I desire permission of the Senate to recall one of the witnesses offered by the defense, for further caoss-examination on next Wednesday evening when the Senate shall convene, or on Thursday morning, as shall be convenient to secure his attendance.

The PRESIDENT. It will be considered that unanimous consent is given unless objection is made. There being no objection, unanimous consent is given.

Senator CROOKS. I now renew my motion that the Senate do adjourn.

The motion was seconded.

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ager COLLINS. Do we understand that the respondent has
ase?
ANDER. No, sir; I have not so stated yet.
IDENT. It is moved and seconded that the Senate do now
many as are of the opinion that the motion—
AMPBELL. I would like to ascertain whether the respondent
or ready to rest.
ANDER. I am not ready to rest, because the shorthand re-
o is my only witness,—has told me that he is not quite pre-
e his testimony, because he has to examine his minutes that he
the judiciary committee. It is simply upon the question of
hment of one or two witnesses.
AMPBELL. We fixed this time for adjournment, so as to
onorable managers to get ready for the rebuttal. Have you
witnesses you wish to call?
ANDER. That is all.
IDENT. Is there any objection to that witness being put up-
d at that time?
ager COLLINS. I don't think there is.
ate then adjourned.

THIRTY-NINTH DAY.

ST. PAUL, MINN., March 1, 1882.

ate met at 8 o'clock P. M., and was called to order by the
ro tem.
being called, the following Senators answered to their names:
Aaker, Adams, Buck C. F., Campbell, Case, Castle, Crooks,
Cormick, McLaughlin, Mealey, Morrison, Officer, Perkins,
Powers, Rice, Shalleen, Simmons, Tiffany, Wilkins and Wilson.
ate, sitting for the trial of E. St. Julien Cox, Judge of the
icial District, upon articles of impeachment exhibited against
e House of Representatives,
geant-at-Arms having made proclamation,
nagers appointed by the House of Representatives to conduct
o-wit: Hon. Henry G. Hicks, Hon. O. B. Gould, Hon. L.
s, Hon. A. C. Dunn, Hon. G. W. Putnam and Hon. W. J. Ives,
e Senate Chamber and took the seats assigned them.
lien Cox, accompanied by his counsel, appeared at the bar of
, and took the seats assigned them.
SIDENT *pro tem.*. Are there any resolutions or motions?
honorable managers ready to proceed with the examination
es?
TANDER. Mr. President, I desire to state that our reporter
re, informs me that he has been unable to find the minutes of
ony of two of the witnesses taken before the Judiciary Com-
at we desired him to use in showing statements made by the
which we have put to them in cross-examination, and which
denied having made. He states to me that he thinks his
as part of the minutes of the testimony with him at Stillwater,

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and that he will not be able to get at it for a couple of days. He has got part of it here, but I suppose it would not be proper nor right to put him on the stand as to simply one portion of the testimony, when we can have him hereafter for all of it at once. I therefore ask leave from the Senate for the respondent to rest his case with the reservation that Mr. Hillman, the short-hand reporter—or if there were two of them, as I understand there were, who took the testimony before the committee,—that they may be called as witnesses on our case, hereafter, for that purpose. There are three or four witnesses, I think the managers will remember, where questions were asked them, and I do not suppose it would injure the managers' case any if that matter should be left until their case is through.

Mr. Manager COLLINS. Mr. President, before that question is disposed of, I desire to say that two or three witnesses have been summoned, or expected here, by the managers, who were on the stand for the defense, for further cross-examination; there is only one of them here to-night. I understand, and we ask, coupled with this request of the counsel, that we may be allowed to put them on the stand out of their order, when they come. We expect them here to-morrow morning, without doubt. I suppose the counsel will have no objection to that.

Mr. ARCTANDER. Oh, of course not.

The PRESIDENT *pro tem.* That will be considered as the sense of the Senate, unless objection is made,—as to both requests.

Mr. ARCTANDER. With the understanding, then, Mr. President, that we may introduce Mr. Hillman's testimony hereafter upon that particular branch, the respondent rests.

Mr. Manager HICKS. There is one witness who was called for the defense that we desire to cross examine to-night; he will be called first. I ask Father Hermann to take the stand.

J. R. HERMANN,

Then came forward and took the witness stand.

By Mr. Manager COLLINS.

Q. Father Hermann, you are acquainted with Mr. B. S. Lewis, your attorney in the case of Powers against Hermann, are you not ?

Mr. ARCTANDER. Wait a moment. I object, Mr. President, to a witness who has been discharged and sent home, being re-called for further cross-examination.

Senator ADAMS. You will have to speak louder.

Mr. ARCTANDER. I say I object to a witness who has been on the stand and been examined, re-examined, and cross-examined, sent home and discharged, being called upon to testify again, upon a further cross-examination. After they have examined a witness, and discharged him, I suppose that disposes of the witness.

Now, I understood that unanimous consent was asked as to one witness, to recall him for re-cross-examination. I have had, it is true, a limited legal experience, as far as the practice of this State is concerned, but it has never occurred to me before in any court of justice, that a witness, after he has been discharged and sent home, when the time comes for the rebuttal on the part of the prosecution, could then be re-called for further cross-examination. If this is in rebuttal I do not object to it. If it is for the purpose of further cross-examination,—after

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has been discharged and after having gone home, and, as I
, not attending here upon subpoena at all, but happening to
all,—I claim that it is irregular and out of its order.
IS. I would ask the learned counsel if he calls him for the
cross-examination.
ager COLLINS. Why, most certainly we do.
IS. We object to that.
ager COLLINS. I have no doubt the gentlemen object. The
h them is just here. They have found the managers here
client; they have brought witnesses here from all parts of the
tify to certain things, and the board of managers have sat
ut anyone to consult with, fifty or one hundred or two hun-
distant from the scene of action. Now, we find, when these
f the witness stand, many things which we desire to cross-ex-
n, as might be anticipated,—my colleague, Col. Hicks, sug-
things;—it is really a few things, so far as each individual
concerned, but in the aggregate a great many things, that, if
e would desire to cross-examine upon. We announced on
that we desired to recall witnessess; we announced it here
ending the request of the counsel, and it is not an unusual
here.
concede to the counsel a great deal of practice. He is too
far; the counsel has had a great deal of practice for a
his age, and I apprehend he knows as well as the re-
knows, that it is a common practice in courts for
to be recalled, out of order, for the purpose of cross-
on, or for any other purpose. It is a common practice.
ler the circumstances of this case, the board of manages
they were entitled,—when they learned these things, which
rial and important, which should have been asked the witness
n the stand before, but which of course, we could not foresee,
ng who the witnesses were,—to be allowed to examine them at
We had, as we supposed, a perfect understanding with the
This is a matter that with an ordinary court would rest wholly
discretion, and certainly it is within the discretion of this
it seems to me, if there is anything material here, that we
fect right to bring it out; and I assure the counsel that if he
call any of our witnesses to re-cross-examine, he can have that
he can have all of them here if he desires, and cross-examine
he pleases and we won't raise any objection. It is nothing
n what is due to the managers, if there is anything im-
hich we have omitted, and nothing more than a simple matter
not only to the board of managers, but to the people of the
t we now be allowed to examine the witness. I say it is not
t is quite common in ordinary courts.
IS. I deny positively the position of the counsel when he
common, after the parties have rested, to recall witnesses for
se of cross-examination. I not only say that, but I under-
y it is unprecedented in any court that thoroughly under-
w to conduct legal business. Since this witness was dismissed
our part, there has been ample opportunity for him to apply
irt for the privilege of cross-examining him; and it was per-
per that he should have the chance to-night, before we rested,
recall this witness for further cross-examinations, but he should

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not have waited until we have rested our case. Now, I say, it is too late to call for the cross-examination of our witnesses. He can recall the witness to make him his own of course; we don't object to that, but we object to the further examination of this witness upon the basis of cross-examination. I undertake to say that such a course is unheard of—after waiting until our side has rested then to ask to recall a witness for the purpose of cross-examining him. What we object to is, that this witness be re-cross-examined, now, after we have rested. There is no objection to his being recalled as their own witness; the counsel can examine him then, as much as he pleases, we don't object to that.

Mr. Manager COLLINS. A word in reply, Mr. President. Counsel puts his objection upon the ground that they have rested. Now, we have reserved the right expressly; and if the counsel supposed we were going to jump in here and scramble to get those witnesses on the stand, before the respondent rested, he mistook the managers entirely. We do not propose to do that kind of business; it is not proper to do so. If it were you would have the fine spectacle here, the moment this Senate was called to order, almost before the Senate was called to order, of counsel asking to recall a witness and being obliged to hurry, before they rested. That is the point the counsel makes,—that we didn't do this before they rested. He concedes that we had a right to do it before they rested, and he asks us to scramble with them for a place here to get this witness on the stand before they rested. We would then probably have the spectacle of two or three of us on our feet at the same time.

Now, I say we have not to exceed three witnesses to examine. It would not take a great while; they are upon a single point.

The PRESIDENT *pro tem.* I would ask Mr. Allis if he would undertake to deny that, even in a district court, it would be within the discretionary power of the judge to allow witnesses to be recalled for cross-examination.

Mr. ALLIS. There is great latitude allowed, sir, but ——

The PRESIDENT *pro tem.* I examined that subject on Saturday, somewhat, by references in the United States Digest upon that point.

Mr. ALLIS. Well, sir, do you find authority for it?

The PRESIDENT *pro tem.* Yes, sir.

Mr. ALLIS. For re-cross-examination, after the parties have rested?

The PRESIDENT *pro tem.* It is stated by a good many authorities.

Mr. ALLIS. After the other side have rested?

The PRESIDENT *pro tem.* It depends upon circumstances, and is within the discretionary power of the court.

Mr. ALLIS. There is a large discretion to the court, but a discretion of the court is one that must be exercised reasonably.

Mr. Manager COLLINS. May I ask the counsel a question?

Mr. ALLIS. Yes, sir.

Mr. Manager COLLINS. Did you ever see a party permitted to open his case after the argument to the jury?

Senator CAMPBELL. Mr. President, submit the question or decide it!

The PRESIDENT *pro tem.* I would prefer that the court decide it.

Senator CAMPBELL. Then I move that it be submitted to us now.

The PRESIDENT *pro tem.* The roll will be called upon the objection.

Senator MEALEY. Mr. President, this is a subject with which I am not acquainted. I should like to hear some explanation of the matter.

Mr. Manager HICKS. Mr. President, allow me call the attention of the Senate to the fact that we claimed this privilege on Friday last, and it was given without objection on the part of respondent. We asked the

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on Friday last to re-call a witness for the purpose of re-exam-
ınd permission was given, we certainly could not have done it
permission, and the right to do this was granted to us by the

.LIS. We expected that would be called for, of course, like any
velege of that kind, at the proper time.
ınager HICKS. It was done with the understanding that the
e had closed. Mr. President, I read from the Journal of Feb-
h, page 894——

permission of the Senate to recall one of the witnesses offered by the
r further cross-examination on next Wednesday evening, when the
ll convene, or on Thursday morning as shall be convenient to secure his
.

SIDENT *pro tem.* It will be considered that unanimous consent is given,
ection is made. There being no objection unanimous consent is given.

.LIS. That means, of course, at the proper time.
ınager DUNN. That might mean, of course, to-morrow morn-

r CAMPBELL. Now, Mr. President, I am going to raise the
order that I should have raised long ago;—that this question,
e rules, should be argued by only one person on each side, so
shall know, at some time, when the question has been fully ar-
l when it is submitted, so that it cannot be re-argued.
r ADAMS. Before this proposition is submitted to the court, I
ask the defense whether they have rested their case.
RCTANDER. We have, with the exception of one witness.
r ADAMS. If the respondent or defendant had rested his case,
would be conceded, without any question, that the State would
l the right to cross-examine this witness; but as to the right of
.mination after the defense has rested its case, in my opinion
very serious question,—unless the cross-examination had oc-
hen the witness had been first summoned here and was on the
The witness was upon the stand and delivered his testimony
rned to his home. He has returned now for what? If he is
ll, he must be here in response to the summons of the respond-
has not been summoned by the prosecution, and after he
his testimony in response to the summons of the respondent, a
ımination, in my opinion, would be entirely illegal and out of
As to the cross-examination that occurred before, as I understand,
no question as to the right, but, having been summoned now
espondent, for the defense, I think it would be highly improper
of place to examine him; but that is a question for the court;
t is competent to decide the question, and I prefer to have the
ıestion referred to the court itself for decision.
RESIDENT *pro tem.* The roll will be called. It is out of order to
his question, unless we go into secret session. Those who are
of sustaining the objection will vote Aye, and those who are op-
ill vote No. Those who vote No will vote in favor of permitting
nination of the witness. Those who vote Aye will vote the con-

)ll being called, there were yeas three, and nays twenty as fol-

who voted in the affirmative were—Messrs. Adams, Crooks and
ıs.

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Those who voted in the negative were—Messrs. Aaker, Buck, C. F., Campbell, Case, Castle, Gilfillan, C. D., Hinds, McCormick, McLaughlin, Mealey, Morrison, Officer, Perkins, Peterson, Powers, Rice, Shalleen, Tiffany, Wilkins and Wilson.

The PRESIDENT *pro tem.* The vote being taken on the question, there were yeas three and nays twenty; so the objection is overruled. The counsel will proceed with the examination of the witness.

By Mr. Manager COLLINS.

Q. Father Hermann, my question was whether or not you were acquainted with B. S. Lewis, who was your attorney in that case.

A. I am acquainted with him.

Q. Did you not state to B. S. Lewis, in the town of Waseca, during the trial of your case, that you were uneasy about the result, and give, as a reason for it, that Judge Cox was intoxicated, or words to that effect?

A. I never made such a statement.

Q. Or never expressed yourself in that way, or words to that effect?

A. Which case have you reference to?

Q. The case of Powers vs. Hermann.

A. May I please to ask you, Mr. Manager, if you will give me a little insight where that conversation happened, that I might correct myself if I am wrong.

Q. Well, during recesses, either at his office or at the court room.

A. During the time that case was pending?

Q. Yes; during the trial of that case, and during the recesses taken in the case?

A. No, sir.

Q. You did not?

A. No, sir.

Q. Did you make any such statement during the trial of the case in the court room, or express yourself in words to that effect?

A. No, sir.

Mr. Manager COLLINS. We desire, Mr. President, to have the sergeant-at-arms call Mr. Lew Brownell.

The sergeant-at-arms called the name of the witness.

Mr. Manager COLLINS. We now ask leave of the Senate to introduce, in the morning, the further cross-examination of the witness just called. We are informed that he can not be here this evening, but will be here in the morning or sometime to-morrow.

The PRESIDENT *pro tem.* That will be considered as the sense of the Senate unless objection is made.

Senator ADAMS. What is the question? we can not tell over here.

The PRESIDENT *pro tem.* I stated that unless objection is made that would be considered as the sense of the Senate. If objection is made I will submit it to the Senate.

Senator CASTLE. I suggest, Mr. President—

The PRESIDENT *pro tem.* State the question again, Mr. Collins.

Mr. COLLINS. I ask leave to introduce this witness to-morrow; he is unable to be here to-night. He is one of the witnesses that we desire further to cross-examine; we ask leave to cross-examine him to-morrow.

Senator CASTLE. I suggest, Mr. President, that if there is to be any objection, we had better wait until the witness comes—he may not come at all—and save discussion here to-night, when we want to get on with other matters.

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ıger COLLINS. Very well; that will be satisfactory.
ıIDENT *pro tem.* Have you any other witnesses to call to-

ager COLLINS. Yes, sir; in rebuttal. We are now ready to
:h that. I will say to the Senate that we have opened the
ır the prosecution in rebuttal.

JACOB NEIBELS,

witness in rebuttal on behalf of the prosecution, testified.

by Mr. Manager COLLINS.
Neibels, where do you reside?
Vaseca.
r long have you lived there?
ve lived there five years last August.
at is your business?
business is a gunsmith.
v long have you been engaged in that business?
ıve been engaged in that business for eight years.
you know Mr. Alexander Winston of Waseca.
, sir.
you acquainted with Charles Ecob his brother-in-law?

you remember meeting Mr. Ecob in the spring of 1879?
).
you go hunting with him in the spring of 1879?
d, sir.
e the first time you went hunting with him.
ent hunting with him on the 13th of April, 1879.
the first time?
the first time that I can recollect of.
v, will you state where your gun shop is, with reference to
on's saloon?
gunshop is next door to his saloon.
s there at that time any other gun shop in that town?
ere was not.
you state how long Mr. Ecob had been in Waseca when you
ing with him?
uld not tell; I don't remember the date when he came, nor
he had been there before he went shooting with me, but I
I went shooting with him on the 13th of April on account of
a swan.
v, state the circumstances why you remember that was
time you went hunting with him,—why you remem-
the 13th of April.
ll, the reason why I remember it is because we got a team
Welch, a sorrel team that he had that was very lazy, and we
good deal of remarks about their being so lazy, and then
it the team had been charged to me; that is the only reason
ı remember it was on the 13th, which will show on Mr. Welch's

w, do you remember anything as to what gun Mr. Ecob had
ne?

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A. He had a gun of his own; he brought a gun with him.
Q. Did he bring that gun with him when he first came to Waseca?
A. When he first came to Waseca the gun didn't come with him when he came, but he sent after the gun right away; but I know that that was the first time that he went out with that gun shooting with me.
Q. Now, can you state how many days it was after he came before that gun came?
A. I couldn't tell.
Q. Was it a few days or a few weeks or how many days?
A. That I couldn't tell; I don't know how long he was there before his gun did come, but I know that he did use his own gun when we went shooting and we shot the swan.
Q. Now, state Mr. Neibels, how you knew at that time that that team was charged to you on the 13th of April?
A. Because Mr. Welch's book shows it; that is the only reason why I remember it; I should not have known whether it was in May or April only by the book.
Q. Now, Mr. Neibels, at the time of that affair where was your place of business in reference to Mr. Winston's saloon?
A. Next door.
Q. How, is it now?
A. Now it is two doors south of me.
Q. Winston has moved?
A. Yes, sir.
Q. You are in the same place?
A. Yes.
Q. By the way, Mr. Neibels, you say that this team was charged to you on the 13th; did you pay for the team, or did some one else pay for it?
A. No, sir; I did not pay for it.
Q. How do you know that it was charged to you on the 13th?
A. Because Mr. Hicks told me that there had been a team charged to me at Welch's on the 13th; of course I had a team of my own, and would have no occasion to have hired a team at a livery.
Q. Didn't you go and see that charge yourself on the books?
A. No, sir; I did not.
Mr. ARCTANDER. That is good testimony; I don't think we want any more testimony from a witness who swears to what Mr. Hicks tells him.

DARLING WELCH

Sworn as a witness in rebuttal on behalf of the prosecution, testified.

Examined by Mr. Manager COLLINS.
Q. You reside at Waseca?
A. Yes.
Q. How long have you lived there?
A. About six years.
Q. Are you acquainted with the respondent, Judge Cox?
A. Yes.
Q. How long have you known him?
A. About six years.
Q. What is your occupation?
A. I run a livery.

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nany years have you run a livery ?
e run a livery in Waseca six years.
ou acquainted with Mr. Charles Ecob?

can you tell us when the first time was that he got a team
he ever got one?
ir.

3th of April 1879.
you may state, Mr. Welch, how you know it was the 13th
'9?
y register that I keep.
ister?
I keep a register of every man's name, and the name of the
es out.
ANDER. We now move to strike out the testimony, for the
it is not the best evidence.
ger COLLINS. Best evidence of what?
ANDER. The register is the best evidence, I suppose, if he
ne register.
ger COLLINS. Do you pretend to say that the register is the
e?
ANDER. Yes, I do, if he swears by the register; if he has a
independent of the register, that is a different matter.
Velch, where is that register?
at the Merchant's Hotel.
ger COLLINS. Now, do you want it to-night, Mr. Arctander?
e it here in ten minutes.
ANDER. We will see.
, is there any other circumstance except that register by
remember this was the 13th of April?
, I remember at the time they went out they killed a swan.
ou remember that fact, the time that you speak of,—the
illed the swan?

you tell us the team they took at that time?
y took a team I call Jack and Frank—a team that I register-
and Frank, a sorrel team, and a side spring buggy.
you state what remarks, if any, this Ecob made about the
that time?
said they were a first-rate team to hunt with; there was no
heir running away.
Mr. Ecob get the team from you prior to that?
sir.
may state how you remember that he was charged?
as charged to Jake Neibels; I make a practice of doing that
anger comes.
l you were not acquainted with the other man?
id not been acquainted with him but a few days.
l that is your practice, is it?

harge to the man you are acquainted with?
idn't know who would pay for it, at the time, of course. They
there.

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Mr. Manager COLLINS. You may take the witness now, Mr. Arctander, and when the register comes, we will introduce that.

CROSS-EXAMINATION

By Mr. ARCTANDER.

Q. You don't know how long a time Mr. Ecob, or whatever his name is, had been at Waseca?

A. No, sir; I do not.

Q. He might have been there two weeks for all you know?

A. Yes.

Q. Or eight days, or ten days, or two days only?

A. I don't know, sir.

Q. You had seen him there some time before?

A. I had seen him before; I don't know how long.

Q. Do you remember how many days?

A. No, sir.

Q. Do you know whether it was two days or eight days before?

A. No, sir.

Q. The register that you spoke of, Mr. Welch,—is that a book in which you entered your charges against men?

A. Yes, sir; it is a book I have to keep charges in; that is, I register a charge against every man who gets a livery, if I can get their names; of course I don't always get their names and I charge it to "stranger" or "runner" when I don't get their names, but I calculate to register every name.

Q. And you charged it to this man at the time?

A. I charged it to Mr. Neibles, at the time.

Q. At the time they went out?

A. Yes, sir.

Q. You did not keep the only livery at Waseca at that time?

A. No, sir; there was another livery there.

Mr. Manager COLLINS. Give us your best recollection, as to the number of days this man, Ecob, had been there before the team was obtained.

A. I should not think that he had been there over ten or twelve days; this is my opinion.

Q. Can you tell us what day of the week?

A. It was on the Sabbath day.

By Mr. ARCTANDER.

Q. What?

A. On Sunday.

Q. Now, let me understand you, Mr. Welch, this register is the only thing that fixes in your mind the day of this team going out; you have no recollection of what day it was, except from the register?

A. That is all I have to go back to, is the register.

B. S. LEWIS

recalled as a witness in rebuttal on behalf of the prosecution, testified.

Examined by Mr. Manager COLLINS.

Q. You have already been sworn in this case. I want to call your

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› a period during the trial of the Powers-Hermann case. You
emember that case; you testified about it the other day.
member it.
ll ask you to state whether or not Father Hermann said to you,
progress of that trial, that he was afraid that the case might
because of the intoxication of Judge Cox, or words to that

TANDER. I object to it for the reason that it is not the same
iven to Father Hermann.
ager HICKS. Then we will get it from the reporter; I don't re-
e exact language myself.
›rter read the question as asked of Father Hermann.
'NESS. I cannot state that he used just that language nor can
language he did use, but he used language expressing that
ıe was uneasy on that account.
account of the intoxication of Judge Cox?

Lewis, Father Hermann has testified that he asked you to
; adjournment that day,—that he caused the adjournment;
ıer or not that is so.
ıer Hermann knew nothing of that adjournment until after it
ed; he did not request me to get the adjournment.
ıer Hermann has testified that he saw a piece of brown paper
:; that he requested you to get it; that you got that brown
handed it to him, and that he then stated that you must have
ion at once; go on and tell us about that, Mr. Lewis;—tell us
brown wrapper and where that occurred, if there is anything
ıt it?
›n't recollect anything particularly in relation to that piece of
pping paper, excepting I particularly remember that there
. paper there, but it was the contents of that paper, which was
al thing in the case, not the paper itself. On Tuesday when
nced the trial of the case, we found, for the first time, that Mr.
ied on some other plans, a roll of paper, perhaps so long and
ıdicating], a different elevation of the church,—that he relied
ıt plans and specifications than we did. We had one and
ght another one into Court that we did not anticipate they
Ve found that out by seeing the roll of paper there, by simply
n with the roll. We mis-trusted that, and on the second day
I fix that only from the fact that it was during the direct
ıination of Mr. Powers, which occurred on the second, the first
trial—they introduced those plans or offered them in evi-

TANDER. The second day, you say?
: second day of April.
ıager COLLINS. The first day of the trial?
: first day of the trial they introduced those in evidence as the
ɛr which the church was to be built. They were plans cheaper
ɛnt from ours—somewhat similar, of course. We found then
ɛeded some witnesses that we did not anticipate, the trustees
ırch who had attended a meeting between Mr. Powers, Father
and the church authorities before the letting of the contract,
· which plans were there, and we sent after those witnesses on
of the second; that is, we arranged to send after them on the

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night of the second; I couldn't say whether the messengers went after the witnesses on the night of the second or the morning of the third; my impression is he went there on the night of the second. I know we arranged for it that day—sent a special messenger as I recollect; no subpœnaes were issued, although I would not be positive as to the subpœnae being issued or not.

Q. Were the plans introduced that day, or did you see them, or both?

A. We first saw them and mis-trusted what they were, and then they were introduced.

Q. And the brown paper was wrapped around the plans?

A. I don't recollect that it was wrapped around, but I remember seeing such a paper there; it was a paper that had been around those plans.

Q. Was that prior to the 3rd day of April, that you discovered that?

A. It was during the direct-examination of Mr. Powers, which was on the 2nd.

Q. Did you at any time during the trial, at the request of Father Hermann, or at the request of anybody, get that piece of brown paper and hand it to Father Hermann?

A. I could not state; it is possibly that Father Hermann and I, sitting near by the table, close by,—that he might have asked me to hand him that piece of paper, and I may have handed it to him, but I did not on the morning of the 3rd.

Q. Did you or not, during the examination or cross-examination of Powers?

A. I did not during the cross-examination of Powers.

Q. And when did you find it necessary to have the witness, Coughlin, sent for, if at all?

A. We found it necessary before the trial commenced.

Q. When did you send for him?

A. We sent for him, and he was there before the trial commenced; I recollect he and one or two other witnesses especially being there from certain things that they did.

Q. Before the trial commenced?

A. Before the trial commenced.

Q. And remained how long?

A. It is possible that he remained then, but he may have gone back to Janesville.

Q. What witness did you want then, on the day you adjourned?

A. I wanted no witness; it was not pretended that I wanted any witness.

Q. Did Father Hermann say to you that he wanted a witness, or say to you that he wanted a witness on that day?

A. He did not, to my knowledge, want a witness except this—I don't know whether this witness from South Prior had got there or not, but he did not say anything in relation to this about an adjournment.

Q. Had you sent for the witness?

A. We had sent prior to that time, for those witnesses.

CROSS-EXAMINATION,

By Mr. ARCTANDER.

Q. Mr. Lewis, you say that the first time you discovered that he relied upon other specifications was at the time they were introduced there, was it?

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id that we mistrusted, as I remember, when we saw the plan,
ad a roll of paper there that looked like elevations.
r, didn't they have a plan and elevation according to the
hich Father Hermann claimed they had built under?
had those I understand.
ı had those?

l simply seeing a roll of paper there made you think there
er set of specifications?
her Hermann knew there had been two talked about, and
ay the other there,—saw that roll of paper we thought they
ther elevations, and naturally supposed that they were going
on others instead of those that we claimed under.
t not a fact that the question as to which of those plans had
oved by the Bishop of the diocese had to figure in that case.
on't remember that it did; it might have.
t not a fact that Father Hermann called your attention to the
f the Bishop had returned those, and they could show that
been sent to the Bishop, and returned to Mr. Powers, that
d have a bearing in the case?
on't recollect that.
ı wouldn't swear that he did not?
ould not swear that he did not, but whatever it was came on
l and not the third.
ıt you are positive about?
at I know.
ı swear positively that you did not hand Father Hermann the
n the morning of the third?
o.
d a minute before you swear that you don't know whether you
to him at all or not?
on't say that I might not have handed it to him, as I would
paper that was on the table or desk, but I say that I couldn't
that except on the second, when the question came up; but
rning of the third, I do not remember any communication be-
ther Hermann and myself. I immediately commenced to
nine Mr. Powers.
't it a fact that you don't remember of handing him any such
ll?
on't remember of handing him any such paper at all, but I
done it before.
w is it that you may have done it on the one day, and not the
ning?
cause it didn't come up that day.
at is the only reason you can give, is it, for it not being that
—that it did not come up that day?
, sir.
at paper or wrapper, whatever it was, did not belong to your
e case at all?
didn't belong to either side.
was amongst Mr. Collisters paper's?
was a mere wrapping paper, that is all.
ry well, it was amongst his papers,wasn't it,—it was not amongst
ers?
was not amongst our papers; no, sir.

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M. D. COLLESTER

Recalled in rebuttal on behalf of the prosecution, testified.

Examined by Mr. Manager COLLINS.

Q. You have been sworn and examined before. I believe you were attorney for Powers in this case of Powers versus Hermann?

A. Yes.

Q. Can you tell who went out of the court room—well, to get at the first in a proper manner, will you state, first, what you know about this brown paper,—what it was?

A. We had some plans and specifications in the case that we claimed were the original plans and specifications upon which the contract was drawn; if I remember aright they were wrapped up in some kind of a brown paper or something of that kind, merely as a wrapper for the plans. The brown paper had no significance whatever, further than that it was simply a wrapper on the plans and specifications that we claimed were the originals.

Q. State when you had that brown paper and those plans in court.

A. We had them in on the first day of the trial.

Q. That would be the 2d day of April?

A. I think so.

Q. But they were there on the second day of the trial, the day that adjourned?

A. I don't know whether they were or not; we had no use for them that day as I know of.

Q. But they were in court the first day of the trial?

A. Yes.

Q. Now, Mr. Collister, can you state who, if any one, went out of the court room on the day of that adjournment, with Judge Cox?

Mr. ARCTANDER. That is objected to.

Mr. Manager COLLINS. Why?

Mr. ARCTANDER. For the reason that it is not proper re-direct examination; it comes properly in the case in chief, I suppose.

Mr. Manager COLLINS. Mr. President, counsel says this is not proper re-direct examination. [To Mr. Arctander.] You mean not rebuttal, I suppose.

Mr. ARCTANDER. Yes, I mean not rebuttal.

Mr. Manager COLLINS. Mr. Murphy has testified that Mr. Hayden did not go out of the court room with Judge Cox; that he remained there. Mr. Winston has testified substantially to the same thing. Mr. Murphy, it will be remembered, testified that he was away when court adjourned, but when he came back immediately after court adjourned, meeting people at the foot of the stairs, he went up and found J. B. Hayden in the court room and sat down and talked with him some time. Now, if this is not rebuttal, I don't know what is. I will ask the witness to state who, if anyone, went out with Judge Cox on that day.

Mr. PRESIDENT *pro tem.* If there is no objection——

Mr. ARCTANDER. May it please the Court, I desire to be heard on that. When this case was first brought out by the managers on direct examination, they called upon the standard witness, Jim Hayden, who swore that he took Judge Cox off, and went up to a hotel with him and put him to bed;—he afterwards took that back, but that don't make any difference;—that was their evidence at the time to show intoxication

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art of the Judge,—that this clerk had to bring him out of the
and took him up the street to his hotel and put him to bed.
im if they wished to corroborate his testimony on that, it
e been proper to have caused Mr. Collester, or any other wit-
ould do it,—I don't know whether Mr. Collester could do it
would have been proper for them to have called the witness
, and to have corroborated Mr. Hayden. Now, it has been
, in contradiction to the testimony of Mr. Hayden, that Mr.
mained in the court room and that the Judge went off. Now,
irect denial of the testimony brought in in chief by the State.
try to bring here, as I understand it—I suppose that is the
an see no other object—they try to corroborate Mr. Hayden
act that he went out of the court room with Judge Cox; that
hould have been brought in in chief; any testimony which
o corroborate any fact which witnesses testified to in the ex-
in chief, should have been brought in then.
t be brought in in the form of rebuttal after the other testimo-
ked. It is not new matter that we have brought out at all.
imply denied the fact that Mr. Hayden went with the Judge,
l it by showing that the Judge went out ahead and that Mr.
mained afterwards in the court room. Now, they cannot
nd claim to show as rebuttal, that he did not remain in the
, because it was part of their case in chief to show that it was
Mr. Hayden went off with Judge Cox, if it was material at
ot even rebutting new matter brought out. It is simply try-
oborate Mr. Hayden and bolster up his testimony at that
ad of doing it as they should have done, at the time they in-
he testimony in chief. That was the time to do it, and when
ot do it then they lost their right to do it at all, unless this
it to re-open the case. There has been some talk about dis-
think that is within the discretion of the court too. I admit
great many things within the discretion of the court.
hin the discretion of the court to allow a witness to be recall-
time for cross examination; but I doubt very much whether
is going to carry the matter of discretion to this extent, be-
e is a limit even to discretion, as I understand; there is such a
n abuse of discretion; that a superior court will even set aside
s of an inferior court when they have abused the discretion
them; and I apprehend that it would be an abuse of the dis-
anted to the court to allow the prosecution to come in now, and
eir case and bolster it up by testimony that they did not in-
hen they ought to have introduced it under the rules of evi-
l all the rules of practice, but which they seek to do now, un-
etence of rebuttal, while, as a matter of fact, it is not rebuttal,
s not deny any new matters brought out by the defense. I
if that is the road that we are going to be led upon here,—if
is to be allowed to bring in here, under the claim of rebuttal,
to bolster up their case, cumulative testimony of facts testified
r case in chief, then I say, very well; but I shall ask, Mr. Pres-
your hands, and we shall ask at the hands of this Senate the
he State is allowed to bring in here witnesses to make a new
h we had no chance to answer to before,—we shall claim the
our part to bring in a new set of witnesses and show by them
is false. We shall all ask the right to be allowed to meet the

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new case which they shall make out after they have once rested, and I do not think the Senate will dare, in the face of the world, refuse to allow us to do it.

Mr. Manager COLLINS. I have no doubt, Mr. President, that when the time arrives, the Senate will meet that question properly, without regard to the threats that counsel makes. We are not trying that question now. The facts, as developed, are these: Mr. Hayden testified that he went out of the court room with Judge Cox; asked him to go up the street with him,—not that he took Judge Cox out of the court room at all, but asked him to go up the street with him. Judge Cox made some reply, and they went up to the hotel. Now, they put a witness on the stand to show that Mr. Hayden did not leave that room. We propose to show that Mr. Hayden did leave the room, and show it by more than one witness; and to show that he did leave the room with Judge Cox. Does the counsel pretend to say that we are obliged to bolster up our case, and bolster up our witnesses,—when the witness testifies that he was present and did a certain thing, that we are obliged to bring in a certain number of witnesses to show that he did do that thing,—for instance, to show that Judge Cox did leave that court room with Mr. Hayden? I apprehend that by the time we had examined one or two witnessses, the Senate would have become disgusted with that mode of trying the case.

The witness has testified that Mr. Hayden did not leave the court room. Mr. Hayden testified that he did; that he went up with Judge Cox. That was a material thing. The witness has testified that he did not leave the room, and we now propose to show that he did. It is strictly in rebuttal, because it is their own testimony that Mr. Hayden did not leave the room with Judge Cox, and it is wholly immaterial whether Mr. Hayden testified on the case in chief, or in the opening of the case, that Judge Cox left the court room with him. The question, however, was whether he went up the street with him,—not whether he left the court room.

The PRESIDENT *pro tem.* You desire to rebut the testimony of their witness?

Mr. Manager COLLINS. We desire to show that Mr. Hayden did leave the court room with Judge Cox, as has been testified to by Mr. Hayden. Mr. Murphy contradicts it, and says that he did not. I have taken more time now, and I feel actually ashamed to take the time of this Senate, where there are so many lawyers, in arguing so plain a question as that.

The PRESIDENT *pro tem.* [To the witness.] You may answer the question. The objection is overruled unless otherwise determined by the Senate.

Q. You may state now, Mr. Collister, who left the court room that day, at the time of the adjournment, with Judge Cox, if anybody?

A. Mr. Hayden went out of the door, or down the stairs with Judge Cox; I don't know where he went.

Q. You saw him go out of the court room with Judge Cox. You may state whether or not, you saw, during that term of court, Dan. Murphy in company with Judge Cox, when Judge Cox was drunk?

Mr. ARCTANDER. We object to that as not proper rebuttal, as immaterial and irrelevant.

Mr. Manager COLLINS. Then I will change the form of the question. [To the witness.]

You may state whether you saw Dan. Murphy in company with Judge

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he stated to Judge Cox that he had enough, and that he could
ny more liquor.
TANDER. That is objected to, for the reason that it does not
hing that has been brought out on the direct examination.
nager COLLINS. Hasn't Murphy testified to that?
TANDER. No; he has not.
nager COLLINS. Dan Murphy has testified that he did not see
: under the influence of liquor during that term. We propose
y this witness that Dan. Murphy told the Judge, in the pres-
s witness that the Judge was full, and had enough, and that he
ave any more.
ESIDENT *pro tem.* [To the witness.] You may answer the

TNESS. I saw——
TANDER. Wait a minute.
nager COLLINS. I will ask a preliminary question. [To the
Q. You are acquainted with Dan. Murphy, the deputy

m.
nager COLLINS. I refer, of course, to this Murphy.
CAMPBELL. Was that testified to on the direct examination,
cross examination?
nager COLLINS. On the cross examination, I think.
ESIDENT *pro tem.* Have you the page there on which the tes-
as given.
nager COLLINS. No, sir; I have not.
nager HICKS. It is on the bottom of page 253, and on the top
54.
TANDER. Now, may it please the court, I object to this for the
it it is not proper rebuttal. In the first instance, if Mr. Mur-
estified to anything of the kind, namely that he had not seen
x intoxicated during that term any time—in the evenings or
,—and they could show that he had seen him intoxicated, it
immaterial and irrelevant, and therefore, not a subject of im-
it, and not material to the subject matter at issue. The subject
issue was whether Judge COX was intoxicated upon the bench
m of court, not whether he was at any time, in the evening or
oxicated. That is not the question at issue here, and any ques-
that matter would be entirely immaterial and irrelevant, and
ing to do with the matter.
ehend that that is a rule so well settled that it does not need
reiteration,—that to make a certain question a subject matter
chment, it must be material to the issue. It can not be upon
that you see fit to ask,—any harum-scarum questions, without
bject, that any person may see fit to ask on cross-examination,
any examination, because that was testified to. It does not
ecome material, or a proper subject matter of impeachment.
ot what they try to do with this witness,—to show that he tes-
what was false, and it is proper to do that upon any matter
aterial to the subject matter, any matter of pertinence to the
atter. Now, I claim, therefore, for that reason alone, that this
is incompetent, because the matter upon which Mr. Murphy
ined was not material to the subject matter at issue.
ESIDENT *pro tem.* Was not that the question that was brought
our own witness on your cross-examination?

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Mr. ARCTANDER. Not upon my examination.

Mr. Manager COLLINS. Yes, sir; upon your examination, right at the bottom of page 253, and at the top of page 254,—answers to your own questions.

The PRESIDENT *pro tem.* It is certainly competent to rebut anything that you brought out.

Mr. ARCTANDER. Not at all; it would not be competent to rebut anything that I brought out. If it was not material, it is not material to rebut it; because if I see fit to bring out nonsense, that does not give the managers a right to rebut it, or subject the Senate to sit here and hear nonsense rebutted by nonsense for an hour or two. But, as I said before, there are other grounds for this. It is immaterial in the first instance. Then this question calls for what? Is it showing that Judge Cox was intoxicated at a certain time when this witness, Murphy, was present? Not at all; it simply goes to show that this witness, Murphy, was present on one occasion, on which he told Judge Cox that he had enough, and that he was "full." Judge Cox might have been just as sober as he is to-night, and not had a drop in him, and Murphy say that in fun,—or, if not in fun, be mistaken about it, and find out that he had been mistaken about it. It does not tend to show that Judge Cox had drank to excess at that time, but simply that Mr. Murphy said that he had done so.

They have not asked Mr. Murphy anything of the kind, as to whether he did say so and so. They have not asked him if he did tell Judge Cox that he had had enough, and that he was "full." The questions that were put here, and that I understand the managers refer to, are these. And you, Mr. President, will probably remember what this had reference to. It was two particular specified occasions, brought out on cross-examination, at which he had seen Judge Cox in the saloon of Walleston & Hall—I think that is the name, Walleston & Hall,—at least those two times when he had seen him drink—one time when Mr. Blowers had been in and another time when he had been playing cards in the back room, and it had reference to those two occasions, and no other occasion, at that term of court. This witness is asked generally, if, at that term of court, at any time, he had been drinking to excess. All these questions here have reference simply to two occasions. Now, if he had seen him drinking to excess at any other times, that would be entirely immaterial to show here, because he has not been asked anything of that kind, and it would not rebut that. The question is:

Q. Now, I want you to say whether, at the times that you have testified that you saw Judge Cox drink in the evening ——

That he did testify to, which were two occasions.

—whether or not at any of those times he had drank to excess, or drank to excess in your presence, so as to be intoxicated?

A. He never drank anything but beer during the term of court in my presence.

Q. Well, a man can drink beer to excess, but did he drink enough in your presence to make him intoxicated?

All the time referring to these occasions—

A. He did not drink enough in my presence.

Q. Was he intoxicated in your presence?

A. No, sir.

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Mr. Manager DUNN. Go on, you did not read enough.

Mr. ARCTANDER. I finished it all; that is down to the re-cross-examination; do you want any more? That is all the testimony there is on the subject. It ends here. The cross-examination is as to whether he was under the influence of liquor, and he says he was,—if he had been drinking a glass he would have been under the influence of liquor. Now, then, you will see that this rebuttal, if proper rebuttal at all, should be limited and shown to have been on these occasions to which this witnesses' attention has been called, and not to give it generally during the term. If this witness was asked anywhere in his direct or cross-examination as to whether he had not, at any time during that term, in the evening, or at all, seen Judge Cox intoxicated or worse for liquor, this question would have been proper, but he was not asked any such question upon either side. Now, then, to come in and ask this witness whether he did not see him at some time when he said that he was full, is not giving us a fair show; it is not giving the witness a fair show, for his attention was not called to it, and if this is proper rebuttal at all it must be only when it is properly limited to the particular occasions on which the witnesses testified, and that is not done by this question.

Mr. Manager COLLINS. Now, I read the testimony of Dan Murphy, from page 243 of the Journal, for the twenty-seventh day. [Reading.]

Q. I will ask you to state, Mr. Murphy, what the condition of the respondent was as to sobriety or inebriety at that term of court, and all that. You understand my question, do you not?
A. I don't exactly understand it.
Q. What was the respondent's condition as to sobriety?
A. Sobriety?
Q. Yes.
A. I should call him sober all through the term of court.
Q. When you say you should call him sober, how do you mean to be understood—that you have any doubt about his being sober?
A. No, sir.

Then he goes on further, to ask where he saw him.

Mr. ARCTANDER. Will you please let me ask you a question, Mr. Collins—Whether or not the two questions immediately before that were:

Q. State whether or not you were present at every session during that term of court. A. I was.
Q. Morning, noon and evening sessions?
A. I was.

Mr. Manager COLLINS. Then comes,

Q. I will ask you to state, Mr. Murphy, what the condition of the respondent was as to sobriety or inebriety at that term of court, and all that. You understand my question, do you not?

The PRESIDENT *pro tem.* That embraces the whole term of court, does it not?

Mr. Manager COLLINS. I should say it did. [Reading.]

A. I don't exactly understand it.
Q. What was the respondent's condition as to sobriety?
A. Sobriety?
Q. Yes.
A. I should call him sober all through the term of court.

Now, further along, upon pages 253 and 254, the counsel not being

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satisfied with what he had already got, he asks the witness this question :

Q. Mr. Murphy, you say you went hunting up Mr. Baker that night; what were you hunting him for ?

The cross-examination of the witness was lengthy, but he is followed from one end of that term to the other, and he does not admit that Judge Cox was under the influence of liquor at all. He admits that he did drink beer, but not to excess. This is the re-direct examination.

Q. Mr. Murphy, you say you went hunting up Mr. Baker that night; what were you hunting him for ?
Mr. Manager COLLINS. He has testified to that and explained it.
Q. Wasn't it to get a key. The door of the hotel was locked ?
A. Yes.
Q. Now, at the time you were there, playing cards with Judge Cox in the sitting room or parlor, was Judge Cox intoxicated at that time ?
A. No, sir.

Now, how does the counsel know but that refers to that very instance? I say, how does he know it? I am very frank to say that it does not refer to that instance. [Reading.]

Q. Now, I want you to say whether at the times you have testified that you saw Judge Cox drinking in the evening, whether or not at any of those times he had drank to excess, or drank to excess in your presence so as to be intoxicated ?
A. He never drank anything but beer during the term of court in my presence.
Q. Well, a man can drink beer to excess, but did he drink enough in your presence to make him intoxicated ?
A. No, he did not drink enough in my presence.
Q. Nor was he intoxicated in your presence ?
A. No, sir.

Mr. Manager HICKS, That's it.

Mr. Manager COLLINS., Now, that is the testimony of this witness, Dan Murphy, when in the hands of the counsel for the respondent. This it will be understood, is his opinion—a matter of opinion we could not possibly call the attention of Dan Murphy to. It would not be necessary in order to lay the foundation for rebuttal, to do that, because we are not asking him if he had not stated out of court something different from what he stated in court. But Dan Murphy has given us his opinion under oath, while in the hands of the counsel, that Judge Cox was not drunk during that term of court. He says emphatically "no, sir," in answer to the question. The counsel says, the question we ask is immaterial and irrelevant. Well, I do not understand how. What is the object of the question ? The object of the question is to discover whether Judge Cox was under the influence of liquor there during that term of court,—so under the influence of liquor at night, that he could not transact the business of the court properly,—because everybody knows that whenever a man has what has been termed here the "katzenjammen;" he is in a worse condition than when immediately under the influence of liquor,—everybody knows that, or at least everybody who has had any experience. That, I say, was one of the objects; the other object was to test the knowledge of the witness. I apprehend that witnesses might go on here,—I know men, I think, who would go on and swear that they never saw men drunk in their lives; I know men, Mr. President, who will swear that they were never

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in their lives drunk, although I have seen them so drunk that they could not possibly stand up, and could hardly lie down. We all know that. No man who drinks to excess is willing to admit it.

We have shown that this witness testified that he did not see Judge Cox drunk. Now, if we show that he did see Judge Cox in that condition,—if we show that he stated to Judge Cox that he was full,—that he couldn't have any more,—it seems to me to be conclusive evidence of two things: first, that Judge Cox was drunk; and second, that the witness is either falsifying, or else he does not know when a man *is* drunk. I should judge from what I have heard, that it would be conclusive evidence that the witness is falsifying, because he testified he did not see Judge Cox under the influence of liquor. It seems to me it is the most pertinent thing in the world. It was at a time when this witness *knows* he was full, and it is at the time this man Murphy *told* him he was full. Why, it is a most remarkable position that the counsel takes, that we cannot show that at the times when the witnesses have testified Judge Cox was not drunk, they said he *was* drunk; that they told *him* he was drunk, and told him he couldn't have any more to drink,—that the whole town knew it. The counsel says it is not rebuttal. Now, the counsel is too good a lawyer to maintain that, and believe it. I think the counsel knows it is strictly rebuttal. It comes directly within the rule, and if there ever was any rebuttal testimony offered, it is this. We not only propose to show it by this witness, but propose to show by half a dozen more,—that Dan Murphy was the boon companion of Judge Cox; that Judge Cox was drunk and Dan Murphy knew it, and told people about it, and interceded with Judge Cox in various ways.

The PRESIDENT *pro tem.* The witness may answer the question.

Mr. ARCTANDER. Mr. President, I think if you examine the Journal, you will find that nowhere was Dan Murphy asked whether he at any time had stated to Judge Cox what they now want this witness to state.

Mr. Manager COLLINS. Why, no, of course not.

Mr. ARCTANDER. Now, I claim that if there was any statement of his outside of court, which was inconsistent with what he stated here in court, they could not prove it, sir, unless they laid the foundation and asked the question. Now, that is a rule that is just as well settled as any rule of law ever was; it is a rule that has been established for the last five hundred years, and if it is going to be broken here, very well.

The PRESIDENT *pro tem.* I don't see any use in arguing the question after it has been decided.

Senator CASTLE. I ask the question be submitted to the court.

The PRESIDENT *pro tem.* The roll will be called. The question is upon sustaining the objection. Those who are in favor of sustaining the objection will vote Aye; those in favor of overruling it, will vote No.

Perhaps it would be well, Mr. Collins, to repeat the question.

Mr. Manager COLLINS. I will put the question again, if it is desired. I ask the witness this question: State whether or not Dan Murphy, in your presence, stated to Judge Cox at any time, when Judge Cox was intoxicated, and at any time when Judge Cox wanted to go and get another drink, that he could not have it; that he was full and could not have any more,—during that term of court.

Mr. ARCTANDER. That is objected to as improper in rebuttal, because no foundation is laid, and as immaterial and irrelevant.

The PRESIDENT *pro tem.* The Secretary will call the roll.

The Clerk then proceeded to call the roll.

Senator CASTLE, [when his name was called.] Mr. President, I asked

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that that be submitted for this reason: I understand it to be a rule well established that if you propose to show, by the way of contradicting a witness, or rather, impeaching his evidence, that he has made statements outside of court different from what he has in court, in justice to that witness, before you can ask the question of the impeaching witness, his attention must be called directly to that point. Now, my recollection is, (and it has not been read here at all,) that Mr. Murphy was not asked the question as to whether or not he did not state at a certain time so and so. His attention not having been called to it, it strikes me the rule is plain, and therefore I vote Aye.

Senator GILFILLAN C. D., [when his name was called.] I recollect the law as Senator Castle has stated it, but this is not for the purpose of direct impeachment as to anything he may have said outside of court. The question is this: Mr. Murphy stated that Judge Cox was sober during the entire term of that court. Now, the question is asked this witness for the purpose of showing that he did not state the truth.

The PRESIDENT *pro tem.* That is the way I uuderstand it.

Senator GILFILLAN, C. D., [continuing.] That at the time this court was held he knew he was drunk; and the way that is intended to be shown is that he stated to him that he ought not to have any more. It is a different question from the one supposed by Senator Castle. It simply has relation to his testimony as to the question of sobriety. He said he was sober. Now, they propose to show that the witness himself told the Judge that he was drunk. I vote No.

Senator HINDS, [when his name was called.] Mr. President, I think it is competent to show that the witness to which reference has been made did see Judge Cox during the term to which he has testified in a state of intoxication, and to show also what he said at the time in relation to that. I think that is strictly rebuttal; but this question, if I recollect aright, only goes so far as to ask what the witness said or whether he did not say so and so.

Mr. Manager COLLINS. It goes farther.

Senator HINDS. I would like to hear the question read.

The question was then read by the reporter.

Senator HINDS. I vote No, with the understanding that it is to be followed up with the other branch of the question.

The roll having been called, there were yeas 4, and nays 15, as follows:

Those who voted in the affirmative were—

Messrs. Campbell, Castle, Mealey and Simmons.

Those who voted in the negative were—

Messrs. Aaker, Case, Gilfillan, C. D., Hinds, McCormick, McLaughlin, Morrison, Officer, Perkins, Powers, Rice, Shalleen, Tiffany, Wilkins and Wilson.

The PRESIDENT *pro tem.* There is no quorum present.

Senator CASTLE. I withdraw the request, Mr. President. I desire the vote, however, as it has been taken, to go on record.

Mr. Manager COLLINS. Mr. President, I don't see how we can proceed if that vote goes on record.

The PRESIDENT *pro tem.* There can be no vote if there is no quorum.

Senator RICE. Mr. President, I move that we adjourn.

The motion was seconded.

Mr. Manager HICKS. Mr. President, I desire to ask the witnesses that have been subpœnaed here upon the part of the prosecution to consult with the managers immediately after adjournment.

The Senate then adjourned.

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FORTIETH DAY.

ST. PAUL, MINN., March 2, 1882.

The Senate met at 10 o'clock A. M., and was called to order by Senator Wilson, acting as President *pro tem.*

The roll being called, the following Senators answered to their names: Messrs. Adams, Buck C. F., Campbell, Case, Castle, Clement, Hinds, Howard, Johnson, A. M., Johnson F. I., Johnson R. B., McCormick, McLaughlin, Mealey, Morrison, Officer, Perkins, Peterson, Powers, Rice, Shaller, Shalleen, Tiffany, Wheat, Wilkins and Wilson.

The Senate, sitting for the trial of E. St. Julien Cox, Judge of the Ninth 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. Henry G. Hicks, Hon. O. B. Gould, Hon. L. W. Collins, Hon. A. C. Dunn, Hon. G. W. Putnam and Hon. W. J. Ives, entered the Senate Chamber and took the seats assigned them.

E. St. Julien Cox, accompanied by his counsel, appeared at the bar of the Senate, and took the seats assigned them.

The PRESIDENT *pro tem.* Are there any resolutions or motions to be made before proceeding with the regular order of business? If not, counsel will proceed.

Mr. Manager COLLINS. Mr. Collister was on the stand last night and we will recall him.

M. D. COLLISTER,

Examination resumed.

The PRESIDENT *pro tem.* There was a question pending before the Senate last night at the time of the adjournment which was left unfinished, because there was not a quorum present. [To the managers.] Do you desire to have that question re-put this morning and decided? If so, the reporter will read the question that was submitted to the Senate at the time of the adjournment.

The reportor read as follows:

Mr. Manager Collins. I will put the question again if it is desired. I asked the witness this question. State whether or not Dan Murphy, in your presence, stated to Judge Cox, at any time when Judge Cox was intoxicated, and at any time when Judge Cox, wanted to go and get another drink, that he could not have it, that he was full, and he could not have any more—during that term of court.

The PRESIDENT *pro tem.* Do the Senators hear the question distinctly.

Senator C. F. BUCK. I did not, Mr. President, and I would like to have it repeated.

The reporter again read the question.

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The PRESIDENT *pro tem.* Some of the Senators were absent last night when the vote was being taken, and it might be well to say, for their benefit, that, that question was objected to by the respondent and the roll was called. The question will be now submitted as to whether or not that question shall be allowed.

Senator C. F. BUCK. Mr. P.esident, is it intended by the board of managers, by this evidence which they seek to bring out by this witness to impeach Dan Murphy?

Mr. ALLIS. It is, sir.

Mr. Manager COLLINS. Well, counsellor Allis has answered for the board of managers. We desire to say for ourselves, however, that the object is not to impeach Mr. Murphy. The object is to show that he has expressed an opinion different from the one he expressed on the witness stand. It comes within that rule; and there is no doubt that when a witness expresses an opinion that a man has or has not been under the influence of liqnor, that he has or has not been insane, that you can show without laying a foundation, that he has expressed a different opinion at some other time. That is a rule laid down by Greenleaf, and is well known. That is precisely what we are getting at now.

Mr. ALLIS. Mr. President, some of the senators were not here last night and it may be well to re-state our objection. The Manager has stated that there can be no doubt at all about this coming within the rule. This witness is asked as to whether Murphy made a certain statement on a certain occasion. That is just what it is; that and nothing else.

Mr. Murphy was not asked if that statement was made by him. The reason of the rule for asking a witness whether he has made a different statement or expressed a different opinion,—it does not matter which, it is the same thing,—is to give the witness an opportunity to explain,—that is the reason of the rule,—and perhaps to take away an apparent contradiction. Perhaps this witness has told that it was made in fun, or made for some purpose,—that it was a jocular remark,—we don't know what the explanation is. Now, he has had no opportunity to make any explanation in regard to the conversation or the remark which the witness assumes that he made. I am at loss to see how there can be any doubt about this question. It comes precisely within the rule. It matters not what other object may be connected with it. That is one of the objects obviously, and the object is, notwithstanding what the counsel says, of course, to impeach the credit of that witness,—to impair the value of the statements which he has made upon the witness stand.

You can call it by whatever name you please; that is the object of it. It would not be asked except it was to impair the value of the testimony that Mr, Murphy gave. If that is not discrediting it I should like to know what was. Now, as has been said three or four times during the session of this court, the whole object in calling the attention of the witness to that fact is not that the witness may prove or disprove it, admit or not admit it, but the object is to give the witness, out of pure fairness, an opportunity to make any explanation in regard to this statement, if he says he did make it, which he may choose to make. Now. this witness Murphy has had no opportunity to explain. If there ever was a case which comes both within the letter and the reason of the rule it is this case.

The PRESIDENT. The vote will be taken without debate. Those in

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favor of sustaining the objection will vote Aye, and those in favor of overruling it will vote No.

The Secretary proceeded to call the roll.

Senator CASTLE, [when his name was called] Mr. President, when this question came up last night——

The PRESIDENT *pro tem.* Our rule says that the vote shall be taken without debate.

Senator CASTLE. I suppose, Mr. President, that the chair is an example to the remainder of the Senate. I have a recollection that the chair the other day made quite a lengthy speech in explaining his vote, and of course, the chair, like the king, can do no wrong.

The CHAIR. That comes within the rule; our rules expressly say that the question before the court shall not be debated except in secret session.

Senator CASTLE. Mr. President, I am not debating the question; I am simply explaining my vote, which a senator always has the right to do. When the question was up last night, several senators explained their votes, the lawyers of the Senate pretty generally. I was sorry to see—and it is not quite creditable to the profession as a class or to the members of the Senate,—that we do not agree upon plain, ordinary propositions of law. The suggestion is not infrequently made, that when the lawyers disagree,—the professional men, the men who ought to know and who ought to be a guide to the non-professionals upon questions of law,—it leaves matters entirely at sea; that if they disagree and vote in opposition to each other, that no matter how erroneous a non-professional man be in his vote, he is excused, because he is not presumed, by his training and education, to know.

As I started out by saying, the explanation of the votes developed the fact that the attorneys of the Senate were widely apart on these elemental questions. I voted to sustain the objection. I had sufficient deference for my brethren of the bar, members of this body, to examine critically the proposition that was submitted here. I did more. I consulted several of the very ablest members of the bar in this city and State, writing down the question and submitting it to them. Their opinion was unanimous, concurring with my own, and concurring also, as I understand, with the books. With this explanation, Mr. President, I vote aye.

Senator CROOKS. [when his name was called.] I decline to vote.

On sustaining the objection, the roll being called, there were yeas, 9, and nays, 19, as follows:

Those who voted in the affirmative were—

Messrs. Adams, Buck C. F., Campbell, Castle, Johnson A. M., Mealey, Peterson, Powers and Simmons.

Those who voted in the negative were—

Messrs. Case, Clement, Gilfillan C. D., Hinds, Howard, Johnson F. I., Johnson R. B., McCormick, McLaughlin, Morrison, Officer, Perkins, Rice, Shaller, Shalleen, Tiffany, Wheat, Wilkins and Wilson.

The PRESIDENT *pro tem.* The vote being taken on the objection, there were ayes, 9, and nays, 19; so the objection is overruled.

Mr. Manager COLLINS [to the witness]. You may answer the question.

Mr. ARCTANDER. Now, I object to the question, may it please the court, for the reason that it is leading. It is not a matter of impeachment, and I object to it as leading,—asking the witness to say whether he did not say so and so, instead of asking him what he said.

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Mr. Manager COLLINS. Do you want me to ask him what he said on that occasion?

The PRESIDENT *pro tem.* Ask him in that form.

Q. Mr. Collister, state what was said on that occasion; give us all the circumstances.

A. About nine o'clock in the morning, I think—I know it was in the morning; it was about nine o'clock in the morning, during that term of court.

Q. Can you tell the day?

A. I cannot tell the day; it was very near the latter end of court that I met Judge Cox and Mr. Dan Murphy at the corner where this Hall & Cummings drug store is in Waseca.

They were coming down from the depot, a side street; I met them right at the corner—I was going towards the court house, and I stopped for a moment and said good morning, or something of that kind, and Judge Cox spoke about going to take a drink. Dan Murphy spoke up, he says "Not by a damned sight." He either said, "You got enough now," or "You are full now;" I can't swear positively which it was; my impression is it was the latter. Mr, Murphy walked off away from Judge Cox, and the Judge turned to me and he says "That man acts as if he owned me," and I went along and Judge Cox stepped up to the store of the druggist and went in, and I went along. Mr. Murphy went off down street and left him.

CROSS-EXAMINATION.

By Mr. ARCTANDER. You would not state, as I understood, Mr. Collister, that Judge Cox was intoxicated at that time?

A. No, sir.

Mr. Manager COLLINS. Of course, he has not, he would not be permitted to.

Q. Well, was he or was he not, at that time so far as you know?

A. I didn't notice that he was intoxicated.

Q. You don't remember, yourself, what time this was,—what day it was?

A. I don't remember the day.

Q. This time, this third day of April, when the court had adjourned, you say that Hayden went out of the court room with the Judge?

A. He did.

Q. Did he go out in company?

A. Judge Cox went out to the top of the stairs and met Mr. James E. Child, the editor of the *Radical* there; the way I happened to remember it was that I stood up by the table, some little distance from them and I saw them talking together, but I don't know what was said.

The Judge was talking ordinarily loud, perhaps more than usually so, and my attention was arrested by the conversation that was had; I didn't hear what either one of them said; and Mr. Hayden stood a short distance from them. If I remember aright, Mr. Hayden asked the Judge, or beckoned to him, to come along with him, but, at any rate, my impression is that Mr. Hayden went down first, and the Judge followed him down stairs.

Q. You don't know whether Mr. Hayden and the Judge went off together?

A. I don't know anything about that.

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Q. Or whether Mr. Hayden came right back in the court room again?

A. I don't know anything about that.

Q. All you know is, that when the Judge went down the steps, he seemed to be in his company?

A. Mr. Hayden seemed to be waiting for the Judge to get through talking with Mr. Child; he stood there at any rate: I can not say that he beckoned to him to come along, but at any rate, he spoke to him, and the Judge went down stairs and he followed him.

Q. Would you swear that was morning or at noon?

A. That was at the time of adjournment in the forenoon.

Q. You are positive about that?

A. I am positive of that.

Q. And you couldn't state, as I understand, whether Mr. Hayden went away with the Judge, or whether he came back in the court room or not?

A. I don't know whether he did or not; he might have gone back for all I know.

Q. You didn't pay any attention, I suppose?

A. I paid no attention at all; I didn't know anything about it.

By Mr. Manager COLLINS.

Q. You say you didn't notice whether Judge Cox was intoxicated or not; if there is any reason why you did not notice it, state?

A. Well, because I was in a huiry; you refer to the corner, I suppose.

Q. Yes.

A. I was in a hurry and simply heard that conversation and passed right along.

Q. Without noticing his condition?

A. Without stopping to have any conversation with him, except what I have stated.

Q. The time Mr. Hayden left the court room, was the time of the adjournment in the Hermann-Powers case?

A. The time I asked for a recess.

Q. Now, Mr. Collister, that you speak of that, who called for that adjournment?

A. I called for it.

Q. And it was not Mr. Lewis?

Mr. ARCTANDER. We object to that; that has been all gone over.

Mr. Manager COLLINS. Very well; we don't care to press it.

By Mr. ARCTANDER.

Q. Mr. Collister, you say that the reason that you did not notice anything about the Judge's condition was that you were in a hurry there; did you see the Judge afterwards in the court room that day?

A. I think I did.

Q. Did you notice anything out of the way with him at all?

A. As I testified before, when I was on the stand I never saw him when I thought he was "off" but once, and that was the day—

Q. That was the morning after adjournment?

A. Yes.

Q. This was not the morning of adjournment,—this time when you met him?

A. No, sir.

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Mr. Manager COLLINS. You can tell whether you were in court that day or not, or whether you noticed his condition?

A. I cannot, at this time, remember exactly about that.

Mr. Manager COLLINS. We will now call Mr. Welch, who has already been on the stand.

DARLING WELCH,

Re-called by the prosecution in rebuttal, testified.

Examined by Mr. Manager COLLINS.

Q. Mr. Welch, you may state what book that is? [Handing a book to the witness.]

A. This is the register that I keep when I let out my horses; with peoples names that have the teams.

Q. For the benefit of those Senators who were not present last night, you may state your occupation and business in 1879.

A. I run a livery at Waseca.

Q. Now, you say that is a register; will you turn to that register and find the entry that you spoke of last night?

A. April the 13th?

Mr. Manager COLLINS. We offer that in evidence.

Mr. ARCTANDER. I would like to ask the witness a question before you introduce this,—[to the witness], whether or not that entry, under April 13th, is in your handwriting?

A. Yes, sir.

Q. Was it made at the time?

A. Yes, sir.

Q. At the time you let it out?

A. Yes, sir, made in the morning; it is the first charge. The other entries are not in my handwriting; they are in my man's handwriting.

The PRESIDENT *pro tem.* While the counsel are examining that record, I will call the attention of the Senate to Rule 59, my attention having been called to it—a good deal of latitude has been allowed, and if the Senate wish the rule to be suspended, it is for them to say.

Senator GILFILLAN, J. B. What is the rule.

The PRESIDENT *pro tem.* It is the rule in reference to smoking in the Senate chamber during sessions.

Senator RICE. I move that the rule be suspended.

Mr. ARCTANDER. We object to those entries as immaterial and incompetent.

Mr. Manager COLLINS. We offer this entry; the witness has testified it is in his own handwriting. The counsel, last night, objected to his testifying to it, because we did not have the register. I presume he thought the register was in Waseca, but it was in town.

Mr. ARCTANDER. I will state that when we objected to it last night, we objected for the reason that the witness tried to testify what the register contained; that he knew by the register that he had taken those people out on the 13th, and that he didn't know it any other way.

The PRESIDENT *pro tem.* The objection was made?

Mr. ARCTANDER. Yes, that objection was made because it was trying to prove the contents of some writing by parol. Now, the record of this is here, and we object to the introduction of it, for the reason that it don't prove anything. It is immaterial, irrelevant and incompetent,

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because it is not a record required by law to be kept in any form, shape or manner whatsoever; and its contents don't prove anything. It is immaterial as proof. All there is of the entry is certain names and the horses and buggy and three dollars. Why, this Senate ruled out a semi-official record of the respondent the other day; and now they propose to introduce a horse-trader's or liveryman's record. And claim that that should be admissible proof in evidence when the respondent's record was not.

Mr. Manager COLLINS. We have nothing to say. We will just take the ruling of the court upon it; we are not particular one way or the other. But the counsel objected last night, and we thought we would see what position he would take this morning; he seems to have changed his position.

The PRESIDENT *pro tem.* I take about the same view of that, that I took with reference to that book which was offered the other day; I think it is immaterial and does not cut any figure any way.

Senator GILFILLAM J. B. What is the objection to the evidence?

Mr. Manager COLLINS. That it is immaterial. I will state, for the benefit of the Senator, that last night we put this witness upon the stand, and endeavored to show what the register contained, or at least, that was what we were getting at. The counsel objected,—very properly,—and we then said we would send for the register. We have got the register here; and we now propose to introduce it in evidence.

Senator GILFILLAN, J. B. Then the question arises, I suppose, how the fact becomes material?

Mr. Manager COLLINS. I will withdraw the question for a moment.

Q. Mr. Welch, you may state whether or not this is your book of accounts—your account book?

A. That is the only book, the only record I keep.

Q. Containing the original entries in your business?

A. Yes, sir; those are the original entries, and whenever they paid me I checked it off, and at the end of the month, of what is not checked off I draw up my bills and present them.

Q. Now, those entries on the 13th were made in your own handwriting?

A. That first entry was made in my own handwriting.

Mr. Manager COLLINS. Now, we will offer it in evidence as an account book.

Mr. ARCTANDER. Well, if the counsel wants to prove an account against us here, that book would certainly be admissible, but I don't think we want to answer to that livery-stable keeper in these proceedings for any account.

Senator GILFILLAN, C. D. I would like to ask Manager Collins to state to the Senate why he considers the point material to the case.

Mr. Manager COLLINS. It is material in this: The witness (Winston) has testified that he was in court the 3d day of April—the day of the adjournment in the Power-Hermann case; that he walked from the court room up street with Judge Cox, contradicting, of course, the testimony of the witness Hayden, who testified that *he* walked up street with Judge Cox. Winston testified that Hayden did not, that he was the man himself. I asked Mr. Winston how he knew it was the 3d of April, and he said because his brother-in-law came the day before, and because he went out hunting with the gunsmith, who lived next door, on this 3d day of April.

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Now, the gun-smith has testified that he did not go out hunting with him upon that day, but that they went out on the 13th day and that they got the team of the liveryman, Welch. We now propose to show by Welch that Ecob did get the team upon that day and that it was that day that he went hunting; and he has already testified to a circumstance that occurred,—the shooting of a swan on that day.

Our Supreme Court has held that account books may be introduced in cases where there are no accounts; they held that in a case,—very much to my discomfiture,—on one occasion. We don't care to take the time of the Senate to rule upon it; we don't consider it very material.

Senator CAMPBELL. "Question!"

The PRESIDENT *pro tem.* The question will be submitted to the Senate without debate. The roll will be called.

Senator CAMEBELL. Is it necessary to call the roll, Mr. President, unless it is asked for?

The PRESIDENT *pro tem.* I think, under our rules, unless they are suspended, the roll-call is necessary.

Mr. Manager COLLINS. Mr. President, I won't take the time of the Senate with this matter.

Mr. ARCTANDER. I will waive the objection; it may go in.

Q. Now, won't you just read that entry?

Mr. ARCTANDER. I understand you propose to offer the entry on the third day, also?

Mr. Manager COLLINS. Yes.

MR. ARCTANDER. With that understanding I withdraw my objection.

The WITNESS, (reading:) "Jacob Neibles, Jack and Frank, three dollars;" the 13th of April.

Q. And that is the team and the man about whom you testified last night?

A. Yes sir.

Q. Now, I will call your attention to the entry upon the third of April; is that in your handwriting?

A. Yes sir.

Q. Won't you read that?

A. (Reading:) "Mr. Cox, Pet and Zephyr, two dollars."

Mr. Manager COLLINS. We will offer that in evidence also.

The PRISIDENT *pro tem.* That is "Cox," the respondent in these proceedings?

A. Yes sir, E. St. Julien Cox.

Q. Mr. Welch, do you remember the third day of April, the day you made that entry?

A. Yes, sir.

Q. You were on the jury in the Hermann-Powers case?

A. Yes, sir.

Q. Now, won't you state the transaction or the circumstances connected with that entry,—state all the circumstances about it?

A. Well all I know about it is, Mr. Cox wanted a team to ride out, and I took my carriage and carried him out.

Q. On the third day of April?

A. That is on the third day of April.

Q. Was it before or after the adjournment on that morning?

A. Well, sir, I couldn't tell you, certainly; I couldn't be certain whether it was before or after. It is my impression it was after dinner.

Q. You may state who, if any one, was with you besides Judge Cox.

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Mr. ARCTANDER. How is that material? We object to that as immaterial.

Mr. Manager COLLINS. Well, it is material in connection with some of your testimony.

Mr. ARCTANDER. We have not testified to anything about that.

Mr. Manager COLLINS. I know you haven't; you had a sick headache that day and had to go to bed.

Mr. ARCTANDER. May it please the court, I understand there is no testimony as to any transactions in the afternoon of that day, with the exception of the transaction when the Judge came and excused the jury. That is testified to by both the witnesses for the prosecution and the witnesses for the defense,—that he came out and excused the jury on account of a sick headache, and that they then met again in the evening. That is all the testimony on our part, or upon the part of the prosecution. Now, I maintain that it is entirely immaterial, for any purpose, who went with Judge Cox in the afternoon. The witness testifies that Judge Cox went out and got a team; he thinks it was in the afternoon, and he drove him out. Now, who went with him is entirely immaterial; it can have no bearing in this case whatsoever. It is not, at least, in rebuttal, because it don't rebut anything.

We brought nothing out about that, upon our side, at all; consequently, it is not proper rebuttal of anything. It would not be proper to show that this team was taken out by him, but I was perfectly willing it should come out, because the witness, Winston, had testified that when he walked up with the Judge, the Judge went over to the livery stable, and then came back again, and because I considered it in confirmation of his statement,—the fact that he had a livery team that day. I say I now object to going farther into the details of that transaction as to who was *with* Judge Cox, because it can cut no figure in this case, and it certainly rebuts nothing.

Mr. Manager COLLINS. One of the witnesses has testified,—I think one of the Murphy family,—that Judge Cox gave as a reason why he should not hold court that afternoon, that he had a sick headache. Now, we propose to show that on that afternoon he was engaged in riding about the streets of Waseca with a party of boon-companions. If anybody ever heard of a man with a sick headache riding around town for pleasure, I should like to hear from him. It rebuts the presumption that might arise from the testimony of that man Murphy, who testified that Judge Cox was suffering from a sick headache that afternoon. We show that he was engaged with a party of friends, riding about the streets, that was the object of it. I want to show that he was not alone with the witness, but that he had a party of friends with him, and that they were having a nice time.

Mr. ARCTANDER. Does the counsel claim that the fact that a man rides around the streets with his friends, rebuts the idea that he has a sick headache?

Mr. Manager COLLINS. Well, a man with a sick headache don't ride on the streets of a town, or anywhere else; he rides into bed about as soon as he can.

Mr. ARCTANDER. That may be the counsel's way.

Mr. Manager COLLINS. Well, that is *your* way, if you have ever had it. I never had it in my life, but I have seen it.

The PRESIDENT *pro tem.* You may answer that question. It may go in for what it is worth.

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Q. Who was with Judge Cox on that ride?
A. Well, I think that Mr. McConnell was one: and the others I have forgotten.
Q. By Mr. ARCTANDER. The hotel keeper?
A. Yes, sir.
Q. State whether, or not it is your impression that Dan Murphy, the deputy sheriff, was in that party.
A. Well, that was an impression I had, but I can't say positively whether he was or not.
Q. How many were in that party?
A. Well, I think there was three besides myself; that is my impression of it. I have no way of remembering it particularly, except from my record there.

Examined by Mr. ARCTANDER.
Q. During this ride you had there, was it in the streets of the village? Was it not across the lake;—around the end of the lake there?
A. I think it was; I think we rode down to the edge of the lake and around in the city.
Q. It was not riding back and forth in the city,—it was riding out in the country, around the lake there, was it not?
A. It was in the limits of the city, I think.
Q. It wasn't riding back and forth in the streets was it?
A. Well, it was riding around in the city.
Q. That is one of the rides people take when they go out for an airing isn't it?
A. Yes, sir.
Q. Was Senator McGovern with the Judge at that time?
A. I can't remember.
Q. Isn't it a fact that the Judge complained at the time of suffering from a sick headache before you went out and while you were out?
A. I don't recollect as he complained before; I think I heard him complain of having a sick headache sometime, but I don't remember exactly when.
Q. Whether it was before you went out or after?
A. No, sir; I don't remember.

DR. D. S. CUMMINGS,

Sworn as a witness on behalf of the prosecution in rebuttal, testified.

Examined by Mr. Manager COLLINS.
Q. Doctor, where do you reside?
A. At Waseca.
Q. How long have you lived there?
A. Six years.
Q. What is your profession?
A. Physician.
Q. Practicing at Waseca?
A. Yes, sir.
Q. Are you acquainted with Judge Cox?
A. I have met him; yes, sir.
Q. When did you first meet him?
A. It was during the term of the court that he held there.

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Q. Are you acquainted with Dan Murphy, who was deputy-sheriff at that time?

A. Yes, sir.

Q. You may state whether or not during that term of court you met Dan Murphy in company with Judge Cox, when Judge Cox was intoxicated?

A. Yes, sir; I did.

Q. Now, state all of the circumstances, Doctor.

A. I met them on the sidewalk one evening, sometime during the term of court; I don't remember the date of the evening; sometime during the latter part of the term.

Mr. ARCTANDER. We might as well object to this testimony; I suppose, for the reason that it is not proper rebuttal.

The PRESIDENT *pro tem.* It is substantially the same question which was decided.

Mr. ARCTANDER. It is substantially the same.

The PRESIDENT *pro tem.* The objection will be overruled.

Senator GILFILLAN J. B. (to Mr. Manager Collins). This is under article two?

Mr. Manager COLLINS. Yes, sir.

Q. Now, go on, doctor, and state it so that the Senate can hear you.

A. I met Judge Cox and Mr. Murphy on the sidewalk; they were coming from in the direction of Mr. Hall's saloon.

Q. By Mr. ARCTANDER. From the saloon?

A. Yes, sir; well, coming from that direction. I didn't see them come out of the saloon. Mr. Murphy had Judge Cox's arm, and as they came along he met me; they spoke, and Mr. Murphy suggested that I go with them. I went along; they were going to the hotel; and we went to the Judge's room at the hotel, and we had some conversation with him there about his condition, his drinking, and the public talk it was creating.

Q. State what that conversation was.

A. I don't remember the exact language; it was to the effect that his conduct was creating public scandal.

Mr. ARCTANDER. Well, we object to anything about the public talk. We were shut out from public talk and I suppose it is nothing more than fair that the prosecution should be shut out.

Mr. Manager COLLINS. It was a conversation.

The WITNESS. Yes, sir, it was a conversation.

Mr. Manager COLLINS. It was in relation to his condition.

The PRESIDENT *pro tem.* The conversation called for is the conversation of Murphy.

Mr. Manager COLLINS. The conversation of Cox and this witness and Murphy about the condition of Judge Cox.

The PRESIDENT *pro tem.* If it is a conversation in which Murphy participated, I think it is competent.

Q. State the substance of the conversation?

A. I don't recollect the language, but the substance of it was that it was advised on the part of Murphy for him to go to bed and stay in; that he had been out; and the Judge evidently wanted to go back.

Q. To go back where?

A. Where he came from.

Q. Do you know where that was?

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A. I don't know of my own knowledge.
Q. What knowledge have you?
A. Mr. Murphy said that he had been at the saloon of Hall & Smith.
Q. That is what Murphy said?
A. Yes.
Q. In Judge Cox's presence?
A. No, sir.
Mr. ARCTANDER. We move to strike that out.
Mr. Manager COLLINS. All right; that may be stricken out.
Q. What time was that?
A. I think about eleven o'clock; I don't know exactly.
Q. You may state where you left Judge Cox.
A. I left the room a few minutes after that.
Q. Who left with you?
A. Mr. Murphy.
Q. Where did you leave Judge Cox?
A. Left him in his room.
Q. Where did you go?
A. We went down to the sidewalk on the outside of the hotel.
Q. Now, state what took place there between Murphy and you?
A. We stayed there probably over half an hour, I think, talking; and Murphy was watching the Judge's room. He went around the corner several times, and looked at his window to see that he stayed there and didn't go out again.

By Senator GILFILLAN, J. B.
Q. What time of day was this?
A. About eleven o'clock at night, I think. I don't remember exactly.

Examined by Mr. ARCTANDER.
Q. What time was this, doctor?
A. I think it was about 11 o'clock; I don't remember exactly.
Q. I mean what time in the year was it?
A. It was in the year 1879; I only remember it as during this term of court the Judge held there.
Q. What time during the term of court was it?
A. I think along in the middle or latter part of the term.
Q. That is as near as you could come to it?
A. Yes, sir.
Q. It might have been the first part of the term?
A. Yes; it was several days, because I had seen the Judge several times.
Q. Was this the time you were with the Judge in Senator McGovern's office, to spend the evening there?
A. No, I never was there.
Q. Were you ever introduced to the Judge?
A. Yes, sir.
Q. When was it?
A. I don't remember what day or where; it was some time there.
Q. Do you remember by whom?
A. No, sir.
Q. Was it in the back room of Hall's saloon?
A. No, sir.

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Q. That you got introduced to him?

A. No, sir; it was by some member of the bar, I think, in the office of the Continental House, that I first met him.

Q. By Mr. Lewis, or Mr. Collister, or some gentlemen there that was in with the Judge?

A. I remember now that it was in the office of the Continental.

Q. Now, at this time, how did the Judge act when you saw him?

A. He acted as if he was under the influence of liquor.

Q. Very much?

A. Not badly; no, sir.

Q. He wasn't what you would call drunk, was he?

A. Not drunk.

Q. Did he stagger?

A. I did not see him stagger, no sir.

Q. Talk sensible?

A. Not *very;* that is, he was rambling in his conversation.

Q. What was it that he said?

A. Well, I don't remember the language that he used; I only judged from his general appearance that he was under the influence of liquor.

Q. You hadn't had many talks with him at that time?

A. Not a great many: no, sir.

Q. You didn't think he was a very eccentric man in his talk at that time, did you?

A. No, sir.

Q. You haven't had many talks with him since that time, have you?

A. No, sir.

Q. As a matter of fact, this was about the only time you had had any long conversation with him?

A. I have had frequent short conversations with him, or occasional.

Q. That is, just passing the time of day, etc.?

A. Yes, sir.

Q. But this was the only time you had any lengthy conversation with him, in which he expressed his ideas at any length?

A. I think it was; yes, sir.

Q. You have never seen him since?

A. No, sir; I don't recollect of ever seeing him since.

Q. And this kind of rambling in his talk was all you noticed at the time, that made you think he was under the influence of liquor?

A. Yes,—well, his manner,—

Q. Well, what was his manner?

A. I remember at the time he was in the room he seemed to be considerably emotional at some remarks that were made, I don't remember what. He was moved to tears. He seemed to be broken down. I remember that he cried there and shed tears at one time over something.

Q. Something sorrowful that was related there?

A. I don't remember; I remember that. The conversation was between him and Mr. Murphy principally. I was not much acquainted with him.

Q. Had you been drinking any that night?

A. No, sir.

Q. Not a bit?

A. No, sir.

Q. I suppose all you testify to here is as to what your opinion was, as to his condition that night, You won't give it as a fact?

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A. It is an opinion; that is all.
Q. Merely an opinion upon your part, that he was under the influence of liquor?
A. That is all.
Q. But not that he was drunk?
A. That is all.
Q. Did you see the Judge the next day?
A. I don't remember; I might have.

Examined by Mr. Manager COLLINS.
Q. Doctor, you say Judge Cox was not drunk; I asked you in the first place if he was intoxicated and you said he was. Now, won't you explain to the Senate what you mean by a man being under the influence of liquor, being intoxicated and being drunk?
A. Well, it is a pretty difficult matter to define it exactly. There is a difference in degree, of course, in drunkenness. Anyone is intoxicated who is under the influence of liquor so as to manifest it in any way by his conversation or appearance; but one who is drunk, is a good deal further gone.
Q. Pretty far gone, in your opinion?
A. Pretty far gone. I would apply that term to a man who is unable to manage himself.
Q. Then, the difference, in your opinion, is as to the degree of intoxication?
A. Yes, sir; as to the degree.
Senator HINDS here took the chair to act as President *pro tem.*

JAMES CLEGHORN

Sworn as a witness on behalf of the prosecution, in rebuttal, testified:

Examined by Mr. Manager COLLINS.
Q. Mr. Cleghorn, where do you reside?
A. At Waseca.
Q. What is your business?
A. My present business is nothing; I have been in the butcher business for the past eleven years.
Q. What business were you in in the year 1879?
A. In the butcher business.
Q. And you then lived at Waseca?
A. Yes, sir.
Q. Are you acquainted with Judge Cox, the respondent in this case?
A. I am not personally acquainted with him; I know him by sight.
Q. How long had you known him by sight?
A. I could not give the date that I first saw him; it was at the term of court held there in the spring of the year.
Q. Of 1879?
A. Possibly so.
Q. Are you acquainted with Dan Murphy, the deputy-sheriff at that time?
A. I am.
Q. You may state whether or not during that term of court upon the streets of Waseca you saw Mr. Murphy in the company of Judge Cox, or with Judge Cox, when Judge Cox was drunk?

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A. I might say he was under the influence of liquor.
Q. To what extent?
A. Not so much at that time as I saw him afterwards; I would consider that when a man is drunk he is pretty well gone; but I should consider that he was under the influence of liquor at the time we speak of.
Q. To what degree?
A. He was not so drunk but what he could walk and talk.
Q. Was or was he not so under the influence of liquor at that time as to make himself conspicuous and noticeable?
A. He was; quite so.
Q. Now, you may state the circumstances.
A. I heard a noise out on the street, and having nothing to do, I walked out to my front door to ascertain the cause of the noise,—the loud talk.
Q. What time in the day was this?
A. It was just after nightfall; just in the edge of the evening. I saw three or four persons standing on Bailey's corner, some eighty feet from me, and a person coming towards me from them. It was Dan Murphy. After he got there I saw it was Dan. Said I Dan, who is that up there? His remark to me was that the Judge——
Mr. ARCTANDER. Wait, wait. We object to remarks made not in the presence of the respondent.
By Mr. Manager COLLINS.
Q. This was not in the hearing or presence of Judge Cox, was it?
A. It was not.
Q. Then you needn't state what Dan said. You may state what you did.
A. I walked with Dan Murphy up to the corner where these three persons were standing.
Q. What did you find there?
A. I can't say who the other parties were,—one was Judge Cox.
Q. You may state what Dan Murphy said to you as he approached you there?
Mr. Manager COLLINS. [To Mr. Arctander.] That, I suppose you will object to.
Mr. ARCTANDER. Yes.
Mr. Manager COLLINS. I believe it has already been ruled upon.
The PRESIDENT *pro tem.* The objection is overruled.
Q. You may say what Dan Murphy said as he approached you.
A. After I asked him who that was up there he remarked that it was "Judge Cox, drunker than a fool." I says what are they doing? He says telling a story. I remarked, lets go up and hear it, and we walked along up there and listened to the story.
Q. Now, who was telling the story?
A. Judge Cox was telling the story.
Q. You may state the character of that story.
Mr. ARCTANDER. That is objected to.
The PRESIDENT *pro tem,* The objection will be sustained.
Q. You may state the tone of voice that this story was given in.
A. It was in rather a loud tone of voice—so much so that I heard it, in the first place, at my place of business. I could not distinguish the words, but I went up there because I am very fond of a story myself, and wanted to hear all the particulars in regard to it.

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Q. You may state what Judge Cox did, or at least, state about the story as you went up there.

A. He told the story. It was—

Mr. ARCTANDRR. Wait; we object to that.

Mr. Manager COLLINS. With all due deference to the ruling, I will say that it does seem to me that it is an indication of his condition. If the Judge told an indecent story there, for instance, in a crowd of men, and in the presence of a crowd of ladies, as we will show, if permitted, in a loud tone of voice, and without lowering it when these ladies approached, it seems to me that there was something wrong with the court. It would be evidence, it strikes me, that he was drunk, because I don't think a sober man would do it.

The PRESIDENT *pro tem.* I think so too; and that is the reason why the objection was sustained. It would not be rebutting evidence in such a case as that, but evidence in chief. Anything that connects the former witness as participating in anything that transpired, which would indicate that the former witness knew the condition of the respondent, would be rebutting evidence.

Mr. Manager COLLINS. Now, the former witness, Mr. Murphy, has testified that Judge Cox was not drunk in his presence. Now, if we show that Judge Cox was drunk, by means of his obscene stories on this occasion, we connect Mr. Murphy with the drunkenness of the Judge.

The PRESIDENT *pro tem.* This question does not connect with him at all.

Mr. Manager COLLINS. It would if he were present, it strikes me. We have shown that he was present; that he went back there and listened to it.

The PRESIDENT *pro tem.* I don't think it is proper.

Mr. Manager COLLINS. Very well, we don't care particularly.

Q. You may state whether or not there were any ladies passing on the street while this story was being told.

Mr. ARCTANDER. We object to that. We are not responsible for the ladies.

The PRESIDENT *pro tem.* I think the objection should be sustained. The evidence is only proper as rebuttal,—for the purpose of showing that Murphy *then* understood the condition of the respondent.

Q. Now, Mr. Cleghorn, you may state how you know this was during the term of court.

A. I only know it by hearsay; I didn't attend court; I didn't go to the court house, but afterwards I went to the court house. It might have been a day or two afterwards.

Q. And that is the reason you know this was during the term?

A. It was during the term of court as I have heard.

Q. Who presided at the term the day you were there?

A. Judge Cox.

Q. Can you tell us what that day was?

A. I cannot. I can only connect it with certain circumstances that occurred at that time.

Q. You may state what they are,—how you fix it.

Mr. ARCTANDER. I object to that as not being in rebuttal. If it was during the term I don't suppose it would make any difference; that would impeach Murphy.

The PRESIDENT *pro tem.* Oh, I think they may identify the time, by comparisons.

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Q. You may state the circumstances that led you to make that inference.

A. It was after I met Murphy, some two or three days, possibly; I can't give the dates. Somebody told me that Judge Cox was drunk on the bench.

Mr. ARCTANDER. Now, we certainly object to that, and we move to strike it out.

The PRESIDENT *pro tem.* That may be stricken out.

Q. Well, you went to court, did you?

A. I did.

Q. You found Judge Cox there?

A. I did.

Q. Will you state whether Mr. Murphy was there?

A. I cannot state whether he was or not. The only person I can swear was there was Mr. Collester.

Q. Why do you remember that Mr. Collester was there?

A. From the fact that he made a motion to adjourn, or something to that effect.

JAMES B. HAYDEN

Recalled as a witness on behalf of the prosecution in rebuttal, testified.

Examiued by Mr. Manager COLLINS.

Q. Mr. Hayden, I believe you have already testified that you were clerk of the court at the time of this trial?

A. I have.

Q. Will you state the construction of the wall back of the Judge's desk? It is in testimony here that there is a railing there. Can't you state about that?

A. It is plain, just like this wall. There is a window on the right side and a window on the left.

Q. How far apart are those windows?

A. Oh, about between eight and nine feet; I don't know the distance exactly

Q. Now, as to the construction of those windows,—I will call your attention ;o *these* windows, about the construction of them, how do they compare with those in this room here?

A. Something like these. The casing is from three to four inches wide, that is, from the wall out.

Q. Is there any more of a protection there than there is to these windows?

A. Well, I don't think that there is; that is, standing here looking at them; I don't think there is any more protection. Some three or four inches perhaps.

Q. Has there ever been a railing there?

A. There never was,—not for the last ten years.

Q. Now, at this term of court, will you state where the witness' box was, or the stand on which the witness sat?

A. Well, the witness-stand is to the right; the judge's stand was some eight feet, I think—I measured that—and the witness' stand is about three feet to the left of the judge's stand.

Q. The judge's stand is about eight feet long?

A. About eight feet long.

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Q. How high is it?

A. Well, it is abont thirty inches; and then the judge's stand is about sixteen inches high. The witness' stand is only about half as high, eight inches, and is off to the right about three feet.

Q. Now, Mr. Hayden, have you been there for the purpose of seeing as to the construction of the desks and the seats there; have you been there purposely for that?

A. Yes; I think Saturday evening I was in there with Mr. Lewis and Col. Hicks; went in to look at that stand.

Q. Now, will you state as to the ability of a person sitting in the Judge's seat to put his feet on the witness stand?

A. Oh, he could not do it.

Mr. ARCTANDER. We object to that; there is no such testimony as to that.

Mr. Manager COLLINS. Father Hermann has testified that Judge Cox rested his feet upon the witness stand. We propose to show that it would take a man eight feet tall to do it, and then he could not do it.

Mr. ARCTANDER. You will find that he says on two little boxes, protruding.

Mr. Manager COLLINS. I was not here at the time. I am informed by my associates that that was the testimony.

The PRESIDENT *pro tem.* You are mistaken. I think it was a box upon the platform; that is my recollection of it.

Q. Now, was there any projection except the one you have stated, made by the window casing?

A. No, sir, there was no projection there. That is, what I mean is, there is no projection from the wall *out*.

Q. There was nothing between the windows at all,—nothing between the casing,—the wall was perfectly bare?

A. Yes, sir.

Q. Now, were there any boxes there, on which the Judge rested his feet?

Mr. ALLIS. What is the object of this testimony?

Mr. Manager COLLINS. To show that Father Hermann is mistaken when he says that he did.

Mr. ALLIS. Well, it is immaterial.

The PRESIDENT *pro tem.* I think the testimony in chief showed the position in which the respondent held his feet during a portion of the sitting of the court, for the purpose of indicating that it was on account of his intoxication. The respondent rebuts that by showing that his feet were in a different position,—stated what that position was. This, I suppose, is to explain that testimony, and being such I think it would be competent,

Senator GILFILLAN, J. B. The testimony referred to, that of Father Hermann, is on page 289, at the top.

The PRESIDENT *pro tem.* (to the witness.) You may answer the question.

Q. You may state whether or not there were boxes there?

A. Well, really I don't know as to that; I wouldn't state positively as to that.

Q. Mr. Hayden, you have in your hand certain files, I believe. You may state what they are.

A. I have the judgment roll in the case of Patrick Powers vs. Joseph R. Hermann.

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Mr. Manager COLLINS. We offer that part of the judgment roll in evidence, which shows as to how many days Mr. Coughlin attended, and what pay he received.

Mr. ALLIS. Is that in rebuttal?

Mr. Manager COLLINS. Yes, sir. That is in rebuttal of the testimony of Father Hermann. He testified that he got this adjournment to send for Mr. Coughlin.

Mr. ALLIS. What is the object of it?

Mr. Manager COLLINS. We propose to show by this that the witness Coughlin was there all the time, and got pay.

Mr. ALLIS. By this judgment roll?

Mr. Manager COLLINS. Yes, sir; by that part of the judgment roll which shows it.

Mr. ALLIS. That is no part of the judgment roll, if the judgment roll was made up.

Mr. ARCTANDER. I suppose you mean the affidavit that he was in attendance so many days?

Mr. Manager COLLINS. Yes, and that he got pay for so many days.

Mr. ALLIS. That is no part of the judgment roll. The statute does not require such things in the judgment roll.

The PRESIDENT *pro tem.* I think the evidence would be incompetent for that purpose. I think the objection must be sustained.

Mr. Manager COLLINS. I think the court is right; that is *my* opinion. (To the witness.) Mr. Hayden, you are aaquainted with Father Hermann?

A. Yes, sir.

Q. I will ask you this question: Did he or did he not, at or about the time of the trial of the Hermann vs. Powers case, in the town of Waseca, state to you that when he was excused from the witness stand that he saw a letter lying upon the table; that he took it and put it in his pocket, thinking that it was his letter, and that he had a right to, and that he thought it was providential that the letter lay where he could get his hands on it, or words to that effect?

The WITNESS. You say at Waseca at that term of court?

Q. Or about that term of court?

A. No, not at the term of court.

Q. After the term of court?

A. I think the conversation was in September or August, afterwards. I had no conversation with Father Hermann that day at all.

Q. Well, at the time you speak of,—after the term of court,—did he or did he not say that?

Mr. ALLIS. That is not proper.

Mr. Manager COLLINS. Why do you object to the last question?

Mr. ALLIS. Because it is not limited to the time you asked the witness Hermann. The counsel laid the foundation for this in the three questions which I have before me,—all of which referred to the term of court. And the witness has answered that question.

Mr. Manager DUNN. The witness Hermann said he *never* had any such conversation.

Mr. ALLIS. That does not lay the foundation for the question.

The PRESIDENT *pro tem.* Read the answer of the witness.

Mr. Manager DUNN. This question, Mr. President, was in reference to a brown wrapper that Father Hermann had been testifying about and which he claimed was the cause of the adjournment that was had of

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the Powers vs. Hermann case, on the 3d day of April. After speaking relative to the letter I asked him this question:

Q. Well, now, isn't that a letter that we have been speaking of here, that you say that the attorney held up and said was from Bishop Grace; isn't that the letter which you took instead of that brown paper you are speaking about?
A. This letter was not presented at that time; this letter was not presented until—
Q. Isn't that the letter you took and read?
A. No.
Q. That you took instead of the paper with the brown wrapper, which you have been testifying about?
A. No.
Q. Aren't you mistaken about that?
A. No, sir.
Q. You can't possibly be mistaken?
A. No, sir.

Then there are some other questions which intervene there, which are relative to the intoxication of the Judge. And then I asked this question:

Now, Mr. Hermann, I want to know if you had any conversation with James B. Hayden, the clerk of the court, about that brown wrapper or brown paper, which you have been testifying to here, and which you claim was the cause which moved you to ask for a continuance of that case on the 3d day of April?

Senator GILFILLAN, J. B. There is another question, previous to that, about the middle of the page.

Mr. Manager DUNN. No; *that* is the question I am reading.

Senator GILFILLAN, J. B. No; you are reading the question at the lower end of the page.

Mr. Manager DUNN. No; I am reading the question now right in the middle of the page:

—which moved you to ask for a continuance of that case on the third day of April. Have you had any conversation with James B. Hayden about that paper since that time?
A. Never.
Q. Or with any other person? A. Oh yes.
Q. Well, whom? A. A good many.
Q. Well, who?
A. I had a conversation about it with the attorney of Judge Cox.
Q. When? A. Upon two occasions.

Then I asked the question again:

Q. I want to know if you did not state to James Hayden, the clerk of the court, and in the presence of some other person, whose name I have not now got, that you saw the letter lying on the table, after you had been excused from the witness stand, in the case of Power against Hermann; that you saw this letter lying on the table, and picked it up and put it in your pocket, thinking that it was your letter, and that you had a right to, and stating at the same time that you thought it was providential that the letter lay where you could get it, or words to that effect?
A. I could not make any such statement
Q. I did not ask you whether you could or not; I asked you whether you did.
A. I did not.
Q. Neither to Mr. Hayden or to any one else?
A. No; I never made any such statement to Mr. Hayden.
Q. Neither to Mr. Hayden nor to any one else?
A. That I picked the letter up?
Q. Did you make that statement, or words to that effect?
A. Please repeat it again.

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Q. The question is whether you stated to James Hayden, or any other person, that when you were excused from the witness stand, or at that time, that you saw the letter lying on the table, and took it and put it in your pocket, thinking that it was your letter and that you had a right to, and that at the same time you stated that you thought it was providential that the letter lay where you could get it?
A. No.

Now, we claim that the foundation is thoroughly laid for the answer to the question in reference to the conversation which occurred between Mr. Hayden and Mr. Hermann relative to this brown paper and this letter. I don't want to make any argument on the subject.

Mr. ALLIS. I understood, in reading that over, that that referred to the term of court. If it does not refer to the term of court then no foundation is laid. You have to call the attention of the witness to the time and place. If these questions have the latitude that the counsel claims for them then no foundation is laid, because it refers neither to the time nor place, putting a very liberal construction on it, taking it altogether, assuming that the whole language here, assumed the time and place of that trial. If the counsel claims that is not the case then, of course, I make the farther objection that no foundation whatever is laid, for these parties have failed to call the attention of the witness to the time and place of the conversation referred to, that is all there is to it.

The PRESIDENT *pro tem.* I think that the answer of the witness taken in connection with the several questions that preceded it, has laid a sufficient foundation and therefore the objection will be overruled.

Mr. ALLIS. Does the chair understand that the time and place is fixed by that?

The PRESIDENT *pro tem.* Some of the questions referred to the occasion.

Mr. ALLIS. Then I understand the objection is overruled, on the assumption that the questions on the whole, taken together, fix the place.

The PRESIDENT. *pro tem.* That the answer either has fixed the place or has waived it. The answer of the witness is that he never made the statement. The object of fixing the time and place is to refresh the recollection of the witness. Now, if the witness has answered that he never did, he includes all times and places in his answer.

Mr. Manager DUNN. That is just the answer of the witness—that he never made any such statement.

The PRESIDENT *pro tem.* Yes; I so understood it. The witness can answer the question.

Mr. ALLIS. Let us have the question again. We want the question in the first place.

Senator CROOKS. Let the question be read by the reporter.

The reporter read the question as follows:

Q. Well, at the time you speak of, after the term of court, did he or did he not say that?

The WITNESS. Well, we had a conversation. I think it was not at the term of court; it was along in August or September. I won't fix the time now, because I don't know. I was at Father Hermann's place with another reverend gentleman, and we were speaking about the matter, and it was either in August or September, and there was a conversation about the law-suit, and about one thing or another, and it came

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up some way that that was a letter, or a piece of paper,—it was a letter, I think,—that was taken off there or got out of the way in somehow or other.

Mr. ALLIS. August or September following that?

The WITNESS. Yes, sir; following that preceding term of court; that is my recollection of it now.

Mr. Manager COLLINS.

Q. State whether or not he said he took it and regarded it as providential that it came in his way.

A. I don't know whether the word providential was used or not; he said that he took it, or got it in some way; I don't know whether he took it himself, but he got hold of it.

Q. In justice to Father Hermann, it might be said that was a letter that belonged to Father Hermann, was it not?

A. Yes; something that belonged to him, and was stolen from him.

Q. That was a letter that belonged to Father Hermann, that had been taken from him by Powers, and Father Hermann afterwards got possession of it.

A. I think that is my recollection of it,—that it belonged to Father Hermann, of course.

Mr. ALLIS. Then this was a letter and not a piece of brown paper?

The WITNESS. No, not a piece of brown paper; I knew nothing about a piece of brown paper until I heard it spoken of through the press.

Q. Now, who was the other priest,—what other priest came up there with Father Hermann?

A. Father Christie.

Q. Who is he?

A. Well, he is a Catholic priest there at Waseca.

Q. What time was that?

A. I cannot fix the date; I told you it was in August or September.

Q. In August or September?

A. I wouldn't fix the date; I don't know.

Q. Well, they came up to see him?

A. No, we went out to see him.

Q. At whose place?

A. Father Hermann's place.

Q. Where is that?

A. He then resided at St. Mary and was building a new church; we stayed there that afternoon at his place.

Q. Father Christie was there?

A. Yes.

Q. How is that,—did you find Father Christie there, or did he go with you?

A. No, sir, Father Christie and I went out there: we went to look at the church and when we got to the church we found Father Hermann at his place.

Q. Where is Father Christie?

A. I don't know where he is; I guess he is at Waseca.

Q. Still there, is he?

A. Yes.

Q. You cannot remember the time any nearer than you have fixed it?

A. No, sir—I couldn't fix the time.

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Q. You couldn't tell whether it was August or September?
A. I could not.
Q. Can you tell whether it was before or after harvest?
A. Well, it was about harvest time, I couldn,t say whether it was before or after, I couldn't tell.
Q. You couldn't say whether it was before or after?
A. It was a time when I hadn't much or anything to do in the office, and he had a team and wanted to have me take a ride with him; that is all.
Q. When you cannot fix the time, how do you fix the conversation so distinctly in your mind?
A. We were speaking about the lawsuit, that is all.
Q. What lawsuit?
A. Why, the lawsuit of Powers against Hermann.
Q. Well, that don't quite answer the question. How do you come to remember this conversation about the letter?
A. Oh, well, I would have to go into the details. He was showing his plans and specifications that were drawn up by Mr. Powers, and stating ——
Q. He was showing these to you?
A. And stating in connection with other things what a good architect he was, and a nice old man, but he thought he was a little bit tricky and stated the details in general about the church at that time, and I made the remark that it was kind of fortunate, the condition of the Judge that day, and he said yes, it was, or, at least, I think that is the remark he made.
Q. Hadn't Mr. Powers in the meantime been arrested for stealing at the suit of Hermann?
A. I think after the case was tried, Father Hermann had a warrant out and had him arrested; that was in a Justice court.
Q. Had that occurred before the conversation you had with Father Christie?
A. Yes; I think that is right.
Q. Wasn't that the way you came to talk about it?
A. Well, perhaps it was; I don't know; I know that Father Hermann had Mr. Powers arrested shortly after the law suit; I remember that.
Q. For stealing the paper?
A. Yes, for stealing the paper or wrapper, I wouldn't say which, but still some papers in relation——
Q. And among other things this very letter?
A. Perhaps that was the letter; I wouldn't be positive about that, but I think that was the time.
Q. You think it was?
A. Yes.
Q. An account book; do you recollect what the papers were?
A. Well, I don't know, some papers that he said he had stolen out of the vestry belonging to Father Hermann at Janesville. Now, what those were I do not know; and if he named them I couldn't say,—some papers.
Q. That is the way the conversation originated?
A. That is the way it came up.
Q. That is how it come to take place?
A. Yes.
Q. A conversation with reference to letters and papers that Mr. Powers had been accused by Father Hermann of stealing?
A. Yes.

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Q. Are you and Father Hermann on good terms?
A. I don't know whether or not we are on what we call good terms; he has always come into the office, spoken and shaken hands, and I have always spoken when I have met him, but I don't know that we were very warm friends. He has always come in and asked for things and I have always accommodated him whenever I could, like any other man.
Q. Isn't it a fact that for the last two years you have been on inimical terms with Father Hermann?
A. No, sir; Father Hermann and I have not exchanged half a dozen words in two years.
Q. That is what I thought.
A. Because he hasn't been around where I have been.
Q. Well, when you have been around, have you exchanged words with him?
A. Yes; I bid him the time of the day, and saluted him and passed him by.
Q. Didn't you, in the Hermann vs. Powers case, testify that you had not spoken to him for two years?
A. I was not called as a witness in that case. The minutes will show that; you have a certified copy of the minutes.
Q. Did you make that statement at that time?
A. I think not. I wasn't called in the case at all.
Q. What was the truth about that?
A. I don't remember anything at all about that just now.

Senator CROOKS.
Q. I would like to ask the witness a question. Have you had any trouble at any time, differences or quarrels with Father Hermann?
A. I could not state that we ever had any trouble or difficulty; he and I wern't very warm friends at all.
Q. What made you anything but warm friends?
A. Well, we had some little trouble; I might say that we had a little trouble, come to remind me of it, four or five years ago, something about a school question that he and I had a few words about, that I think was in the fall of 1875, but it was all passed over with.
Q. And that was the only occasion of a breach between you and Father Hermann?
A. That is all, I think.
Q. That is all the trouble you ever had?
A. That is the only trouble we ever had.
Q. It grew out of a difference of opinion?
A. He wanted to have a school in the church, and I was one of the trustees at the time and I objected to it, that is all.

By Mr. ALLIS.
Q. Where do you reside?
A. At Waseca.
Q. Where does Father Hermann reside?
A. He came to Waseca in 1874 and stayed there till a year ago.
Q. Well, then, he resided in the same town with you in 1878?
A. At that time he did, and also at St. Mary and Janesville.

Senator GILFILLAN J. B.
Q. You were one of the school trustees?

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A. No, sir; I belonged to the church at the time and was one of its trustees.

Q. One of the church trustees?

A. Yes

Q. What did the controversy relate to,—the public school question or a parish school question?

A. A parish school question; he wanted to have a school in the church, and I as trustee and some of the others were opposed to it and dismissed the teacher.

Q. The question was in relation to a parish school?

A. Yes.

By Mr. ALLIS.

Q. Were you not sworn as a witness in the Powers and Hermann case, and did you not, on the trial there, testify that Father Hermann had not been at your house for two years and that you and Father Hermann were not on speaking terms?

A. I have no recollection of that at the present, not a bit.

Q. Do you say you did not.

A. I say I have no recollection of it.

Q. I say, are you prepared to state positively that you were not sworn, and did not say that, testify to that?

A. Well, I won't swear that I did not, but I say that I have no recollection of it at present.

Q. I understand you have answered that question as far as it goes; that is all right; but I ask you the question,—are you prepared to testify that that did not take place? You would not swear that you did not make that statement on the trial of the Powers and Hermann case?

A. Well, I say that I have no recollection of it; that is all.

Q. Then you are not prepared to say positively that you did not?

A. You have a certified copy of the minutes there and if you will let me look at them and refresh my memory I can ——

Q. You can answer my question, sir.

Mr. Manager COLLINS. Let him see the certified copy, and he can refresh his memory; he does not know whether he was sworn or not.

Mr. ALLIS. Certainly; I did not understand his request.

The WITNESS. I don,t know whether I was or not; I can't remember just now.

Q. [Handing paper to witness.] Those are minutes made by you?

A. Yes, sir; this is my handwriting so far. [After an examination of the paper] Yes, I was not sworn in that case; the minutes do not show it, and I am ready to testify that I was not sworn in the case, and the minutes do not show it.

Q. I understand you to say you were not sworn and testified in that case?

A. That is the best of my recollection.

Q. You have sworn to that two or three times?

A. The minutes don't show that my name was taken down as a witness, and I am willing to swear that I was not sworn; I might have been asked a question about it.

Q. Isn't it a fact that you were clerk there at the time?

A. Yes.

Q. Didn't you stand up at your desk before Judge Cox and didn't he swear you in that case?

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A. I have no recollection about it.
Q. Did you sit in your chair?
A. He might have asked me a question, but I don't recollect being sworn.
Q. Never mind that, I ask you if you ever have been sworn?
Mr. Manager COLLINS. Hasn't that been answered by the witness often enough.
PRESIDENT *pro tem.* I think it has already been answered.
Q. What do you say to that?
A. I say I have no recollection about that.
Q. You don't say that it did not occur?
A. I say I have no recollection about it.
Q. I don't know whether you have told the whole of it, but I want you to state briefly all that took place at Father Hermann's with reference to the Powers against Hermann case, and Father Christie being present; how long were they there?
A. Oh, perhaps an hour,—well, I don't know what took place, they talked generally; I didn't do a great deal of talking, I had not—
Q. What were they talking about?
A. Oh, about a little of everything, church matters and one thing or other.
Q. Have you told all the conversation that occured there, about this Powers and Hermann case?
A. As I told you, Father Hermann was showing the plans and specifications about the church, showing him what Mr. Powers had drawn up; that is all; that is the way it came up.
Q. That is all?
A. That is their conversation; I can't remember any thing about it, because they did most of the talking, I simply sat there.
Q. You don't remember the conversation?
A. I don't remember their conversation because I was not interested in it.
Q. The only conversation that you can remember distinctly is that which you have just referred to, about that letter.
A. Yes, I remember that because having been arrested, and so on, it was in my mind and I knew more about it than I did about other things; that is why I remember it.
Q. Nothing else that you can remember?
A. No.
Q. And they were there an hour?
A. Perhaps more, perhaps less.
Q. Talking about church matters, and looking at these plans?
A. Yes; talking about church matters and one thing or another.
Q. Looking at the plans; and the only conversation that you remember distinctly was about this letter?
A. I remember that—
Q. Well, that is the only conversation you remember distinctly?
A. I don't say that is the only one; there might be other things if you should call my attention to them.
Q. What other things?
A. I say if you call my attention to them I might remember.
Q. Well, can you remember anything else now?
A. There is nothing else that I can call to memory now, but just

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these things, because you called my attention to it; there might be other things which I don't remember just now.

By Mr. Manager COLLINS.

Q. Mr. Hayden, as I understand, this difficulty was between the trustees, or between you, as one of the trustees of the church, and Father Hermann, as to whether the church over which he had charge should be used for school purposes; that was the difficulty?

A. Well, if you should call it difficulty, that is all there was about it; I don't know what you would call it.

Q. Did you remain on speaking terms with Father Hermann from that time up until the time he left?

A. Oh yes; he was always in the office. He came in and asked for papers,—and on the street; and I have been to his place after that around and talked with him.

Q. Up to the time he left there?

A. Yes.

Q. It was no quarrel of any moment?

A. I had no quarrel with Father Hermann directly.

Q. I didn't get your remark out there concerning Judge Cox,—whether you said it was fortunate or unfortunate that Judge Cox was in that condition that day?

Mr. ALLIS. I didn't understand him to say that.

The WITNESS. I thought I said it was fortunate he was in that condition.

Mr. ALLIS. Let us understand that; I thought he referred to the fact of that paper or letter.

Mr. Manager COLLINS. No; he was speaking of his condition.

Mr. ALLIS. Won't you repeat that again?

Mr. Manager COLLINS (to the witness.) You may repeat it again.

A. I said that it was fortunate for Father Hermann about the condition of the Judge at that time, that he was drunk.

Q. You said that?

A. Yes, I said that.

Mr. ALLIS. I move to strike that out, what he said,

Mr. Mannager COLLINS. It was not part of the conversation.

The PRESIDENT *pro tem.* It was part of the conversation that occurred at another time.

Mr. Manager COLLINS. Yes, a part of a conversation which they brought out.

Mr. ALLIS. I didn't bring that out.

Mr. Manager COLLINS. Yes; it was in response to your questions as to what was said there.

Mr. ALLIS. I asked for what Father Hermann said; I didn't understand at all that it was said by the witness, and I don't think the counsel did.

Mr. Manager COLLINS. I did, and made a memorandum of it, but did not know whether he said fortunate or unfortunate.

The PRESIDENT *pro tem.* That part of it was not responsive to the question, and the chair thought so at the time. The motion will be granted.

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ISAAC LINCOLN, JR.

Sworn as a witness on behalf of the State, in rebuttal, testified.

Mr. Manager COLLINS. This witness is called upon the impeachment of Coleman, and for the purpose of impeaching the testimony of Mr. Megquier, one of the witnesses for the defense.

Q. Where do you reside?

A. I reside at Olivia, Renville county.

Q. How far is that from Beaver Falls?

A. From fourteen to sixteen miles.

Q. What is your occupation?

A. Milling.

Q. What sort of a mill do you own; a custom mill, or a merchant mill?

A. Both combined?

Q. Mr. Lincoln, are you acquainted with Mr. Robert Coleman?

A. Yes.

Q. An attorney who formerly lived at Beaver Falls, I think, and is now residing at Moorhead?

A. I believe that is it.

Q. How long have you known him?

A. For about two years.

Q. Do you know his reputation for truth and veracity in the community in which he resided prior to going to Moorhead?

A. So far as I—

Q. Well, you may answer that yes, or no, whether you know or not?

A. Please state the question again?

Q. Do you know his reputation for truth and veracity in the community in which he lived; that is a question that is to be answered yes, or no, whether you *know* or not. I don't want you to state what it is, but to state whether you *know* what it is?

A. Well, I can state as far as I know; I wouldn't vouch for his reputation.

Q. You don't understand my question?

A. Perhaps not.

Q. I will ask you if you know the reputation of Mr. Coleman?

A. Yes.

Mr. ALLIS. That is not the question; in the community in which he lives, it ought to be. This witness lives twelve miles away.

Mr. Manager COLLINS. Well, twelve miles is not a great distance, in the country.

Mr. ALLIS. Well, put the question to him "in the community in which he lives."

Mr. Manager COLLINS. That is the way I intended to put it to him.

Mr. ALLIS. That is not the question you put to him the last time; I suppose it was an inadvertence.

Q. I asked you, if you knew the general reuptation of Coleman in the community in which he lives for truth and veracity?

A. I do.

Q. State whether it is good or bad?

A. So far as I know, it is good.

Q. State whether you ever heard it questioned.

A. I never heard it questioned.

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Q. Are you acquainted with George Megquier, an attorney of Bird Island?
A. I am.
Q. Well, do you know his general reputation for truth and veracity in the community in which he lives?
A. I have heard it commented on.
Q. Well, do you know it?
A. Yes.
Q. You may state whether it is good or bad?
A. Well, nothing extra.
Q. Well, state whether it is good or bad.
A. Well, bad.

CROSS-EXAMINATION.

By Mr. ALLIS.
Q. How far do you live from the community in which Mr. Coleman lives,—where did Mr. Coleman live?
A. He lived at Beaver Falls.
Q. Where do you live?
A. I live at Olivia
Q. How far are these places apart?
A. Twelve or fourteen miles.
Q. Are they in the same county?
A. Yes.
Q. Twelve or fourteen miles?
A. Yes.
Q. How long have you known Mr. Coleman?
A. I have known him about two years.
Q. Does he live there now?
A. No, sir.
Q. You have known him for two years?
A. About two years.
Q. Where does he live now?
A. I think he lives at Moorhead.
Q. How long since he moved there?
A. Some time within the last six months.
Q. Then you knew him for a year and a half or two years up there?
A. Yes.
Q. That is all you know,—all you knew him previously to that?
A. Yes, sir.
Q. Do you know where he came from?
A. No, sir; except that he was at Beaver Falls when I came there; I heard of him and then I became personally acquainted with him.
Q. Did you ever hear of him from Chippewa Falls?
A. No, sir.
Q. Or Eau-Claire?
A. No, sir.
Q. Did you ever hear any report that he was a fugitive from justice?
A. No, sir.
Q. Now, Mr. Lincoln, did you ever hear Mr. Coleman's reputation for truth and veracity discussed at all?
A. I cannot say that I have.

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Q. Have you been at Beaver Falls often during this last year and a half.

A. Yes, quite often.

Q. How often,—I am not so very particular, but how often?

A. Once or twice a month.

Q. Through the year,—during this entire period, that he has been living there?

A. During the entire period of what?

Q. That Mr. Coleman lived there?

A. Oh, I can't say as to that.

Q. Well, about that?

A. About that, yes; I should judge.

Q. Well, what I want to get at is how often you have been in the habit, during the year and a half, of going to Beaver Falls where Mr. Coleman lived?

A. Well, as I said before, about once or twice a month; nothing very regular about it.

Q. Have you not heard persons talk there about forged pension papers, in which Mr. Coleman was concerned?

A. No, sir.

Q. You say that during that entire period, you never heard his character for truth and veracity discussed?

A. I never heard Coleman's character discussed.

Q. Did you ever talk with any one about Mr. Coleman's character for truth and veracity? A. No, sir.

Q. Did you ever hear anybody talk about it?

A. No, sir.

Q. How long did you usually stay, when you were in Beaver Falls?

A. Oh, generally drive down in the forenoon and take dinner, and come back in the afternoon.

Q. Did you mingle around pretty freely with the people?

A. Oh, with the people I was acquainted with.

Q. You did business there?

A. Oh, not particularly; went down more on a pleasure trip.

Q. Mingled with the people there when you went down?

A. Yes, some.

Q. And you know the people there very well?

A. I know a certain few of them, very well.

Q. And you never heard any of those people discuss Mr. Coleman's character for truth and veracity, or say anything about it?

A. No, sir.

Mr. Manager COLLINS. That is pretty good evidence that it was good. [To the witness.] Mr. Lincoln, how many people are there in your county?

A. How many people are there in our county? I couldn't say.

Q. Can you state how many there were at the last census?

A. No, sir.

Q. About how many?

A. I have no idea at all; it would be just guessing at nothing.

Q. It is a small county and thinly settled?

A. Well, along toward the river it is pretty thickly settled; but back toward the northern and western part of the county it is sparsely settled.

Q. How large a place is Beaver Falls?

A. Do you mean the village itself, or the township?

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Q. The village itself.
A. Between three and four hundred.
Q. How large is Olivia?
A. A small town of about a hundred inhabitants.
Q. Is there any other town in the county?
A. Yes.
Q. Bird Island is in the county?
A. Yes.
Q. How large a place is that?
A. A town about three times the size of Olivia.
Q. Are there many other towns and villages?
A. Oh, there are some five or six.
Q. Beaver Falls, I believe, is the largest?
A. Yes; Beaver Falls is the county seat.
Q. And the county seat?
A. Yes.

By Mr. ALLIS.
Q. Have you ever had any difficulty, personal, political or of a business character, with Mr. Megquier?
A. I don't understand you.
Q. Have you ever had any difference either personal, political or of a business character, with Mr. Megquier?
A. No,—
Mr. Manager HICKS. Did I understand you, Mr. Allis, to say *business relations?*
The WITNESS. Oh, I have had business relations with him.

Mr. ALLIS. No, personal, political or business difficulties with him?
A. No, sir; I have had no difficulties with him.

By Mr. Manager COLLINS.
Q. Mr. Megquier is your attorney, is he?
A. Yes, sir.

A. D. SIMPKINS,

Sworn as a witness on behalf of the prosecution, in rebuttal, testified:

Examined by Mr. Manager COLLINS.
Q. Where do you reside?
A. Olivia, Renville county.
Q. How long have you lived there?
A. Two years in Olivia; three years in Renville county.
Q. Two years in Olivia?
A. Yes.
Q. The other year, where did you reside?
A. In the township of Winfield.
Q. How far is that from Beaver Falls?
A. Sixteen miles north.
Q. What is your business, Mr. Simpkins?
A. I am employed in the mill at Olivia.
Q. Anything else?
A. Justice of the Peace.

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Q. Are you acquainted with Robert W. Coleman, who formerly practiced law there?
A. Yes.
Q. How long have you known him?
A. By reputation three years, and personally two years.
Q. Do you know his general reputation for truth and veracity in the community in which he resided prior to going to Moorhead?
A. I do.
Q. You may state whether it is good or bad.
A. Good, so far as I have heard; I never heard it questioned.
Q. Are you acquainted with George Megquier, an attorney at Bird Island?
A. I am.
Q. Are you acquainted with his general reputation in the community in which he lives, for truth and veracity?
A. Well, I have heard different opinions expressed.
Q. Well, I am not asking you what the opinions were. Are you acquainted with it; do you know what his general reputation is?
A. The general reputation, I do know.
Q. You may answer yes, or no to that.
A. Yes.
Q. State whether it is good or bad.
A. Not very good.
Q. Can you answer good, or bad, Mr. Simpkins?
A. Bad.
Q. How far is it from Olivia to Bird Island?
A. Four and a half miles.
Q. And Megquier lives at Bird Island?
A. Yes.

CROSS-EXAMINATION

By Mr. ALLIS.
Q. Mr. Simpkins, you said you were acquainted with Mr. Coleman during the entire period that he lived at Beaver Falls?
A. No, sir.
Q. How much of that time?
A. He was living at Beaver Falls when I came into Renville county. I was acquainted with him two years before his removal.
Q. Did you ever hear his character for truth and veracity discussed, one way or the other?
A. I never have.
Q. You never have heard anybody say anything for it, or against it?
A. No, sir.
Q. Then you don't know, really, what his reputation is; you don't know anything about it; you never heard it discussed did you; you don't know whether he has or has not a good reputation; all you mean is that you never heard it discussed?
A. Well, a man will generally calculate that a person's reputation is good until he hears to the contrary of it.
Mr. Manager COLLINS. That is what our supreme court says.
Mr. Manager DUNN. That is a legal conclusion.
Q. What attorney told you that; is it your own idea or did the counsel post you on that?
A. That is my own idea.

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Q. That is the reason you say his reputation is good,—because you never heard it discussed?
A. Yes, sir; because I never heard it doubted or discussed.
Q. Never heard anything said about it, one way or the other?
A. No, sir.
Q. You never heard anything about his being a fugitive from justice, or anything of that kind?
A. No, sir.
Q. Anything about pension papers that he was concerned in, or anything of that kind?
A. No, sir.

H. V. POOR

Sworn as a witness in rebuttal on behalf of the prosecution, testified.

Examined by Mr. Manager COLLINS.
Q. Mr. Poor, where do you reside?
A. In the town of Osceola.
Q. What county?
A. Renville county.
Q. How far from Beaver Falls?
A. About twenty miles.
Q. How far from Bird Island?
A. About five miles.
Q. How long have you lived there, Mr. Poor?
A. Since the fall of 1878.
Q. What is your business?
A. Farming.
Q. Are you acquainted with George Megquier, an attorney at Bird Island?
A. I am.
Q. How long have you known him?
A. I knew him before I came to this country.
Q. When?
A. I have known him since the spring of 1878.
Q. Ever since he came to this country, you say?
A. I came in the fall; I met him in Ohio first; and I came out here in the fall, and have been intimately acquainted with him ever since?
Q. And you say you now live about five miles from Bird Island?
A. Five and a half.
Q. Do you know the reputation of George Megquier in the community in which he resides for truth and veracity?
A. I do.
Q. You may state whether it is good or bad.
A. It is bad.

CROSS-EXAMINATION

Examined by Mr. ALLIS.
Q. What are your business relations with Mr. Megquier?
A. I have none, at this time.
Q. Have you ever had any?
A. Yes, sir.

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Q. Are you and he on good terms?
A. Yes, at the present time we are, so far as ——
Q. Well, how long since you were not on good terms, then?
A. Well, I have never—I can't say that I have been on right friendly terms since the fall of 1879.
Q. What is that?
A. I can't say that I have been on right friendly terms since the fall of 1879; there has been no ——
Q. Do you mean to say that you have been on right friendly terms? I didn't hear you.
A. I say I can't say that I have been on right friendly terms since the fall of 1879, but there has been no open rupture, or anything of that kind.
Q. You say that you cannot say that you have been on right friendly terms since the fall of 1879?
A. No, sir, not on friendly terms since then.
Q. Now, then, what was the cause,—before that you were on friendly terms?
A. We were.
Q. Was he your lawyer?
A. No, sir.
Q. He never was your lawyer?
A. No, sir.

By Mr. Manager COLLINS.
Q. You say you have not been on intimate, friendly terms with him since 1879; have you had any quarrel with him?
A. Not since the fall of 1879.
Q. What do you mean by not being on intimate, friendly terms?
A. Why, I have never spoken to him but twice, until this spring.
Q. You had a difficulty with him, and you didn't speak with him until this spring?
A. He had a difficulty with me, rather.
Q. You are now on speaking terms with him?
A. Yes.

CARL HENNING,

Sworn as a witness in rebuttal on behalf of the prosecution, testified.

Examined by Mr. Manager COLLINS.
Q. Mr. Henning, where do reside?
A. Renville Station, Renville county.
Q. How long have you lived there?
A. Two years and a half.
Q. Where did you live prior to that?
A. In Beaver Falls.
Q. Are you acquainted with Robert W. Coleman?
A. Yes.
Q He now lives at Moorhead?
A. Well, I don't know where he lives now.
Q. A lawyer who formerly lived at Beaver Falls?
A. Yes.
Q. How long have you known him?
A. Well, it must be next summer, I think, three years, or maybe two and a half.

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Q. What is your occupation, Mr. Henning?
A. Well, I am a dealer in merchandise, general merchandise.
Q. You are a merchant?
A. Yes.
Q. Do you know the general reputation of Robt. W. Coleman, in the community in which he lived, for truth and veracity; you may answer that yes or no; state whether or not you know it?
A. I don't know it in the neighborhood where he lived, in Beaver Falls, because Renville Station is twenty miles from Beaver, but I know his reputation in my neighborhood?
Q. You don't know it in his neighborhood?
A. No, sir; you see I was not living there at that time, and I was acquainted with him ever since.

By Mr. ALLIS.
Q. You left there before Mr. Coleman came?
A. I lived there before Mr. Coleman came.

Mr. Manager COLLINS.
Q. How far do I understand you live from Beaver Falls?
A. Twenty miles.
Q. You know Mr. Coleman's reputation in the neighborhood in which you live?
A. Yes.
Mr. Manager COLLINS. We now ask, Mr. President, this question: State his general reputation in the neighborhood in which you live?
Mr. ALLIS. We object to it.
Mr. Manager COLLINS. The point is this: Of course, in a thickly settled country, a man's neighborhood is necessarily somewhat circumscribed, but I apprehend in that county, as thinly settled as it is, and undoubtedly where every man knows nearly every other man in the county, we would have a right to go as far as the gentleman resides to show the reputation, especially of a man who is practicing law, and who has, of course, a large acquaintance.

I think that the rule in that respect would be quite as well settled as it would upon values; and the court understands how far our Supreme Court has gone upon that,—how far they have deviated from the old rule as to ascertaining values and as to how they now permit a person to show the value of a certain article in almost any way, and do not require the exact knowledge, or, perhaps, do not require the particular knowledge that was formerly required. I think that in a county where there are so few people we have a perfect right to ask a witness the reputation of Mr. Coleman in the community in which the witness lives and argue from that what it was where Coleman lived.

Mr. ALLIS. We object to it, because the question should be as to the knowledge of the witness as to the reputation of Mr. Coleman in the neighborhood of Mr. Coleman; what the extent of that neighborhood would be is another question; but he is not asking that question. He asks whether he knows the general reputation of Mr. Coleman in the community in which the witness lives; it is an unheard of question.

Mr. Manager COLLINS. That narrow view would leave it entirely in the judgment of the witness as to what constituted the neighborhood. Some men might think the neighborhood extended fifty miles: others that it did not extend a quarter of a mile. We have shown the witness

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lives in the same county, twenty miles distant, and it does seem to me that it comes within the rule.

The PRESIDENT *pro tem.* The testimony is offered solely to support the character of the former witness, and it would appear to me that any testimony that covers the time between the time as to which the other witnesses testified, and the time the witness himself gave his testimony, would be competent no matter where it might be; that he might have a bad reputation in one place where he lived, and a good one in another place; and I think it might be competent to show that he had a good reputation in one community, and that it was bad in another.

Mr. ALLIS. They have not shown that Mr. Coleman lived where this witness now lives, or that he knew him there. He is not asked the preliminary questions; he has not shown anything about that,—that his reputation is known.

The PRESIDENT *pro tem.* But he has shown that he has a reputation in the neighborhood where this witness lives.

Mr. Manager COLLINS. He says that he knows his reputation there.

The PRESIDENT *pro tem.* It might be true that Mr. Coleman had a very bad reputation in one place, and a very good one in another, and it seems to me that one would be competent against the other.

Mr. ARCTANDER. Allow me to call your attention to the fact that all we introduced proof of was the reputation of Robert W. Coleman, in the community in which he lived, viz., Beaver Falls. It would not be proper to show, in rebuttal, that his reputation was good anywhere else, because that would not be proper rebuttal.

The PRESIDENT *pro tem.* I think that the evidence that they have offered here might have been offered in chief on their part, not solely in rebuttal, but testimony may be offered in chief to support Mr. Coleman's reputation.

Mr. ALLIS. That is rebuttal.

The PRESIDENT *pro tem.* It would rebut, of course, but still not be in the nature of rebuttal.

Mr. ALLIS. It is rebutting our evidence in relation to impeaching the witness?

Mr. Manager DUNN. It is not rebuttal.

The PRESIDENT *pro tem.* That would be my own theory,—that it would be competent to prove that his reputation would be good in some other place that he was known in,—although it might have been bad in another community where he was known. Still I have no recollection of authorities on the subject that mark the distinction.

Mr. ALLIS. I never saw any.

Mr. Manager COLLINS. I would like to ask the witness some other questions.

Q. Mr. Henning, was Mr. Coleman frequently at Renville station?
A. Yes.
Q. And is well known there.
A. Yes.
Q. Do you know his general reputation there for truth and veracity?
A. Yes, I do.
Q. You may state whether it is good or bad?
A. It is good.
Q. Now, are you frequently at Beaver?
A. Yes, I have been back and forwards.
Q. Do you do business at Beaver, any?
A. Not now.

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Q. Well, do you have any business transactions with the business men of Beaver?

A. I had, with Mr. Coleman himself.

Q. Beaver is the county seat, is it not?

A. Yes.

Q. You go there to transact your county business?

A. Well, I had a business there, and had to leave there, and had to move over to the railroad, and left my old accounts there in Beaver Falls, so I had to go backwards and forwards on that account.

Q. And then you transact your county business at the county seat there.

A. Yes.

Q. Now, Mr. Henning, I ask you whether you ever heard his (Coleman's) reputation discussed at Beaver Falls?

Mr. ALLIS. That is objected to. He has already stated that he didn't know his reputation at Beaver Falls.

Mr. Manager COLLINS. Our Supreme Court have held, in a case that went up from Ramsey county, that it is excellent evidence that a man's reputation is good, when it is not talked about; and I apprehend that there are many men within the sound of my voice, whose reputation has never been mentioned in the communities in which they live, for the reason that they are first-class citizens, and there was no occasion for mentioning it. It is the best evidence that a man's reputation is good when it is not discussed, for then their neighbors do not have any reason to discuss it, and I apprehend that this is such a case.

Mr. ARCTANDER. We admit that the rule, as laid down in the State vs. Lee, in that particular, is correct.

The PRESIDENT *pro tem.* But the witness must be shown to be in a position where he could have heard it discussed. The evidence would have some weight, but it would be very slight.

Mr. Manager COLLINS. That is very true, Mr. President, but I have done that.

Mr. ALLIS. And the witness stated that he didn't know the reputation.

Mr. Manager COLLINS. A man might say that he didn't know the reputation of another because he did not hear his reputation discussed. We will take the ruling of the chair.

The PRESIDENT *pro tem.* We will admit it; he can state what his opportunities were, and he can state whether he ever heard his reputation called in question.

Q. Did you ever hear his reputation called in question at Beaver?

A. I never did.

CROSS-EXAMINATION.

By Mr. ALLIS.

Q. Did you ever hear it discussed at Beaver?

A. No, sir.

Q. Did you ever hear it talked about?

A. No, sir.

Q. Did you ever hear the reputation of Mr. Coleman, for truth and veracity talked about, where you now live?

A. No, I did not.

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Q. Did you ever hear it talked about anywhere ?
A. Not outside.
Q. Never heard it discussed at all ?
A. No, sir.
Q. And only knew him after he came to Beaver Falls ?
A. That is it.
Q. And you had already moved to this place ?
A. Yes, sir.
Q. Do you know a man by the name of Nelson in Beaver Falls ?
Mr. Manager COLLINS. I object to it as immaterial.
Mr. ALLIS. How do you know that it is immaterial until I ask the next question ? I am cross examining the witness.
The PRESIDENT *pro tem.* That does not appear to be incompetent.
Mr. Manager COLLINS. Go ahead.
Q. Do you say you did ?
A. Yes, sir.
Q. How long since you have seen Mr. Nelson ?
A. How long since I did not see him ?
Q. How long since you saw him ?
A. Well, that must be probably a year or a year and a half; I couldn't tell exactly.
Q. Since you saw him ?
A. Yes; let me see, I think it was last spring a year ago, when I saw him.
Q. About a year and a half ago since you saw him ?
A. Something like that.
Q. How long is it since you were at Beaver ?
A. Well, that is—let me see— next Fall will be three years that I moved out of Beaver.
Q. Now, how long since you were at Beaver—last, I mean ?
A. The last time ?
Q. Yes, that you went up there ?
A. I think it was last fall.
Q. What time ? This last fall, you mean ?
A. Yes; this last fall; it was late in the fall, anyhow,—I can't remember now.
Q. Have you been there often since you moved away ?
A. Oh, I have been there now and then.
Q. For how many times do you suppose, roughly ?
A. I cannot tell that exactly.
Q. Well, give us some idea ?
A. Oh, four or five or six times; I can't tell exactly.
Q. Four or five or six times since you left you have been to Beaver?
A. Yes.
Q. And one of them was last fall ?
A. Yes.
Q. That was after Mr. Coleman had moved away then, was it,—had Mr. Coleman moved away when you went there last fall ?
A. No, he had not left when I was there.
Q. Was Mr. Coleman's family up there at that time, when you were up there last fall ?
A. That is more than I know; I never inquired particularly; when I am going around I don't inquire for private families.
Q. Well, it is a small place; and I didn't know but that you knew

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whether the family was there; it isn't a very large place, Beaver Falls, is it?

A. No, sir.

Q. Has Mr. Coleman been your attorney?

A. Yes, sir.

Q. He was your attorney all the time you was there?

A. Yes, sir.

Q. He was your attorney after he came there until he moved away?

A. Yes.

Q. Do you know where Mr. Coleman came from?

A. No, I do not.

Q. Did you ever inquire about his character or reputation,—about his character for truth and veracity; did you ever ask anybody?

A. No, sir; I did not.

Q. Never talked with anybody?

A. No, sir.

Q. Did you ever have any conversation with Mr. Nelson in regard to Mr. Coleman?

A. No, sir; I don't think I ever did.

Q. You don't remember of hearing Mr. Nelson say anything about him?

A. I don't think I have had much conversation with Mr. Nelson, on that kind of a question.

Q. You never had any conversation with Mr. Nelson about Mr. Coleman, so far as you can remember?

A. No, I guess not; I don't think I have.

Q. Did you ever hear any discussion about pension papers, with Mr. Nelson, or anyone else, in which Mr. Coleman was connected, or claimed to be connected, about pension papers, forging them, or anything of that kind?

A. No, sir; I never heard him saying so.

Q. Never heard anything of that sort from Mr. Nelson, or any complaint?

Mr. Manager COLLINS. Well, he has said that twice.

Mr. ALLIS. That is all.

Mr. Manager COLLINS. I was not aware at first, that this witness was called upon another point. I will proceed to examine him farther.

Q. Are you acquainted with George E. Megquier, a lawyer at Bird Island?

A. Yes.

Q. You know him?

A. Yes.

Q. How far is Bird Island from where you live?

A. Seventeen miles.

Q. Do you know the general reputation of this man, Megquier, in the neighborhood in which he lives, for truth and veracity?

A. I do not, sir; not where he lives, because I have not been down in the town but just once.

Q. You were just once there?

A. Yes.

By Mr. ALLIS.

Q. You never heard, then, Mr. Megquier's character for truth and veracity, discussed or questioned by anybody?

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A. No.
Q. How long have you lived in that town?
A. In Renville county?
Q. Yes.
A. Since 1865, in the spring.
Q. How long have you known Mr. Megquier?
A. I think I knew him since 1866, or 1867.
The court here took a recess until 2:30 P. M.

AFTERNOON SESSION.

The court met at 2:30 P. M., Senator Wilson in the chair.

Mr. Manager COLLINS. Mr. President, we desire to have Mr. M. E. Donahue sworn. He has been subpœnæd here by mistake, but we desire to have him sworn, so that he can draw his pay.

The witness was sworn by the Secretary.

Mr. ALLIS. There is a witness that has been called by the other side, which we would like to have recalled for a few moments for cross examination sometime before he goes away; the precise time for recalling the witness we will fix in accordance with the convenience of the managers.

Mr. Manager HICKS. At the request of the respondent's counsel, I have requested Mr. Lewis, the witness referred to by Mr. Allis, to remain until to-morrow morning.

The PRESIDENT *pro tem.* Do the managers consent to the request of the counsel for the respondent?

Mr. ALLIS. I understand them to consent.

Mr. Manager HICKS. The witness will be kept here.

HENRY KELSEY

Sworn as a witness in rebuttal on behalf of the prosecution, testified:

Examined by Mr. Manager COLLINS.
Q. Mr. Kelsey, where do you reside?
A. Beaver Falls, Renville county, Minn.
Q. How long have you lived there?
A. Eight years in April.
Q. What is your business?
A. Publisher.
Q. Printing a newspaper?
A. Yes.
Q. What paper?
A. The "Renville Times."
Q. Are you acquainted with George Megquier, of Bird Island, an attorney.
A. Yes.
Q. How long have you known him?
A. Eight years in April it will be, since I became acquainted with him.
Q. Do you know his general reputation for truth and veracity in the neighborhood where he resides?
A. Yes.
Q. State whether it is good or bad?
A. It is bad.

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CROSS EXAMINATION.

By. Mr. ALLIS:

Q. How long have you lived there?

A. Eight years in April.

Q. How long have you known Mr. Megquier?

A. I have known him the same length of time.

Q. Is there a considerable controversy going on between your town and Bird Island?

A. Well, there has been; I don't know what the feeling is now?

Q. What was the nature of the controversy?

A. A county seat question.

Q. Now, is there any newspaper published at Bird Island?

A. Yes.

Q. What is the name of the paper?

A. There are two papers there.

Q. What are their names?

A. The Post and Blizzard.

Q. They want the county seat there I suppose?

A. They talked that way.

Q. And you wanted it at Beaver Falls; your paper,—you advocated Beaver Falls as the county seat?

A. No, sir; I never advocated Beaver Falls as the county seat?

Q. Haven't you been in favor of that—well you are opposed to Bird Island?

A. I am opposed to the removal of the county seat, or was at the time the question was brought up; I did not favor any point; I only opposed it on the ground that it was not policy to move the county seat at that time.

Q. Now, Mr. Megquier is connected with one of those papers, isn't he, in some way?

A. He has written for the paper, but whether he has any other connection or not, I don't know.

Q. For what paper did he write?

A. The Blizzard, I understand.

Q. That is the Bird Island paper?

A. That is the Bird Island paper.

Q. Hasn't there been considerable difference between your paper and that?

A. Some, yes.

Q. Rather hot?

A. Pretty warm, sometimes.

Q. Hasn't it been pretty warm?

A. Yes, more so on the part of the papers in Bird Island than on the others.

Q. More so on the part of the other papers than on yours?

A. Yes.

Q. I thought so; I never knew any controversy but what the other side was worse than our side. Well, Mr. Megquier, was the person who was writing these articles a good deal—your attention was directed to him?

A. Not that I know of.

Q. Didn't you know of some poetry that he wrote?

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A. I don't know that he wrote some poetry; I know that I supposed that he wrote one piece, because he showed it, but that was not concerning me at all; it was not anything that had any relation to me or my paper.

Q. It had no relation to the paper?

A. No, it was a drive at the other paper in Bird Island, the Post.

Q. Wasn't there some poetry there that had a little drive against your paper or the editor of it, that was written by Mr. Megquier, or was supposed to be written by him?

A. I don't know; I am not positive about Mr. Megquier writing any poetry; I only supposed so in some instances.

Mr. Manager COLLINS. It was bad enough for him to have written?

A. Well, he is capable of doing such things.

Q. Haven't you been in a bitter personal controversy with the editors and writers of that paper on account of the county school superintendency this last fall?

A. Well, we had some little controversy; yes.

Q. Wasn't it a pretty personal controversy; didn't it degenerate into pretty strong personalities before you got through?

A. Not on my part.

Q. Did it on the other side?

A. Well, yes; it was rather strong.

Q. Now, are your personal relations with Mr. Megquier and the editor of that paper perfectly pleasant?

A. Well, they are pleasant, so far as I am concerned. I don't have anything to do with them or meddle with them at all; they are not the class of men I care to associate with.

Q. Your relations are pleasant enough with them, because you don't have anything to do with them?

A. I don't have anything to do with them; I just let them alone unless it comes into a political case, in a political campaign, and then if they stir me up of course I am not simple enough to sit down and take it all.

Q. You have lived at Beaver Falls during the eight years you speak of?

A. Yes.

Q. Are you at Bird Island often?

A. No, sir; I never stopped in the town but once since the town started.

Q. Never was there but once?

A. And came through there as I came down to St. Paul this time: that is the only ——

Q. You say you have been at Bird Island only twice during eight years?

A. I have been there only twice since the village was started.

Q. When was that—how long ago was it started?

A. Well, I don't remember just when; two or three years ago, I think; I am not positive as to just the time.

Q. Now, have you, during either of the times you were there,—did you hear Mr. Megquier's character for truth and veracity discussed at all when you were there; did you talk with anybody about it?

A. I didn't talk with any men.

Q. Or did anybody talk with you about his character for truth and veracity?

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A. No, sir; not during the time I was in Bird Island.
Q. Neither time?
A. No, sir.
Q. How far is it from Beaver Falls to Bird Island?
A. Well, it is from eighteen to twenty miles.
Q. Now, Mr. Megquier has held some prominent offices, has he not, in that county, since you resided there?
A. Yes.
Q. What are they, and what have they been?
A. Judge of Probate, County School Superintendent and County Attorney.
Q. He has been a prominent politician there?
A. Yes.
Q. Have you ever supported him?
A. No, sir.
Q. He is like most prominent politicians, he has a good many friends and a good many enemies in that county, hasn't he?
A. Well, he has a large number of enemies, but as to his friends, I can't say.
Q. Well, you are better acquainted with his enemies, than you are with his friends, are you not,—you associate more with his enemies than you do with his friends?
A. Well, I don't know where his friends are?
Q. He seems to have had some or he would not get elected to those offices?
A. Well, it isn't necessary for a man to have a great many friends to get office in this county.
Q. Well, they voted for him?
A. Yes.
Q. Well, those are all offices elected by the people?
A. Mr. Megquier, I think was appointed in the first place, by some power I don't know what or where.
Q. Appointed to what?
A. Judge of Probate or county school superintendent, I don't remember what.
Q. Wasn't he elected Judge by the people some time?
A. I don't remember how that was; he was not in office when I went there, but when I went there he had been appointed to an office, but I don't remember whether it was county superintendent or Judge of Probate.
Q. Well, those are all offices to which people are elected by popular vote.
A. Yes.
Q. If he was appointed once, he was elected afterwards?
A. Yes, he was elected afterwards.
Q. That is the case for all the three offices you have named,—they are popular offices?
A. Yes.
Q. And he has been elected to all of them by popular vote at one time or another?
A. Yes.
Q. Do you know how many terms he served as Probate Judge?
A. I do not.
Q. Well, he served more than one, didn't he?

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A. I don't remember how that was.

Q. Well, as superintendent how many terms,—do you remember that?

A. I don't remember whether it was one or two.

Q. District attorney?

A. Well, it was one at any rate, and it might have been two; I don't call to mind.

Q. He didn't hold more than one of these offices at the same time?

A. Yes, he did.

Q. What one?

A. I don't know; but at one time he held all three of them.

Q. Probate Judge and District attorney?

A. I don't know how it was, but he held two of them at one time.

Q. Which two?

A. I think it was the Judge of Probate and school superintendent.

Q. Well, he was not District attorney and Judge of Probate at the same time?

A. Probably not.

Q. But you think he was Judge of Probate?

A. I know that he held two offices at the same time, probably Judge of Probate and school superintendant.

Q. He was Judge of Probate and school superintendant at one time?

A. I think those were the two offices.

Q. Well, he couldn't have had so many enemies at that time,—at least he must have had a majority of friends in that county?

A. Well, he held those two offices in a very peculiar manner.

Q. Well, he held them, didn't he?

A. He held them, yes.

Q. And he was elected by the people?

A. But it was no credit to him the way he held them.

Q. You have heard the general reputation as to truth and veracity of Mr. Megquier discussed, I suppose?

A. Yes.

Q. You have heard people speak against it I suppose, from what you say,—you say you know it?

A. Yes.

Q. Now, what have you ever heard anybody say,—tell us what somebody said against his reputation for truth and veracity, or what they said about him from which you inferred—from which you say that you are acquainted with his reputation for truth and veracity? Tell us one person now, and who he is.

A. You want me to name some man by name?

Q. Yes, if you can,—who have you ever heard—from whose conversation—you say you have heard it discussed, his reputation for truth and veracity—you say you have heard it discussed, and you say it is bad. Now, I want to know who it is that you have heard say his reputation was bad, or speak against him and when and where?

No answer.

Q. Well, sir; we are waiting on you?

A. I will name the postmaster at Beaver Falls, J. S. Gerald and Hans Gronwold, the county treasurer.

Q. Well, take that one first, the postmaster; now, where did you hear him say anything?

A. Well, I can't specify the date or the time exactly.

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Q. Well, tell us as near as you can then,—more than one occasion?
A. Oh, probably half a dozen occasions; whenever the question has come up in the last seven or eight years.
Q. Well, about when; I want you to fix upon some instance.
A. Oh, I can't put down any dates.
Q. I don't want you to put down any dates, but tell us as near as you can fix it within some bounds.
A. I cannot fix it, because it is a general thing.
Q. Well, you heard him talk about it some time,—can't you tell what year it was?
A. Oh, I have heard hundreds of people talk about it, but it is a matter I have not fixed in my mind.
Q. Then how long ago is it since you heard the post-master speak?
A. Oh, I don't know how long ago.
Q. You don't know whether it was one year, two years or three or four years ago?
A. Oh, it was probably last fall.
Q. It was probably last fall, what did he say?
A. Well, I don't know any more than he was like every body else who says anything about it, in a general way,—that he was a man that was not to be believed, lacking in truth.
Q. He said that?
A. In a general way, that is the run of the conversation,—whenever the conversation comes up where he is called in question, his general reputation is that he is a slippery customer and not to be depended upon; that is the idea.
Q. A slippery customer, and not to be depended upon?
A. Not truthful, in any business transactions of any kind whatever.
Q. Can you remember anything that was said, so that we can tell whether that is your conclusion, or whether the man really meant that; can you tell us the substance of what the man said?
A. Well, the substance of what he and every other man—
Q. I don't ask you for what every other man said; I want what this one man, the post-master, said on that one occasion.
A. I don't know the language that he used, because I did not treasure the matter up, expecting to have to use anything in the future, and it has become so common in that country—
Q. Never mind about telling us that so often; you have repeated that so many times; I am not asking you what was common; tell us something somebody said, that was so common, or the substance of it.
A. He said he was a liar.
Q. That is the language that this man used on this occasion, that you refer to?
A. I don't know that he used that term, but that is the meaning and effect of what he did say.
Q. That was the meaning and effect?
A. Yes.
Q. Well, can't you tell us what terms he did use?
A. I can't tell exactly what language every man used that I have heard speak of George Megquier.
Q. Can you tell us the language that any man used?
A. Well, I have heard men call him a liar.
Q. You have heard them use that expression?
A. Yes.

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Q. Who did you ever hear call him a liar?
A. Well, it would be easier to tell who I did than who I didn't.
Q. Well, tell us who did, if it is so easy to do it; anything that is so easy to do you ought to have done long ago.
Mr. Manager DUNN. It would be easier for him to tell who didn't than who did.
Mr. ALLIS. I am not asking him to tell who didn't, but who did.
Q. Now, who have you ever heard call Mr. Megquier a liar, or say he was a liar?
[No answer,]
Q. Well, I will not detain the Senate; you don't seem to be able to answer that question. Now, didn't Mr. Gerald run against Bowler for county superintendent or something?
A. No, sir, he didn't—last fall, do you mean?
Q. Yes, last fall.
A. No, sir, he didn't.
Q. What office did Gerald run for?
A. County Superintendent.
Q. What office did Bowler run for?
A. Judge of Probate.
Q. Who did run for Superintendent?
A. A man by the name of Foster.
Q. Mr. Megquier backed this man, Foster,—Mr. Megquier was the man who supported the man who ran against Gerald?
A. I don't know who Mr. Megquier supported.
Q. How about the papers,—didn't they support the other man?
A. The paper itself supported Foster; but what connection——
Q. And your paper supported this man Gerald?
A. Yes.
Q. Now, after the election was over, wasn't there some pretty severe articles in the Blizzard, or whatever you called it in Bird Island, against Gerald?
A. Well, I think there were three or four.
Q. Upon the whole, the papers of the two places are pretty bitter against each other, and the management and the people are mixed in with it a good deal; there is considerable bitterness between the people of Bird Island and Beaver Falls on these local subjects, the county subject?
A. I don't know how that is.
Q. You cannot specify anybody else besides this Mr. Gerald that you are able to say you heard say that Mr. Megquier was a liar, or words to that effect,—you are not able to?
A. Oh, I could name a number of men, but I do not wish to name them as saying in those direct terms that he was a liar, right out in plain language in that way.
Q. Did you mention Hans Gronwold awhile ago?
A. Yes, but I don't say that he said to me in those words, that he was a liar.
Q. Well, what did he say to you?
A. I don't say that he said it directly to me; but I heard these things. I don't wish to intimate that he said it directly to me, but I heard him say it,—not to me.
Q. Well, what did you hear him say?
A. I heard him intimate—

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Q. What did you hear him say? Not what he intimated.
A. I cannot use the words.
Q. Give us the substance; I don't ask you to repeat the language,—but not his intimations; tell me in substance what he said.
A. Well, the substance of it was that he was an untruthful man.
Q. That is the substance—the effect of it; but you cannot give us the substance of the language. I don't ask you to give the exact language, but can't you give the substance of the language?
A. I cannot give you the wording of it.
Q. You only remember the effect that it left upon your mind?
A. Yes, from the conversation.

By Mr. Manager COLLINS.
Q. How long since Megquier held office down there,—in the first place he doesn't hold any now?
A. No, sir; not now.
Q. How many years since he has held office?
A. Probably about four years; I don't know the exact time; I don't know now.
Q. When was it, when you had the county seat fight,—when Megquier wrote the poetry that the counsel has been talking about?
A. I don't remember whether that poetry was in connection with the county seat question or not.
Q. Well, when did you have the county seat fight?
A. Some two years ago last fall.
Q. Oh, I thought it was last week from the way the counsel talked.
A. Oh, no, it was some time ago.
Q. Did you know Mr. Megquier before he came to this county, Mr. Kelsey?
A. No, sir.
Q. Where did you first know him?
A. At Beaver Falls.
Q. You knew him when he lived at Beaver Falls?
A. Yes.
Q. Now, in speaking of his reputation as bad, did you say his reputation was bad at Beaver Falls as well as Bird Island,—do you mean both places?
A. Yes.
By Mr. ALLIS.
Q. When did he remove from Beaver Falls,—how long ago did Mr. Megquier remove from Beaver Falls to Bird Island?
A. I don't know how long ago exactly it was, but it was three or four years ago I think.
Q. How long ago do you say?
A. Some three or four years ago; I don't remember exactly.
Q. You say that county seat fight took place two years ago last fall?
A. I don't recollect now just what year it took place in.
Q. Can't you fix it in some way? You lived right up there and participated in it,—it is singular that you cannot fix it in some way; when do you think it took place?
A. I think it was two years ago last fall.
Q. You think it was two years ago last fall?
A. Yes, but I couldn't remember.

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HERMAN ZUMWINKIL

Sworn as a witness in rebuttal on behalf of the State, testified.

Examined by Mr. Manager COLLINS.

Q. Where do you live?
A. Beaver Falls, Renville county.
Q. How long have you lived there?
A. About eleven years ago.
Q. How far is Beaver Falls from Bird Island?
A. About eighteen or twenty miles.
Q. Are you acquainted with George Megquier, an attorney at Bird Island?
A. Yes.
Q. Did you know him when he lived at Beaver Falls?
A. Yes.
Q. What is your business?
A. A sadler,—I keep a sadlery shop.
Q. Do you know the general reputation of George Megquier in the neighborhood in which he lives and did live in Beaver Falls, for truth and veracity?
A. It was not very good when he lived at Beaver Falls.
Q. You knew what it was?
A. Yes.
Q. State whether it was good or bad?
A. It was bad.
Q. State whether it was good or bad at Bird Island?
A. I do not know.
Q. How long ago did he move from Beaver Falls to Bird Island?
A. About four years ago.

Mr. Manager COLLINS. You can take the witness on that subject if you desire. I shall examine him on article 12, and I will examine all through now, or you can cross-examine now on this.

Mr. ALLIS. I guess we will finish the cross-examination on this impeachment business first.

CROSS EXAMINATION.

By Mr. ALLIS:

Q. How long have you lived in Beaver Falls?
A. Eleven years.
Q. And it is four years since he moved from there?
A. I think thereabouts?
Q. Did you ever hear his reputation for truth and veracity discussed at Beaver Falls?
A. Yes.
Q. By people generally?
A. Yes.
Q. Can you mention some of the people you heard talk about it?
A. Yes.
Q. Well mention them?
A. A man by the name of Stone who lives in Olivia now.
Q. Who else?
A. Pete Hines.

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Q. Who else?
A. A man by the name of Miller who lives out in the country a piece from Beaver Falls.
Q. Who else?
A. A man by the name of Gerald, postmaster at Beaver Falls.
Q. Who else?
A. A man by the name of Berndigen, who keeps a store in Beaver Falls.
Q. Who else?
A. Well, I don't know the names of them all now; I have heard so much of it.
Q. Those people all lived at Beaver Falls, and still live there?
A. No, they don't all live there now.
Q. Where have they gone?
A. Some live in Olivia.
Q. Very well; it was some four years ago or more that you heard these people speak about it?
A. Yes.
Q. You haven't heard much talk about it since how long?
A. Not that I took any stock in.
Q. You haven't heard his reputation for truth and veracity discussed in Beaver Falls within the last four or five years?
A. No, sir.
Q. How long has it been since you heard it discussed?
A. Seven, eight, or nine years ago.
Q. Seven, eight, or nine years ago you refer to?
A. Yes, five years ago, six years ago,—those years he lived there; I lived there at the time he lived there.
Q. From five to nine years ago?
A. Yes; he lived there when I came there.
Q. You know nothing about Bird Island?
A. No, sir.

By Mr. Manager COLLINS.
Q. Mr. Zumwinkle, do you remember a term of court held at Beaver Falls, in Renville county, in May, 1881?
A. I don't remember.
Q. You don't remember it?
A. No, sir. I take that back; yes, I remember it.
Q. Do you know Mr. Coleman?
A. Yes.
Q. Robert W. Coleman?
A. Yes.
Q. Do you remember of his being there at that term of court?
A. Yes.
Q. Can you tell when he went away from there to another place, during that term or after that term?
A. He went away on Saturday after the court to Redwood Falls; I went along with him.
Q. Now, you mean that was Saturday of the week court commenced?
A. The Saturday the court adjourned.
Q. The day court adjourned he went to Redwood Falls and you went along with him?
A. Yes.

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Q. How do you know that it was the day court adjourned?
A. I think the court adjourned already on Friday or Thursday, I don't know which.
Q. And this was the next day?
A. And this was on Saturday.
Q. This was the Saturday, was it, of the week that court was held there?
A. Of court week, yes.

By Mr. ALLIS.
Q. The court you say had adjourned before you went up there, prior to that Saturday?
A. The court had adjourned.
Q. For good?
A. Yes, for good.

By Mr. Manager COLLINS.
Q. Were you there when court adjourned?
A. I was in town.
Q. Were you in the court room?
A. No, sir.
Q. Then you don't know of your own knowledge that court had adjourned?
A. Well, I saw the Judge himself out of the court room, and the jurors going home, a good many of them, so to my own knowledge the court had adjourned.
Q. That is all you know about it,—you saw the Judge there that Saturday? A. Yes.

CARL HOLTZ,

Recalled as a witness in rebuttal, on behalf of the prosecution, testified.

Examined by Mr. Manager COLLINS.
Q. You have been sworn here before?
A. Yes.
Q. You reside at what place?
A. Beaver Falls.
Q. Are you acquainted with George Megquier, an attorney at Bird Island?
A. Yes.
Q. How long have you known him?
A. I have known him eleven or twelve years.
Q. Where have you known him?
A. I have known him seven or eight years at Beaver Falls and the rest of the time at Bird Island; he moved away.
Q. I believe you are a hotel keeper?
A. Yes.
Q. And have been for a number of years?
A. Six years this spring.
Q. Now, Mr. Holtz, do you know the general reputation of George Megquier for truth and veracity in the neighborhood in which he lives

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and the one in which he formerly did live, that is at Beaver Falls and Bird Island?

A. Yes, especially at Beaver Falls.

Q. You may state whether it was good or bad.

A. It was bad.

CROSS-EXAMINATION

By Mr. ALLIS.

Q. How long ago was it since you heard Mr. Megquier's reputation for truth and veracity discussed at Beaver Falls?

A. The last time?

Q. The last time; you say you know his reputation; I suppose you have heard it discussed some at Beaver Falls?

A. About three years ago; that is the last.

Q. And prior to that?

A. And prior to that, for six, seven or eight years,—not much since he left Beaver Falls.

Q. Well, have you heard it discussed at all, the last three or four years?

A. Yes, some

Q. Have you heard it discussed in Bird Island?

A. No, I never was there.

Q. And you don't know, really, anything about his reputation at Bird Island?

A. Not in Bird Island; I know it through some people that have lived there that came to Beaver to live,—that lived in Bird Island and come to Beaver and tell us about it once in a while.

Q. Have you heard it discussed there by anybody living there?

A. Yes, coming to Beaver, traveling.

Q. Coming to Beaver, you have heard them discuss it?

A. Yes.

Q. But you haven't been there?

A. No, sir.

Q. Who do you remember of from Bird Island?

A. Well, there are four or five; he had a patent fire alarm for sale then, three years ago, and a good many said then that he was defrauding them and cheating them.

Q. Defrauding them and cheating them?

A. Yes.

Q. That is what they said, was it?

A. Yes.

Q. Anything else?

A. No, sir.

Q. Anything else, except that he was defrauding and cheating them. Did they say anything about his reputation for truth and veracity?

A. Not about Bird Island, but before he left—

Q. I am talking about Bird Island.

A. No.

Q. Then you haven't heard anybody from Bird Island talk about his reputation for truth and veracity?

A. Not since he left Beaver Falls.

Q. Since he left Beaver Falls you haven't been to Bird Island?

A. No, sir.

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Q. And you haven't heard anybody from Bird Island questioning or discussing his reputation for truth and veracity?
A. No, sir.

JAMES GREELEY

Recalled as a witness on behalf of the State in rebuttal, testified.

Examined by Mr. Manager COLLINS.
Q. Where do you live?
A. At Beaver Falls.
Q. How long have you lived there?
A. I have lived in Beaver Falls and its vicinity for eleven years.
Q. What is your occupation?
A. I am the justice of the peace there.
Q. Anything else?
A. Well, I farm.
Q. Are you acquainted with George Megquier, an attorney, who formerly lived at Beaver Falls, now of Bird Island?
A. Yes.
Q. How long have you known him?
A. Since 1870.
Q. Do you know his general reputation for truth and veracity in the community in which he lives?
A. Yes.
Q. Is it good or bad?
A. It is bad.
Q. Mr. Greely, you testified the other day that the reputation of Coleman was bad, I believe?
A. Yes.
Q. Won't you state which has the worst reputation for truth and veracity Robert W. Coleman or George Megquier?
Mr. ALLIS. I don't think the Senate wants to go into the respective merits of these two gentlemen.
The PRESIDENT *pro tem.* I don't think that is material.

CROSS-EXAMINATION

By Mr. ALLIS.
Q. How many years have you been there, Mr. Greeley?
A. About eleven or twelve.
Q. And some three or four years ago Mr. Megquier moved to Bird Island?
A. I think he partly moved about four years ago, but he moved for good about three years ago.
Q. Now, are you at Bird Island often?
A. Yes, occasionally.
Q. Have you heard his character for truth and veracity discussed at Bird Island?
A. Yes, some.
Q. As well as at the other place?
A. No, sir; not as fully, I mean.
Q. How often do you go there?
A. Well, I should judge I visit the town of Bird Island about a dozen

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en times a year; sometimes I go pretty often and it might be a long interval before I should go there again.

Q. How often?

A. About a dozen times a year probably more or less.

Mr. Manager COLLINS. We will now pass to article 15, the term of court at Lyon county.

C. H. RICHARDSON

Sworn as a witness on behalf of the State, in rebuttal testified:

Examined by Mr. Manager COLLINS.

Q. Where do you reside?

A. Marshall, Lyon county, Minnesota.

Q. What is your business?

A. I am engaged in carpentering and building.

Q. Were you engaged in building in June, 1881?

A. Yes.

Q. Where?

A. I built a bridge across the Redwood river at Marshall on Main street.

Q. Whereabouts in reference to Mr. Hunt's hotel?

A. It was between Mr. Hunt's hotel and the railroad.

Q. You say you built the bridge?

A. I had charge of the construction as one of the town officers.

Q. Do you keep a daily record of your transactions?

A. I have almost uninterruptedly since the war, and sometimes during the war.

A. Have you a record with you, a memorandum or diary of the year 1881?

A. I have.

Q. Will you turn to that record of June 20th, 1881.

A. [Witness produces it.] Do you wish I should read it?

Q. Not at present. Wait a moment. Do you know when court commenced that month at Marshall?

A. I know the day when Judge Cox arrived there.

Q. What day of the month was that?

A. That was on Tuesday, the 21st day of June.

Q. You were engaged in building the bridge at that time?

A. Yes.

Q. I believe I asked you where that bridge was with reference to Mr. Hunt's hotel?

A. Between that and the railroad track—between that and the depot; it is what we term the second street bridge.

Q. Now, will you turn to that diary and read your record for June 20th.

Mr. ALLIS. We object to that.

Mr. Manager COLLINS. Why?

Mr. ALLIS. Because we don't know when it was made.

Q. When was it made?

A. My custom in regard to my diary business is to write it up every night.

Q. Was that made that night?

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A. I can't swear positively any more than it is my custom every night to write up my day's proceedings in regard to my labor, the weather and any little incidents that I may think worthy of memorandum at the time.

Q. You did it at that time?

A. Yes.

Q. Have you any doubt that you did make that at that time?

Mr. ALLIS. Don't ask him whether he had any doubt, but whether he did it.

Q. Did you do it at that time?

A. I can't swear positively that I did it that night.

Q. Did you do it about that time?

A. I did it about that time. As I say, my custom has been to always write it at night wherever I be, traveling or otherwise, and especially when I have charge of men, as I had then,—to write up my diary, and post up my books in regard to their labor, every night.

Q. Now, if it was not done that night, when was it done?

A. Well, it must have been done that night or, at the latest, next morning; I know of no reason why it should not have been done that night.

Mr. Manager COLLINS. Now, we offer to allow Mr. Richardson to read from his diary.

Mr. ALLIS. We object to that.

Mr. Manager COLLINS. Then we offer the record in evidence.

Mr. ALLIS. As a matter of course under no rule of law can the diary be put in evidence. If this witness can testify that he made that memorandum at the time, then, of course, he can be allowed to refresh his memory and testify from it. I don't know of any rule of law by which a diary can be put in evidence.

Mr. Manager COLLINS. We are not very particular about it, only you were very anxious last night about a register, and we thought we would do it.

Mr. ALLIS. Well, even if we were—we were arguing that from what was presented at the time; that don't change the rule of law—now the witness is produced with a private memorandum. If he proves that the memorandum was made at the time, as it purports to have been made then, the witness can refresh his recollection and testify; if it is pertinent testimory.

Mr. Manager COLLINS. Well, we will not take the time of the Senate with it; it is immaterial.

Mr. ALLIS. In the first place he has not proved that he made it at the time.

Mr. Manager COLLINS. Well he has proved it pretty nearly.

Q. Well, independent of that diary, can you testify as to the condition of that bridge on the twentieth day of June?

A. The bridge on the twentieth day of June——

Mr. ALLIS. He has not said that he can answer the question.

The WITNESS. I can.

Mr. Manager COLLINS. The counsel is technical about that.

Mr. ALLIS. I want to be certain that he can answer the question.

Mr. Manager COLLINS. Well, you have found out.

The WITNESS. On Monday night, the twentieth of June, the bridge was all complete except the abutting plank on the end towards Mr. Hunt's hotel. The plank is diagonal on the bridge, perhaps not quite

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an angle of forty-five, they met in the center and ran towards each side, and we commenced laying plank on the side next to the track and laid across, and our abutting plank,—this plank was trimmed off, and there is a plank set up edgeways that was on the end, and that covers the top part of it, to save wear, and our bridge was completed all but the abutting plank on the opposite side——

Q. That was the finishing plank called the abutting plank ?

A. Yes, at the end of the bridge where the dirt fills in.

Q. You say the bridge was complete on the twentieth of June up to that time ?

A. Yes.

Q. How about the grading of the approaches to the bridge ?

A. The grading was done so that teams could come on to the side next to the track on the night of the twentieth of June.

Q. Now, tell us how it was on the day that court commenced.

A. The day that court commenced we put the plank over on the opposite side, among the very first, and we put the railing on the bridge.

Q. How about teams crossing that day ?

A. Well, it was not more than an hour after I commenced work in the morning on the twenty-first of June, until our grading teams were driving across; and as quick as they had it filled in on the other side, after three or four teams passed, or a few teams, just to fill in a little there,—the filling on the side towards Mr. Hunt's hotel,—to make it passable for our grading teams and others,—the width of the wagon was not much,—and after they drove across the first three or four wagons, drove over that morning,—they drove over to the other side of the bridge and took the horses off, and took the wagon off, so they could dump the dirt down by the end of the bridge; and after there were three or four teams passed there was a young fellow that drove a team there for Owen & Dibble who drove his team directly across with a load. And after that the grade teams and other teams passed and repassed there all day, from not later than 9 o'clock in the forenoon.

Q. Did you see the bus go across to the train that day ?

A. I saw the bus from the train that came up. I saw it go over to the depot after that.

Q. State whether or not that crossed that bridge.

A. It did.

Q. State whether or not Judge Cox arrived in town that day.

A. I can't say that I saw him when he came on the train. I saw him that evening.

Q. Won't you explain about the foot-bridge that has been testified to here, commencing with the first bridge you had there ?

A. The first bridge—I was not there when it was constructed; I was in the eastern part of the State during our flood last spring, and I arrived at Marshall on or about the 11th of May. The bridge had been swept away and there was a small foot-bridge across the river about where the upper edge of the present bridge now stands, or very near it, and when I commenced work on it—our pile-driver arrived there on the 2d day of June, that I've had from the company,—and I cleared away. We found the foot-bridge was in the way of our driving piles. I took that foot-bridge away and moved it up stream about two rods, as near as I can recollect, sufficiently for to back our pile-driver up, as we were driving our bents. That foot-bridge was at least four feet wide; that is, the whole of it was four feet wide. It was sufficiently wide, at any rate,

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as I was working on the other bridge, that I repeatedly saw the agent, or the young man who carries the mail to and from the depot across that foot-bridge with a wheelbarrow, and other people passing him on the foot-bridge; other people, foot passengers, passing and repassing him with a wheelbarrow.

Q. That foot bridge was four feet wide?

A. I think it was.

Q. And when did they commence taking that away?

A. I don't know when it was fully taken away, but they begun taking it down because there was a party who had lumber in the bridge,—a lumber merchant there,—who said he had sold some of the plank, and he wanted to use them, and he commenced taking the bridge away, on Wednesday the 20th of June,—the day we planked the new bridge.

Q. Who was that man?

A. Mr. A. D. Morgan.

Q. At that time you made a record of when the bridge was completed,—when it was finished so that teams could cross,—when it was finally completed, in the book?

A. I have no record of when the teams went across, but I have a record of my work, when the teams crossed.

Q. And when you finally finished the railing?

A. Yes, I finished the railing on the 21st.

Q. Now, from that record together with your memory, you know when teams went across there to fill in?

A. Yes.

Q. And from your memory you know when other teams commenced to cross?

A. Yes.

Mr. Manager COLLINS. Now, we offer the diary in evidence, and the entries under the 20th and 21st days of June.

Mr. ALLIS. We object to that.

Mr. Manager COLLINS. We will take the ruling of the court upon it.

Mr. ALLIS. We object to it as incompetent and immaterial. In the first place, the record is not good in evidence anyhow. He has not even proved that it was made contemporaneously, sufficiently to allow the witness to consult it. He could testify from his own memory, but in no case would it be anything more than a contemporaneous memorandum from which the witness could refresh his recollection; he cannot offer the memorandum.

The PRESIDENT *pro tem.* The objection is sustained.

Mr. Manager COLLINS. You can take the witness.

Examined by Mr. ALLIS.

Q. Wasn't that bridge in part left there, enough of it left so that persons could cross, on the 21st?

A. My impression was that there was only one length of plank left, and that was on the side next to Mr. Hunt's hotel—that is, of the superstructure of the bridge. The other part of the bridge was made of two pieces of timber; I can't say as to the size—four by six, or something, set on trusses set in the river, with pieces of two by four laid cross ways, and plank on top.

Q. Couldn't a person cross, if he was careful, on foot. Wasn't there enough timbers there?

A. I think there was but few that would venture it.

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say you think that was the condition; are you sure that it
t condition on the morning of the 21st?
ow the bridge was not passable on the morning of the 21st.
ean not for foot passengers?
sir.
l, how do you know that?
ause I know the plank were taken up and the stringers were
what timber was not taken off from there that night was
he next morning.
ı are sure that was the condition of it on the 21st?
, sir; I saw them taking the lumber out of there on that
hey took the most of it up on Monday.
at time did the train arrive there?
n't tell you the hour; I am not positive.
w do you fix the date; for instance, of the 20th, when you say
work was done?
ı that in this way: I know that it was on Monday. I recol-
on Saturday night or Saturday morning about one or two
ained very heavy, and Saturday forenoon; and I had been
r two or three days, or along there, possibly, for the plank for
ge, and had been urged by the other members of the town
ave the bridge completed before court sat, because we had no
good passage way into town. On Saturday noon the timber
I unloaded it Saturday afternoon and comenced the bridge,
onday forenoon I commenced work there, and I had nine men;
afternoon I had one less,—to rush the bridge through as fast
e, to get it passable for court.
ve you any other way of fixing that that was on the 20th of
pt that you find it so in your diary?
ıave, from the fact that I know I had it done,—if any one
en court sat, I know I had it done before Judge Cox came to
that teams passed, and passed the day that he did come; that

u think that at that time the foot bridge had been taken up?
know the foot bridge was impassable; all of the top plank ex-
ibly, the one length on the side next to Mr. Hunt's hotel, was
on Monday.
ıs there any portion of that day on which there was any plank
dge itself, which was used for foot passengers a portion of the
is, I mean on the bridge you built, was there any temporary
ent any portion of that day?
ere was no temporary arrangement any further than as I built
e I put the stringers across. On Monday morning I put the
the two center tier of piles and then put my stringers across,
nenced planking the bridge immediately.
ıu were planking the bridge, then, on Monday?
s, sir.
d you finish it entirely?
e finished it all but about two hours' work for one man. I was
lo it by the village marshall. He was grading it and he wanted
graded that night so they could pass over it.
out what time on Tuesday was it entirely completed?
ell, I put that plank on immediately in the morning. I assis-
f my men in putting on the plank. It took us but a short time;
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we just had the plank to cut up and put them up and spike them and hew the edge off where they stood above the main level, and then we let the teams right across.

Q. And then they passed.

A. Yes.

A. G. MORGAN

Sworn as a witness for the prosecution, in rebuttal, testified:

Examined by Mr. Manager COLLINS.

Q. Where do you reside?

A. At Marshall, Lyon county.

Q. What is your occupation or business?

A. Lumber dealer.

Q. Do you know anything about these bridges that have been talked about by this witness, Richardson.

A. Yes, sir, I do.

Q. Do you know anything about the first foot bridge that was there and the second one.

A. Yes, sir.

Q. Now, state about that.

A. I could not give the exact dates when the bridge was built, but Mr. Hunt and myself and Mr. Drake put the first foot bridge in there that was put across the river after our bridge went out. I think it was built by driving some stakes into the ground and fastening our old foot bridge that had been our bridge before, fastening them together and spiking to the end of the planks to hold it up, and we tied them with ropes to a tree on the side next to the piling; on the other side it was fastened to the banks, or in front of my office.

Q. About when was that built?

A. Well, I should think it was along in the first week in June, as near as I can remember.

Q. How long did it remain there?

A. It remained there about two weeks.

Q. Then what was done with it?

A. It was moved up the stream out of the way of driving the piles for the new bridge, about thirty feet.

Q. It remained there until that time?

A. It remained there until the 20th day of June.

Q. Then what became of it?

A. The south end of it with the planks off the top of it sold to Mr. Rackett. I sold that on the 18th and delivered it on the 20th.

Q. How do you know you delivered it on the twentieth?

A. Because I have a record of it in my book, or entry.

Q. As I understand, you are a lumber dealer; you bought that foot-bridge, and you sold a part of the plank on that foot-bridge, or of that foot-bridge, and delivered it on the twentieth day of June?

A. No, sir; the lumber belonged to our company that I worked for, that the bridge was put in by.

Q. The lumber belonged to the company?

A. Yes, sir.

Q. And you took it?

A. I took the lumber I found on the foot-bridge across the river and

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built the bridge,—that is, what was not built out of the old sidewalk; that was on the other side of the bridge.

Q. And on the twentieth of June you took that old bridge up and sold part of the lumber?

A. Two lengths of that plank was sold on the eighteenth, but delivered on the twentieth.

Q. Now, do you know when the wagon bridge was completed for use?

A. It was completed on the twenty-first; teams crossed it. I used a shovel at the south end of the bridge myself in leveling down the grade.

Q. Are you acquainted with Judge Cox?

A. I be.

Q. Did you see him upon the twenty-first day of June, 1881.

A. I did.

Q. Where?

A. Saw him coming from the depot and saw him crossing the bridge.

Q. What bridge.

A. The wagon bridge that we now cross at Marshall.

Q. You say you saw him coming from the depot on the twenty-first day of June, and saw him cross that wagon bridge?

A. I do.

Q. Did you talk with him?

A. Nothing more than just passing the time of day with him and shaking hands with him at the end of the bridge.

Q. Do you know where he was coming from?

A. No, sir: I do not know where he was coming from. I understood court was to open that day, and saw him coming.

Q. Do you know whether he came from the cars or not—from the train?

A. Well, I could not say as to that; the train came in; directly after the train came in, he came across.

Q. How was he crossing from the depot?

A. Towards the hotel.

Q. Towards the hotel?

A. Yes, sir.

Q. You say you met him and shook hands with him?

A. Yes, sir.

Q. And on the bridge?

A. Right at the end of the bridge.

Examined by Mr. ALLIS:

Q. What did Judge Cox have in his hand?

A. He had a "grip" in one hand.

Q. Had what?

A. A satchel, or grip, or whatever they call it.

Q. How large a one was it?

A. It was an ordinary leather satchel—it was a brown colored satchel if I remember right.

Q. A leather?

A. Yes, sir. I should judge it was leather.

Q. A brown colored satchel—leather?

A. I should call it leather—something the color of those books [indicating some law books.] I could not swear particularly as to the color of it; but I should judge it was a brown satchel.

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Q. Not the color of that hat for instance? [indicating a silk hat.]
A. No, sir, I do not think it was as black as that hat.
Q. Was it a heavy one?
A. The way he carried it, it seemed as though it was heavy. (Laughter.)
Q. How large was it?
A. Well, I should judge it was a foot or fourteen inches long—possibly a foot deep, and eight to ten inches thick.
Q. Well filled?
A. It looked as though it was well filled.
Q. You fix that day by reference to an entry in your books or by reference to the court sitting there. How do you fix the 21st of June—that this occured on the 21st of June.
A. His coming across there?
Q. His coming across there and the bridge being completed—how do you fix that date?
A. I know I delivered that lumber on the 20th, Monday, and Tuesday I worked on the bridge at the grade.
Q. How do you know you delivered it on the 20th?
A. I am satisfied of that; I sold it on Saturday and agreed to deliver it on Monday, and I done so.
Q. Well, how do you know that that Monday for instance was the 20th of June 1881?
A. I fix it by my books.
Q. The entry that you made in your books?
A. Yes, sir.
Q. And no other way of fixing it?
A. No, sir, nothing more than I kept of the account; I worked on the bridge that day grading and got my credit for it on my poll-tax, the 21st.

W. A. ALLEN.

Sworn as a witness on behalf of the prosecution in rebuttal, testified.

Examined by Mr. Manager COLLINS.
Q. Where do you reside?
A. Winona.
Q. What is your business occupation or profession?
A. I am in the office of Judge Wilson, of Wilson & Gale.
Q. In what capacity?
A. Am clerk, I run the business there generally so far as the office is concerned.
Q. Are you acquainted with the respondent, E. St. Julien Cox?
A. Professionally; I am not personally acquainted.
Q. Did you attend a term of court held at Marshall, commencing on the 21st of June last.
A. Yes, sir.
Q. State when you arrived there and on what train.
A. We arrived there I should judge about half past 12 on the 21st of June.
Q. Half past 12 on the 21st day of June?
A. Yes, sir.
Q. From what place?
A. From Winona. We left there on the midnight train Monday night.

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you see Judge Cox upon the train?
sir.
hat place did you first see him?
Tracy.
you state whereabouts on the train you were—what car?
had a special car,—the business car was on the end of the

) was in the car?
Sanborn, Mr. Gale, Johnny Burke, the roadmaster, and a
witnesses that we were taking to Marshall.
were going up there for the purpose of trying a suit?
umber of suits that were pending at that term.
', did Judge Cox come into that business car.
, sir.
you tell whereabouts on the road he came into the car?
were standing at Tracy—the train was standing there—they
erring baggage and express.
e the condition of the Judge as to sobriety or inebriety when
1 board that train, Mr. Allen.
IS. That is objected to.
ager COLLINS. Argue your objections.
IS. Why the objection is that it is evidence in chief and not

ager COLLINS. Mr. President, the testimony in this case has
ied to the terms of court at Marshall. We were not allowed
de of the term of court and show Judge Cox's condition when
his way there, or anything of the kind. In defence they
luced a saloon keeper who testifies that at Tracy Judge Cox
and that he knows, because he was in his saloon. They have
another witness, Col. McPhail, who testifies that he was so-
t train. Now if this is not in rebuttal I don't know what is
We propose to show by this witness that he was not sober on
that he was drunk. We could make no charge against Judge
ing drunk on that train, and we did not say a word about it,
charge him with being drunk upon the bench at Marshall
t day of June and subsequent thereto. The defence show
s not drunk or drinking in this crowd of his companions, to
he was sober on the train, and being sober on the train, of
could not be drunk when he arrived at Marshall. Now, we
fect right to show that he was drunk on board that train, to
testimony that he was not drunk on that train. They have
e door themselves, and we have a right to enter that door.
IS. As a matter of course, Mr. President, we had to follow up
ion of the Judge in order to negative the evidence that they in-
n regard to his alleged drunkenness at Marshall. If they had
evidence in chief they ought to have offered it before. To neg-
ase which they made out, we had to go over the entire time
the court was in session and the events connected with it.
use we have produced witnesses here to prove a negative of
, it does not follow that they can go on and introduce further
under article 18 or any other article proving that he was drunk,
pretence of contradicting our witnesses. This testimony, of
es to make out either some specific charge, or the general one, of
runkenness.

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Mr. Manager COLLINS. It would show that your witnesses have either falsified or been mistaken, when they have said that he was not drunk at that time.

The PRESIDENT *pro tem.* The objection is overruled unless the court otherwise determines.

Senator CROOKS. I ask that it be submitted to the court.

The PRESIDENT *pro tem.* I regard this as rebutting evidence, inasmuch as they have shown by two or three witnesses that the respondent was sober during all of that trip.

The roll will be called, and those who are in favor of sustaining the objection will vote Aye as their names are called; the contrary minded will vote No.

The roll being called, there were yeas 5 and nays 21, as follows:

Those who voted in the affirmative were—

Messrs. Buck C. F., Castle, Crooks, Powers and Simmons.

Those who voted in the negative were—

Messrs. Case, Clement, Hinds, Howard, Johnson A. M., Johnson F. I., Johnson R. B., McLaughlin, Mealey, Miller, Morrison, Officer, Perkins, Peterson, Rice, Shaller, Shalleen, Tiffany, Wheat, Wilkins and Wilson.

So the objection was overruled.

Q. State his condition as to sobriety or inebriety, upon that train and in that car.

A. Well, he was under the influence of liquor when he came in that car.

Senator CROOKS. I would ask that the witness state all he knows about it, and describe it pretty carefully.

Mr. Manager COLLINS. I didn't get the last remark of the Senator.

Senator CROOKS. Let this witness tell all he knows about this, and describe it pretty carefully.

Q. State all you know about this, and describe it pretty carefully.

A. When our train stopped at Tracy, Judge Cox, Col. McPhail, Joe Whitney, and one other man that I did not know, came into the car; Judge Cox spoke to Mr. Gale and shook hands with him, and they stopped for a moment, and this strange gentleman remarked that he guessed they were in the wrong pew, and that they had better go out,—that they were in the business car.

They passed along through the car, and in the hind end of the car there is a little kitchen. When they got in there, they left their luggage there, that is, a valise, an overcoat done up in a shawl strap, and some more luggage, and passed along into the train. After awhile Joe Whitney and Judge Cox came back and sat down in the hind end of the business car and talked awhile, and then got up. Colonel McPhail came back and asked for Judge Cox. After he sat there a few moments he got up and went back into the car again. After they came back into the car, I went out and passed into the business car,—went into the little kitchen with one or two others, and I noticed the luggage there, and in this overcoat, which was set in a little wood box with an inclined cover, was a pint bottle of whisky.

Senator CROOKS. What?

The WITNESS. A pint bottle filled with liquor.

Senator CROOKS. Liquor?

A. Yes, sir.

By Senator CROOKS.

Q. You don't know it was whisky though?

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A. Well, I didn't—

Q. You *said* it was whisky in the first place.

A. Well, from the smell I should judge it was. One of the boys jokingly took the bottle, and took out the cork and said, "Let's take a drink;" and afterwards said, "It's such villianous stuff, we won't drink it," and he corked it, and put it back again. (Laughter.)

By. Mr. Manager COLLINS.

Q. Now, have you any further knowledge as to the contents of that bottle?

A. Yes, sir.

Q. Well, state what further knowledge you have of it?

A. Well, we came back in the business car and sat down, and after the train started and had gone along for a while we heard a jar or something drop, and Mr. Sanborn was sitting with his back against the partition, and he remarked that he guessed some dishes were broken. But pretty soon we smelled the perfume coming through the door,—it was a swinging door,—and I remarked that I guessed that bottle of whisky had fallen and broke, and I opened the door and looked in, and, sure enough, it was. Well, I didn't touch it; we were satisfied then it was whisky.

Q. You smelled it then?

A. Yes, sir.

Q. Now, do you know to whom that overcoat belonged?

A. I do not.

Q. Do you know who carried it?

A. Yes, sir.

Q. Who carried the overcoat?

A. Judge Cox brought it out; he came to get it.

Q. Did he get it before or after the bottle was broken.

A. Well, the next thing I seen of the overcoat the Judge came out with the overcoat when he stopped at Marshall, and had it in his hand. That was the overcoat that had the bottle in it.

Q. Now, when you stopped at Marshall, did you go across in the bus or walk?

A. I walked.

Q. Do you know what bridge you crossed?

A. Yes, sir, I crossed a bridge back of the hotel.

Q. In what condition was the bridge as to completeness?

A. There were men working on the bridge, one or two.

Q. Was it a wagon bridge or a foot bridge you crossed?

A. A new wagon bridge.

Q. Men working on it?

A. Men were working, that is my recollection.

Q. Do you know where Judge Cox was at the time you crossed there?

A. I do not, after I seen Judge Cox standing on the platform,—we had our witnesses there and I was looking after those;—I paid no farther attention.

Q. Did you notice what those men were doing?

A. They were working on the sides of the bridge; they were, I should judge, putting on a railing,—nothing heavier than that.

Mr. ALLIS. We would like to have the cross examination of this witness deferred until to-morrow morning if there is no objection.

Mr. Manager COLLINS. Mr. Allen is very anxious to go home, as I am informed. I don't see why they can't cross examine him now.

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Mr. ALLIS. I am instructed by the respondent here that there are certain things he desires to ask this witness, upon which he is not prepared to examine now.

Senator JOHNSON, A. M. I move that the request of the counsel be granted.

The PRESIDENT *pro tem.* Is the motion seconded?

Mr. Manager COLLINS. Well, never mind. We care nothing about it, except in behalf of Mr. Allen. [To the witness] I will ask you one or two more questions. You stated Judge Cox was under the influence of liquor; will you state to what extent, when he came on the train?

A. Well, he was able to go along, but I was satisfied in my own mind that he had been drinking, and the men also that were with him. They looked as though they had been on a pretty hard spree.

Q. Was he slightly or quite visibly under the influence of liquor?

A. Quite visibly.

Mr. Manager COLLINS. Your cross examination will take place in the morning. If you will be here, we will put you on the first thing.

C. B. TODD,

Sworn as a witness on behalf of the prosecution in rebuttal, testified.

Examined by Mr. Manager COLLINS.

Q, Where do you reside?

A. Marshall, Lyon county.

Q. What is your business?

A. Selling merchandise and goods.

Q. You say you are selling goods; you are a merchant?

A. Yes, sir.

Q. Do you know about this foot bridge that has been testified to?

A. Yes, sir.

Q. Will you state to the Senate when that bridge was taken up, if you know.

A. It was taken up on the 20th day of June, the day previous to the convening of court.

Q. How do you know that?

A. I fix it by a letter that was completed on Monday and mailed at the train.

Q. Now state when you first crossed on the wagon bridge?

A. I crossed it on returning from the train.

Q. You crossed which bridge in going to the train?

A. Well, I was in a hurry when I went to the train and I couldn't say whether I crossed on the foot bridge or whether I crossed on the wagon bridge?

Q. Now, when you came back from the train you crossed on the wagon bridge?

A. Yes, sir.

A. At that time what were they doing, if anything, with the foot bridge?

A. I saw Mr. Morgan when he returned from the train, and having nothing to do, I stopped and talked with him a few moments while he was removing the foot bridge, or a portion of it—saw him take it out, lay it near the building in which he keeps his lumber.

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M. SULLIVAN,

Recalled as a witness on behalf of the prosecution in rebuttal, testified:

Examined by Mr. Manager COLLINS.

Q. I believe you reside at Marshall?

A. I do.

Q. Can you tell us anything about these bridges that have been testified to—when the foot-bridge was taken up, and when the wagon bridge was completed so that it could be traveled upon?

A. I recollect the bus passing over the bridge on the 21st day of June last.

Q. Where was the bus going?

A. It was going to the depot.

Q. For the noon train?

A. No; the time I speak of the train had come in and stopped for dinner, and then the bus was going over to the train after dinner.

Q. Now, how do you fix that as the 21st day of June?

A. Well, that was the first day of court.

Q. So that the bridge was completed on the first day of court?

A. Yes.

Q. Do you know anything about the removal of that foot-bridge?

A. I do not.

Q. Do you know anything about the removal of the plank?

A. I do not.

Examined by Mr. ALLIS.

Q. This was after dinner?

A. Yes, sir.

Q. Going over to the train?

A. Yes, sir.

Q. What train was that?

A. It was the passenger train that stopped there for dinner.

Q. Which way?

A. It was going west.

Q. Do you remember any other occasion that you had seen the omnibus going over, except that one on that day?

A. Nothing that made an impression.

Q. I say, can you remember any other day on which you can now swear you saw the omnibus go over there,—can you fix the time and the date?

A. Yes, sir.

Q. What day, now, besides that one?

A. Why, the bus passed the bridge every day after that.

Q. Well, I know, but can you remember seeing it go over on any other day except that one day? I don't ask you whether you can remember whether at different times you have seen it, but can you fix the day and the occasion, at which you have seen that bus cross over except this one day?

A. No, sir.

Q. How long have you lived there?

A. I have lived there almost three years.

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Q. Have you seen the bus crossing there every day, during that time?
A. Yes, sir.
Q. What did you say your business was?
A. Lumber dealer.

Examined by Mr. Manager COLLINS.
Q. Now, I understand you to fix this time, because it was the first time the bus crossed the new bridge and it was the day court opened?
A. If I may be allowed to explain I will tell clearly, just why I fix this. Superintendent Sanborn was sitting on the stoop of my office, and the bus went over there on a run or trot, and Mr. Sanborn said, "You have got a good bridge; I wouldn't be afraid to run a train of cars over it."
Q. That is what fixes it in your mind?
A. Yes, sir, and being the first day of court; I was a member of the jury.

Examined by Mr. ALLIS.
Q. He sat on your stoop?
A. On the stoop to the office.
Q. How long had he been sitting there?
A. He had been sitting there probably not to exceed ten minutes; I couldn't state the time. He came in on the train and came down there and stayed.
Q. Which train?
A. The train from the east.
Q. And this train from the east was the one the omnibus was going to?
A. It was; the bus was taking the passengers that had had their dinner to the train.
Q. How long was this after the train had come in?
A. They usually stopped there from twenty to thirty minutes for dinner.
Q. Do you remember what kind of a day it was?
A. I think it was a pleasant sun-shiny day.
Q. Wasn't it raining almost continually about that time?
A. I couldn't say; I kept no charge of that in my mind.

L. A. GREGG,

Sworn as a witness on behalf of the prosecution in rebuttal, testified:

Examined by Mr. Manager COLLINS.
Q. Where do you reside?
A. At Marshall.
Q. How long have you lived there?
A. I have lived in the village this last time, about seven months; that has been my trading center for about eleven years.
Q. You have lived in the county, then, for about eleven years?
A. About that.
Q. What is your business there now?
A. Teacher.
Q. Prior to that time what was your business?
A. Farming, the most of the time.

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Q. State whether or not you were a member of the grand jury in the June term, 1881.

A. I was.

Q. You may state who drew the resolutions that have been spoken of here.

Mr. ALLIS. That is objected to.

Mr. Manager COLLINS. I understand, Mr. President, that it was agreed that these resolutions might be offered in evidence. At the time the resolutions of the bar committee were offered in evidence, I understood that it was agreed between counsel that the original resolutions of the grand jury might go in evidence, and that the printed copy that they furnished here might be taken as the resolutions of the bar on that occasion.

Mr. ALLIS. I was not present at that time.

Mr. ARCTANDER. You may introduce the resolutions.

Q. Have you a copy of those resolutions?

A. I have.

Q. A duplicate? A. I have.

Q. I believe you wrote both sets?

A. I did.

Q. Will you produce them?

[Witness produced resolutions.]

Q. Now, these resolutions, as I understand, were made in duplicate, and the grand jurors signed each of the duplicates,—one set was taken into the court, and the other was kept by some of the members of the grand jury?

A. Yes, sir.

Q. And it was all in your hand writing except signatures?

A. Yes, sir.

Mr. ALLIS. These have been ruled out once or twice by the court, and I suppose are not admissible excepting under the agreement. What do you understand, Mr. Collins, by the agreement?

Mr. Manager COLLINS. I understood that they should all be put in together,—the bar resolutions and the whole of the minutes. We will let you have them at any time, and put them all in.

Mr. ALLIS. Well, that is what I want to understand. They are manifestly inadmissible of themselves, but if there is any understanding about them, it should be carried out. The resolutions of the bar committee will go in also?

Mr. Manager HICKS. Certainly.

Mr. Manager COLLINS. Shall we read these resolutions at this time?

The PRESIDENT *pro tem.* I suppose so; I don't know of any objection. That was the understanding, I believe.

Mr. ALLIS. It may go in with the other papers.

Mr. COLLINS. Shall I take the time to read these resolutions now, or defer it?

Mr. ALLIS. Read them now.

Mr. Manager COLLINS. Reading:

True copy.

WHEREAS, We the grand jury of the June term, 1881, and of the 9th judicial district, having reverence for the laws of our land, and also for all instruments and officers through whom it may be administered, and priding ourselves on the unsullied reputation of our officers, and

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WHEREAS, The Rev. Mr. Rodgers, of Marshall, Lyon county, has appeared before the grand jury and complained of the Hon. E. St. Julien Cox, Judge of said district, for appearing upon the bench and in our streets in a state of intoxication, and, according to his belief, unfit to preside upon the bench, and

WHEREAS, The said grand jury has taken diligent pains to ascertain the truth of the report, summoning therefor witnesses to the number of six from among the most influential citizens, whose testimony has strongly corroborated the charge, citing numerous instances personally known to them, and

WHEREAS, The said grand jury understand that redress is to be found in these resolutions, and although greatly regretting the necessity, we do hereby,

Resolve, That we convey to the court this expression of regret that occasion has been given to bring reproach upon a court that should show itself spotless in purity, spotless in integrity and spotless in justice; and, we also,

Resolve, That we, the grand jury of the June term, 1881 [of the] Ninth Judicial District, concur in censuring the said E. St. Julien Cox, judge of said district, for conduct unbecoming a citizen, gentleman and judge.

SIGNED.

Andrew Helliksen,
I. N. Harvey,
Z. O. Titus,
George Michie,
David Gamble,
David Willford,
D. N. Mason,
L. A. Gregg,
C. Tisher,
Walter Carlow,
E. B. Downie.
William Van Buren,
M. Sullivan,
Andrew Purves,
Lars J. Jerpbeck,
J. C. Townsend,
J. C. Beach,
N. M. Lyle,
David Hanks,
J. F. Remore,
Miron Finch.

[Endorsement.]
Copy of resolutions adopted by Grand Jury on 22d day of June, A. D. 1881.
J. F. REMORE, Foreman.
M. SULLIVAN, Clerk.

Exhibit 20.

Q. Mr. Gregg, all of the grand jurors signed these papers?
A. They did.
Q. One copy was presented to Judge Cox and one copy you kept?
A. Yes, sir.

Examined by Mr. ALLIS.

Q. Who were these witnesses besides Mr. Rodgers that you refer to here in these resolutions?
A. I don't know that I could name them all. There was O. C. Gregg, there was a bar-keeper of Mahoney's, whose name I have forgotten, there was Mr. Hunt, the three others I think I could name in a while, but I can't think of their names positively now.
Q. Was one of them Mr. Liscomb?
A. I can't say positively.
Q. The Reverend Mr. Rodgers was one of them?
A. Yes.
Q. He is a clergyman there at Marshall?
A. Yes, sir.
Q. Can you mention any further names?
A. I couldn,t positively, at present.
Q. And this took place in the grand jury room?
A. Yes. sir.
Q. In your official sessions, did it?
A. Yes, sir.

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Q. When did you first mention the fact of this transaction to anyone?
A. In what way do you mean?
Q. Well, when did this action of the grand jury first get publicity?
A. The first publicity that I know of was when it was published in the paper.
Q. How did the paper get it?
A. I don't know.
Q. You drew up the original I believe?
A. Yes.
Q. Now, what did you do with it?
A. They were both drawn together, in duplicate and signed in duplicate.
Q. What did you do with them?
A. One of them was carried in by our foreman into the court room.
Q. What was done with that?
A. The Judge—
Q. Carried into the court room.
A. It was carried into the court room and handed in with our indictment, the last indictment we had, to the court.
Q. Was this addressed to the court?
A. It was exactly the same as that, except this, I think, is marked "Copy" and the other was not.
Q. This is marked a "True Copy"; this is not addressed. Were you clerk of the grand jury?
A. No, sir.
Q. What was this copy made for? why was it made in duplicate?
A. It was made in duplicate because we did not know what action might be taken upon it.
Q. By whom?
A. By anyone.
Q. Now, this don't appear to be addressed to the court?
A. Well, no further than you see it there.
Q. It was not a report that you were making to the court then?
A. It is just as you see it there; you may call it what you choose.
Q. Well, I know, but it was not addressed; the grand jury very often make a report to the court when they get through,—this was not your report that you made?
A. Only as it was official, being signed by all of the jurors and handed by the foreman to the Judge in open court, the same as the other papers.
Q. Now, when did this copy first get into print; did you furnish this copy to anybody?
A. I did not.
Q. Did you let anybody see it?
A. I did not. That copy I did not hold myself.
Q. Who did?
A. It was in possession of one of the grand jurors.
Q. Who—which one?
A. Mr. Sullivan.
Q. The one that was on the stand here a few minutes ago.
Mr. Manager COLLINS. Yes, sir.
Q. Do you know what he did with it?
A. No, I do not.

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Q. Did you produce this to-day.
Mr. Manager HICKS. Yes, sir, he produced it to-day.
The WITNESS. In the court, yes.
Q. How did you get it?
A. I got it from Mr. Sullivan.
Q. By Mr. Manager COLLINS. Sullivan was the foreman, I believe, of the grand jury.
A. No, Sullivan was the clerk. I could'nt swear positively about his being the clerk, but that was my impression.
Q. When did you first mention the contents of this paper to any body?
A. I never mentioned them at all that I know of, only after they became the talk, and not until after they were published, that I know of.
Q. Then you mentioned it, did you?
A. I dare say I have referred to them. I have been asked; it was the public talk and I dare say I would be asked a thousand times about them, or a hundred times.
Q. Now who authorized you to divulge the secrets of the grand jury?
A. I do not know that I have divulged them any more than—
Q. Any more than to talk about them?
A. Any more than to keep that copy for ourselves.
Q. Well, you say you have been asked about it since its publication?
A. But I did not reveal secrets; that was out at that time. It was public talk.
Q. There was something in the paper about it but you told them that was so didn't you,—that that was done didn't you?
A. I don't know that I ever said *that;* they *knew* that it was done and there was no need for me to say so.
Q. Well, you gave your assent to the fact that this was done by the grand jury with people you talked with didn't you?
Mr. Manager COLLINS. He says so. It was intended to be a public file, to go upon the public records, and would if the court had done its duty. There was no secret about it.
Q. Did Mr. Sullivan take this paper and keep it until he gave it to you at the present time?
A. I know nothing at all about the paper from that time to this, I have never seen it since.
Q. You got the paper back from Sullivan since you have been here?
A. To-day.
Q. And it was originally drawn by you?
A. It was.
Q. This is your handwriting?
A. It is.
Q. Now, who requested you to draw it?
A. The foreman of the grand jury.
A. It was not drawn then by the county attorney. The county attorney did not suggest it to the grand jury did he?
A. He did not, only in this way; as the complaint was brought in, it was brought in with charges and for us to bring in an indictment against the Judge, and this was as we knew and were informed by the county attorney, that that could not be done, and he said that the only redress that we could have would be in the resolutions we would draw. That was before they were drawn but while the witnesses were examined.

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Q. Was that paper submitted to the county attorney,—this paper and the other one the duplicate?

A. I think not, I am not positive.

HERMANN ZUMWINKEL

Recalled as a witness on behalf of the prosecution in rebuttal, testified.

Examined by Mr. Manager COLLINS.

Q. Are you acquainted with Mr. Jensen?

A. Yes, sir.

Q. Do you know where he lives?

A. He lives in Beaver Falls Renville county, Minnesota. He is the sheriff of our county.

Q. Have you ever told Mr. Jensen that Robert W. Coleman had a bad reputation for truth and veracity, or that he was a liar, or words to that effect?

A. No, sir.

Q. Do you know James Greely?

A. Yes, sir.

Q. Have you ever told him that Coleman was a liar or a man of bad reputation, or words to that effect?

A. No, sir.

Q. Do you know Peter Berndigen, who lives at Beaver Falls,—a saloon keeper?

A. Yes, sir.

Q. Have you ever told him that Coleman's reputation was bad or that he was a liar or words to that effect?

A. No, sir.

Q. Or of that character?

A. No, sir; I have not.

Q. Do you know James McIntosh?

A. Yes, sir.

Q. Have you ever told him that Coleman was a liar, or a man of bad reputation, or any words of that character or of that effect?

A. No, sir.

Examined by Mr. ARCTANDER.

Q. Mr. Zumwinkel, you have never talked to any of these men about Mr. Coleman, have you?

A. Yes.

Q. Have you talked to them more than once?

A. Yes, sir.

Q. Have you talked to all of those men?

A. I don't know, exactly, if I have or not.

Q. You don't know whether you have talked to all of them or not?

A. No, sir.

Q. Which one of them is it, you don't know whether you have talked to them or not?

A. I don't know; I have talked generally, about matters of business, of course. We see each other every day and of course we talk together.

Q. And about Robert W. Coleman?

A. Oh, yes, we have talked about him, too, considerable.

Q. Now, have you never said anything to Mr. Jensen about him and about his proclivities for lying and telling stories?

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A. I have said that sometimes he would spin yarns about himself, about his business, and what he had been doing and such things.

Q. Was that the way you said to Jensen,—that sometimes Mr. Coleman would spin yarns about himself and his business and his doings?

A. Yes, sir.

Q. That was the words you used was it?

A. Well——

Q. Now, what was it you said to McIntosh?

A. I don't know whether I have ever said anything to him or not.

Q. What was it you said to Mr. Berndigen?

A. Well, me and Mr. Berndigen have a talk, generally, every day about this and that, and Mr. Coleman after he left, and so on.

Q. You have talked very nearly every day?

A, Yes, sir.

Q. Now, you have talked good about him, have you?

A. Well, not very bad, no sir.

Q. Well, not very good either, have you?

A. Yes, I have talked good about Coleman.

Q. You have talked good about him?

A. Yes.

Q. You haven't talked any bad at all about him?

A. Oh, no.

Q. You never said to Mr. Berndigen that you wouldn't believe him, have you?

A. I perhaps have said that I wouldn't believe him on his yarns that he would tell around.

Q. Well, you are sure you put in that, that you wouldn't believe his yarns?

A. Yes, sir.

Q. That you did to Berndigen, too?

A. Yes, sir.

Q. Almost every day?

A. Yes.

Q. By "yarns," you mean when a fellow tells lies, don't you?

A. Well, of course, if a man tells anything about himself that way I wouldn't, of course.

Q. What have you said to Mr. Greeley about him?

A. I do not know.

Q. Would you swear that you haven't said anything to him about it?

A. No, I would not.

Q. You wouldn't swear you haven't said to him you wouldn't believe him, would you?

A. No.

Q. Nor you wouldn't swear you haven't said to Mr. Jensen you wouldn't believe him?

A. Well, in the way that I stated before—that I wouldn't believe his yarns that he would tell.

Examined by Mr. Manager COLLINS.

Q. Now, what do you mean by these yarns; what yarns do you refer to?

A. Well, I mean yarns he would tell about himself; what business he had done and how much he used to take in, and where he had been, and all those things,—put it up pretty high so a person wouldn't believe it.

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Q. Now, this had no reference to business at all?
A. Not at all, sir.
Q. But it was just some big yarns he was telling about his experience?
A. Yes, sir.
Q. And those were the yarns you were not inclined to believe?
A. Yes, sir.
Q. Now, were these matters in which you would not believe him matters which Mr. Coleman was telling and bragging about himself?
A. Yes, sir.
Q. About the law practice and the money he had made?
A. Yes, sir.
Q. And nothing else?
A. Yes, sir; how rich he had been and how big an estate the Coleman family had, and all those things he used to tell.
Q. And it was nothing else?
A. Nothing else. In his dealings I consider him a square man.

By Senator POWERS.
Q. How do you discriminate when Mr. Coleman is talking, between the time when he is lying and when he is not lying?
A. Well, when he would tell these big stories about himself—
Q. If you know he is telling the truth, you believe him?
A. I think so;—in his *business*, yes, sir.

By Mr. Manager COLLINS.
Q. Had you any reason to believe that Mr. Coleman was lying, except from the largeness of his stories about his law practice and the money he was worth,—the improbability of it?
A. No, I didn't.
Q. You had no other reason to believe he was lying?
A. No, sir.

By Mr. ARCTANDER.
Q. In other words everything he told was so plainly a lie that you couldn't help knowing it, without knowing anything else about the facts.
A. Oh, yes; there is always some facts about it.

By Mr. ALLIS.
Q. If you knew he was telling the truth, you believed him; if you didn't, you didn't?
A. Yes. [Laughter.]

Senator CROOKS. I would like to offer the following order:
The order offered by Senator Crooks was then read by the clerk, and is as follows:
It is ordered, That the sergeant-at-arms be, and he is hereby instructed and ordered to arrest and hold under arrest, until otherwise ordered by the Senate, Henry Kincaid, a witness in the case of impeachment of E. St. Julien Cox, Judge of the Ninth Judicial District of Minnesota. And it is further ordered that the President of the Senate do prepare charges and articles of specification under such charges, or charge, against the said Henry Kincaid, for the crime of perjury, committed by the said

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Henry Kincaid, when testifying before the Senate of the State of Minnesota, sitting as a High Court of Impeachment in the case of E. St. Julien Cox, Judge of the Ninth Judicial District of Minnesota, and that he, the President of the Senate of Minnesota, do accompany the same with a full and complete record of the proceedings of the Court of Impeachment as aforesaid, fully verified; and that the said President of the Senate of Minnesota, do prefer such charge or charges,—in a form of complaint, as may be necessary to inform the grand jury of the county of Ramsey, Minnesota, of the commission of this crime,—the crime having been committed in said county of Ramsey. And be it further ordered, that the President of the Senate procure the attendance of such witnesses as may be required by the attorney general of the State of Minnesota, and the district attorney for the county of Ramsey.

Ordered further, That all expenses necessary to carry out these orders be paid, as other expenses of this Senate, sitting as a High Court of Impeachment, in the case of E. St. Julien Cox, judge of the Ninth Judicial District of Minnesota, are paid.

Senator CROOKS. I move the adoption of the order.

Senator ADAMS. I second the motion.

The PRESIENT *pro tem.* Senators, what will you do with the motion of the Senator from Ramsay?

Senator HINDS. I would like to have some explanation in regard to that. It is something new to me.

Senator Aaker. I move that the Senate go into secret session.

Senator CAMPBELL. I was going to move, if the gentlemen will permit me, that the order be referred to what constituted the judiciary committee of the Senate while we were acting as a Senate.

Senator CROOKS. I am willing it should be referred.

The motion of Senator CAMPBELL was seconded.

Senator CROOKS. I have no objection to that; but, Mr. President, I deem it of great importance that the Senate, acting as a High Court of Impeachment, do take cognizance of crimes committed here. They *must* do it; they are obliged to do it. I have no objection to the reference of the orders I have introduced here to the committee on judiciary, or any special committee, to report and investigate *if* it is necessary for us to adopt those orders or not; but it is highly proper that the matter should be brought to the attention of the Senate. It is highly proper that the Senate should take proper time to consider it, and act upon it for the preservation of its power, acting here as a court which dispenses justice, and from whose decision there can be no appeal.

Men must be taught that they must be guarded in what they say here and cover themselves with the cloak of truth, before they attempt on either side, to usurp, as it were, by the falsification of their tongue, the highest power that has ever been placed in the hands of men. Let it go to any committee; I don't care where it goes, but I would ask that it receive early attention consistent with the duties imposed upon the Senators, and that, if there is anything in these charges, or if any witness here has swerved from the line of truth, that he may be instructed that there is a duty behind the Senate, and that there is a people behind it which will require the punishment of such things.

The PRESIDENT *pro tem.* Did the Senator from Scott make a motion in regard to this matter?

Senator CAMPBELL. I moved that it be referred to the judiciary committee.

The PRESIDENT *pro tem.* Unless objection is made, that will be the di-

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position of the order. It will be referred to the judiciary committee of the Senate.

C. C. WHITNEY

Sworn as a witness on behalf of the prosecution in rebuttal, testified.

Examined by Mr. Manager COLLINS.

Q. Mr. Whitney, where do you reside?
A. Marshall, Lyon county.
Q. What is your business?
A. Publishing and printing.
Q. What is the name of the paper you publish?
A. The Lyon County *News*.
Q. How long have you been publishing that paper?
A. About eighteen months.
Q. Are you acquainted with M. E. Matthews, who has been a witness here?
A. I am.
Q. How long have you known him?
A. Since about last May, I think, as near as I can recollect.
Q. Have you a copy of your paper containing a letter in reference to the drunkenness of Judge Cox?
A. What copy do you refer to?
Mr. Manager COLLINS. I don't know what the copy is.
[Paper handed to witness.]
Q. Will you state from what newspaper that slip was cut if you can?
A. That is cut from the Lyon County *News*.
Q. Your newspaper?
A. Yes, sir.
Q. Can you state who wrote the original?
A. I received a letter from M. E. Mathews——
Senator ADAMS. [To the witness.]
Q. Who was that? A. M. E. Mathews.
Q. A lawyer at Marshall who has been a witness here?
A. I believe he has been a witness here; he is a lawyer at Marshall.
Q. Was there anything in it besides this letter?
A. There was.
Q. What was that?
Mr. ALLIS. One moment. What is the object of that?
Senator ADAMS. I would ask the honorable managers to read the portion which has been clipped from the article; I happened to have the pleasure of reading the whole of it; I would like to see that portion of the article.
Mr. Manager COLLINS. I will read it if it is desired. I propose to offer it in evidence after showing what became of the original letter.
Senator ADAMS. Is it a portion of it or the whole of it?
Mr. Manager COLLINS. It seems to be the latter part of the letter.
Senator ADAMS. Let the witness answer whether that is the whole or a portion of the article published in the Lyon County News.
The WITNESS. It is a portion of the letter.
By Senator ADAMS.
Q Where is the original letter?
A. Mr. Mathews came to my office and asked me if I would let him have his letter and I gave it to him.

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Q. When was that?

A. After this was published.

Mr. Manager COLLINS. Now, we offer this in evidence.

Mr. ARCTANDER. We object to it as immaterial and irrelevant.

Mr. ALLIS. It is a part of the letter, I understand?

Mr. Manager COLLINS. Certainly; a part of the letter. Mr. Matthews denied writing the original.

Mr. ARCTANDER. Very well; that is perfectly proper for Mr. Mathews to do. Now, to show that he did write it brings it in under the subject of impeachment, and to make it a subject matter of impeachment, it must be some matter pertinent to the issue.

Now, this letter refers to the condition of Judge Cox at the Tyler term of court, in Lyon county, upon which Mr. Mathews was not called as a witness; it refers more particularly to the travel of Judge Cox up to that Tyler term. Upon that Mr. Mathews was not called as a witness. Mr. Mathews was called simply as a witness to a transaction which took place a week afterwards, to wit, a general term in Lyon County. When this question was put to Mr. Mathews we didn't see fit to object, because we did not consider it cut any figure one way or the other. Now, we say we object to the introduction of this thing, for the reason that it tends to impeach him upon a matter that is immaterial to the subject matter upon which he testified, namely, Judge Cox's condition a week later at Lyon county. Of course, if this is persisted in, we shall ask leave of the Senate to re-call Mr. Mathews to show that it is false; that he never went and asked to get that letter back. We will have to bring him here again, and wait another day, and to have witnesses brought down to rebut this. It is a new matter, and if allowed to come in, we must certainly have Mr. Mathews here to deny, if we can,—and I have no doubt we can,—the statement of Mr. Whitney here upon the stand.

It has been taken for granted all through this trial that the rule is so well established as to need no citation of authority to the effect that nothing can be the subject of impeachment except it be a statement of the witness which is inconsistent with the statement he makes in court upon his direct examination, and then it must be pertinent to the subject matter upon which he has testified,—it must be material. Now, this is not material under article 15, the article upon which Mr. Mathews was called. It is not a statement inconsistent with his testimony that Judge Cox was sober at Lyon county; he may have been drunk ten times at Lincoln county the week before, and yet have been perfectly sober at Lyon county.

Now, I am probably wasting more words on this thing than is necessay, but we have seen the result before here of a deviation from the rules, and I think we have seen the pernicious consequences of it, and it is certainly getting more and more evident as we progress with the trial if this kind of proceeding is to be allowed to go on. And therefore I insist upon it as strenuously as I can, feeling confident, as I do, as a lawyer, being willing to stake my reputation, whatever it is, upon the position that this matter is not a proper subject of impeachment; that it is not material matter; that it is not inconsistent with the statement that he made upon the trial in direct examination nor upon cross-examination,—the subject matter of that letter. It is not inconsistent with any statement he made, and therefore not a proper subject of impeachment. They cannot now show that he wrote it nor what it was.

Mr. Manager DUNN. Mr. President, and Senators, inasmuch as I made the cross-examination of Mr Matthews, I will make the statement

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think this is material at this time. It will be remembered Mathews was a witness, not to prove the Judge's sobriety at the rm held in Lyon county at Marshall. He was asked, during e of his examination, whether there was any difference in the nt of the Judge at that term from other terms or other times had seen him, and he stated that there was not. Upon cross-ion I asked him:

there any difference between his actions at Marshfield and at Marshall, lition?
you mean whether the Judge was in any different condition there?

o what?
o sobriety?
ink he was—no, I will not say so; I will say to the contrary, answering ion.
say there was no difference?
, there was no difference.
was just the same at Marshall as he was at Marshfield?

there any difference between his actions at Tyler and at Marshall?
re was.
ll, what was the difference?
at difference was there?
he intoxicated at one of the two points?
TANDER. That is not proper, Mr. President, I have not asked the wit-mpare the two times.
ager DUNN. You have asked the witness whether his demeanor was s at other times.
TANDER. I didn't ask this witness any such question.
ager DUNN. Well, you have compared him at other times, and I will the record; you asked him to compare his condition there with what at terms of court in other places.
TANDER. I may be mistaken, but my remembrance is that I didn't ask question, and I would like to have the reporter read that question. It n the first part of the examination this afternoon.
orter read part of the direct examination by Mr. Arctander
ager DUNN. You are not afraid of it?
TANDER. I don't want to stop to take up time; I think there is hum-h in this case.
ager DUNN. I don't think you ought to object to comparing the differ-een his condition there and his condition at Tyler.
GILFILLAN, J. B. What is the question?
ESIDENT *pro tem.* He asks whether the respondent was intoxicated at two places, Tyler or Marshfield?
GILFILLAN, J. B. Is there any objection to it?
CTANDER. Yes, it is not proper cross-examination.
ager DUNN. They claim that they have not asked for anything on the mination which would allow me to introduce comparisons.
TANDER. Well, we withdraw the objection. Will the reporter again question?
ager DUNN. I have a right to a comparison to show his knowledge, if g else; he has testified that he was sober.
ESIDENT *pro tem.* I think you can answer the question.
u say he was different at this term from what he was at Tyler—in what ifference consist?
, I don't know anything more than the weather and the size of the town g of that kind. I don't know as I could tell you the difference; we see g different every day, but we cannot tell the difference.
ll, don't you know why he acted different at Tyler?
; I don't know why.
u, don't know any cause for any difference?
n't give you any difference.
l you, in your mind, have a knowledge of any cause,——
CTANDER. We object to that; it is certainly improper.

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Q. Did you, in your mind, have a cause that you can explain to the Senate?

Mr. ARCTANDER. You need not answer that. I object to that question as improper. It is unprofessional and unlawyer-like, to ask such questions.

Q. You said there was a difference, Mr. Mathews, in his conduct, etc., at Marshall, from what it was at Tyler; do you wish to withdraw that, or do you wish to explain it in any way? I asked you what the difference consisted in?

Mr. Manager HICKS. He says in the weather and the size of the place.

The WITNESS. Here is a question that I understand is objected to. Is there any question for me to answer?

Q. I withdraw that question, and I ask you now if there is any explanation that you want to make of the difference in his deportment and conduct, except the weather and the size of the place?

A. No; I don't know as I care to make anything further.

Q. *Did you go from Tracy to Tyler with Judge Cox when he went to hold that term of court?*

A. I did, sir.

Q. About June, 1881?

A. Yes, sir.

Q. *Did you write a letter to the newspaper that is published at Marshall, relative to that trip?*

A. I did not.

Q. Did you write any such letter?

A. I said I did not.

Q. Did you write to a man by the name of Whitney about it?

A. No, sir; I did not.

Q. You did not write any letter?

A. I did not.

Q. [Showing witness a paper.] Look at that printed letter, and say whether you wrote the original of that?

A. Oh, no; I didn't write that.

Mr. Manager HICKS. You didn't write the original, of which this is a copy?

A. No, sir.

Mr. Manager DUNN. I will ask the President to mark this paper for identification.

The paper shown the witness was then marked "Exhibit I."

That is the paper that was shown to this witness. Now the object of this is to show that Mr. Mathews, when he testified that there was no difference in the conduct of Judge Cox at Marshall and at Tyler, when he testifies that he was sober,—if it is proven that he wrote this letter,—was of a different opinion at that time from what he is now. That is competent evidence, to show that the witness entertains an entirely different opinion, that is, provided he did write this letter, in which it is claimed by the author of the letter, that Judge Cox was drunk at Tyler.

Now, that was the bone of contention here,—as to whether there was any difference in his demeanor and deportment at Marshall, where he did testify he was sober, and at any other place. It was then brought out on cross-examination that he went to Tyler with him, and was there when he held the court; and we endeavored to show, by the witness himself, that he had written a letter to the editor of the Lyon county *News* (Mr. Whitney), in which he stated that Judge Cox was there, drunk as a lord, or words to that effect. Now, if it can be shown that he wrote that letter, it certainly, to my mind, is proper cross-examination, and it is certainly proper rebutting evidence, for the purpose of showing that he was of entirely a different opinion then, and that his memory was certainly very treacherous at the time he was on the stand, as to the sobriety of Judge Cox at the village of Marshall. Those are the views I hold on this point, and I think they are correct views.

Mr. ARCTANDER. Mr. President, taking it for granted, for the sake of the argument, that Mr. Mathews did write that letter, that he did write a letter to the Lyon County *News*, saying that Judge Cox was drunk

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lth and 15th of June, at Tyler, is that inconsistent in any form manner, with his statements upon the stand, that Judge Cox intoxicated at the Lyon County term, on the 21st, 22nd, and of June ?. Is it inconsistent with any testimony that he gave ıe fact that he wrote that letter ? It is not inconsistent with the t that he has given, when he was called by us, therefore, I say a proper subject of impeachment, and I don't suppose that any- ll claim that it is inconsistent with those statements; I don't anybody will claim that Judge Cox could not have been sober Mr. Mathews could not speak the truth about Judge Cox being the Lyon County term, on the 21st day of June, because, per- e was intoxicated a week before at Marshall. Now, it seems to osition is ridiculous upon its face that that can be a proper sub- ıpeachment. I have no doubt that the learned managers them- ould not attempt to offer it as a subject of impeachment in the Court or in any court which is guided strictly by the rules of evidence; and if it could not to be offered there, it certainly ıt to be offered here. This court is liberal in its construction of —it has been remarkably so, in favor of the State in this case; I d I do not blame anyone for it for we have desired to get at the uth,—and probably it was fair and right; but when you come ınt where you throw down all the barriers that the law and ce and justice have surrounded the practice of law, then I say e to cry halt, and I think this court will do so.

LLIS. Do I understand the object of the Managers is to contra- statement of the witness?

lanager COLLINS. That is the object. Mr. Mathews said he rite it; and he said that the Judge was not drunk at Marshall.

LLIS. You cross-examined here as to whether he wrote that

anager COLLINS. Yes, sir.

LLIS. You want to show he did ?

lanager COLLINS. We want to show he did, for two or three

LLIS. Now, a single word. He is shown an exhibit and asked he wrote it. He says he didn't. Now this witness didn't say

lanager COLLINS. Well, he will say so.

llis. This is a part of the letter?

lanager DUNN. We will explain all that.

LLIS. Well, he got a letter which he has got here from Mr. s. But that letter was not this. This is not a copy of it. Let oduce the original letter, or if it is lost, produce a copy.

lanager COLLINS. Mr. Mathews says he didn't write the original

LLIS. But this is not an entire letter. If he had been shown le letter, the original letter, he would perhaps have acknowledged e it.

lanager COLLINS. No, he wouldn't.

RESIDENT *pro tem.* I would refer the subject to the Senate. The y will call the roll. Those who would sustain the objection of ondent's counsel will vote aye; opposed no.

or ADAMS. What is the question ?

PRESIDENT *pro tem.* Upon the objection of the respondent's

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Senator ADAMS. I vote aye. If we had the whole letter I would vote no.

The roll having been called, there were yeas 3, and nays 21, as follows:

Those who voted in the affirmative were—

Messrs. Adams, Buck, C. F. and Simmons.

Those who voted in the negative were—

Messrs. Campbell, Case, Clement, Hinds, Howard, Johnson, A. M., Johnson, F. I., Johnson, R. B., McCormick, Mealey, Miller, Morrison, Perkins, Peterson, Rice, Shalleen, Tiffany, Wheat, Wilkins and Wilson.

So the objection was overruled.

Mr. ARCTANDER. We desire to object to it for a further reason,—that it appears upon its face to be only a part of the letter, and because the letter was not shown to the witness. Now, I suppose if he is entitled to see the letter at all, he is entitled to see the whole of the letter.

Mr. Manager COLLINS. I understand this letter has already been admitted in evidence.

Mr. ARCTANDER. Well, I object to it now, for that reason.

Mr. Manager COLLINS. We have no argument to make. We understand that the letter has been offered and received in evidence.

The PRESIDENT *pro tem.* Yes, I guess it will go in evidence now.

Mr. Manager Collins then read the letter as follows:

TYLER, MINN., June 15, 1881.

FRIEND WHITNEY:

* * * * * * * * * * *

Cox came up with me from Tracy to-day, *and is as drunk as* ——! All necessary arrangements were made for holding court at Marshfield, the county seat, which is about three or four miles from here, but when Cox got out there, he, without cause, as every one says, and against the desire of every one, adjourned court to this town. The fact is that the people are —— mad over this drunken move.

Yours truly,

Q. Will you go on and state the circumstances of your receiving that letter, all about it and what became of it, and the circumstances about its going out of your hands?

A. I received the letter about the middle of June, and the object in writing the letter was to have a slip, that was published in another paper, regarding Mr. Mathews, which was cut from the Tracy *Gazette*, and enclosed in this letter, requesting me to publish it in my paper. It was a puff for Mr. Mathews, that is the idea; and I published the puff and laid the letter away in my letter file. That part of the letter which is published, was published in connection with an article written in reply to an article by Col. McPhail, that had appeared, saying that Judge Cox was sober at Tyler. That is why I published that, and omitted the other part. A few weeks later Mr. Mathews, immediately upon his return from the Marshfield or Tyler term of court, came into the office and wanted to know how much the bill was for publishing that item. And I told him it was nothing.

Q. That was the *puff* you speak of?

A. Yes, sir. A few weeks later he came into my office, after this had been published, and asked me if I had any objections to my letting him have this letter; I told him no, I considered it a private letter; I had not used his name in the paper, and for that reason I calculated that he had a right to the letter, and I gave it to him.

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r. Whitney, are you acquainted with Virgil Seward, an attorney
all?
ım.
ow long have you known him?
arly ever since I have been there.
ere you acquainted with him on the 22d day of June, 1881, or
ıt time?
was.
d he state in your presence, and in the presence of Mr. Burchard
rs, at or near the Lyon county bank in Marshall, that if the
ors of Lyon county did their duty, they would indict Mahoney
g liquor to an habitual drunkard, to-wit., E. St. Julien Cox, or
that effect?
e made a similar remark on the evening of the 21st day of June.
ate what he said?
r. Burchard, Mr. Sullivan and myself, were together, and prob-
e might have been two or three others near us. He came up
ared to address his remarks to Mr. Sullivan. He said, "The
ry ought to indict Mahony for selling liquor to an habitual
l, to wit, E. St. Julien Cax."
ıat was all he said about it? A. That was all.
nator WILSON.
as the letter signed by any one?
should say the letter was signed by Mr. Mathews.
ıator ADAMS.
o you know the signature of Mathews?
can't say that I do. That is the first letter I had ever received
ı, and I have never received a letter from him since.
o you presume to testify now that that letter was written by
hews at all,—that you can identify his signature?
couldn't identify his signature.
nator CASTLE.
r. Whitney, I couldn't hear either the question propounded by
tor or your answer?
he letter as published——
or ADAMS. I will answer.
or CASTLE. I will ask him, if you will permit me.
RESIDENT *pro tem.* The senator from Washington is referring to
tion asked by the senator from Goodhue.
or ADAMS. Oh, all right.
nator CASTLE.
he Senator from Goodhue asked you if a certain letter was
y him; which letter did you understand him to mean, and
id you answer?
understood him to mean the letter I have testified to as having
eived from him.
ınd that you returned to him?
ınd that I returned to him.
or WILSON. That is the letter I meant.
ow, I ask you if the letter that you published in your paper
ıed by him.
hat was an exact copy of the original letter, that he wrote me.
Vas it signed?
t was not signed in the paper.

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Q. Was the original letter signed ?

A. I presume it was; I can't say it was signed, any more than I can say that a letter from my father, received six months ago, was signed.

Q. Do you know whom it was signed by ?

A. I know that the letter was from M. E. Mathews, and he came up to pay the bill that he contracted in that letter.

Q. Well, it may have been some one else may have written it; do you know whose signature, if any one's, was attached to the letter that you have published ?

A. I can't swear positively to that, sir.

Senator ADAMS. That is the very question I asked.

Senator CAMPBELL. But I believe the witness has stated Mr. Mathews came and got that same letter.

The WITNESS. Yes, sir.

Senator CAMPBELL. And claimed it was his letter ?

The WITNESS. Yes. sir.

Senator CAMPBELL. He testified that that is a correct copy of that letter as far as he published it; he omitting the name.

Senator JOHNSON A. M. Was there any name signed to the letter ?

A. Mr. Mathew's name was signed to it.

By Mr. Manager HICKS.

Q. Was it signed, giving the initials ?

A. I can't positively swear how it was signed.

Q. Was there any signature to it ?

A. There was a signature to it.

Q. What was the signature ?

A. I can't tell exactly how the signature was, or what it was; it was Mr. Mathews's signature; I knew the letter was from him at that time.

Q. Was there any other Mathews that you knew, in or about that community at that time,—that is, in that tier of counties,—who used the signature which was at the foot of the letter ?

A. No, sir, there was not.

Q. And the letter that you published in the paper, from which the signature was omitted, was a copy of this letter which you received from Mr. Mathews, and which you returned to Mr. Mathews, at his request?

A. Yes, sir, the type was set from the original letter, and placed on the case.

By Senator ADAMS. I want to ask a question. The honorable manager has presumed that a certain letter, published in a certain paper, was written by a certain Mr. Mathews. Now, in order to identify that letter, I desire to ask the witness on the stand this question: Does he *know* of a truth Mr. Mathews's signature when he sees it? I ask that question.

The PRESIDENT *pro tem.* The witness has said that he could not swear to it.

Senator ADAMS. I desire an answer positive, Mr. President.

The PRESIDENT *pro tem.* (to the witness). You may answer the question.

The WITNESS. I do not know Mr. Mathews' signature,—not as an expert.

Q. You have asserted that that is the only Mathews living in that neighborhood.

A. No, sir, I have not.

Senator ADAMS. I so understood you, in answer to the question of

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rable manager. You don't know whether there is one, two,
ır or five Mr. Mathews liv.ng there?
ıere is no other M. E. Mathews there.
›u don't know then that this man who is charged with having
his, is the party who did it, do you?
lon't know but what he employed some one to write it for

›w, then, you come before this court and swear that this man,
ıthews, sent it, and is the writer of that letter do you?
ɜan swear that he came to me and acknowledgeu the letter, and
it.
›u would recognize him, I suppose, if you met him in court,
›u?
ɜrtainly, I know him intimately.

ALLIS.
would like to ask you if this is a copy of the letter which was
ou? A. It is, sir.
the entire letter? A. Not the entire letter, no, sir.
ıat is what I ask you, sir; is that a copy of the letter which
you?
›t a full copy. That relating to the business transaction is

ell, I want to know whether it is a copy of the letter he sent
ıuse the question asked here is, in regard to whether this was a
he letter which Mr. Matthews sent. When did Mr. Matthews
etter back which you received, purporting to come from him?
think it was after proceedings had been taken by the State in
this trial. It was probably some time after, about three or
more weeks.
ou say after you published it?
fter I published it.
understood you to say, in your direct examination, that Mat-
me up in a short time,—the next week,—
said that Mr. Matthews inclosed in that letter, (and that is the
is omitted,) an item from another paper, giving him a favor-
ce, asking me to publish it, saying that he would pay me when
up; he called when he did come up, and offered to pay, but he
k for his letter at that time. This was after I received the let-
letter was not published for three or four weeks after I received
hat part which he requested me to publish, or that item which
sed.
understood that when he came up to pay the bill, he got the

o, sir; he didn't get it for several weeks.
ow, fix the time as near as possible, when Mr. Matthews got
ɜr back from you.
can't fix the time, sir. It was quite a long time after it was
d.
/hen was it published?
think it was published in the latter part of July; I think it was
d the 23rd of July. I am quite positive that was the date. I
positive about it, but I am very sure.
low long after that do you think it was, before Mr. Mathews got

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A. It was a number of weeks after that; I can't say how long, I didn't fix the thing in my mind at the time.

Q. Was it after or before the impeachment proceedings were commenced?

A. My impression is, it was about the time the impeachment proceedings commenced; perhaps afterwards. I know I thought, at the time, that he came after the letter so as to destroy it and not have it in my possession in case it came up, because it had been published. That is the impression I have of it now. I know it was a long time after it was published before he came after it.

Q. Have you got the paper in which this communication was originally published?

A. I have not got the paper with me. The paper that the *item* was published in, I have got, if you wish it.

Mr. Manager DUNN. This was cut from the paper?

A. Yes, sir, I gave the paper to Col. Hicks.

Senator ADAMS. The paper itself is the best evidence.

By Senator CAMPBELL.

Q. There has been so much said about this copy, I desire to ask the witness in what respect, if any, it differs from the original letter,—if the language is the same in this that was used in the original letter.

A. The language in the letter, so far as it is printed is exactly the same as it appeared in Mr Mathew's letter.

By Mr. ALLIS.

Q. What were the exact words used in this conversation at the Lyon County Bank?

A. He addressed himself to Mr. Sullivan and said that "the grand jury ought to indict Mahoney for selling liquor to an habitual drunkard. to-wit.: E. St. Julien Cox."

Q. Those were the words? A. Those were the words.

Q. When was that?

A. That was the evening of the first day of the court.

Q. The 21st day of June? A. The 21st day of June, yes, sir.

Q. What time in the evening?

A. It was probably between half past six and seven o'clock. It was just after I returned from tea.

Q. Did you write those words down? A. No, sir, I did not.

Q. How do you come to remember the exact words?

A. I remembered them because they were, as I considered, technically expressed; and the remark was very common around town.

Q. Never mind what the remark was.

A. That is how I happened to remember it. The remark was commonly repeated around town; it was repeated by a great many persons.

Q. That same remark? A. Yes, sir.

Q. The other people used the same words, eh? A. I remember it.

Q. Now are you positive that Mr. Seward said this, and not that these other people you heard, said it?

A. I am positive Mr. Seward said so, because a short time after he said it we took a walk together,—four of us,—walked around town. The conversation was in regard to Judge Cox.

Q. Who was present when Mr. Seward made that remark?

A. Mr. Sullivan, Judge Burchard, and there were two or three around the corner; whether they heard the remark or not I don't know, but we were there together; we were talking together.

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referred to the company to whom the remark was addressed,
d the remark?
ell, we three were there together, in a bunch.
ou, and who?
r. Seward, Mr. Sullivan, Judge Burchard and myself.
nd the same identical language was being used by other people?
hat, or very near it. It struck me as being very peculiar. He
t remark more than once.
LLIS. I think this witness had better come here in the morning;
time to adjourn.
RESIDENT *pro tem.* (To the witness): You will be here at the
of court at 10 o'clock.
will now stand adjourned.
r CROOKS. Mr. President, I would ask that Senator Adams be
from attendance to-morrow afternoon, for the reason that he is
ed before the district court for the county of Dakota. I ask
ous consent that he be excused.
RESIDENT *pro tem.* That will be taken as the sense of the Senate
bjection is made.
enate then adjourned.

FORTY-FIRST DAY.

ST. PAUL, MINN., Mar. 3, 1882.

enate met at 10 o'clock a. m., and was called to order by
Wilson acting as President *pro tem.* The roll being called the
g Senators answered to their names:
s—Aaker, Adams, Bonniwell, Buck, C. F., Case, Castle, Clement,
Hinds, Howard, Johnson, A. M., Johnson, F. I., Johnson, R. B.,
ick, McRea, McLaughlin, Mealey, Miller, Morrison, Perkins,
, Powers, Rice, Shaller, Shalleen, Simmons, Tiffany, Wheat,
and Wilson.
enate, sitting for the trial of E. St. Julien Cox, Judge of the
udicial District, upon articles of impeachment exhibited against
the House of Representatives.
ergeant-at-arms having made proclamation,
anagers appointed by the House of Representatives to conduct
to-wit: Hon. Henry G. Hicks, Hon. O. B. Gould, Hon. A. C.
Hon. G. W. Putnam and Hon. W. J. Ives, entered the Senate
r and took the seats assigned them.
Julien Cox accompanied by his counsel, appeared at the bar of
ate, and took the seats assigned them.
'RESIDENT *pro tem.* Are there any motions or resolutions to be
by any Senator before proceeding with the regular business?
he counsel will resume the examination of witnesses. [To the
rs.] Are you ready to go on?
anager HICKS. Mr. Whitney was the last witness. The respon-
ounsel had not finished his cross-examination.
55

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C. C. WHITNEY

Again took the stand.

CROSS-EXAMINATION,

By Mr. ARCTANDER.

Q. Mr. Whitney, you stated that Mr. Seward made a certain statement on the 21st day of June?

A. I did.

Q. That was the first day of court?

A. Yes.

Q. What time of day was it?

A. In the evening just after tea, between six and seven o'clock.

Q. Who were present?

A. Judge Burchard and Mr. Sullivan, Mr. Seward and myself.

Q. Judge Burchard is the Commissioner of the Land Department there—of the land office of the Winona & St. Peter Railroad Company?

A. Yes.

Q. That was all that were there?

A. We four were there together in a bunch; there might have been others around the corner. It was on the corner of the Lyon County Bank.

Q. How did the conversation come up there?

A. We three were there together, and Mr. Seward came up and spoke to Mr. Sullivan, and made that remark as he came up.

Q. He made that remark the first thing, as he came up?

A. Yes.

Q. Now, what was it he said?

A. He said "The grand jury ought to indict Mahoney for selling liquor to an habitual drunkard, to-wit, E. St. Julien Cox."

Q. Those were the words he used, were they?

A. Those were the words he used.

Q. Say it again, please?

A. "The grand jury ought to indict Mahoney for selling liquor to an habitual drunkard, to-wit, E. St. Julien Cox."

Q. That is the first thing he said when he came up there?

A. Yes.

Q. He said the "to-wit," too, I suppose?

A. Yes.

Q. He put that in?

A. Yes, sir.

Q. He didn't have "*videlicet?*"

A. I don't understand you, sir.

Q. I probably pronounce it in a different way from what you do.

Mr. Manager HICKS. That is right.

Q. *Videlicit.* I pronounce it in the Continental fashion.

A. He made the remark just as I have stated it.

Q. I will ask you to state, Mr. Whitney, if the language used by Mr. Seward was not about in this way. That "The only proper way that you can take cognizance of such an offense as the one they had spoken of, in connection with Judge Cox, would be to indict the saloon-keeper for selling liquor to an habitual drunkard."

A. No, sir.

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e did not?
o, sir.
iis was a remark in answer to nothing you said?
o, sir.
was just something that he offered on his own account?
'e were standing there and he came right by and said it.
ou were not even talking about Judge Cox, I suppose?
don't remember just what we were talking about.
ut you do remember he made that remark?
es, sir.
re you willing to swear—you are sure that he said they ought
Mahoney?
es.
id he get his initials, too?
o, sir.
ist simply—"indict Mahoney?"
o, sir.
e did not say it would be a joke if they *should* do it?
o, sir.
ou swear positively that he did not say that?
es.
'hat day do you say this was—what day of the week?
his was the first day of court—the evening of the first day of

'hat day of the week was it?
; was Tuesday.
ou are positive about that, too?
am very positive about it.
id you take a note of this thing at that time?
o, sir.
ut you remember it, and you are sure that he used just exactly
guage at that time?
'hat is the language just as I remember it.
lave you talked with anybody about it since?
'es.
Who?
couldn't tell you; the matter has been a subject of general com-
good deal since.
'hat remark of Seward's has been a matter of general comment,

'es, it has.
ver since that time?
t has been a matter of comment a great deal since that time.
Ie must be quite an important personage up there, isn't he?
Ir. Seward?
'es.
'es, sir; he is,—one of the prominent lawyers of the town.
Ir. Whitney, you said you were publisher of a newspaper up
believe?
'es, sir.
'our paper has taken a very friendly position towards Judge Cox,
ot?
No, sir.

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Q. You yourself have taken a very decided and violent stand against him, have you not?

A. I have not taken any violent stand against him; I am not acquainted with the gentleman, and never spoke to him.

Q. Is it not a fact that in almost every issue of your paper since last June, there has been an attack upon Judge Cox? There was nothing friendly said about him?

A. Well, no; I don't think you would consider it friendly.

Q. Is it not a matter of fact that there has not been an issue of your paper since that time that has not contained some attack against him?

A. I think there have been several issued that have not contained any attack.

Q. You think there have been several issues?

A. I think there have.

Q. Can you name one in which there has not been an attack made upon him?

A. No, sir; I cannot name one,—any particular one.

Q. Don't you know that there is a man by the name of A. C. Mathews, deputy-clerk of the court in Lincoln county, living at Lake Benton?

A. No, sir; I do not know it.

Q. You never heard of such a man at all?

A. I may have heard of him, but I don't know him.

Q. Is it not a fact that you told Virgil Seward shortly after or about the time when this squib was published in your paper, which you claim was written by Mr. M. E. Mathews, that you didn't know what Mathews it was; that you had received it from one Mathews, at Tyler?

A. I never told Mr. Seward any such thing.

Q. Nor any words to that effect, did you?

A. No, sir.

Q. You never expressed to him any doubt as to who it was?

A. No, sir; I have no recollection of having any conversation with Mr. Seward about it.

Q. You never had any conversation with Mr. Seward about it.

A. I say I have no recollection of it.

Q. Would you swear you didn't have any?

A. No, sir; I wouldn't swear it, because I did have a conversation with several people about it. I think it very possible that I may have shown the letter to Mr. Seward. He was in my office a great deal.

Q. Well, do you remember whether or not you did show him the letter?

A. I do not recollect positively.

Q. Now, at this time that you say it is likely you showed him the letter, did you not then state to him your doubts as to which Mathews it was, and that you was doubtful of it?

A. I have no recollection of any such conversation at all.

Q. Were you the editor of the Lyon County News on February 17, 1882?

A. Yes, sir.

Q. And the publisher?

A. Yes, sir.

Q. Was there not on that day an article published in that paper, with your knowledge and approbation, in which it is stated: "It is safe

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iat a few Senators seem intent on saving the Judge at any cost, r the testimony might be, and the reason is that they have been ink too many times with the Judge to feel like condemning

lanager HICKS. That is objected to as incompetent and imma-

RCTANDER. Mr. President, I offer this simply to show the feel- ie witness towards the respondent in this case; to show that it ar that he must keep up a violent abuse of the judges of the ent, trying to bulldoze them by threats and abuse to find him t any cost. I think it is proper, if the editor and publisher of er allowed such an article to appear, to show it in order to show nus and spleen of the witness.

'RESIDENT, *pro tem.* He may answer the question.

lanager HICKS. We ask to have it submitted to the Senate, and e to make a remark in this connection. This witness has not led here for the purpose of testifying against Judge Cox. Had en for the rule established by the Senate limiting the prosecu- ive witnesses, we might have called him with a half dozen score s from the same vicinity to have testified to the drunkenness of ge. This witness, however, has been called here simply for the of identifying a certain letter, or a certain paper which is the a letter,—that, and nothing more; consequently it is no testi- gainst Judge Cox.

.LLIS. It makes no difference for what purpose this witness ed. He was called adversely to us, and we have a right to show nus.

VITNESS, (To Mr. Manager Hicks, in an undertone.) I would nswer the question.

lanager HICKS. Mr. President, the witness says he would like er the question; I will withdraw the objection.

)id you not allow that article to be published in your paper of y?

n reference to that article I would like to explain.

Well, you can just answer the question, now.

Such an article was published in my paper on that day.

Was there not, in the same issue of that paper, an article stating s court of impeachment was a bar-room, the only thing needing to make the picture complete, being a bar and bottles in front presiding officer?

I don't know that any such remark was made in that paper.

)r words to that effect?

)r words to that effect.

You look at the article and refresh your recollection, [handing ness a newspaper.] That is your paper of that date, I suppose ;?

Yes, sir. Whatever is in that letter was published in my paper date.

That was not the question I put to you; the question is, was ot such a statement published about this court?

I will read the portion in the letter,—

ALLIS. You can answer the question can't you?

ARCTANDER. I simply asked you to refresh your recollection,

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Mr. Manager HICKS. You can refresh your recollection and then answer yes or no.

The WITNESS. Yes, sir; that sentence appears in this letter.

Q. That sentence appears in that letter?

A. Yes, sir.

By Senator POWERS.

Q. Is that a communication or an editorial?

A. That is a communication; that is what I wanted to explain.

Q. Is there any signature to it?

A. I think there is.

By Mr. ARCTANDER.

Q. It is signed, "an observer," is it not?

A. Yes, sir.

The PRESIDENT *pro tem.* The witness can explain now, if he desires.

The WITNESS. That article was written by Rev. J. N. Liscomb.

By Mr. ARCTANDER.

Q. The one that was a witness here?

A. He was a witness here. The article was taken to my office and published during my absence, while I was in Chicago. On the day of the publication of the paper I was in Milwaukee. I never read the article; never saw the article until it appeared in the paper, after I had returned home; and if I had read the article I should have cut out all those allusions to this Senate.

By Senator POWERS.

Q. Who did you say was the author of the letter?

A. Rev. J. N. Liscomb.

By the PRESIDENT *pro tem.*

Q. Did you say he testified here in the case?

A. He did, sir.

By Mr. ARCTANDER.

Q. A witness for the prosecution?

A. He was.

By Mr. Manager HICKS.

Q. Is there anything further you desire to explain in regard to that?

A. No, sir; that is the whole story.

Q. Mr. Whitney, have you a paper, [handing the witness a paper,] the Lyon County *News*, of the date that contains the puff which was sent to you by the Mr. Mathews who wrote this letter in question?

A. I have.

Q. Is the article enclosed by pencil marks a correct copy of the letter enclosed in that letter?

A. Yes, sir.

Q. As to initials, name, and everything else?

A. Yes, sir.

Mr. Manager HICKS. Mr. President, we now offer in evidence the article in the Lyon County *News*, which is a correct copy of that sent to the witness, with the letter enclosed. We offer it for the purpose of

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ng the Mathews who wrote the letter in question. The counsel
espondent have sought to throw a mist or veil over the Mathews
g the witness if he did not know a Mr. C. E. Mathews. The
ıas testified that the letter which he received—a copy of which
ı evidence—was contained in a slip which was a puff for the gen-
which was enclosed with a request that it be published and he
ıy him for it. We now offer this for the purpose of identifying
ıews further, so that there may be no question about it, as the
pears, with the initials.
LLIS. We object to that, Mr. President. It is not competent for
pose. If this witness knows that he received the letter from Mr.
s he can say so; it does not fix it any more conclusively by
this, because some one else may have enclosed the slip. I be-
witness has testified that he was not familiar with the hand-
of Mr. Mathews, and was not sure it was his handwriting. This
does not bring it any nearer.
RESIDENT *pro tem.* [to Mr. Manager Hicks]. You may ask the
if that was the same Mathews who called and paid for it.
lanager HICKS. He didn't pay for it. The testimony is that he
pay for it, and the editor told him that there was no charge.
LLIS. Well, we have already had that testimony; that would
identify him, but this would not.
lanager HICKS. That, in connection with this, would tend to
him. We submit the matter without further argument.
RESIDENT *pro tem.* I will submit the matter to the Senate if

lanager HICKS. We will withdraw it, rather than take the time
enate. Time is too valuable.
will ask you to state, Mr. Whitney, if you read this letter, or
it, to Mr. M. Sullivan, of Marshall?
did, sir.
About what time was that, as near as you can recollect?
t was after the grand jury brought in the resolutions of censure.
How long after, as you recollect?
cannot say just when it was. It was after that. He was up in
e one evening, and we were talking over the matter, and I
him that letter, as coming from Mr. Matthews of Tyler.

enator CASTLE.
I would like to ask this witness a question. I would like to in-
Mr. Whitney, if this letter which was written to you by Mr. Mat-
and to which reference has been made here, was in the usual form
ıte letters?
Yes, sir.
I did not hear the testimony from where I was sitting yesterday,
u will excuse me for asking over again questions which you may
ıswered; well, how did you happen to publish that letter at all;
a custom of newspaper men to print and publish private corres-
ıce?
No, sir; it is not the usual custom. I will answer your question.
icle had been written, I think in the Lake Benton News, by Col.
il, going to show that Judge Cox was sober all the time at Tyler
ırshfield. I wrote an article in regard to that term of court, and
ıed those few lines of that letter from Mr. Matthews, which

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showed that Col. McPhail's statement was not so. That is why it was published.

Q. And you took this private letter and used it in your fight with the other fellows, in regard to the question of the drunkenness or sobriety of Judge Cox?

A. I did, without using the signature, or giving any evidence as to who wrote it, at that time.

Q. Well, now, how much of this letter did you publish, and what proportion did you leave out? Did you publish one-half of the words in the letter, or one-third, or what?

A. I should judge it was just about one-half.

Q. Then, what we see here, is but one-half of the original letter written to you by Mr. Mathews?

A. That is all.

Q. So you took this private letter and showed it to some other persons who came to your office?

A. I did.

Q. This was a business letter in some respects?

A. Yes, sir.

Q. On private business?

A. Yes, sir.

By Mr. Manager HICKS.

Q. What proportion of that letter which related to the drunkenness of Judge Cox at the Lincoln County term is this which has been offered in evidence?

A. About one-half of the letter as I remember it.

Q. Well, one-half of the letter,—did the whole of that letter relate to the drunkenness of the Judge, or did any portion of it relate to this puff which was enclosed?

A. Yes, sir; that is the part omitted.

Q. Now I ask you again, what proportion of that letter written to you which related to the drunkenness of Judge Cox at Marshall, is this part now in evidence?

A. *All* of it that related to his drunkenness.

By Senator HINDS.

Q. Do we understand that there were blanks in the original?

A. There were. He made a dash.

By Mr. Manager HICKS.

Q. Does the dash in the original letter occur where it is in the printed copy in evidence?

A. Yes, sir; I was very particular to copy it just as it was written.

Q. Was this letter marked "private" or by any indication on it, by marks or otherwise, that the writer desired it to be kept secret?

A. None at all.

Q. Or confidential?

A. None at all.

By Mr. ARCTANDER.

Q. When was it that you showed that letter to Mr. Sullivan?

A. I can't state just when it was. It was after this affair of Judge Cox's was brought up.

Q. And it was after it was published in your paper, was it?

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think it was after I published it in my paper.
Within two or three weeks after Mr. Mathews got it back again,

didn't say two or three weeks. I don't know. It was sometime.
was sometime before he got it, and sometime after you pub-
?
Yes, sir, sometime after I published it Mr. Mathews called and
e for it.
thought you testified yesterday that Mr. Mathews got it back
ree weeks after you published it ?
don't think I gave such evidence. I think I testified I didn't
st when he got it.
ow, sir, how did you come to show that to Mr. Sullivan ?
Ir. Sullivan was on the grand jury, and this Cox matter was a
of general comment throughout the town. He was in my office
owed him the letter.
You showed him the original letter after you had published it in
er?
think it was after I had published it ; I am very sure it was.
low, will you please explain to me how it was that you showed
t letter after you had published it in your paper?
Well, I presume that we were talking about this Cox case.
You *presume*,—do you know whether you were talking about it

can not state positively.
low, that letter had been, before that time, published in the pa-

am very sure it had been published then.
He was a subscriber to your paper, was he not?
Yes, sir.
Now, what was the reason of your showing him that letter?
Well, nothing more than the general interest that was felt in all
that pertain to this case.
Well, what was your object in showing it to him?
had no particular object, really, to show him the original let-

Was there any request upon his part to see the original letter?
don't remember.
You don't remember how it came up that you showed it to him

don't remember.
But you remember you did show it to him?
remember I showed it to him, and we had considerable con-
n about it.
Did Mr. Sullivan say anything about having seen that letter be-
aving seen it in print?
can not recollect the conversation that occurred; I know we were
about the Cox matter,—everybody was talking about it, in the
The grand jury had brought in their resolutions, and it was an
proceeding. It was a little town and everybody was talking
. I think this was at least three weeks after the resolutions had
ought in.
Did Mr. Sullivan come to your office for the purpose of seeing
ter?

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A No; Mr. Sullivan came into the office frequently. He did not come in for the purpose of seeing that letter.

Q. Have you shown other people the letter, too?

A. Yes, sir.

Q. What other persons have you shown it to?

A. I have shown it to C. H. Whitney.

Q. Who is he?

A. He is a relative of mine, that resides in Marshall, and is frequently in my office.

Q. Did you show it to Seward?

A. I don't recollect; I may have shown it to Mr. Seward; it is quite likely I did show it to him.

Q. Is there anyone else that you showed it to?

A. I showed it to my foreman; my foreman set the type from it for the paper; and I either showed or read the letter to Mr. Patterson at one time when he was in my office.

Q. That was all done after it was published, was it?

A. I think it was.

Q. All of this showing.

A. Yes.

Q. Now, what object did you have in showing them the original after it was published?

A. Nothing more than to,—than as regards the statement of Col. McPhail in the Lake Benton News as to Judge Cox's condition at Tyler.

Q. That had been already done by the publishing of it, had it not?

A. Yes, but I showed the original, as I had no signature in the paper as published.

Q. Well, did you show the original to any of them with a view to find out whether it was Mr. Mathew's handwriting or not?

A. No, sir.

Q. There was no discussion upon that as to whether it was his handwriting or not?

A. No, sir. I have no recollection of any such discussion at any time, because I knew well enough that it was Mr. Mathew's, because he enclosed this printed slip which was a puff with his full name on it.

Q. The others didn't seem to doubt it,—there was no discussion or examination to see whether it was his handwriting or not?

A. No, sir.

Mr. Manager HICKS. Mr. President, we have held Mr. Allen here for the purpose of cross-examination. I desire to state that Mr. Allen has been obliged to lock up his office and we desire to have him recalled and have the cross-examination go on so as to allow him to go home as soon as possible.

W. A. ALLEN,

Re-called for cross-examination, testified.

Examined by Mr. ARCTANDER.

Q. Mr. Allen, the first day you saw Judge Cox,—that day was the day he came aboard the train was it?

A. Yes, sir.

Q. And he came aboard the train there while the train was standing still at the depot at Tracy?

A. Yes, sir.

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Was he there in the car, sir, before the train commenced to go?
No, sir; I think that we were about starting, or we started after
in.
Now, is it not a fact that Judge Cox came running to that car
was in motion, and got into your car there, while the train was
oing?
was inside the car, sitting down and talking with some of our
s; that I couldn't say. I did not see the Judge until he came
car.
Now then, when did you first see these whisky bottles?
Well, perhaps, it was but shortly after he came into the car. I
ot give the exact time.
Did he have it at the time you saw it?
No, sir.
Was he in the car at all when you saw it?
Not in the business car; he was in the other car.
Then as I understand you, Judge Cox came into the business car,
hat he was in the wrong car, left his baggage in that kitchen, as
l it, and went into the other car?
Yes, sir.
And it was while he was in the other car, that you and others
oozing around his baggage to see what whisky he had?
No, sir.
Where was he?
When he was coming through the car, he had this in his hand;
sky bottle was perfectly visible.
He had what?
His overcoat done up in a small strap.
How was it tied up in a small strap.
Well, I should judge a little package about so long, [indicating;]
wl strap was around it and the bottle was stuck in the crease.
per stated last night in his pocket. I did not state that.
The whisky bottle was perfectly visible, you say?
Yes, sir.
That was the first time you saw it?
Yes, sir.
It was not in the kitchen then the first time you saw it?
No, sir; I saw it in the kitchen also.
Then you went and looked at it while he was in the other car?
No, sir; I will explain why I went there, if you wish me to.
Well, I ask you to do it?
We didn't wish to come in contact with Judge Cox at all, when
e in the train; I saw right away that he was under the influence
or. He passed through the car with this in his hand. I noticed
Mr. Gale and myself remarked to each other his condition. He
long in the other coach, and as he passed through he left this in
chen. He immediately came back, and went to the other end of
r, and sat down talking with Mr. Sanborn. I was then at that
the car, and I walked back and walked through and walked into
tchen, and a few of us were there. The road master was with me,
think one of our witnesses, and I think the conductor of the train.
et right there; he was passing through too, and we noticed it;
at was at the time this conversation took place about the whisky

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Q. That was the time you took it up and smelled of it, was it?

A. I didn't touch it at all.

Q. Now, is it not a fact that Judge Cox went back immediately and went out of your car as soon as he came in there, and did not come back until Mr. Sanborn sent a conductor after him and invited him to come in and take a seat there?

A. Well, he passed through the car; as to whether Mr. Sanborn invited him in there or not, that I know nothing about; but I think I could explain why he came back there.

Q. You did not hear Mr. Sanborn tell the conductor to invite him to come in there?

A. No, sir; I did not.

Q. Were you sitting there while he was talking with Mr. Sanborn?

A. No, sir; I immediately left and went back into the kitchen.

Q. Now, it was after Judge Cox had left there and gone into another car that you heard this crash out in the kitchen, was it?

A. Yes, sir.

Q. There was nobody there drinking, or anything?

A. There was no one in the kitchen at all when that crash occurred.

Q. You went out then and saw the bottle, or the remnants of it, did you?

A. I was sitting right near the door. The seats in that car face each other, and Mr. Sanborn was sitting in one seat, and we had a plat, and the road master and one or two others were looking at the plat, explaining something about a bridge; and this crash came, and I pushed the door open and looked in. They wondered what it was; I knew what it was. The little wood-box that it sat on was a covered wood-box with an inclined cover. The coat was rolled up and the shawl strap was around it.

Q. What color was that coat.

A. I did not notice it, particularly.

Q. An overcoat?

A. I should judge it was.

Q. Are you sure it was an overcoat?

A. Yes, sir; I took it to be a coat, from the seams and appearances.

Q. It was not a duster, was it?

A. Not a linen duster; no, sir.

Q. It was an overcoat?

A. I should judge it was from the appearance of it.

Q. And you say you saw Judge Cox carry that when he first came into the car?.

A. Yes, sir.

Q. Did he have something in both hands?

A. I think not; I did not notice him particularly.

Q. Is it not a fact that when Judge Cox came into that car, that he had a heavy valise, carrying it.?

A. Mr. Joe Whitney carried the valise; that is my recollection.

Q. What sized bottle was this?

A. My recollection is it was a pint.

Q. Probably it was a half pint.

A. Well, I wouldn't want to swear positively to that; all I know is it was a bottle of liquor.

Q. You didn't see more than one around there in the party, did you?

A. No, sir.

Q. You don't know whether that was Judge Cox's coat or not, only that you saw him carry it.

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'hat was all.
Ir. Whitney carried his valise and the Judge carried this thing?
'hat is my recollection.
ınd it may have been Mr. Whitney's coat and Mr. Whitney's

don't know whose it was. After the train had stopped, Judge
off the train with his coat in one hand, or this bundle and the
rap.
)id he have the bottle with him too, when he went out of the

'o, sir; I didn't notice it.
thought you said he had.
said the bundle.
When he left the car, when you saw him at the depot, that is all
in his hand, was it,—that bundle?
'hat is all I noticed at the time.
Ie didn't have that valise at that time, did he, either?
didn't uotice it; I didn't notice the Judge particularly. I think
ıll he had.
Iow was the Judge dressed that day?
Iy recollections are that he had a Prince Albert coat.
Something like the coat he has on now?
Vell, I didn't notice the Judge's coat in particular. It was a
Albert coat,—a long coat at any rate.
What kind of a hat did he have on,—or didn't he have any hat

Vell, I did not pay much attention; it was a black felt hat, I

Iow many of them were there in the party that came aboard at
here?
There were four. One of them was Col. Mc Phail, one Whitney,
lge Cox, and the fourth I did not know. He might have resided
r or some one that went on with the train. I do not know any-
bout that.
)id Mr. Sanborn stop there that day at town?
'o, sir; I believe he stopped there long enough to get dinner and
to Watertown or went up the road; that was my recollection,
o not know as to that; I would not want to swear. I did not
ıch attention when we got there; I had our witnesses to take

Ir. ALLIS.
Did you inform the editor of this paper, the Lyon County News,
ast witness that was on the stand, that during Judge Cox's
from Tracy to this place, Marshall, he entered uninvited, the
car of Supt. Sanborn, making himself generaly disagreeable, and
a general stench by discharging his whisky bottle and spilling
tents upon the furniture?
Ianager HICKS. That is objected to as immaterial and incom-

ALLIS. The object is to prove the animus of this witness.
Ianager HICKS. The objection is withdrawn.
WITNESS. I never spoke a word to Mr. Whitney in my life. I
ver introduced to him. I have never seen the gentleman until I
n here.

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Q. Did you furnish that information to him in any way?

A. No, sir, never. I never mentioned it to any one.

Q. Did you furnish the Winona Republican with an item of news that in the course of the trial Judge Cox ordered Mr. Gale,—the member of the firm of which you are clerk,—to be arrested and to be placed in jail for thirty days, and to pay a fine of $100?

Mr. Manager HICKS. I make the same objection to this.

The PRESIDENT *pro tem.* I think myself *that* is entirely immaterial.

Mr. ALLIS. It is for the same purpose.

Mr. Manager HICKS. What purpose?

Mr. ALLIS. To show the animus of this witness, the activity which he has displayed, and hostile feeling towards Judge Cox.

Mr. Manager HICKS. Mr. President, allow me to state that the witness has sworn upon the stand that Judge Cox was in an intoxicated condition. He has sworn to other facts which this Senate can see at once are disgraceful to any man, particularly a Judge upon the day upon which he is to open court. If this witness has stated these facts to other parties, it is only in accordance with his present testimony. It would not be impeaching in any sense of the word, but it is not material. It would not show any animus on the part of this witness more than has already been exhibited here upon the stand, simply to state the facts that the Judge was upon the train under the influence of liquor,—a spectacle degrading to the Judge and to the people who elected and sustain him.

The PRESIDEN *pro tem.* The witness may answer the question, and it may go to the Senate under all the circumstances, for just what it is worth.

The WITNESS. That occurred after I reached Marshall, and I did not reach home until quite a while afterwards. I did not know of it until I got to Winona. I left that day, and it occurred after I left, and it was known in Winona, and published in the paper before I reached home, and Mr. Gale was not arrested while I was there; it occurred after I left.

Q. Well, did you furnish the information?

A. I have no recollection of—

Q. What day did you leave?

A. I left, I think, Friday noon, on the train going east.

Q. What cases were there to try?

A. The case on trial was the case of Lindsley against the Winona & St. Peter R. R. Co.

Q. That is the case you went there to represent?

A. And other cases.

Q. Railroad cases, all of them?

A. No, sir; some were railroad and some were not.

Q. Those railroad cases were the cases that you and Mr. Gale were there for?

A. Those, and I think we had some other cases on the calendar.

Q. What day did you get through?

A. Well, Mr. Gale remained after I did; I did not wait to get through; I left Friday, according to my recollection.

Q. Do you know what day of the month that was?

A. My recollection is that it was the 24th.

Q. Now, when did Mr. Gale get home?

A. Well, that I couldn't testify.

Q. Was Mr. Wilson there?

A. No, sir; he was not.

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You do not know when Mr. Gale got through?
I do not. If I was at home I could tell. I think he came down
by night on the train, but I do not want to swear positively to
cause I am not positively sure of it.
Were not all the cases in which the Winona & St. Peter R. R. Co.
terested, disposed of by Thursday night?
No, sir.
What case remained?
There were two cases disposed of Thursday, according to my
tion.
What cases remained undisposed of?
There was the case of Johnson against the Winona & St. Peter R.
t was not tried at all.
Well, I mean those cases that were tried at that term. what cases
ed to be tried after Thursday, that were tried after Thursday?
Samuel Lindsley against the Winona & St. Peter R. R. Co.
And the Johnson case?
That was not tried at all.
What was the number of that case on the calendar?
Well, I don't recollect; I think I have got a calendar,—but I do
ow whether I have got it at the hotel or not,—with the minutes
ere made on that day.
Was not the third case tried on that day?
What case was that?
Lindsley against the Winona & St. Peter R. R.
Not the third case on the calendar.
Was it not the third case that was tried at that term of court?
Oh no, sir; that was not my recollection. We had one case of
n, that we tried before it; Chas. W. Main against the Winona &
er R. R. Co., and then there were other cases tried before.
Were both of the Main cases tried?
No, sir; only one.
Then you did not have but one that was tried?
Well, they were disposed of.
How long did it take to dispose of the second case?
Well, we stipulated as to that.
As long as it would take to write the stipulation?
Yes, sir. Well; we had some talk about it; I don't know how
took.
What was the case, preceding the Main case, that was tried?
I couldn't state; it was none of our cases.
Didn't they commence the trial of cases the first day of the term
o'clock and dispose of one that afternoon?
I don't recollect. There were none of our cases that were going
e on.
The first day of the term was Tuesday?
Yes, sir.
How long did it take to try the first Lindsley case?
Well, that was quite awhile; I think we were on the trial of that
he resolutions were handed in by the grand jury. Then we ad-
l to the Bagley house.
At the trial of the Lindsley case was there any defence put in

Oh, yes, sir; a stubborn one.

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Q. Was that case given to the jury at all ?
A. Yes, sir, the Lindsley case was.
Q. How long did that take ?
A. Well, that was after I left for home. I wasn't there when it was given to the jury, but the verdict was reported to us, and it was on trial when I left.
Q. Then it was not given to the jury until after Thursday,—you went away Thursday ?
A. My recollection is Friday.
Q. Were you in court at all Friday ?
A. Yes, sir, in the forenoon awhile.
Q. Then it had not been given to the jury then ?
A. I left about 11 o'clock I think.
Q. At that time it had not been given to the jury ?
A. No, sir; that is my recollection.

By Mr. Manager HICKS.
Q. Mr. Allen, I understood you to say that you left Marshall before the fining of Mr. Gale.
A. Yes, sir.

Senator POWERS. Mr. President, as there is a little lull in business, I have a resolution I would like to send up and have read.
The PRESIDENT *pro tem.* The Secretary will read the resolution.
The Secretary then read the resolution as follows :
WHEREAS, It has been shown in evidence that the so-called "Reverend," J. N. Liscomb, of Marshall, Lyon county, Minnesota, is the author of a false and scandalous letter published in the Lyon County *News*, under date of February 17, 1882, describing this court as a lot of barroom loafers, coarse and gross, and inattentive to the business before them; and
WHEREAS, It is our opinion that a man who will lie in one matter—and especially when hiding behind a cowardly *nom de plume*, is not reliable or truthful in anything, therefore,
Resolved, That the whole of the said "Reverend" J. N. Liscomb's testimony be stricken from the record in this case, as unworthy of attention and belief.
Senator GILFILLAN, C. D. Mr. President, I move that the resolution be referred to the committee to which the resolution yesterday was referred,—the judiciary committee, I believe.
The motion was seconded.
The PRESIDENT *pro tem.* The Senate have heard the resolution and the motion. The question is upon referring to the judiciary committee. Are you ready for the question ? As many as are in favor of the motion will say Aye; contrary No. The motion prevails.
Senator CROOKS. I would ask, Mr. President, that the judiciary committee, to whom was referred a resolution offered by me yesterday, would report their action upon the same. There ought to be some record made of it.
The PRESIDENT *pro tem.* The judiciary committee have heard the request, and will govern themselves accordingly.

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M. SULLIVAN.

ed as a witness in rebuttal on behalf of the prosecution, testified.

nined by Mr. Manager HICKS.

Mr. Sullivan, are you acquainted with Virgil Seward, of Mar-

I am.

You testified on this case before, I believe?

I have.

You reside at Marshall?

I do.

Did Mr. Virgil Seward, on or about the 22d day of June, 1881, at on county bank, at Marshall, in the presence of J. K. Hall, S. D. Mr. Burchard, and yourself, state that if the grand jurors of n county did their duty they would indict E. W. Mahoney for liquor to an habitual drunkard, to wit, E. St. Julien Cox, or to that effect?

ALLIS. From what page do you read,—page 724?

Manager HICKS. Yes, sir.

WITNESS. In Lincoln county?

Manager HICKS. That was the wrong question, I will ask it There was an error made. His testimony is on page 733, near) of the page. I desire to ask the same question again, with the ing of Lyon instead of Lincoln county. I will ask the questiou [To the witness]. Did Virgil Seward state, on or about the 22d June, 1881, at the Lyon county bank at Marshall, in the presence . Hall, S. D. Howe, Mr. Burchard and yourself, that if the grand Lyon county did their duty, they would indict E. W. Mahoney ing liquor to an habitual drunkard, to wit, E. St. Julien Cox, or to that effect?

WITNESS. On the 22d?

I say on or about the 22d.

He made that remark on the 21st.

He made that remark on the 21st day of June?

Yes.

Near the Lyon county bank?

Yes.

In the presence of the gentlemen named?

In the presence of Mr. Burchard, Mr. Whitney, who has testified, Forbes, county attorney, Mr. Seward and myself.

ALLIS. That was on the 21st, you say?

Yes.

ALLIS. That, Mr. President, I suppose is not strictly correct.

Manager HICKS. The question does not say on the 22d; it says about the 22d; it is so qualified.

ALLIS [after an examination of the Journal.] Yes, sir; that is the ne question reads.

Mr. Sullivan, I will ask you to state [showing witness a printed f you have ever seen a letter purporting to have been written by atthews, of which the slip you hold in your hand is a copy of a f it?

I was in Mr. Whitney's office and he read me a letter and then

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passed it over to me. I opened it, looked at it, and laid it down; and, as near as I can recollect, that is the purport of the letter; but I don't swear positively, because I did not give it any attention or thought.

Q. You say you don't swear positively; as to what do you not swear positively?

A. I don't swear positively that is the very word or that is the language of it; but that is the purport of it.

Q. Well, is that the purport of it,—I ask you that?

A. Yes, sir; to the best of my recollection and knowledge.

CROSS-EXAMINATION,

By Mr. ALLIS.

Q. You don't know whether this was a copy of that letter or not, except that you recognize the similar sentiments in it; that is what I suppose?

A. I recognize where it uses Judge Cox's name, and the dash, the purport of it; I would not recollect any particular word; I couldn't swear to any single word in that letter, at this moment, because—

Q. You can not swear that this was a copy,—you had that letter in your hand for a moment?

A. Just a moment.

Q. Now, when was that?

A. What time of day or—

Q. No; when?

A. Well, it was in the summer of 1880.

Q. 1880?

A. Of 1881.

Q. About how long after it was published in the paper, did you see this publication?

A. I don't think that we ever did; I have no recollection that I ever did.

Q. Do you remember the date of the letter that you had in your hand?

A. I do not.

Q. Did you notice what month?

A. I did not.

Q. Do you remember where it was dated,—at what place?

A. I would not swear where it was dated.

Q. Do you swear as to the signature,—who signed it?

A. No, sir; my impression is it was M. E. Matthews, but I wouldn't swear as to the signature.

Q. Whereabouts did Judge Cox's name occur in the letter?

A. I could not answer, Mr. Allis.

Q. Now, I want to get a little nearer to the time, when this letter was handed to you, if you can fix it: do you remember what month it was that Mr. Whitney handed you that letter?

A. No, sir.

Q. Was it late in the summer, or early in the fall?

A. Mr. Allis, I have testified that it was in the summer of 1881. I could not tell you the month or the day.

Q. Well, I didn't know but you might tell, Mr. Sullivan, whether it was late in the summer, or early in the summer, or midsummer.

A. No, sir; I could not.

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o you remember how Mr. Whitney came to show you this

es, sir; I can.
id you ask him for it?
o, sir.
low did he come to show it to you,—what was his object in it,—do you know?
don't know what his object was; no, sir.
low did he come to show it to you?
RESIDENT *pro tem.* He stated that he did not know.
LLIS. I understood him to say that he did; he said he did not s object. [To the witness.] I understood you to say that you ll how he came to show it to you. If I am mistaken, just cor-

think this is the reason why he showed it to me,—some of the s of the bar of Lyon county passed some resolutions denounc- action of the grand jury. That is why, I think, he showed me er.
ou were a member of the grand jury?
was.
low, are you positive, Mr. Sullivan, as to the language that Mr. addressed to these gentlemen in your presence?
am.
Which you have testified to,—that was the exact language?
hat was the language.
low came you to recollect the exact language in that particular n you generally recollect the exact language of a conversation k place a year or two ago?
think I can, in as important a matter as that was.
What was there important in Mr. Seward's making that remark?
Being associated with the county attorney and being a prominent y there.
And that fixed the exact language, "to-wit" and all, in your

Yes.
Can you remember the exact language used by Mr. Seward in ng else on that occasion?
I cannot.
Can you remember the exact language used by any of the other men—you were all in conversation at that time, Mr. Hall, Mr. and Mr. Burchard,—you were talking with each other?
I was talking with Mr. Burchard, or Mr. Burchard, was talking e, I couldn't say which.
Now, Mr. Seward came up—now can you remember anything said Burchard on that occasion,—the exact language?
I cannot.
Or any other of those gentlemen?
That was all that was said just then.
Well, you were talking before and after, were you not.
Yes, sir.
Now, can you remember the exact language used by any body else occasion, or during that entire interview?
I don't know as I could give the exact language.
You are quite sure that that word "to-wit" was used.
I am.

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Q. All you gentlemen seem to be sure of that; you could not be mistaken about that?

A. No, sir.

Q. About that "to-wit" part?

A. Yes.

Q. Now, didn't Mr. Seward, at the time he made that remark, or some words like that, say it would be a good joke?

A. No such language was used by Mr. Seward.

Q. Wasn't he speaking in regard to indicting Mr. Mahony,—wasn't he indicted,—wasn't that matter of Mahony being indicted which caused Mr. Seward to made that remark,—that he ought to be indicted for selling liquor to an habitual drunkard?

A. The matter of Mr. Mahoney being indicted?

Q. Yes; wasn't that the subject of conversation?

A. No, sir; no such conversation occurred until Mr. Seward made that remark.

Q. Mr. Seward came up to where you were standing, and made that remark, the very first thing?

A. Yes.

Q. Broke right in with that remark, "to-wit," and all?

A. Yes.

Q. And then went away?

A. No, sir.

Q. Did he continue to talk?

A. He did.

Q. What did he say after that?

A. I couldn't say what he said after that.

Q. You can't remember any language that he used after that?

A. I can remember that he talked; I can remember that Mr. Seward and myself walked together at least a mile and a half.

Q. How long did that take?

A. Oh, we were probably three-quarters of an hour.

Q. That was immediately after he made that remark you have testified to?

A. I, at that time, went past, and went and talked to the county attorney, Mr. Forbes; after talking with Mr. Forbes a few moments—

Q. Well, I am not asking you to detail the conversation now. You walked with Mr.—

Mr. Manager HICKS. You asked him if it was made after, and he has explained that there was a slight interim.

Mr. ALLIS. What was a slight interim?

Mr. Manager HICKS. Between his going and talking with Mr. Forbes?

Q. After he made that remark you and Mr. Seward walked away together?

A. There was no conversation between Mr. Seward and myself; I didn't even reply to it.

Q. Did Mr. Seward continue to talk there in your presence, after making the remark that you have sworn to?

A. After Seward made the remark to me, then the next thing that I recollect of I talked with Mr. Forbes. We went together and stood on the sidewalk and talked some little time.

A. Very well; what took place after that?

A. I can't tell how long, but it was within a few minutes, that Mr. Seward, Mr. Whitney, Mr. Howe and myself took a walk.

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Which lasted some three-quarters of an hour?
Three-quarters of an hour, more or less. I didn't time it, and
t tell now from memory.
Didn't Mr. Seward talk any that time?
He did.
What did he say? I will ask you a question: Can you remem-
thing he said?
Give the precise language?
Yes, or the substance; can you do one thing or the other?
Manager HICKS. You can answer that by yes or no.
ALLIS. I suppose he knows how to answer, and if he does not
rt can instruct him.
WITNESS. I cannot give the precise language.
Can yon give the substance of anything that he said; not the gen-
bject of conversation, I don't mean; but the substance of any re-
nat he made—the substance of the language?
Not the general subject of conversation you don't want.
I suppose you can remember what you were talking about; I
know if you can remember anything specific,—you needn't give
e;—I want to know if you can remember the substance and the
ge of any other remark that was made on that occasion.
No, sir.

Manager HICKS.
You were a member of the grand jury?
I was.
And this remark was made to you by the partner of the county
y?
It was.

A. C. FORBES

d as a witness in rebuttal on behalf of the prosecution testified.

ned by Mr. Manager HICKS.
Mr. Forbes, you have been sworn in this case, I believe?
Yes.
I believe you testified that you know Virgil Seward?
Yes, sir; he is my law partner.
He is now your law partner?
Yes.
And was last June?
Yes, sir; and has been for nearly three years.
I ask you to state if Mr. Seward did not, on or about the 22nd
June, at the Lyon county bank, in Marshall, in the presence of
lf, Mr. Burchard, Mr. Sullivan and others, say if the grand jury
eir duty, they would indict E. W. Mahoney for selling liquor to
itual drunkard, to-wit, E. St. Julien Cox, or words to that effect?
He did.

CROSS EXAMINATION

. ALLIS.
You heard Mr. Seward say that?
Or words to that effect.

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Q. What were the words that he used?

A. The words as I remember them, are these: Mr. Seward, myself and a Mr. Davidson came along the southwest side of Main street, and walked across the walk to the Lyon county bank; Mr. Sullivan, Mr. C. C. Whitney, Mr. Burchard and Mr. Hall were standing on the sidewalk and Mr. Seward said—now this is as I remember it—"Mr. Sullivan, the grand jurors ought to indict E. W. Mahoney for selling liquor to E. St. Julien Cox—to an habitual drunkard,—to-wit, E. St. Julien Cox,"—that is as I remember it.

Q. How do you come to remember the exact words?

A. I remember it because it struck me very forcibly at the time.

Q. All of you gentlemen get in the word "to-wit"; how do you come to remember that in a conversation such language as that was used,—rather precise for colloquial talk?

A. I remember those words very particularly, because they are not very common in every day talk or in street talk.

Q. Are you a partner of Mr. Seward now?

A. Yes.

Q. Are you acquainted with Mr. Seward's character for truth and veracity?

A. I am.

Q. Is it good or bad?

Mr. Manager HICKS. We object to that; you cannot impeach your own witness.

Mr. ALLIS. We cannot impeach him, but we can confirm him.

The WITNESS. If it is permissable I prefer to answer the question unless it is objected to.

Mr. Manager HICKS. I have not attacked his character.

Mr. ALLIS. You are impeaching Mr. Seward, are you not?

Mr. Manager HICKS. Well, by this question, perhaps; we do not say generally that his character for truth and veracity is not good; he may be mistaken in this matter.

Mr. ALLIS. Oh, if that is all you claim, I do not care about pressing the question. I thought you were attacking his reputation for truth and veracity.

Mr. Manager HICKS. Well, we are attacking it as to this matter. But we will withdraw the objection, as the witness says he would rather answer it.

The PRESIDENT *pro tem.* The witness said he would like to answer it.

The WITNESS. Mr. Seward's character for truth and veracity is good. I think he is as straight a man as I ever met, and I know him intimately and well; there has always been the most intimate relations between us, and there is now the pleasantest feeling between us.

Mr. ALLIS. Has the language that he used been the subject of conversation between you and other parties?

A. No, sir; not very often; this is a matter that I have said very little about, this impeachment trial; I think I have said less about it than any attorney in Marshall.

Mr. Manager HICKS. You have tried to avoid it?

The WITNESS. Yes; at every point.

Q. Is there any particular reason why the words are impressed on your memory, apart from what you have stated?

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There is a particular reason why I remember it, and I wish to t right here: Virgil Seward and myself were walking along the east side of main street, and, passing along, the thought suggested o my mind, first, in view of the excitement that was there, and I e first person who said that thing; he immediately got up and l it right across and stated it to Mr. Sullivan.

Mr. ALLIS.
You were the first person that made that remark?
I made the remark to Mr. Seward; but made it to no other per- id did not suppose the matter would be discussed at all or stated other person.
Was Mahoney under indictment at the time?
No, sir; he was not.
Wasn't he afterwards?
No, sir, he was not.
Mr. Manager HICKS.
You are the county attorney of Lyon county.
Yes.
And were at that time?
Yes.

C. F. CASE

as a witness in rebuttal on behalf of the prosecution.

Manager HICKS. Mr. PRESIDENT, I understand from one of the gers that this witness heard the remark at another time, and we herefore have to dismiss him for the present at least; a founda- as not been properly laid.
PRESIDENT *pro tem.* Call the next witness.

C. E. PATTERSON

lled as a witness in rebuttal on behalf of the prosecution, testified.

mined by Mr. Manager HICKS.
You have testified in this case, I believe?
I have.
You are the clerk of court of Lyon county?
I am.
Have you the minutes of the court of the June term, 1881, with

I have.
Do you remember of receiving and recording in your minutes tions passed by the bar of that county at that term of court, about ird or fourth day of the term?
I do.
You may turn to them.
Manager HICKS. I will show them to the counsel first. [To the lent.] This is done by agreement with the other side, Mr. Presi-

e WITNESS. [Opening minute book.] I have it here.

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Q. The copy you made in your minutes is correct to the best of your knowledge and belief?
A. It is.
Q. Did you compare it with the original, after having copied it?
A. I did.
Q. And found it correct?
A. Yes.

Mr. Manager HICKS. Counsel have consented because of the difficulty in hearing distinctly, that the Secretary instead of the witness, may read the entry in the book of minutes, produced by the witness.

The Secretary read as follows:

Ordered, That the following resolutions of the members of the bar be spread upon the records of this court:

WHEREAS, Certain persons have complained to the grand jury of Lyon county at [the] regular June term, A. D. 1881, against the Hon. E. St. Julien Cox, Judge of the district court, in and [for] the Ninth Judicial District; and

WHEREAS, The said grand jury passed certain resolutions of censure against the said Hon. E. St. Julien Cox; and

WHEREAS, Judge Cox has referred said resolutions to the members of the bar present at said court;

Resolved, That we have undiminished confidence in the eminent ability and integrity of Judge Cox, and that we hope he may long continue to do honor to the bench;

Resolved, That a copy of these resolutions be presented to Judge Cox, and that said resolutions be spread upon the records of this court.

Those voting in favor of the above resolutions, H. C. Grass, J. W. Whitney, C. S. Butts, E. B. Jewett, M. E. Matthews, C. W. Andrews, E. C. Dean, E. A. Gove, W. Wakeman, A. G. Chapman, V. B. Seward, D. F. Weymouth. William Gale, not present, and other members of the bar from other judicial districts not voting.

Those voting in the negative, A. C. Forbes, F. N. Randall, M. B. Drew and C. W. Main.

To the honorable E. St. Julien Cox:

The undersigned, who voted in the negative on the above resolution, voted in the negative simply because we believe the issues squarely presented to us by your honor with reference to the resolution of the grand jury, were not squarely met and dealt with as we believed the importance of the case required. The above reasons were given at the time of the vote on the resolutions and urged upon the members of the bar; and for the further reason that the foregoing resolutions do not answer the purpose for which the resolutions of the grand jury were confided to us.

A. C. FORBES, CHAS. W. MAIN, F. N. RANDALL, M. B. DREW.

Q. Mr. Patterson, were there any resolutions of the grand jury—you were here yesterday in court, were you not?
A. I was.
Q. And heard the report of the grand jury that was read in evidence?
A. I did.
Q. Were they ever spread upon your minutes?
A. They were not.
Q. Were they ever delivered to you for that purpose?
A. They were not.

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SHERBURNE SANBORN

ı as a witness in rebuttal on behalf of the prosecution, testified.

ımined by Mr. Manager HICKS.

What is your name, residence and occupation?

Sherburne Sanborn; I reside in Winona and I am superintend- Winona & St. Peter R. R.

Are you acquainted in the village of Marshall in Lyon county?

I am, somewhat.

Do you know of a certain wagon bridge being built across the ı in that place and being built sometime in the summer of 1881?

Yes, sir; I do.

Do you know of your own knowledge of the date of the comple- f that bridge?

No, sir; I do not.

Do you know whether or not on the 21st day of June, A. D., that bridge was completed for travel,—the new bridge?

No, sir; I couldn't say.

Do you know the day that the respondent, E. St. Julien Cox, on the train from Tracy to Marshall for the purpose of holding in Marshall, Lyon county?

Yes sir.

Do you know whether that day, on the arrival of the train, the ›ridge was complete so that teams might pass over it for travel?

Yes, sir; it was.

Do you remember about the time of day that you noticed the letion of the bridge, as near as you can recollect?

It was about noon.

Did you see any teams crossing there?

I did.

How long did you remain in Marshall that day, Mr. Sanborn?

I couldn't say definitely, my impression is from twenty to thirty tes.

Manager HICKS.

vis Brownell will be re-called for cross-examination. I desire to Mr. President, that Mr. Brownell came up on Friday of last week id not arrive here, until after the Senate had adjourned. He was or that he might be cross-examined before the defence closed. He ally the witness on account of which we asked for time.

LEWIS BROWNELL

called for further cross-examination.

Mr. Manager GOULD.

Mr. Brownell, you have been sworn in this case already?

Yes.

Do you know Robert Taylor, Esq., of Kasson?

I do.

Do you remember to have seen Mr. Taylor at Waseca, at the of court held there in the spring of 1879?

Yes.

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Q. Did you have a conversation with Mr. Taylor at that time?

A. I presume I did; I most always do with every lawyer or person I meet or am acquainted with.

Q. Did you state to Mr. Taylor at that time, on the street of Waseca or at the hotel, that Judge Cox was drunk?

Mr. ALLIS. This is on the cross-examination?

Mr. Manager GOULD. Yes, sir.

Mr. ARCTANDER. Where?

Mr. Manager GOULD. At that term, Waseca term 1879.

The WITNESS. Where do you fix a time and place?

Q. Either on the street or at the hotel.

Mr. ARCTANDER. We object to that, Mr. President, unless they limit it to drunkenness in court. That is all Mr. Brownell was examined upon by us, nothing further.

Mr. Manager GOULD. May it please the court, I take it that if a man is drunk in the morning just before he goes into court, or is drunk at noon when he comes off the bench, or is drunk at night, when he comes off the bench, it is fair to assume that he was drunk while he was on the bench; and hence, if this man has said that Judge Cox was drunk there, either on or off the bench, it would be pertinent for us to show it.

The PRESIDENT *pro tem.* The objection is overruled, unless it is desired to submit it to the Senate.

Q. You may answer the question.

Mr. ALLIS. Will the reporter please read that question? I didn't understand it the way it was put.

The reporter read the question.

Mr. ALLIS. What time is fixed?

Mr. Manager GOULD. I have fixed that by preliminary questions;—when Mr. Taylor was out there at that term of court in June, 1879.

The WITNESS. Are you ready for the answer?

Mr. Manager GOULD. We are.

The WITNESS. I have no distinct recollection of so stating. If I did so state, I stated from what I heard and not from what I saw or knew; I was not speaking from what I knew, if I did make such a statement.

Q. Do you say you did not make any such statement?

A. I have no recollection; I say if I did, I stated it from what I heard, not from what I saw. I never stated to him that I saw him drunk, or knew that he was drunk; I might have stated from what I heard, and don't say that I didn't.

Q. You don't say that you didn't say to him that he was drunk at that term?

A. I don't remember of having a conversation about that with him, but I say that if I did so state I know that I didn't state from my own knowledge, but stated from what I had heard.

Q. Now, Mr. Brownell, did you not state to Mr. Taylor, at that time, when talking about a motion which Mr. Taylor wanted to make in the court, that you thought Judge Cox was too drunk to hear it?

A. I never talked to him about his motions, and never made any such talk.

Q. Never made any such statement?

A. Never talked with him about his motion or case, or about bringing it up.

Q. You never talked with him about his case at all, or about his motions.

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No, sir; about his case, or about his motions.
Mr. Brownell, are you acquainted with R. A. Jones of Rochester?
I think I am.
Did you see Mr. R. A. Jones at New Ulm, in the county of Brown ;eneral term, held there in May, 1881?
Yes, sir; the first day of the term.
In the trial of the case of Howard vs. Manderfeldt?
Yes.
Did you have a conversation with Mr. Jones at that time?
I did.
Did you not say to Mr. Jones at that time, referring to the Judge, s presiding at that trial, that the Judge was drunk?
I did not.
Did you say to Mr. R. A. Jones at that time, in New Ulm, when re there on the trial of the case of Howard vs. Manderfeldt, that Cox was drunk in Waseca at the time he held a term of court

I might have so stated; I so state now, that he was drunk.
That he was drunk?
At that time; at the time the court adjourned, not while in court.
Didn't you so state—that the Judge was drunk while holding a court in Waseca?
Not in that way, or if I did so state, I did not state that I *saw* unk; I might have said that I heard he was drunk; I didn't say y own knowledge; I don't think that I stated to Jones that he unk there during that term, but I might; that is, at the close of m, as I testified before.
ARCTANDER. After the term had closed?
WITNESS. Yes; during the time he was down there, after the djourned, or the next day.
I want you to answer yes or no, whether or not you stated to nes, at New Ulm, at the time of the trial of Howard vs. Manderhat Judge Cox was drunk at the time of the Waseca term, during ding of that term?
I never so stated during the holding of the term; I might have at that time he was drunk, as I testified before, at the close of it.
Did you say anything to him to that effect?
I did not, sir; I have no recollection of it, and if I said to him body that Judge Cox was drunk in court, or drunk at that term, as I have testified, at the close, it was—I stated not from my nowledge but from hearsay; I never stated that I *saw* him drunk.
Mr. Brownell, did you send a communication to Jones & Gove, of ter, concerning the case of Howard vs. Manderfeldt, in the month , last?
ARCTANDER. That is objected to unless the communication is ed and shown to the witness.
Manager GOULD. That is preliminary to asking whether he he letter; I suppose there is no harm in doing that.
WITNESS. As that question is asked—if a communication was n regard to that case?
Yes.
I raise this question to the court,—I don't mean any disrespect to l,—whether that is proper for me to answer: I don't object at all g into it and telling you all about it, if it is proper for me to an- t all——

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Q. Well, you can simply state whether you wrote such a letter?

A. Well, when you ask about that business,—he and I were attorneys in the same case and associate counsel, and the question arises in my mind whether it is a professional—whether I am not violating my professional duty to reveal it; that is the point that comes up and the point that I shall ask the Senate to pass upon and not myself; I have examined the law in the library myself; I am willing to answer it, and I prefer to answer it, but the responsibility of answering that question I want to have the Senate fix.

Q. Mr. Jones was not your client?

A. Mr. Jones and I were associate counsel defending the same client, Mr. Manderfeldt, and what passed between us—I presume you refer to that—was in regard to that case in which we were jointly associated for the same client; I don't think I have a right to divulge it. I have examined the law a little to see my duty; I am perfectly willing to give it, but I want the Senate, if the Senate orders me to divulge it,—that they take the responsibility and not me. I don't wish to be understood that this is captious, you understand. I want to do my duty simply, as I understand it professionally, and all the facts you want, gentlemen, you direct me to give them.

Mr. ALLIS. That is, you don't want to do it without permission of your client?

The WITNESS. The permission of my client, yes, sir.

The PRESIDENT *pro tem.* You cannot be compelled, Mr. Brownell, to divulge anything between yourself and your client.

The WITNESS. This is between the associate counsel, and as I understand the law—I have examined it a little this morning down in the library, and I understand that my associate counsel cannot divulge what I tell him, nor I what he tells me; that it is the property of the client,—our communications regarding his case; that is my understanding of it; I don't wish to argue it at all.

The PRESIDENT *pro tem.* Do the managers desire to submit it?

Mr. Manager GOULD. We are satisfied with the ruling of the chair; if the chair rules that the question shall be answered that will be sufficient for our purpose. This is not any communication between attorney and client, and does not come within the rule at all.

The WITNESS. I simply, for myself, wish to state what it is.

Mr. ALLIS. It is the witness that interposes the objection.

The WITNESS. It is in regard—

The PRESIDENT *pro tem.* Counsel do not object, but it is the privilege of the witness.

The WITNESS. I raise it, because I don't understand that it is my duty or privilege, without the consent of my client, to divulge what passed between me and my associate counsel in the same case.

Mr. Manager DUNN. [To the witness.] There was no question asked Mr. Brownell, as yet, as to what you ought to divulge; it is simply a question, did you make a communication?

The WITNESS. That was not the question; the question was if I made a communication to Mr. Jones in regard to the case of Howard vs. Manderfeldt.

Mr. Manager DUNN. Yes, without asking you what the contents of that communication were; this objection of yours is raised without any cause.

The WITNESS. It was not raised, pardon me, without any cause.

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iestion asked called for that in response, in regard to that matter.
ou ask me if I sent a letter?
Manager DUNN. That is the question.
WITNESS. If you ask it that way—
Manager GOULD. Let the reporter read the question.
reporter read the question as follows :—

Brownell, did you send a communication to Jones & Gove, of Rochester, ing the case of Howard vs. Manderfeldt, in the month of July last?

WITNESS. That is as I understand it, and that is the reason I the point.
Manager GOULD. Did you send such a communication?
WITNESS. I simply raise that question.
PRESIDENT *pro tem.* Answer the question.
WITNESS. I sent a communication.
Did you state in that communication, Mr. Brownell, referring to irge of the court, in the case of Howard against Manderfeldt, that drunk all through?"
ARCTANDER: We object.
WITNESS. Before we come to that point now, I want this court upon whether this is a privileged communication or not.
ARCTANDER. We object to it as incompetent, anyhow.
WITNESS. And if the Senate simply orders it I am perfectly to answer.
PRESIDENM *pro tem.* I desire to submit that question to the Sen- to whether or not it shall be answered.
ARCTANDER. Our objection as to the question itself being incom- can be decided afterwards. That objection will not be decided vote. The vote will decide simply whether it is a privileged unication; that, the Senate will decide now, and we can raise our on afterward.
PRESIDENT *pro tem.* The question will be submitted as to sus- the objection of the counsel.
Manager DUNN. There is no objection now, I understand; I tand that the witness raises the question as to its being a privi- communication.
ARCTANDER. We will make our objection afterward.
PRESIDENT *pro tem.* I understand Mr. Arctander to object.
ARCTANDER. We will withdraw our objection for the present, in o have this passed upon, and then we will renew our objection ard.
ALLIS. The witness claims that it is a privileged communication, at is the question for the Senate now to decide.
PRESIDENT *pro tem.* The roll will be called; those in favor of the s answering the question will say aye, as their names are called, ose opposed, no.
Secretary proceeded to call the roll.
itor HINDS, [when his name was called.] Mr. President, I ask to he question read.
PRESIDENT *pro tem.* The reporter will read the question.
reporter read the question.
itor HINDS. And this is upon the point that the witness raises, was a privileged communication?

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Mr. ARCTANDER. That is all. We haven't objected to the question.

Senator POWERS, [when his name was called.] Mr. President, I have just come in, and don't understand what the question is, and will ask to be excused from voting.

The PRESIDENT *pro tem.* I would suggest that the names of those who refuse to vote be called.

Senator GILFILLAN, C. D. I supposed the question was upon sustaining the objection.

The PRESIDENT *pro tem.* No, sir; there was no objection made except by the witness. The witness interposed an objection—

Senator GILFILLAN, C. D. What is the question, then, before the Senate?

The PRESIDENT *pro tem.* The question is, shall the interrogatory be answered by the witness?

Senator GILFILLAN, C. D. I vote aye.

Senator CAMPBELL. Mr. President, I move that the roll of the absentees be called.

The PRESIDENT *pro tem.* The rules require that every senator present shall vote upon the question before the Senate.

Senator POWERS. If you will just briefly state the question again, Mr. President, I may be able to vote. I was not in the room when the question came up. I do not wish to shirk any responsibility.

The PRESIDENT *pro tem.* The witness himself shrinks from answering the question, on the ground that it would be a betrayal, on his part, of confidence towards his client; or, he puts it as a privileged communication between himself as counsel and his client, as I understand it.

Senator POWERS. What is the question?

The PRESIDENT *pro tem.* The question was, in substance, whether or not he stated, in a communication to Jones & Gove, that a certain charge was "drunk all over."

Mr. Manager GOULD. "All through."

Senator POWERS. Is the question, shall the witness be excused, or shall he answer?

The PRESIDENT *pro tem.* The question is, shall he answer that interrogatory.

Senator POWERS. I vote aye.

The list of the absentees was called by the Secretary.

The roll being called, there were yeas 18, and nays 10, as follows:

Those who voted in the affirmative were—

Messrs. Aaker, Campbell, Case, Clement, Gilfillan C. D., Hinds, Johnson A. M., Johnson F. I., Johnson R. B., Miller, Perkins, Powers, Rice, Shalleen, Tiffany, Wheat, Wilkins and Wilson.

Those who voted in the negative were—

Messrs. Bonniwell, Buck C. F., Crooks, McCrea, Mealey, Morrison, Officer, Peterson, Shaller and Simmons.

The PRESIDENT *pro tem.* The roll having been called there were ayes 18, and nays 10; so the question will be answered.

Mr. ARCTANDER. Mr. President, I now object to the question for the reason that it is incompetent. I think that objection will be sufficient. I would ask the Senate—

The PRESIDENT *pro tem.* The objection is overruled.

Mr. ARCTANDER. I suppose, Mr. President, we have a right to be heard upon that.

The PRESIDENT *pro tem.* The Senate have just passed upon that.

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. ARCTANDER. I understood, Mr. President, that we were allowed
:hdraw our objection, with permission to renew it afterward, for
:ason that it is incompetent and improper—not on the ground that
itness claimed it under,—so that a vote could be had simply upon
uestion of privilege that he has raised. I understood that we could
renew our objection.
e PRESIDENT *pro tem.* You may proceed, Mr. Arctander.
. ARCTANDER. May it please the court, it is now about the hour
ljournment, and I would like to have the privilege of postponing
rgument upon that question until after the noon recess. There is
thority or two that I desire to present at that time.
. Manager DUNN. It will take but a minute, and you had better
it now.
. ARCTANDER. There is an authority that I have in my room,
ı I desire to present, and after hearing it read, the managers may
lling to admit the correctness of my proposition. My objection is
:ou cannot ask the witness what were the contents of the letter, be-
, in the first instance, the letter is the best evidence. My second
:ion is, that you cannot ask him whether he wrote so an so, unless
irst show him the letter, because a witness has a right to see the
and examine it before he is asked to state whether he ever wrote
d so; and I will produce authority to that effect, if the managers
that that is good law.
. Manager DUNN. There is no doubt that that is the law, if the wit-
:laims that he desires to see the letter, before answering the ques-
But if he is willing to answer without seeing the letter, the objec-
s waived.
. ALLIS. The trouble is that the witness is not trying the case.
. Manager DUNN. If the witness does not desire to see the letter,
ubt that waives the objection; but there is no question about the
eing that the letter must be shown to the witness if he desires to
.
. ALLIS. That does not prove the contents of the paper.
. Manager DUNN. Well, this is not an attempt to prove the con-
of a written document.
e PRESIDENT *pro tem.* It wants just seven minutes of the time for
:. What is the pleasure of the Senate?
ıator CROOKS. I move, Mr. President, that we take a recess until
ɔast two.
. Manager HICKS. Before that motion is carried, Mr. President, I
: to say that we have two witnesses whom we shall not need, and
:sire to have them come forward and be sworn, so that they may
n. Their names are A. T. Gamble, and C. F. Tyler.
e PRESIDENT *pro tem.* The witnesses will be sworn unless objection
ıde.
ıator CROOKS. I now renew my motion, Mr. PRESIDENT.
e PRESIDENT *pro tem.* The Senate will now take a recess until
P. M.

AFTERNOON SESSION.

e court met at 2:30 p. m.
ıator Wilson in the chair.
. Manager HICKS. Mr. Sanborn will take the stand at present, as

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his business calls him away and the counsel have consented that he may be put on. We recall him upon another point.

SHERBURNE SANBORN

Re-called as a witness by the prosecution, testified.

By Mr. Manager COLLINS.

Q. Mr. Sanborn, I desire to call your attention to a time about the 21st of June at a general June term in Marshall, 1881,—you remember that time, do you?

A. Yes.

Q. Were you on the same train that Judge Cox was on, going from Tracy to Marshall on that day?

A. Yes, sir, I was.

Q. You may state whether or not you had your business car along?

A. I did; yes sir.

Q. Did Judge Cox come in the car?

A. Yes.

Q. You may state his condition as to sobriety and inebriety at that time?

A. Well, at the time I thought he was under the influence of liquor.

Q Now, Mr. Sanborn, do you know anything about any luggage, or goods, bundles of any kind that were brought into the business car?

A. There was one left in the front end of the car, what we call the kitchen.

Q. What was that package?

A. It was an overcoat tied up in a shawl strap.

Q. Did you see anything besides an overcoat and that shawl strap?

A. Well, I saw part of a bottle in there, that was all, sir.

Q. Part of a bottle?

A. Yes.

Q. Do you know what were the contents?

A. I didn't, only by the smell.

Q. Now, tell us about that, Mr. Sanborn, how you came to know the contents by the smell?

A. I was sitting in the car talking with Mr. Gale and Mr. Allen, and I think it was Mr. Allen made the remark—asked what that smell was in the car, and I got up immediately and went into the kitchen; he spoke to me and came in there and his overcoat that was tied up in the shawl strap—it appeared that whoever left it, left it on a chair or wood-box or something, and it had rolled off on the floor and this bottle had broken and the contents run out on the car floor.

Q. The bottle was then in the overcoat?

A. Part of it was.

Q. Part of it remained in the overcoat.

A. Yes.

Q. And from the smell you judged it to be—what?

A. I judged it to be whisky.

Q. Can you tell us whose overcoat that was?

A. No, sir.

Q. Did you see anyone afterwards having it?

A. I couldn't swear that I did.

Q. Give us your best judgment as to whose it was?

A. I shouldn't want to say.

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Mr. ARCTANDER.
You did not see it before or after?
No, sir.
You don't know either who put that whisky bottle in that over-

No, sir.
You don't know whether it was any of the train hands or the one wned it?
No, sir; I never saw it until my attention was called to it there in r.
Do you remember what the color of that overcoat was, what the of it was, whether it was a winter coat or otherwise?
Well, sir, I couldn't swear positively; my impression is it was a heavyish overcoat, but I don't say. I didn't examine it or pay attention to it.
Was it an overcoat with fur on?
No, sir; I didn't see any fur on it; it was tied up in a shawl strap; 't examine it.
Did you ever see Judge Cox with his overcoat on?
With fur on?
Yes.
Yes, sir.
It was not that coat?
No, sir, it was not that coat.
Have you ever seen him with any other coat than that?
I think I have.
Well, when?
I think I have seen him at different times, and I think I saw him v Ulm at one time with a different overcoat on.
With a different overcoat?
Than the one with fur on.
How long ago was that?
I can't tell you exactly sir; it was a spring overcoat or a lightish at that I saw him have on.
A spring overcoat?
Yes.
Not an overcoat like the one you saw there at this time, either?
No, I should say not.
State whether or not you invited Judge Cox into that business

I did not, sir.

Mr. ARCTANDER.
Who was the conductor on that train, Mr. Sanborn?
His name was Scripture.
Did you not send Scripture after Judge Cox and invite him to go e?
I did not, sir.
You are positive about that?
I am positive about that.

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HENRY M. BURCHARD

Sworn as a witness in rebuttal on behalf of the prosecution, testified.

Examined by Mr. Manager GOULD.

Q. Are you acqauinted with Virgil Seward?

A. I am, sir.

Q. Where do you reside?

A. My family are in Winona and I am in Marshall doing business and have been for the last five or six years.

Q. Marshall, Lyon county?

A. Yes.

Q. And Mr. Seward resides there?

A. Yes, is an attorney there.

Q. You may state whether or not in the month of June, on or about the 21st of June, 1881, at the town of Marshall, in the county of Lyon, Mr. Seward stated in your presence that "if the grand jury did its duty it would indict one Mahoney for selling liquor to an habitual drunkard, to-wit., E. S. Julien Cox," or words to that effect?

A. Shall I tell the circumstances just as they were?

Q. You can answer that question.

A. Well, substantially so, but not exactly.

Q. Now, you may state just what was said, and all the circumstances.

A. Well, sir, Mr. Sullivan, myself and some other gentlemen were standing in front of the Lyon County Bank; Mr. Sullivan and myself were talking. Mr. Seward came right across the street in front of us, and came up to Mr. Sullivan and addressed him, and says, "the grand jury of—" I won't say whether he said Lyon county or the grand jury of the county—"ought to indict Mahoney for selling liquor to an habitual drunkard, to-wit, E. St. Julien Cox."

Q. Now, that was stated,—was there any remark made that led to that remark?

A. Not at all; it was the first thing that he ever said to us.

Q. You were standing there talking, and he came up there and made that remark?

A. Yes.

Q. What else was said,—anything else you remember?

A. Well, sir, I will tell you about that; it non-plussed us for a moment. Mr. Seward is the partner of the district attorney, and saying so to a grand juror was rather an open expression of opinion, for, while there had been a good deal said, there had been no open talk about it, and that was the first bold expression of opinion about it in the town, and I said nothing or made any answer, and I don't recollect that I said anything or heard anything said, until a young man came to me and said that I was wanted in the office, and I went right away; and Mr. Sullivan and myself walked down half a block further, and then Sullivan went back again; I went right to my office; that was all I said.

Q. Did you see Judge Cox there at that term of court?

A. I saw him in the street.

Q. Did you see him when he came the first day?

A. Yes; I saw him after he came over the bridge; he was going on to the hotel, I suppose.

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Q. You saw him after he came over the bridge; what bridge did he come over?

A. That bridge I don't know anything about. There is a dispute as to when it was built, and that I don't know anything about. I know when it was and when it was not, but I don't know what time it was built.

Q. You know what bridge he came over?

A. Yes, I know that. Will you allow me to explain by going to the table and showing where the road is situated?

Q. Well, it isn't very material.

A. He came of course—my office is nearly opposite the bridge on the corner,—and he had to pass over the bridge, because I saw him half way between the bridge and the hotel steps, and they are probably fifty feet apart—probably from the bridge to the hotel steps is fifty feet, maybe seventy, but not more than that—and he had—he was within about—I should say ten or fifteen feet of the steps when I first noticed him—my attention was called to his coming to town and I went to the door and stood in the door of the office.

Q. That was the first day of the term?

A. Yes.

Q. Did you see him when he went up on the hotel steps?

A. Yes.

Q. You may state whether or not Judge Weymouth was with him.

A. Not to my knowledge; there was but one man with him—a stranger.

Q. You know Judge Weymouth?

A. I know him perfectly well.

Q. Mr. Burchard, while you are talking about the bridge, can you fix any time when you know that bridge was completed?

A. I can't; there is nothing to call my attention to it: I know it was built about that time.

Q. Now, fix a time after that when you know the bridge was completed?

A. I know it was completed the last of the week, I should say Saturday, and I recollect a circumstance connected with it.

Q. State what that circumstance was.

A. The circumstance was this: The grand jury, of course, had their action in regard to Judge Cox, and the attorneys had their action, and a meeting of the citizens was called to endorse the action of the grand jury; and Judge Weymouth met me to talk with me about the matter, and we walked on to the bridge and stood and leaned upon the banisters, you understand.

Q. The railing?

A. Yes; that was after the action of the grand jury, and it was the afternoon of the—that meeting was in the evening; I think it was Saturday; I won't say, it was the last of the week.

Q. It was the afternoon of the meeting of the citizens?

A. Yes, sir; the citizens' meeting was in the evening, and this was in the afternoon.

Q. You think it was Saturday of the first week?

A. Yes.

Q. You were on the new wagon bridge?

A. Yes, I think it was Saturday.

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CROSS EXAMINATION

By Mr. ARCTANDER.

Q. You are another of the employes of the Winona & Saint Peter R. R.?

A. I am, sir; land agent of the Winona & St. Peter R. R.

Q. Mr. Burchard, would you swear positively that Judge Weymouth was not with Judge Cox when he came there that day?

A. He was not when I saw him.

Q. He might have been a few steps behind or in front of him?

A. Well, no; he was not anywhere within twenty-five feet of him.

Q. Was your attention called at the time to the fact, whether Judge Weymouth was there or not?

A. No, sir,—

Q. It would be—

Mr. Manager COLLINS. Well, let him answer now.

Q. It would be rather a small circumstance, wouldn't it?

A. No sir; the circumstances connected with it are very vivid.

Q. Wouldn't it be rather a small circumstance whether Judge Weymouth was present or not?

A. Well, sir; if there had been three men with him there might be a dispute, but I know there was only one man with him.

Q. There was only one man that walked with him at the time?

A. Only one man; I recollect the difficulty he had in getting up on to the steps.

Senator GILFILLAN, J. B. I didn't understand the last statement, Mr. President.

The WITNESS. I recollect the difficulty that he had in getting up on the steps of the hotel.

The PRESIDENT *pro tem.* That who had?

A. That the Judge had.

Mr. ARCTANDER. I move that that be stricken out as not responsive to any question.

Mr. Manager COLLINS. I didn't ask for it.

The WITNESS. You asked me whether I knew, and I told you what I knew.

Mr. ARCTANDER. I only asked him if it was not a small circumstance whether or not Judge Weymouth was there. I move that it be stricken out, as a volunteer statement by the witness.

The PRESIDENT *pro tem.* That will be the sense of the Senate, unless objection is made.

Mr. Manager DUNN. That is a circumstance the witness has a right to show; he states why he remembers so plainly.

Mr. ALLIS. It is nothing that he has a right to say.

Mr. Manager DUNN. It is properly in evidence and I think you have no right to strike it out.

Q. You are certain that Mr. Seward used these words, that he ought to indict "an habitual drunkard to-wit, E. St. Julien Cox?"

A. No, sir; ought to indict Mahoney.

Q. Did he use the words "to-wit, E. St. Julien Cox?"

A. Yes.

Q. You are certain of that?

A. Yes.

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Did you ever hear him express himself in such a manner before?
No, sir; but my attention was called to it from the fact that Mr. ;an was a grand juror, and he addressed his remark to him.
Did you ever hear Mr. Seward express himself in such a manner ?
I never heard him say that before or since.
Have you ever heard him use an expression similar to that, "an ual drunkard, to wit, E. St. Julien Cox;" is that the way he ?
I never heard him say that before, or anything like that; I don't ;ith Mr. Seward; I attend to my business, and didn't expect to be on, and didn't want to be.
Isn't it a fact that Mr. Seward's words were, that if they wanted anything about that matter, that they would have to indict some -keeper for selling liquor to an habitual drunkard?
No, sir.
He didn't say anything of that kind?
No, sir; he said it precisely as I have mentioned it.
This matter has not been brought to your attention at all before ime here now?
Yes, sir; I walked with Mr. Sullivan from that point down to fice, and I talked with him then about it.
You spoke of the remark at that time?
Yes, sir; with Mr. Sullivan.
As to what the remark was or not?
I discussed those words, as to what the insinuation which Mr. d had thrown out meant.
Did you take down the remark at the time?
No sir.
Pay any particular attention to it after that time?
My attention was called to it then, and has been called to it since ing came up.
Since the question has been put to Mr. Seward about it?
No; the question was—when Mr. Seward began to act that way he attorneys, of course this question came right out in regard to e said.
But since this impeachment matter came up, I understand?
Yes, sir; it has been talked of since.
It has been talked of since that time, with some of the other wit- ?
I have talked with Mr. Sullivan; I don't know that I talked with the rest about that.
You have talked with Mr. Sullivan about it?
Yes.

Senator JOHNSON, A. M.
Are there two bridges across that stream, a foot bridge and a wag- dge, or were there at that time?
Now, you know, there is a foot bridge—
No, at that time—at the time of the court, the first day of the were there two bridges?
No, sir; I think the passenger had not been built; the bridge was vide enough for both, but the outside railing had not been put on ssengers. It was all together at that time.

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Mr. Manager COLLINS. That is not what the Senator wants to know; he asks whether there was an independent foot bridge.

The WITNESS. I think not; I cannot tell you; I know nothing that called my attention to that.

Senator JOHNSON, A. M. Well, what bridge are you talking about?

The WITNESS. I am talking about the wagon bridge where we all crossed after it was built. There was a new wagon bridge, but the sides for the foot bridge had not been put up at that time.

Senator Johnson, A. M.

Q. That is the bridge you swore that Judge Cox crossed?

A. I didn't see him cross that.

Q. But he must have crossed that?

A. I saw him half-way between the bridge and the hotel; yes, sir.

By Mr. ARCTANDER.

Q. Well, if that foot bridge had been there; he might have crossed that just as well as the other one, for all that you know,—where you saw him?

A. The foot bridge——

Q. They were near by each other?

A. I don't know anything about that.

Q. He might as well come over on that as on the other?

A. Yes.

Q. I mean to say that from where you saw him first, he might have come from one direction as well as the other, for all you know?

A. Yes, there is no dispute about that; I didn't see him crossing the bridge or see him on it.

LEWIS BROWNELL

Recalled for further examination.

Mr. ARCTANDER. I understand, Mr. President, that Mr. Brownell is recalled, and it may be considered that the question is put to him again; the reporter has it.

The PRESIDENT *pro tem.* I desire to state to the Senate that at the time I stopped Mr. Arctander, just before the recess, I understood that he had withdrawn his objection entirely, which was the reason why I made the remark I did.

Mr. ARCTANDER. Mr. President, I make this objection, that the question is incompetent,—not having any reference to the claim that it is a privileged communication, because my idea of that question coincides with that of a majority of this Senate,—that the contents of that letter would not come under the head of privileged communications. I did not have any faith in that point; but it was one that the witness raised, and not I. Now, I maintain that this question is entirely incompetent and that that matter was settled, if it can be called settled, as early as the time of the trial of Queen Caroline, when the Lords sent questions to the Judges, asking whether a witness on cross-examination could be asked whether or not she had made certain statements in writing, without first exhibiting that writing to her, and giving her a chance to examine it, to which the Judges answered, if I remember correctly, that they had no difficulty in answering that question in the negative. As a matter of fact it was not new law, but was a principle of law as old as the common law itself, and it had been practiced in that way for

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reds and hundreds of years. I desire to call the attention of the e to a few text works upon evidence which lay down the rule, I , so clearly and particularly that there can be no question about orrectness of our position.

ıator GILFILLAN, J. B. Will you object, Mr. Arctander to an inter- on, so that we may have the reporter read the question and the ob- n to it; so that we may be advised as to what it is. I was not nt this forenoon, at the time this matter came up.

e reporter read the question, and the objection to the same.

. ARCTANDER. We object to that question as incompetent. I now ave to call the attention of the court to the first volume of Green- ıpon evidence, our standing authority upon that subject. I read sections 462 and 463.

credit of a witness may also be impeached by proof that he has made *state- out of court contrary to what he has testified at the trial.* But it is only in such rs as are relevant to the issue that the witness can be contradicted. And this can be done, it is generally held necessary in the case of verbal state- , first to ask him as to the time, place, and person involved in the supposed ıdiction. It is not enough to ask him the general question, whether he has aid so and so, nor whether he has always told the same story, because it may ntly happen that upon the general question, he may not remember whether so said; whereas, when his attention is challenged to particular circumstan- ıd occasions, he may recollect and explain what he has formerly said. This of proceeding is considered indispensible, from a sense of justice to the ss; for, as the direct tendency of the evidence is to impeach his veracity, on justice requires that by first calling his attention to the subject, he should ın opportunity to recollect the facts, and, if necessary, to correct the state- already given, as well as by a re-examination to explain the nature, circum- s, meaning, and design of what he is proved elsewhere to have said. And ıle is extended, not only to contradictory statements by the witness, but to declarations and to acts done by him through the medium of verbal commu- ons or correspondence, which are offered with the view either to contradict ıtimony in chief, or to prove him a corrupt witness himself, or to have been of attempting to corrupt others.

imilar principle prevails in cross-examining a witness as to the *contents of a* or other paper written by him. The counsel will not be permitted to repre- n the statement of a question, the contents of a letter, and to ask the wit- whether he wrote a letter to any person with such contents, or contents to ke effect, without having first shown to the witness the letter, and having him whether he wrote that letter, and his admitting that he wrote it. For ıntents of every written paper, according to the ordinary and well established of evidence, are to be proved by the paper itself, and by that alone, if it is stence. But it is not required that the whole paper should be shown to the ss. Two or three lines only of a letter may be exhibited to him, and he may .ed whether he wrote the part exhibited. If he denies, or does not admit ıe wrote that part, he cannot be examined as to the contents of such letter, e reason already given; nor is the opposite counsel entitled in that case to t the paper. And if he admits the letter to be his writing, he cannot be whether statements, such as the counsel may suggest, are contained in it, ıe whole letter itself must be read, as the only competent evidence of that According to the ordinary rule of proceeding in such cases, the letter is to d as the evidence of the cross-examining counsel, in his turn, when he shall ›pened his case. But if he suggests to the court that he wishes to have the read immediately, in order to found certain questions upon its contents, they shall have been made known to the court, which otherwise could not ›r effectually be done, that becomes an excepted case; and for the convenient ıistration of justice the letter is permitted to be read as part of the evidence counsel so proposing it, subject to all the consequences of its being con- d.

night say right here, Mr. President, that I understand this rule has

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been modified of late years in the United States, so that the rule goes further now than it did at the time when Mr. Greenleaf wrote, namely, that it is necessary to show the witness the letter, the whole letter, and that he has a right to read the whole letter and examine it carefully. I understand that the later authorities have gone to that extent, so that part of the rule which says he may be shown two or three lines does not any more prevail according to the line of late decisions in the United States, but I think that otherwise the rule has not been limited in any form, shape or manner whatsoever, except in England where there is a late statute, one passed during the reign of Queen Victoria, that limits the rule to a certain extent, and if I do not forget, the rule is laid down in Stephens' Digest of Evidence, just in the very words of that statute. Of course, that was a work that was written upon the law of evidence of England, and it was so, at least I think. I have not examined it lately, but if I remember it correctly it was so laid down in the English edition of that book, which is the only one I have myself. I don't know how it may be in the American Edition, I have not examined it myself.

The PRESIDENT *pro tem.* If you will permit me, Mr. Arctander,—it is unnecessary to read farther. I suppose that no lawyer will dispute the plain rule, that the contents of a letter cannot be proved unless it is present and can be shown to the witness,—unless they first show that the letter is not in existence or has been destroyed.

Mr. ARCTANDER. I don't apprehend that has been shown, so that it certainly would be incompetent.

The PRESIDENT *pro tem.* I suppose no lawyer would dispute that.

Mr. Manager GOULD. The general proposition stated by the counsel is unquestionably law. We make no dispute about that. But it is a privilege on the part of the witness to insist or not to insist upon seeing this letter. If he sees fit to answer the question without having it, then it may be omitted.

Mr. ARCTANDER. I don't understand it so at all,—that is a privilege of the witness.

Mr. ALLIS. The witness is not trying the case at all.

The PRESIDENT *pro tem.* The letter will be the best evidence unless it is shown that it is not attainable,—that it cannot be obtained or has been destroyed. I do not think you can question the witness as to the contents of the letter.

Mr. Manager HICKS. Mr. President, may I be allowed to make a statement. The letter in question, as the counsel have good reason to believe, was in the possession of Hon. R. A. Jones, of Rochester. He has been subpœnaed, *duces tecum*, to produce the letter. We have just requested him to produce the letter and he tells me we shall never get it. I make that statement and if the court desires ——

Mr. ALLIS. Won't you repeat that, Mr. Hicks.

Mr. Manager HICKS. The letter which Mr. Brownell wrote is in the possession of Hon. R. A. Jones, of Rochester. As we are informed and believe it was written to him with the statements incorporated in the question. A subpœnæ *duces tecum* was issued and duly served upon Mr. Jones to be present forthwith and produce the letter. Mr. Jones is present and upon my request for the letter as he came into court just now, he says we never shall get it.

Mr. ARCTANDER. I advise you to try to get it.

Mr. Manager HICKS. We have tried to get it. We have subpœnaed the gentleman here under a subpœna *duces tecum* mentioning the letter.

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I believe the Secretary has the subpœna duly returned; if he has not, Sergaant-at-Arms will return it. The witness refuses to produce the r.

nator GILFILLAN J. B. Has he been sworn?

r. Manager HICKS. He has not; he has just come into the court room in the last three minutes.

r. ALLIS. There is a way to get it; it has not been lost.

ıe PRESIDENT *pro tem.* What is the pleasure of the Senate?

r. Manager GOULD. I understand the objection to be sustained

ıe PRESIDENT *pro tem.* It is, unless the letter is shown to the wit- that is my decision.

Mr. Brownell are you acquainted with Judge Buckham of Fari- t?

I know him well.

Do you remember of his holding a term of court at Waseca since ecame Judge?

Oh, yes, every time—all that he has held there since he was ap- ted.

How many terms of court has he held there?

I don't remember just when Judge Lord died; he was appointed ıcceed Judge Lord—time passes so rapidly—I don't remember when ent on the bench. Two years ago in March, my impression is, was irst term he held, but—yes, I think it was in March, 1880, that he the first term there.

March 1880?

I should think so,—yes.

Do you remember of having a conversation with Judge Buckham at term of court with regard to Judge Cox?

I do not remember; I might have had.

Did you not say to Judge Buckham at Waseca, at the end of the ːh term, 1880, that Judge Cox had been drunk while presiding at erm held by him there in May 1879?

Not when presiding; I might have said that he was drunk when as there, but not when presiding; that is, I mean upon the bench; ıy have said during nights when he was there, but then I was not king of my own knowledge.

You may have said during nights that he was there?

Yes, but if I did, I spoke from hearsay.

You never saw him drunk nights?

I never saw him drunk nights, but I heard of his being out with ɔoys.

You didn't see him evenings at all?

No, sir.

Do you remember the time when the Judge charged the jury in ːase of Howard vs. Manderfeldt, at the May term, 1881, in Brown ıty, in New Ulm.

Certainly, I do.

Did you not state to Mr. R. A. Jones, at or about the time the ge charged the jury in that case, that that charge was drunk all the through?

r. ARCTANDER. I object to that, Mr. President, because that ques- has been put and answered once before dinner.

r. Manager GOULD. That was before dinner?

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Mr. ARCTANDER. Yes, it was before dinner.

Mr. Manager GOULD. I beg the counsel's pardon; I have not asked that question; it was suggested to me since we took the recess.

The WITNESS. May I answer? It was objected to, and I wanted to know whether the gentlemen want it.

Mr. ARCTANDER. Well, I may be mistaken about that.

Mr. Manager GOULD. You are mistaken about that.

The WITNESS. What is the question?

Mr. Manager GOULD. The reporter will read the question.

The reporter read the question.

The WITNESS. I stated that in substance, not in just that language, but I think in substance.

Q. That was at New Ulm on the first day of the term in May 1881?

A. Yes, sir, when the charge was delivered. I don't mean the exact language, but the substance.

Mr. Manager GOULD. Take the witness.

Mr. ARCTANDER. If you want to put Mr. Jones on you can put him on now, and I will cross-examine this witness again.

The WITNESS. If you will permit me, gentlemen, I don't want a dozen witnesses run in between. My time is worth something. I have stepped off half a dozen times for other witnesses. If other witnesses want to come on, very well, but I don't want to sit here all winter or all spring.

Senator GILFILLAN, J. B.—Well, you are drawing pay.

The WITNESS. Well, small pay. I want to oblige you, but I don't want to sit here too long.

RE-DIRECT EXAMINATION

By Mr. ARCTANDER.

Q. When you stated, Mr. Brownell, in your cross-examination, that you have said that Judge Cox was drunk, at the close of the term,—what do you mean by the term "at the close?"

A. I mean after the term had adjourned; I saw him the next day, I think; it was before he went away; I did not mean in the term.

Q. It was while he was there, you mean, but after the term had adjourned?

A. Yes, sir.

Q. Court had adjourned *sine die*, or at least his connection with it had ceased?

A. At Waseca, I mean.

Q. I will ask you to explain, Mr. Brownell,—you stated that you said in substance, to R. A. Jones, at New Ulm, at the time when the charge was delivered in the case of Howard *vs.* Manderfeldt that the charge was drunk all through; I would ask you to state in what sense, with what understanding and under what circumstances you made it.

A. It was not stated with the idea that the Judge was drunk, but that the charge was wrong,—wrong in the law,—incorrect. Thought so then, and think so now.

Q. You did not refer to his condition?

A. Not a word, and I haven't thought of it. I use that word frequently, and have used it in the sense that the charge was entirely wrong.

Q. As a strong expression?

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Yes; I used it in that sense, and I have heard Mr. Lewis use it in ıme sense, and the same thing,—I wouldn't use it in court where I estifying,—that is, with precision, but as an expression,—I have not ıuently used it in the same manner. I have used it, and so have others.

You had no reference in it to the Judge's condition?

No, sir.

Now you say, in your opinion, the charge was wrong, erratic?

Yes; I thought it was unsound in law, and think so now.

Now, were those points in the charge that you thought were un- l in law,—state whether that was upon well established principles on mooted questions.

I will state what it was briefly.

Well, you can answer my question upon that,—whether it was :hing that was well established?

Well, I should think that it was upon questions that judges and :rs very much differ,—the question of fraud,—what was fraud v and fraud in fact; it was somewhat mixed a matter; at least I so :stand it.

Now, that was what you thought the Judge was wrong upon?

Yes; I don't say wrong in the sense that he was not in the right ɜ, but that his charge was illegal, unsound in law, wrong in its legal t.

That is your opinion?

Yes.

You only stated it then, as a matter of opinion, and didn't state ɜ wrong?

I never examined any authorities; but it was just the impression ıwyer, that the legal proposition made upon me.

You have heard judges that you knew to be perfectly sober, state ɔsitions of law that were incorrect?

Oh, very often. I do not agree with a lawyer because he is on ɛnch, any more than off;—that is, always.

That is all, unless you want to make some further explanation in l to it.

That was all; it was simply in that sense that I used it.

RE-CROSS-EXAMINATION

Mr. Manager COLLINS.

How long have you been in practice?

I think a little over 27 years.

How long have you been in practice in that judicial district?

Since the spring of 1868.

Did you ever in your life, refering to a charge made by the pre- ; Judge in that district, other than Judge Cox, speak of his charge ing drunk?

I do not know that I have used it in regard to a charge;—it is an ssion that I have used. I do not know that I have used it in re- :o any particular charge,—do not know that I have. I *might* have t, but I do not remember.

When you examine an opinion of the Supreme Court of the state, loes not state the law as you understand it, are you accustomed to ıat the opinion of the court is drunk?

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A. There is one charge that I have pronounced drunk—expressed that opinion—and it is reported in the reporus of this state.

Q. What is that?

A. The case of the State vs. Beebe; I cannot tell you what it was. You can read it for yourself: I think the opinion is drunk.

Q. You think it was drunk because it was erroneous?

A. Utterly unsound.

Q. You mean by that then, that the Judge was drunk when he delivered it?

A. No, sir, I do not; it is the expression that I use to say it was utterly unsound and wrong in law.

Q. Do you remember any other instance when you have spoken of the opinion of a judge as being drunk?

A. I do not know that I remember of any now, I say it is an expression that I frequently use;—I can tell you in what sense I use it, if you want me to.

Q. I think you have sufficiently explained that.

A. I have; all that I desire to.

Q. Referring to this charge in Howard against Manderfeldt, why do you say that that charge was drunk?

A. Because I think the legal proposition—I think the question of fact should be submitted to the jury different from what it is; that he has charged something as a question of law that I thought was a question of fact.

Q. What was the question?

A. Why, it was a question of fraud in the transfer; of course I have not the charge. If the reporter had it here—I have not seen it, at least, to examine it with any particularity since; I examined it once and ran it over.

Q. Well, you think because the judge charged the jury as a question of law what should have been regarded as matters of fact, that, therefore, the charge was drunk?

Q. Well, the questions of law and fact were not submitted to the jury as I think they should have been; they were mixed up; they were not submitted as they ought to have been.

Q. Badly mixed, were they?

A. They were not clear. If I could see it and look it over I could tell how badly mixed. The reporter has got it and it has been written out, and if you want to look it over you can get it. I cannot tell you now, but it was a mixed charge,—not clear,—and unsound in law.

By Mr. ARCTANDER.

Q. You stated that you heard other attorneys use that expression in the same way; that Mr. Lewis did?

A. Yes.

Q. When did you hear him say anything about,—use the same expression?

A. I heard Mr. Lewis, Tuesday afternoon, in my office, use precisely the same expression in regard to another charge.

Q. What did he say?

A. He said in speaking—he was coming up here—into my office—we were talking something about this trial, or at least, I think this matter about this trial, and about this in New Ulm—he was coming up, and I was coming up, some of the witnesses coming up on this trial; and in speaking we were talking about this charge,—this charge here,

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ve are speaking of now,—as being the charge that was unsound in nd I expressed the opinion that I had of it. He made this remark says, in speaking, or something in speaking about—I can not tell ner I can use his words, but as if somebody had spoken to him some charge that was drunk; he said, "when I heard a drunken e talked about, I thought that the charge in Albrecht against "—a case mentioned here, that Judge Cox delivered—"was the test charge that I ever heard Judge Cox give, and he was perfectly when he gave it."

Lewis said that?

Yes; went on to say that it was erratic and strange.

And he went on to say that he was sober?

Oh, he was perfectly sober at the time.

. Manager GOULD. That was a charge delivered by Judge Cox?

e WITNESS. Yes, and it went to the Supreme Court. He used it it sense,—that is the sense in which he and I used it.

That is the case in which the Supreme Court sustained him in, lrunken charge?

The decision shows, don't ask me—

It did?

The judgment was affirmed.

e PRESIDENT *pro tem.* If you heard a sermon preached that you ot believe in, would you call the sermon drunk?

e WITNESS. Well, perhaps my reverence for the cloth, would pre- that expression.

. Manager GOULD. Mr. Brownell, you may stand one side for the nt, but we will not dismiss you.

ROBERT TAYLOR

alled as a witness in rebuttal on the part of the prosecution, ed.

ined by Mr. Manager GOULD.

Do you remember meeting Mr. Brownell, at the time that you ed that you were up there at Waseca, attending a term of court there by Judge Lord?

I do.

Where did you meet, and when?

I was there two days, a week apart, and I saw him each time; am not able to fix with any clearness in my mind just where I ee him the last day that I was up, but my impression is that it was e hotel first, either at the hotel, in the hotel, or on the steps outside he first arrived there.

Was that before, or after dinner?

It was before dinner.

You may state whether you had any conversation with him at ime.

I did.

Did you have any conversation with him regarding the matter of ness that you were there upon?

I did; after passing the time of day, he asked me if I had a case urt; and I told him that I had a couple of motions that I wanted e heard, if it was possible at that term.

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Q. Did Mr. Brownell say to you at that time and place that Judge Cox was drunk, or words to that effect?

A. He did.

Q. What did he say?

A. After telling me that I—

Mr. ARCTANDER. We object to that. I apprehend that all they can do is to ask whether he did or not, and then it is for us upon cross examination to find out what was said.

Mr. Manager GOULD. Take the witness.

Mr. ARCTANDER. I don't belive we care to ask any questions.

R. A. JONES

Sworn as a witness on behalf of the State in rebuttal testified.

Examined by Mr. Manager GOULD.

Q. Mr. Jones, where do you live?

A. In Rochester, this state.

Q. What is your profession?

A. Practicing attorney.

Q. Are you acquainted with the respondent, E. St. Julien Cox?

A. I am.

Q. Are you acquainted with Mr. Brownell?

A. Of Waseca? Yes, sir.

Q. Were you in attendance on the last May term of the district court, in Brown county, held at New Ulm, and presided over by Judge Cox?

A. I was there the first day of the term.

Q. Had you business there at the time?

A. I had.

Q. Tried some cases there?

A. Assisted in the trial of a case.

Q. What was the case?

A. Howard against Manderfeldt.

Q. Was Mr. Brownell there at the time?

A. He was.

Q. Did you have any conversation with Mr. Brownell at that time?

A. A great deal of it.

Q. Did Mr. Brownell and you converse as to the condition of the Judge there at that time?

A. We did.

Q. Did Mr. Brownell say to you, there, during the trial of the case of Howard against Manderfeldt, that the Judge was intoxicated?

Mr. ARCTANDER. That is objected to for the reason that no foundation has been laid.

Mr. Manager GOULD. The foundation was laid in the examination today.

Mr. ARCTANDER. I think you won't find any foundation laid there. He stated absolutely there that the Judge was drunk at Waseca.

Mr. Manager GOULD. I asked upon both of these questions; I asked the witness, Mr. Brownell, during the forenoon, whether or not he had a conversation with Mr. Jones as to the Judge's condition at that time, that is, during the trial of Howard against Manderfeldt I also asked him whether he had a conversation with him in regard to Judge Cox's condi-

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ı at the Waseca term. Both of these questions will be shown to have n asked by an examination of the reporter's minutes.
Ir ARCTANDER. I ask then, that the minutes of the reporter be read.
Ir. Manager GOULD. All right.
'he PRESIDENT *pro tem.* The reporter will read the evidence of Mr. wnell upon that point.
'he reporter read the evidence.
Ir. Manager GOULD. You may answer.
'he WITNESS. What was the question?
Ir. ARCTANDER. The question should be put in the same way as it to Mr. Brownell.
. Did Mr. Brownell say to you at that time and place, to-wit., New), last spring, when you were trying the case of Howard against Man-eldt, or about that time, in substance, that the Judge then presiding drunk?
. If he did I have forgotten, sir.
. You had some conversation with him as to the condition of the ge?
. A good deal; yes. sir. I did with him and others—more with rs than with Mr. Brownell. The remark that you speak of was le, but my recollection is that Mr. Brownell did not make it.
. Did he use any word of a similar import?
. Not implying as much as that by a good deal, if I understand the ning of the word drunk. He didn't use a word that was equivalent runk.
. What was the word he used?
r. ARCTANDER. We object to that.
r. ALLIS. We object to cross-examining this witness.
r. Manager GOULD. We are not cross-examining him. The question hether he said this in effect. Now, if he used the word intoxicated ad of drunk it is for this Senate to say whether the words are equiv-t. If he used the phrase "under the influence of liquor," it is, in tance, what he is asked here, and it is for this Senate to determine, , whether or not it is so.
r. ARCTANDER. Mr. President, I think the rule is well established you cannot ask a witness, called to impeach another, anything ex-the very language that was used; and to ask him did he say so and r words to that effect,—calling for an answer yes or no, and not call-or anything else. If the Senate will give me time I can certainly authorities upon that.
ıe PRESIDENT *pro tem.* The witness has already said that he did not ny such strong term.
:. ARCTANDER. Or anything equivalent to it.
:. ALLIS. Or anything like that.
Mr. Jones, do you understand the words intoxication and drunk the same or import the same?
Not necessarily; he didn't use either of those words to me, how-

Didn't use either of those words; do you understand that being r the influence of intoxicating liquor is equivalent to intoxication?
No, sir.
Explain then what you understand by the expression, "being r the influence of liquor."
'. ARCTANDER. We object to that as cross-examination of this wit-

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ness. We do not think this witness comes under the category of an unwitness, so that the court would allow them to examine him.

Mr. Manager HICKS. He has testified once, as to being an unwilling witness, but the counsel would not let it come in.

Mr. ARCTANDER. I object to it as not proper rebuttal, not proper examination of the witness, nor is it material or relevant.

The PRESIDENT *pro tem.* All it would amount to would be an expression of his opinions.

Mr. ARCTANDER. That is all, and I do not think he would be called up from Rochester for that.

Mr. ALLIS. He is not an expert on the subject.

Mr. ARCTANDER. It is certainly immaterial and irrelevant.

Q. You say, Mr. Jones, you had a conversation with Mr. Brownell at that time about the condition of the Judge?

A. I did, more than one.

Q. What brought about the discussion about the condition of the Judge?

Mr. ARCTANDER. That is objected to as not proper rebuttal.

Mr. ALLIS. It can make no possible difference how they came to talk about it.

Senator GILFILLAN, J. B. Mr. Presideni, I would like to ask a question, if there is no objection, or let counsel ask it, one or the other.

Mr. Manager GOULD. Let the senator ask it.

Senator GILFILLIN J. B.

Q. What did Mr. Brownell say upon that occasion, as to the respondent's sobriety or inebriety, if anything?

Senator CASTLE. Mr. President, it seems to me that is hardly a proper question to be asked either by the Senator or counsel.

Senator GILFILLAN J. B. I want to get at the facts in this case.

Senator CASTLE. On rebuttal, I suppose there is a specified purpose for which the witness can be introduced.

Senator GILFILLAN J. B. I think it is proper in rebuttal, and I would like to have the question taken down and see whether we can get at the facts.

Senator CROOKS. Let us have the question reported, Mr. President.

The PRESIDENT *pro tem.* I will have the question submitted.

Senator CASTLE. I think the chair can decide it.

The PRSIDENT *pro tem.* It does not seem to me as if it was proper rebuttal, although it is within the discretion of the Senate to admit it.

Senator POWERS. I would suggest, Mr. President, that the chair rule upon the question, and then if it is not appealed from, the decision of the chair will stand.

Senator GILFILLAN, J. B. I would suggest, Mr. President, that I asked this question because I think that it is proper rebuttal, but if it does Mr. Brownnell any wrong, the consequences can not be injurious to him. He is right here, and can take the stand again, and make any explanation he sees fit, and I, for one, shall be anxious to have him do so. I think the question is proper myself, and I ask that it be submitted to the Senate, if there is any question about it. If there is no objection made by either party, I do not see why the question should not be answered.

Senator CROOKS. I object, Mr. President; I object to the question.

Mr. ALLIS. The objection is, that it is not a proper examination of this witness; he is called te impeach. It has nothing to do—

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enator GILFILLAN, J. B. I ask, then, for a vote of the Senate upon question.

he PRESIDENT *pro tem.* I would like to have the Senate pass upon

enator CROOKS. Then let the question be reported by the steno-)her.

he PRESIDENT *pro tem.* Let the reporter read the question.

enator CASTLE. Mr. President, the reason why I object to that—as Senator has made an explanation—is this. This witness was called, ast so far as appears from the testimony at this point, for the pur-e of rebuttal. His attention has been directed to a certain term of rt, held in Brown county, to the relation between himself and the ness who has already been upon the stand at that term of court. He been asked the question whether or not this witness, who has been n the stand in behalf of the respondent, then and there made a cer- statement to him, or words to that affect. He has stated fully that as not. Now then, I don't know as the Senator has any more right sk the question than have the lawyers of the respondent. I am not re that because a man simply goes upon the stand here as a witness any Senator has this privilege to ask him an improper question. I ect not without deference—with all due deference—to the Senator n Hennepin, but I made such an objection as it struck me at the e, was proper under the circumstances. That is all. The Senator es that he thinks the question is proper. I do not know but that it Mr. President, but I am frank to say that if it is, I have studied law ain for a good many years.

he PRESIDENT *pro tem.* The reason why I desire the Senate to pass n it is that I am not clear upon it myself. I believe the Senate has over-ruled any decision that I have made yet, and I prefer that the ate should pass upon it.

enator GILFILLAN, J. B. The point is right here Mr. President. I not know that it is proper to suggest any question and I do not care ch so far as the ruling is concerned,—that alone—which way it goes, as I understand the case is stood like this: The witness Brownell been asked whether or not he said, upon a certain occasion, that the ondent was drunk. He denied that. This witness, called to im-ch him, has said, in answer to the proper question, that he did not those words; that what he did say, did not import or imply so much hat——

enator CASTLE. Nor anything like it.

enator GILFILLAN, J. B. Now, then what did he say, the Senate will n determine whether it imported as much or less, or whether it was ds to that effect,, and that we are entitled to know,—whether it was ds to that effect.

Ir. ALLIS. If the Senate will pardon me——

he PRESIDENT *pro tem.* If you will make the motion I will submit it he Senate.

enator GILFILLAN, J. B. The motion has been made.

enator CASTLE. If the proposition was as the Senator has stated I ld not have objected, and I call upon the reporter to read, if the pro-ition is not entirely different,—that the witness not only stated that did not say that but that he did not say any thing of that kind or to t effect.

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Mr. Manager GOULD. Nothing as strong as that, I think were the words.

Senator CASTLE. Not *anything like* as strong as that, I think were the words.

Mr. Manager COLLINS. Nothing as strong as that, or anything like that.

The PRESIDENT *pro tem.* Mr. Reporter, will you please read the question?

Senator CASTLE. Let the reporter read the whole testimony. As we have got into this question now, let us have it in the right shape so as to settle the whole matter.

The reporter then read the testimony of Mr. Jones to the Senate.

Senator CAMPBELL. I call for the yeas and nays.

The PRESIDENT *pro tem.* Upon the question that Senator Gilfillan asked?

Senator CAMPBELL. Upon the question propounded by Senator Gilfillan.

Senator SHALLEEN. How is the question to be put?

The PRESIDENT *pro tem.* Shall the question asked by Senator Gilfillan be answered? Those in favor of it will say aye.

Senator CAMPBELL. I beg the President's pardon. When a question has been objected to heretofore our usual way of putting the question has been, shall the objection be sustained?

Senator GILFILLAN, J. B. It does not make any difference.

Senator CAMPBELL. I suppose not, but we have been doing it in the other way.

The PRESIDENT *pro tem.* The question is, shall the objection be sustained. Those in favor of sustaining the objection will vote aye, and those opposed no. The secretary will call the roll.

The roll being called, there were yeas 10, and nays 16, as follows:

Those who voted in the affirmative were—

Messrs. Buck C. F., Castle, Crooks, Gilfillan C. D., Johnson F. I., McCrea, Morrison, Peterson, Powers and Simmons.

Those who voted in the negative were—

Messrs. Aaker, Campbell, Gilfillan J. B., Johnson A. M., Johnson R. B., McLaughlin, Mealey, Miller, Perkins, Rice, Shaller, Shalleen, Tiffany, Wheat, Wilkins and Wilson.

The PRESIDENT *pro tem.* The roll having been called, there were yeas 10, and nays 16; so the question will be asked and answered. Let the reporter read the question as proposed by Senator Gilfillan.

The reporter read the question.

The WITNESS. I understand the question to be limited to what may have been said in the court room at New Ulm. You say "that occasion." I am not sure, myself, where it is desired to limit it.

Senator GILFILLAN. I don't know whether it would be proper for me to state. The witness has testified to two or three occasions. The occasion covers the whole day, or the term of court, or whatever the period was.

The WITNESS. May I be allowed to state what was said and how it came to be said? I would like to tell it that way if I am to tell it at all.

Senator GILFILLAN J. B. It is not for me to say.

The PRESIDENT *pro tem.* I presume that is the way it is.

Senator CROOKS. Tell it all.

The WITNESS. If I tell any of it, Colonel, I would like to tell it all.

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Senator GILFILLAN J. B. If the witness does not understand the ques-
n let it be read again.
The WITNESS. I understand the question, but whether it was to be
ited to an occasion,—I don't understand what that means.
Mr. Manager GOULD. I might say, Mr. witness, that a day has been
ined to be an occasion.
The PRESIDENT *pro tem.* The witness enquires whether the term oc-
ion was to be restricted to the term of court.
Mr. Manager GOULD. The term occasion has been defined by this
irt to mean one day.
The WITNESS. The conversation occurred in consequence of the fact
t Mr. Brownell and I arrived there on the morning of the first day of
term of court. The Judge was not there and we began to make en-
iries where he was, and we heard certain reports about him and con-
uently were a little anxious to know some certain matter as we had a
e to try. The Judge arrived there at exactly eleven o'clock in a bug-
I only know where he came from from his own statement. He
ne into the court room and his appearance was the first cause of the
nversation we had. Another attorney said "the Judge is drunk." And
e was, it was the first time I ever saw him drunk—my accquaintance
h him is, however, very slight.
Mr. Brownell and I were sitting together and the Judge—the morning
sion didn't last more than thirty minutes I think; there was no
nd jury and there were only nine cases on the calendar, if I recollect
ght, and they were called and we adjourned until after dinner, and
recollection is Judge Cox walked down town towards the court
use with Mr. Brownell and myself, and I said, referring to the other
n who said that the Judge was drunk, "he isn't drunk." Mr.
ownell said "No, but he has been drinking some." I replied myself
t it was probably true, from his looks, but that he didn't seem to me
be intoxicated. That was before dinner. Judge Cox took dinner
h us that day at our hotel. He didn't stop at the same hotel where
did, but he took dinner with us. In the afternoon the case of
ward vs. Manderfeldt was the first case to try, and the jury was em-
neled very quickly; there may have been a juror excused, but, if so, I
e forgotten it; there was no special objection to anybody, and all
t off quick. Mr. Webber read the pleadings for the plaintiff and
ced, I should say, ten minuts—not more than five or ten minutes
I called his client as a witness, Mr. Howard; he was sworn and he
bably testified for maybe twenty minutes.
Mr. ARCTANDER. We object to the witness going over the whole term
court there. I understand the question is as to what Mr. Brownell
ted.
The WITNESS. I am coming right to that.
The PRESIDENT *pro tem.* We had better have the whole of it.
The WITNESS. The witness testified for perhaps twenty minutes and
Webber said to Mr. Brownell and myself "You can take the wit-
s." Thereupon Judge Cox and Mr. Webber had quite an argument
ore we cross-examined at all, or before we said a word, and Mr. Web-
got somewhat excited. I don't mean to say excited in his speech,
he was aroused, a little out of temper I thought myself, and I said
nim,—I said to Mr. Webber myself, "what is the matter with the
lge?" and he used the word that Mr. Gould put into the question,
Brownell sitting beside me, and I said "I guess not." Mr. Webber
s "You don't know him as well as I do," and Mr. Brownell said "No,

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I guess he don't ; he didn't see him down at Waseca." "No," said I, "I never saw Judge Cox in court but once before, and that was here in this town and that for a very short time." And this occured right there at the table. Mr. Webber insisted again "He is drunk." Said I, "He has been in no place to get drunk ; we have been with him during all the adjournment"—alluding to Mr. Brownell and myself. "Well," he says, "he was drunk when he came here"—Mr. Webber, said, or something that was the import of it. I said I didn't think he was. Mr. Brownell said he had evidently been drinking and said it again. Now, that is all that occured at this time that I can remember.

Anything more that occurred in the court room was in the evening. That is the only thing that occurred, so far as Mr. Brownell is concerned, in the evening.

The jury went out about half past four or five o'clock, and we were called back to get the verdict of the jury may be as late as seven or half past seven ; it was raining a little and was just dark when we went back. There was only one lamp in the court room when the Judge came in, and he ordered lights to be lit, and I am not sure whether they were or not.

The verdict was received and it was a little different from what the attorneys had written it. Judge Cox made some remarks about that ; the jury had added to it—I know what the verdict was,—" We find a verdict for the defendent ; " I had written the form of the verdict myself and the Judge handed it to them, saying that if they found for us they would find in that form, and they had put on it, "no cause of action." They had added to it, " no cause of action, "and the Judge said something about the jury knowing more law than the lawyers, and I didn't catch distinctly what he said, and I asked Mr. Brownell, who sat beside me, " What is that ; what did the Judge say ? " Well, he says—he repeated it. My hearing sometimes isn't very good, if I take a cold I do not hear readily. He says, " The Judge talks a little thick ; " and if that has any reference to his condition, he said that at that time. That is all that was said in the court room that I remember. There was a conversation in the evening after the court had adjourned.

Mr. Manager GOULD.

Q. Well, did he say anything to the effect that the Judge was drunk that day ?

Mr. ARCTANDER. Drunk in the evening or drunk on the bench ?

Mr. Manager GOULD. Drunk that day.

Mr. ARCTANDER. I submit that it should be limited or modified to what he said as to Judge Cox's condition on the bench, because that is all you called his attention to.

Mr. Manager GOULD. It is in the same line as the Senator's question and the Senate has defined the term, occasion and what is said that day would be in response to the question.

Mr. ARCTANDER. We don't object to when he said it, Mr. Manager, but simply that what he said should be limited—the statement should be limited to what he said about Judge Cox on the bench.

Mr. Manager GOULD. That is all right, and we will so limit it.

The WITNESS. Do I understand that I am to state what was said in the evening.

Mr. ARCTANDER. As to what he said on the bench.

The WITNESS. I don't think I could separate the statement intelligently; it referred both to his condition in the evening and in the day,

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I don't think I could state it intelligently. It didn't take four utes, probably that long.

. State what he said?

. Judge Cox came into the hotel that evening and his condition canvassed, perhaps as late as half past eight or nine o'clock. Mr. I don't know who,—there were several of us sitting there in the e of the hotel together, but some one said—I couldn't say who it, but some one said, "the Judge has been on a spree again," and ade the remark about it. Some one there that represented the se made a remark about it in reply to the remark that I made. Mr. wnell then said, "well, he ought to be got to bed," and that was in y to what the person representing the house said.

enator BUCK C. F. What did he say?

he WITNESS. Mr. Brownell said he ought to be got to bed, refer- to Judge Cox, and I said "I will take him to bed," and after per- s five or ten minutes—another matter having intervened—on my rn to where Mr. Brownell was, he said it was a terrible disgrace or ortune and I won't be sure,—alluding to Judge Cox's condition; sed one of those words and others made the same or similar re- ks; my own perhaps was the strongest,—the remark that I said, it was a disgrace to Judge Cox and to the judiciary as well.

At the time, Mr. Jones, to which we have been alluding, to-wit: Ulm, on or about the time of the trial of Howard vs. Manderfeldt hat day, did you have a conversation with Mr. Brownell concerning condition of Judge Cox, while holding a term in Waseca during the ng of 1879?

I don't think I had what you would call a conversation with him, I couldn't say that anything about 1879 was said. Mr. Brownell e a statement about Judge Cox at Waseca; I don't know when it and I don't think it amounted to a conversation; I think it was a ment made—

Did he not state to you at that time that Judge Cox was drunk n he held the term at Waseca, or words to that effect?

I couldn't undertake to give Mr. Brownell's language as to what aid about Waseca, it was quite a statement.

r. ARCTANDER. You have given it already, haven't you?

r. Manager GOULD. Not now.

he WITNESS. Not in reference to that matter.

r. ARCTANDER. You said something about Waseca before?

he WITNESS. No, sir; I have not; I couldn't undertake to give his uage.

r. Manager GOULD. What did he say in substance?

he WITNESS. The most I could say about that in substance, Mr. ld, would be to give the idea or impression.

could give the idea of it I have now in my mind, that I got from Brownell; I wouldn't say that he said that in substance, or words to effect, but I simply say that I have an impression on my mind as udge Cox's condition in Waseca, derived or growing out of what ge Brownell said to me at the time. I wouldn't say that he used a d that I would, and I could not swear that he did.

State, in substance, what he did say as to Judge Cox's condition n he held the court.

r. ARCTANDER. We object to that for the reason that the witness already stated that he couldn't state it.

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The WITNESS. I wouldn't undertake to say that I could use a word that he said.

Q. Well, state it.

A. I say I couldn't undertake to say that he used a word that I would use if I went on to state the impression I have on my mind.

Q. We don't expect you to state the exact words that he used, but state the substance of what he said.

Mr. ALLIS. He said he can not.

Mr. Manager GOULD. He said he can.

The WITNESS. Perhaps I don't understand the meaning of the phrase. *the substance of what a man said*; it is quite a latitudinarian expression that we all use. If it means that I am to state the idea that I got from what Mr. Brownell said, I can give you that,—

Q. Do that.

Mr. ALLIS. We object to that.

The WITNESS. But to state what he said, meaning to give the substance of the language that he used, I can't do it.

Mr. ARCTANDER. We object to that.

Mr. ALLIS. The witness cannot give his impressions.

Q. Well, did he say, in effect, to you at that time, that the Judge was intoxicated at the time he held the Waseca term?

A. I so understood; that is the idea I have in my mind about it;—not during the whole term.

The PRESIDENT *pro tem.* That is what you mean by impression?

A. I derived the impression from what Mr. Brownell said,—that for about a week at Waseca, Judge Cox was intoxicated. I had that impression on my mind from what Mr. Brownell stated, but what he said, or the words that he used, or how it was, I couldn't tell you.

Mr. ARCTANDER. We move to strike that out, Mr. President, as not being competent evidence.

Mr. ALLIS. He is not giving the substance of what was said, he is giving the impression that was left upon his mind.

The PRESIDENT *pro tem.* The witness stated, that from conversation he had with Mr. Brownell, he received an impression on his mind; he simply stated what that impression was.

Mr. ARCTANDER. That is what we move to strike out, as not being competent evidence.

Mr. Manager GOULD. What is that?

Mr. ARCTANDER. We want to get out Mr. Jones' impressions, that is all.

Mr. Manager COLLINS. You have got them out.

M. ALLIS. We want to get them out of the record. We move to strike out that testimony; the last answer of Mr. Jones was not evidence.

Mr. ARCTANDER. The whole answer to the question.

Mr. ALLIS. It is not evidence. Mr. Jones merely gives now, what the impression he now entertains are, which he derives from a conversation a year or two ago with Mr. Brownell. It is incompetent evidence.

Mr. Manager GOULD. I think I asked Mr. Jones whether Mr. Brownell then and there stated that to him in effect.

Mr. ARCTANDER. You asked the question but Mr. Jones was too honest.

Mr. Manager GOULD. Mr. Jones answered that he did.

Mr. ALLIS We don't ask to have the answer stricken out, but we desire to have the evidence stricken out.

The WITNESS. The answer that I gave was not in response to that question at all.

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r. ALLIS. I know it was not; and we don't care about it. The evi-
e that he gave was not responsive to the question, and he repeated
o or three times before.—Gave his impressions.
r. Manager DUNN. I call for the reading by the reporter of the
er given in response to that question.
r. ALLIS. It does not make any difference,—when he stated it was
impression.
r. Manager DUNN. Well, we will have the reporter read the evidence.
IE WITNESS. If you will read the answer that I gave you will see
it was in answer to the question.
nator CAMPBELL. I move that the question of striking out that
er be submitted to the Senate.
ie PRESIDENT *pro tem.* The request is made that it be submitted to
Senate.
r. Manager DUNN. I would suggest, Mr. President, that it be read
ie reporter.
ie PRESIDENT *pro tem.* The testimony just given by the witness will
ad by the reporter, and then the question will be upon striking it

e reporter read the the last question and answer.
e PRESIDENT *pro tem.* The question will be upon striking out that
nony. Those in favor of striking out the testimony will vote aye as
names are called; and those opposed will vote no.
nator CAMPBELL. Is the motion to strike out the entire answer?
. Manager COLLINS. I would like to have the Senate understand
is to be stricken out,—what is meant by the whole answer, whether
the answer in response to the question of the counsel, or the answer
spons to the question of the President; let us settle that.
. ARCTANDER. The whole of it.
nator CAMPBELL. Just that portion of it where he assumes to give
npression of the ideas, without giving the language or the substance.
nator GILFILLAN, J. B. Without giving the words or the substance.
. Manager DUNN. Does the Senate desire that the answer the wit-
gave in response to the question of Mr. Gould shall be stricken out?
Gould asked him a question, did he state in effect so and so; do you
the answer to that stricken out?
. ARCTANDER. That is our motion. He gives an impression or

. Manager DUNN. Afterwards he made an answer in response to
uestion by the President.
. ARCTANDER. Well, it is all the same thing.
. ALLIS. It is an expression of what he had already said.
e PRESIDENT *pro tem* The Secretary will call the roll.
e roll being called, there were yeas 21, and nays 7, as follows:
ose who voted in the affirmative were—
ssrs. Aaker, Buck C. F., Campbell, Castle, Crooks, Gilfillan C. D.,
lan J. B., Howard, Johnson A. M., Johnson F. I., Johnson R. B.,
ea, McLaughlin, Mealey, Miller, Morrison, Officer, Peterson, Powers,
ions and Wilkins.
ose who voted in the negative were—
ssrs. Hinds, Perkins, Rice, Shalleen, Tiffany, Wheat and Wilson.
e PRESIDENT *pro tem.* The roll having been called there were yeas
id nays 7; so the whole answer to the question will be stricken

Manager DUNN. How much is to be stricken out?

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The PRESIDENT *pro tem.* The whole answer to the question, as I understood.

Mr. Manager GOULD. I understand the answer to the question propounded by the President, is stricken out.

Mr. ARCTANDER. No; the whole answer.

Mr. ALLIS. I object to further discussion; we are past that.

The PRESIDENT *pro tem.* The answer to my question was merely in explanation of what he said before.

Senator GILFILLAN J. B. The motion was to strike out all that part which purported to give simply impressions instead of a recollection of the conversation,—that is, impressions or ideas.

The PRESIDENT *pro tem.* That is the way I understood it.

By Mr. Manager GOULD.

Q. It has been testified here, by Mr. Brownell, that in the month of July, last, he sent you a communication relating to the subject of the Howard against Manderfeldt case; you have been subpœnaed to produce that letter. Are you willing to have the letter produced before the Senate?

A. I am not.

Q. That is all.

A. The letter was not to me; it was to the firm of which I am a member. I have it in my pocket.

Q. You have it?

A. I have it in my pocket, and both my partner and myself object to that letter being used here.

The court here took a recess for five minutes.

AFTER RECESS.

Mr. Manager COLLINS. Mr. President, we desire to have Mr. C. H. Nixon called and sworn for the purpose of getting his pay.

The PRESIDENT *pro tem.* That will be done, unless objection is made.

Mr. C. H. Nixon, was accordingly sworn.

Mr. Manager COLLINS. Mr. President, so far as the rebuttal is concerned we are substantially through. We have three or four witnesses whom we expected here to-night, or, at the latest, to-morrow morning. We expected them here to-night, but we are informed that there is some difficulty in getting here, and we are now satisfied that they cannot be here before to-morrow night. If they were here we could close this case, so far as the State is concerned, in a very few minutes. They are not, and we ask the privilege of using them, if we deem it advisable, upon the re-assembling of the Senate next week. I apprehend that there will be no session held to-morrow. I might say, in justification of this, that our witnesses have been examined much more rapidly than we expected, and much more rapidly than the Senate expected. We have examined a great many witnesses in the two days we have been here. We rest, except so far as the few witnesses that we speak of, and we expect to call them upon a single point, on the opening of court Monday.

Mr. ARCTANDER. I would state, Mr. President, that if we have anything to say in this matter at all, it is simply this: we are, of course, expected to bring in here the testimony that we are entitled to, under the rules of law, as soon as the state is ready to close its case. The Senate knows how great a distance we have to send for witnesses, and

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ey know that we cannot be ready on Tuesday morning to meet evi-
nce which the State introduces at that time, unless we have some
evious intimation as to what it will be. It is out of the question. If
e managers could inform us fully as to what they expect to prove by
ese witnesses, and the names of the witnesses, we could take our course
ordingly. If he can give us the names of the witnesses, and a state-
nt of what he expects to prove by them, we may be able to prepare
proceed Tuesday morning.

Mr. Manager COLLINS. We will state this,—we have not the names of
witnesses, but I will state that they are simply upon the impeach-
nt of the witness Megquier, that is all we have now.

Mr. ALLIS. They are to be called upon no other subject?

Mr. Manager COLLINS. No other subject, and we have no other wit-
ses except upon that.

Senator CAMPBELL. You rest with that reservation.

Mr. ARCTANDER. The subject of the impeachment of Megquier is one
he subjects upon which we desire to introduce testimony, and I
nk it would be proper, because the managers must know what wit-
ses they expect upon that subject, and I think it would be proper
on our part to ask who the witnesses are, so we can know whether we
d prepare against them or not. That would probably inform us
ficiently to enable us to make preparation.

Mr. ALLIS. I would like to ask Mr. Collins whether the witnesses will
called in regard to general reputation, or in regard to statements.

Mr. Manager COLLINS. It is not in regard to stealing a sausage; it is
egard to general reputation.

The PRESIDENT *pro tem.* I understood the managers to state that they
ed in rebuttal, so far as the state is concerned, with the exception of
or three witnesses that they cannot have here until to-morrow even-

Mr. Manager COLLINS. Yes, sir. The counsel suggests that these same
nesses will probably be witnesses to sustain Coleman's character.

Mr. ARCTANDER. We do not care anything about that; all we want
now is the names of the witnesses.

Mr. Manager HICKS. I don't remember their names; they live at
l Island, forty-five miles west of Glencoe, perhaps Olivia, or Bird
nd. The sergeant-at-arms has taken their names and gone after
n. I really do not remember their names.

Mr. ARCTANDER. I suppose the managers should give us their names.
here are, Mr. President, two ways in which we can meet that kind of
ence. One is to call witnesses to swear to the good character of Mr.
quier; the other way is to impeach the witnesses who are called to
each him. That is the reason why we desire to know who they are.
client informs me that he has been informed on the street as to cer-
men, whom, it is claimed, are to be subpœnaed, and, if they are the
he says they are, he desires to impeach them. It seems to me that
Managers ought to know who the men are, and be able to give their
es to us.

Mr. Manager HICKS. I can give the names now. The names are Mr.
k, of the firm of Conkling & Clark,—I don't know his first name;
iam Holbrook, George Crowley and D. H. Crowley, of Bird Island.

Senator GILFILLAN, J. B. It seems to me that this is a matter in
h the court ought to be consulted. I understood last week that we

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adjourned over until Wednesday evening to enable the Managers to get their witnesses here, with the understanding that they were to examine them right along consecutively until they were through, hoping to get through to-night.

Mr. Manager COLLINS. Pardon me, to-morrow night.

Senator GILFILLAN, J. B. To-morrow night. I don't know whether the Senate will be willing to adjourn over until next week. I think the members desire the counsel to proceed with this matter until it is closed up.

The time of the Senators, as well as of the counsel on both sides, is somewhat valuable—perhaps I ought to speak with a good deal of modesty upon that subject, in view of the amount of time I have been absent, but I have been here as constantly as I possibly could with any sort of justice to my own business, or interest, or that of the parties with whom I am associated, and I apprehend that it is the desire, upon the part of a great many of the Senators that this thing be pushed to a speedy conclusion. Here we are; fairly into the month of March, and the case is still unfinished, and I do not know as the beginning of the end is yet apparent. Now, I arise here to a point, at which it seems to me the Senate ought to consider the question and say whether they will consent to an adjournment over to next week. Another point,—I desire to ascertain from the respondent's counsel whether they desire to offer further testimony.

Mr. ARCTANDER. We do, Mr. Senator.

Senator GILFILLAN, J. B. As to what character,—impeaching the witnesses that have been called by the managers?

Mr. ARCTANDER. Impeaching and contradicting the new matter that has been brought in by them.

Senator GILFILLAN, J. B. I didn't suppose, Mr. President, that any new matter had been brought in. I supposed this was purely rebutting evidence,—the whole of it.

The PRESIDENT *pro tem.* That was my understanding,—that everything that was not rebutting testimony has been objected to and ruled out.

Senator GILFILLAN, J. B. If any of the witnesses that have been called last by the honorable managers can be impeached, I do not know that the respondent's counsel can be cut off from their right to do so; but I supposed when the managers were through with their rebuttal that was the end of the case, principally and substantially.

Mr. Manager COLLINS. Mr. President, the managers in asking this supposed that counsel for the respondent would require more time. I will say that we made that proposition with that understanding. If the defense is ready to go on to-morrow morning or this evening, the managers are ready to drop this case, so far as they are concerned, right here. I mean by that ready to rest. But I made that proposition with the understanding that the detendant's counsel would expect an adjournment until Monday; that was the reason I made it. We can have our witnesses here by Monday, so there will be no delay. We are, of course, willing to go on if that was the proposition.

Mr. ARCTANDER. I supposd, Mr. President, that we were informed at the time when the adjournment was had that the State would occupy the remainder of this week. That was the information of the defendant. I did not suppose that the Senate would presume that we would sub-

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na witnesses here before we knew what we had to meet or that we uld have them here upon five minutes notice; it is out of the question. is nencessary to give us some time.

We have certainly the right to sustain by witnesses, if we can, witnesses upon our side that have been attacked by the managers. have also the right to attack any of the witnesses that the managers e brought forward; and if there is any new matter that has come in, ebuttal, as I claim there is, upon two or three different points,—only or three different points,—we shall have a right to defend against it. objected to it at the time, as not proper rebuttal; the Senate allowed come in; it allowed new matter to be dragged in, and of course that will question to be considered when we offer our witnesses, whether it is matter or not. The Senator probably has not followed this matter te as closely as counsel have. I don't suppose it would be natural t a judge would follow a case as closely, or pay so much attention as counsel who were trying it, who view the case from a certain standnt and watch it for whatever they have to meet, which, of course, a ge would not do. I suppose that the Senate would not ask us, with- warning, to go on to-night, when it was only the day before yester-, at eight o'clock in the evening that they commenced to bring in ir evidence; when it was only yesterday that they brought in evice from which we could learn what they intended to rebut, what y intended to do; I mean especially with regard to the impeachit of Col. Megquier; that we knew nothing about before yesterday. ow, yesterday it seems that the managers were using both of the eants-at-arms. There were none for us, and, of course, at that time couldn't send any sergeant-at-arms out anyhow, because we could know how long the State would occupy, being informed, as we were, they would occupy the remainder of the week, and we were not to called upon before next week, and also informed, as we were, by er of the Senate, as far as subpœnaing our witnesses was concerned, the Senate desired to adjourn over Saturday and Monday as has n done all the way through. I don't think there has been any laches egligence upon our part in this matter, nor would they have any t to require us to go on, under the circumstances, knowing that our nesses are not within our reach, and that it takes about two days to them.

he PRESIDENT *pro tem.* Mr. Arctander, I understand—

enator GILFILLAN, J. B. Mr. President, counsel seem to have inferred I attributed negligence to them; counsel did not understand me. rtainly did not intend to say so, if I did so express myself. There is point, however, if the counsel will permit me: I do not under-d that there is any new matter here; I supposed that it was only ence in rebuttal that was allowed to come in If there is new matnere, against which the counsel has a right to defend, then the mana- have the right to rebut again, and there is no end to the thing. I ly suggest these questions. I would like to see an end of it somere.

nator CAMPBELL. I was just going to suggest, Mr. President, that this question of new matter, it is proper for the Senate to inquire e counsel what new matter they intend to introduce testimony upon, it may be a question for the Senate to say whether or not the matter w, and if we shall settle it now, it may save the expense of produc-

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ing witnesses here that we would not hear after they were brought in. I merely make that suggestion for the benefit of those people who are more familiar with the matter than I am.

Senator HINDS. Mr. President, I thought the question as to new matter had already been settled. I suppose the question, as to the introduction of new matter, was settled during the progress of the trial.

The PRESIDENT *pro tem.* That was my understanding.

Senator HINDS. Whenever there was objection made to the introduction of evidence because it was supposed to be new matter, the opinion of the Senate was taken upon it then and there.

Senator CAMPBELL. And the question of its admissibility was then and there settled.

Senator HINDS. And I am not aware that any new matter has been permitted to be introduced; all has been ruled out I think.

Mr. ARCTANDER. Will the Senator allow me to ask him whether the impeachment of one of our witnesses is not new matter which we would have the right to meet?

Senator HINDS. That is impeachment, of course, but does not go to the merits.

Mr. ARCTANDER. I would like to call the attention of the Senate to another fact. It is the only one that occurs to me as proof of new matter, and that was objected to when it came out on cross examination. A witness in testifying that Mr. Matthews was the author of that letter, stated indirectly—new matter, you may say—that the witness Matthews had come to him and asked him to get that letter back and he had got it back. Now I contend that is new matter. I claim it is. It is something that Mr. Matthews' attention was not called to when he was upon the stand, and it was new matter that puts a new face upon the question and I understand that we will be allowed under all the rules of evidence to contradict that if we can.

Mr. Manager COLLINS. What do I understand you to say, Mr. Arctander?

Mr. ARCTANDER. To contradict the testimony of Mr. Whitney as to Mr. Matthews' coming and getting that letter back from him.

Mr. Manager COLLINS. Let me suggest that Mr. Matthews said he never wrote the letter.

Mr. ARCTANDER. That is all right, but you brought out new matter and showed he did write it and came there and got it back again; that was new matter that his attention was not called to.

Mr. Manager COLLINS. We will admit, Mr. Arctander, that Mr. Mathews will testify that he never did come and get that letter. I have no doubt about it, and we will admit that he did so testify; you needn't get him up here for that matter.

Senator HINDS. That does not go to the merits of the thing at all.

The PRESIDENT *pro tem.* There is another matter which it strikes me it would be well to have settled, right here. I understood, a week ago to-day, from Mr. Arctander, that the defense rested their case, with the exception of one or two witnesses, which he proposed to call hereafter. I would enquire whether or not he is prepared now to go on and examine those witnesses here referred to.

Mr. ARCTANDER. It is only one witness, Mr. President,—the short hand reporter, Mr. Hillman. He is not here and I do not know whether he has got his minutes yet. His brother had the minutes; he has

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ent for them, but I do not know that he is ready to produce them. It ron't take over ten minutes whenever I put him on.

Mr. Manager COLLINS. [To Mr. Arctander.] Oh, put him on at any ime, Mr. Arctander.

The PRESIDENT *pro tem.* I only suggested it that we might save that nuch time now.

Senator GILFILLAN J. B. I think, Mr. President, that it would be 'ell at this time to determine whether there is any new matter in ne case as suggested by the senator from Meeker, and then to determine ne question whether we will strike it out or re-open the case again, and think it ought to be determined now before the respondent goes to the ouble and expense of subpœnaing witnesses to rebut supposed new natter, which really is not, or if it is, might be stricken out by the Sen- e rather than prolong the trial. I think it is a question that ought to e determined now.

The PRESIDENT *pro tem.* What is the pleasure of the Senate?

Senator GILFILLAN J. B. Of course, so far as calling witnesses to im- each witnesses produced by the honorable managers, in rebuttal, is ncerned, it is not going into the merits of the case at all, and does not me under the head of what is generally understood by the term clos- g the case. They would have that right anyhow, I understand.

Mr. ALLIS. And also to sustain the character of our own witnesses.

Senator GILFILLAN J. B. Your witnesses that have been impeached?

Mr. ALLIS. Yes, sir.

Senator GILFILLAN J. B. Oh, yes; there is no dispute about that, t what I did understand, Mr. President, was that there was no re ening of this case for rebuttal of new matter of any kind. These in- lental, collateral questions is another thing, and does not go to the erits.

The PRESIDENT *pro tem.* There is no question before the Senate now.

Senator JOHNSON F. I. I move we go into secret session.

Senater CAMPBELL. I hardly see the necessity of going into secret sion now, Mr. President.

The PRESIDENM *pro tem.* It is moved and seconded that the Senate into secret session. Those in favor of the motion will say Aye, and ose opposed No.

The Noes have it.

The motion is lost.

Senator CAMPBELL. I now move, Mr. President, that the sur-rebuttal confined exclusively to the impeachment of the witnesses offered by managers, or to sustaining the witnesses of the respondent that have n attacked by the managers,—that the sur-rebuttal be confined to se two points. I think that will cover it.

enator GILFILLAN, J. B. Well, it will have to be confined to that.

enator CAMPBELL. We want to fix that now.

Ir. ARCTANDER. That is all we want.

'he PRESIDENT *pro tem.* Is the motion seconded. The motion having n seconded. The Senate have heard the motion, as many as are avor will say aye, the contrary no. The motion is adopted. What ne further pleasure of the Senate.

enator GILFILLAN, J. B. I would like to enquire, Mr. President of counsel for the respondent, if they are ready to go on to-morrow ning or can be ready.

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Mr. ARCTANDER. Mr. President, we can not be.

Senator GILFILLAN, J. B. I would like to enquire if the witness respondent's counsel referred to about a week ago can be had to-morrow morning or to-night.

Mr. ARCTANDER I suppose Mr. Hillman can be had. I cannot tell until I see him. I can explain to the Senator what I want him for.

Senator GILFILLAN, J. B. Well, if you want him, that is all I care to know.

Mr, ARCTANDER. I have an understanding with the counsel that I can introduce him at any time.

Mr. ALLIS. He is an officer of the court and will be here all the time.

Senator GILFILLAN, J. B. Then it becomes a serious question right here, Mr. President, whether the Senate wish to consume any more time on this question of the impeachment of witnesses. It may be a serious question whether anybody's character for truth and veracity has been attacked, and it is a proper question for the Senate to consider right here, and if they should consider that no one had been smirched, then there is nobody to bolster up.

Senator CROOKS. Excepting Mr. Kincaid.

Senator GILFILLAN, J. B. And I don't know whether the respondents care to attack any of these rebutting witnesses. It becomes, I think a very serious question on the part of a great many of the Senators here whether they want to spend any more time on the question one way or the other—that collateral question.

Senator GILFILLAN, C. D. Mr. President, I think we had better go into secreet session.

The PRESIDENT *pro tem.* Do you make it as a motion?

Senator GILFILLAN. C. D. I move that the doors be closed and the Senate go into secret session.

Mr. ARCTANDER. I desire to give notice, Mr. President, before the court goes into secret session, that we offer to prove on Tuesday morning, or as soon as we get to it, by six of the most prominent men of Bird Island, the place where the witness George H. Megquier resides, and where he has resided three or four years, that his general reputation for truth and veracity is good, and has never been questioned.

Mr. Manager COLLINS. I desire to say, Mr. President, that if we are permitted we will show by twelve to twenty equally respectable men that his general reputation for truth and veracity is bad.

Mr. ARCTANDER. I simply give this notice.

Mr. Manager COLLINS. I also give this notice; it does not cost much.

Senator GILFILLAN, J. B. Question!

The PRESIDENT *pro tem.* The question is, shall the Senate go into secret session. As many as are in favor of the motion will say aye; those opposed, no. The ayes have it, and the Senate will go into secret session, All except members of the court will leave the room, and the Sergeant-at-Arms will keep closed the doors.

After the doors were opened the Senate resumed busines in open session.

Senator RICE in the chair.

The PRESIDENT *pro tem.* The chair is informed that the counsel for the respondent has left the building. What is the pleasure of the Senate?

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Senator GILFILLAN, C. D. I move that the Sergeant-at-Arms be directed to notify the respondent and his counsel that the doors are open.

Mr. Manager COLLINS. Before doing so I have to request that I. R. Miller and George R. Miller be paid. They were sworn here on the part of the prosecution and subpœnaed in rebuttal, but were not used.

The PRESIDENT *pro tem.* That will be taken as the sense of the Senate unless objection is made. No objection being made they will be paid accordingly.

Pending the arrival of the counsel for the respondent, the Senate will take a short recess.

AFTER RECESS.

The PRESIDENT *pro tem.* The Senate will please come to order. The board of managers and the respondent and his counsel being present, the secretary will announce the result of the secret session.

The secretary read as follows:

Ordered, That the Senate, sitting as a court of impeachment, proceed to hear any further testimony now offered; and that if neither party is now ready to offer further testimony, that the case be declared closed so far as evidence is concerned.

Ordered, That the evidence tending to impeach George H. Megquier, of Bird Island, be expunged from the record, as we do not desire to extend the time for rebutting testimony on the part of the managers.

Senator GILFILLAN, C. D. I will state, Mr. President, for the information of the respondent's counsel that the State desires to allow him to call Mr. Hillman, if he is here when we meet again after adjournment, on Tuesday morning. The Senate has only cut off this impeachment business.

Mr. ARCTANDER. Of course that was the understanding, that we could put him on the stand at any time.

The PRESIDENT *pro tem.* Have the managers any further witnesses to introduce now?

Senator WILSON. I would like to know if the counsel on both sides can agree to begin the arguments in the case to-morrow morning?

Senator HINDS. It would be well first to ascertain if there are any more witnesses.

The PRESIDENT *pro tem.* I would like to ask the Managers that question.

Mr. Manager COLLINS. We have no more testimony, if the testimony is to be closed now. We have four witnesses; I presume they are in the city now, but we haven't any here and if the case is to be closed at this time we are perfectly willing that it be closed.

Mr. ARCTANDER. We have no witnesses here, and with the understanding, of course, that we can call Mr. Hillman when we meet again, we have no further witness.

Senator GILFILLAN, J. B. I desire to say further, Mr. President, that the Senate desires to consult counsel on both sides before adjourning as to when the argument shall commence.

Mr. ARCTANDER. I would ask if the Senate has made any order or rule in regard either to how many are going to speak or the order in which they shall speak.

Senator CAMPBELL. No, sir.

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Mr. ARCTANDER. That ought to be determined first.

Senator GILFILLAN, J. B. Can counsel agree?

Mr. ARCTANDER. We are willing to agree to anything, or to have the same rule which obtained in the Sherman Page case.

Senator GILFILLAN, J. B. What was that?

Mr. ARCTANDER. That was to have the State commence——

Senator WILSON. The rule defines the order in which the argument shall be made.

Mr. Manager COLLINS. I believe that when the rules were adopted, upon motion of Senator Castle, that rule was accepted.

Senator CASTLE. I did it, Mr. President, for this reason.—I anticipated at that time that it was very doubtful at that early day that the counsel on either side would know who wanted to speak and how long, and asked to except it until this time thinking it very probable that the counsel for the respondent and for the prosecution would be able to arrange between themselves as to the matter so as to obviate the necessity of having any arbitrary rule whatever. That was the motive I had in excepting that.

Senator GILFILLAN, J. B. What is the substance of that.

Senator CAMPBELL. I will read it.

Rule 23. The cause on each side shall be opened by one counsel. The final argument may be made by two counsel on a side, unless the Senate order otherwise, and the argument shall be opened and closed by the honorable managers on the part of the House of Representatives.

Mr. ARCTANDER. We will stand by that rule.

Senator CAMPBELL. Then I move, Mr. President, that it be adopted.

Mr. Manager COLLINS. Before the matter is decided, Mr. President, we will ask for a moment's delay.

Mr. ALLIS. It would be impossible, of course, for these gentlemen to go on to-morrow morning; we have not the journals.

Senator GILFILLAN, J. B. I would like to inquire if the honorable managers are satisfied with this rule.

Mr. Manager COLLINS. We are satisfied with the rule, except as to the number of speakers; that is what we are now considering.

Senator GILFILLAN, J. B. This provides for two speakers on each side—two on behalf of the managers and two on behalf of the respondent.

Mr. Manager COLLINS. Yes, sir.

Senator CASTLE. That was the very rule adopted in the Page case.

Senator CAMPBELL. The very one.

Senator GILFILLAN, J. B. I have no doubt it is.

The PRESIDENT *pro tem.* What objection have you to the rule, Mr. Collins?

Mr. Manager COLLINS. We have no objection to the rule, except as to the number of speakers. I would make the statement, that if the rule can be changed, the board of managers will agree to take no more time than the counsel for the respondent do in making their arguments I apprehend, judging from experience, without any reflection, that we will not take so much time; but we do not like to be limited to two speakers. We would rather be limited on time than to be limited on the number of speakers, if that could be done.

Senator CASTLE. I don't think limitation as to the matter of time is

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ever allowable, or ought to be allowable in a case of this kind. I should not know how to commence to sum up a case with a view to closing within a specified time. Counsel ought not to be hampered with any limitations.

The PRESIDENT *pro tem.* What change does the Manager propose?

Mr. Manager COLLINS. We do not propose any change; we leave that to the Senate.

Senator CAMPBELL. I now move the adoption of the rule.

The motion was duly seconded.

The PRESIDENT *pro tem.* You have heard the question, those in favor of it will say aye.

Senator POWERS. Mr. President, it seems to me that if the managers desire to use their time by three or four persons speaking, there can be no objection on the part of the Senate or on the part of the respondent. I do not see how any injustice can be done.

Mr. Manager COLLINS. I think we can arrange it satisfactorily.

Senator POWERS. As it is?

Mr. Manager COLLINS. Yes, sir.

Senator POWERS. I was aware you would not be limited as to time, but I supposed you wanted the privilege of more speakers.

Mr. Manager COLLINS. I think we can arrange it between us.

The PRESIDENT *pro tem.* Those in favor of adopting the motion will say aye; those opposed, no. The ayes have it; the rule is adopted.

Senator CASTLE. Now, it would be desirable if we could learn from the respective counsel on either side about when they will be ready to go on. I need not say that the matter was a subject of consideration by the Senate in secret session, and we were all desirous of having the arguments proceeded with as soon as could be in justice to all parties concerned. I don't suppose any of the Senators care to crowd these gentlemen. We desire to give them an opportunity of doing justice to themselves in the case, but we are desirous of getting through—I believe that is the unanimous sense of the Senate—as soon as we can.

Mr. Manager COLLINS. The board of managers can say, and I presume that our views will meet those of counsel for the respondent, that it is very difficult for us to commence the summing up in this case immediately. We ought to make some preparation. I can say, so far as I am coucerned; that I had intended to make that preparation, but was prevented on account of my eyes. The senate will bear in mind that I have been troubled a good deal lately in that respect. I think that it would be very difficult. However, one of the most important reasons why we should not be compelled to begin the argument to-morrow is because the testimony is not printed up to date; we ought to have the printed testimony before we make the argument.

Senator CASTLE, How will Monday suit the counsel?

Mr. Manager COLLINS. I do not believe we can get the testimony by that time; I think that we probably could Tuesday morning.

Senator GILFILLAN, J. B. Can counsel give any approximate guess as to how much time they will consume?

Mr. Manager COLLINS. I will say that I will agree not to consume over four or five hours myself, and will be perfectly willing to do that.

Senator GILFILLAN, J. B. We want to figure whether we could get the case to the jury; so to speak, next week.

Senator CROOKS. I move, then, Mr. President, that when the Senate journs, it adjourn to meet on Tuesday morning next at ten o'clock.

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Senator WILSON. I second the motion.

Senator GILFILLAN, C. D. I ask the respondent when they can probably get their witness, Mr. Hillman, here?

Mr. ARCTANDER. We have him here, but the trouble is his minutes taken before the judiciary committee are with his brother, who is in another part of the State; that is the difficulty. We can have him at any time, but we cannot use him without his record.

The PRESIDENT *pro tem.* It is moved and seconded that when the Senate adjourns it adjourn until Tuesday morning next at 10 o'clock. Those in favor of that motion will say Aye; those opposed No. The ayes have it.

Mr. Manager DUNN. There are four witnesses on behalf of the State who were subpœnaed and are in attendance now, or rather, they are in the city, as I am informed by the sergeant-at-arms. The witnesses we anticipated would not get here until to-morrow night. They are here now, and I simply ask that they be allowed to receive the ordinary pay and mileage for their attendance, inasmuch as they are not going to be heard.

Senator CASTLE. I move that that be done.

Senator GILFILLAN C. D. I move that they be allowed their pay the same as though they had been sworn.

Senator GILFILLAN J. B. I second the motion.

The PRESIDENT *pro tem.* It will be taken as the sense of the court unless objection is made. No objection being made, it is so ordered.

Mr. ARCTANDER. I would ask that the Secretary, at the expense of the State, telegraph to the Sargeant-at-Arms at Marshall, not to subpœna the witnesses he has gone there to subpœna on our behalf. There are two witnesses that he went there to subpœna this afternoon.

Senator CASTLE. You had better telegraph and allow the Secretary of the Senate to audit the bill.

Mr. ARCTANDER. I thought it would be more authoritative; probably we can both sign it.

Senator GILFILLAN J. B. Is there anything further Mr. President?

The PRESIDENT *pro tem.* No, sir.

Senator GILFILLAN J. B. Then I move that the Senate now adjourn.

The PRESIDENT *pro tem.* Those in favor of that motion will say aye; those opposed no. The Senate now stands adjourned, until Tuesday morning next at 10 A. M.

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